

Revenue (1397) Department.

PRESS SERIES.

G.O., No: 519-520

Dated 2nd July 1897.

[Despatch Abstract.]

Agriculturists' Relief Bill.

Ordering that a letter be despatched to the Government of India on the — and on the suggestions of the Government of the general law Government of India to the report of the Commission to enquire into the working of the Agriculturists' Relief Bill. Intimating the views of this Government on the Bill.

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This image shows a blank, aged, cream-colored page, likely an endpaper or flyleaf from an old book. The paper has a slightly textured appearance with some minor discoloration and faint creases, characteristic of old paper. A small, dark, irregular stain is visible near the bottom center of the page. The left edge of the page shows the binding structure, including what appears to be a vertical strip of material and some stitching or staples. The overall lighting is even, highlighting the subtle variations in the paper's tone and texture.

Q.O.	No.	Department.	Date.

4. There are, however, two important points connected with the Bill which can most conveniently be referred to here. It is a question whether the provisions of section 24 of the Bill, or at least so much of them as declare land belonging to an agriculturist to be exempt from attachment or sale in execution of a decree for money for which it has not been specifically pledged, should not be made a part of the general law of India. The remarks of the Deccan Commission upon the beneficial operation of these provisions will be found in paragraph 51 of their report. The rights of certain classes of occupancy tenants are already exempted throughout a great part of India; while in several provinces land cannot be sold in execution of a decree without the sanction of the executive. To hold land liable for money debts not specifically charged upon it is practically to put a

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 credit who lends his money without specific security (and charges higher interest for doing so) on the same footing in respect of his remedy as one who lends on mortgage, and thereby to deprive the borrower of an immunity for which he has no right. Local Governments are being separately consulted as to the advisability of receiving voluntary alienations of land. But so long as the creditor can obtain a valid voluntary transfer on account of debt, any such restrictions must be absolutely inoperative. The question of the liability of agricultural land for unsecured debt is one of which the Governor General in Council, as at present advised, is of opinion that it is one that should be settled for the country as a whole, rather than be left to be decided piecemeal by notifications under an enabling Act.

The further question arises, whether the extension of the law for the sale of land belonging to an agriculturist should not be extended to such land, even when it has been specifically attached and already gives the Courts jurisdiction to sell it, as to the suggested extension of the exemption would be a step further in the same direction. If the exemption is thus extended, it will be for consideration whether it should apply (1) to mortgages effected, and (2) to decrees for the sale of mortgaged land passed, before the new law comes into operation.

I am to invite an expression of opinion on all the points discussed in this paragraph.

5. The Commission, in addition to proposing a general Bill for the protection of agriculturists, made certain proposals for the amendment of the general law. Those relating to the amendment of the Contract and Evidence Acts and Act XXVIII of 1855 have already been referred for opinion to Local Governments and Administrations, and the replies received to the reference from the Governor General in Council on these points are now under the consideration of His Excellency in Council.

6. There remain the following proposals of the Commission, viz.:-

- (1) that village Munsiffs should be constituted under a separate Act;
- (2) that the period of limitation should be altered in suits on bonds or on accounts stated to six years;
- (3) that section 337A of the Civil Procedure Code should be amended so as to prevent it from being used to defeat the intention of section 266 of the Civil Procedure Code or of any other law similarly exempting specified property from attachment; and
- (4) that section 525 of the Civil Procedure Code and the Registration Act should be amended so as to prevent the abuse of arbitration procedure.

7. In Madras and the North-Western Provinces and Oudh (North-Western Provinces and Oudh Village Courts Act of 1892) there are local Acts which provide for the establishment of Courts of Village Munsiffs. The Governor General in Council agrees with the Commission in thinking that the establishment of such Courts should be dealt with by means of a measure separate from that for the relief of agriculturists.

It appears to His Excellency in Council desirable that the local Legislatures of Bombay and Bengal should undertake the legislation necessary to legalize the establishment of Village Courts in the parts of those provinces where it may be desirable to constitute them, and that a Bill should be passed in the Legislative Council of the Governor General making the necessary provision in the case of provinces in which there is no Legislative Council. The Governor General in Council is also, subject to the advice which Local Governments and Administrations may have to offer on this subject, inclined to think that the North-Western Provinces and Oudh Village Courts Act provides the most suitable model upon which legislation for the establishment of Village Courts might be framed. Possibly, however, it may be considered that this Act leaves too little to be settled by rule, and section 49 is inconsistent with section 71 of the Deccan

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 Agriculturists Relief Act and with section 22 of the Bill now circulated. It may also be thought that section 69 is not entirely suited to Village Courts. The Governor General in Council

order to provide for the constitution of Courts to be presided over by Village Munsiffs.

8. Turning to the proposal of the Commission, that the period of limitation in suits on bonds or on accounts should be six years, I am to observe that the Commission of 1875 expressed themselves (paragraph 107) thus regarding the law of limitation:-

"It will be seen from the extracts quoted in the appendix that there is a general opinion that the short period of limitation (three years) now allowed for suits for unsecured debts has the effect of enabling the creditor to oppress his debtor. Only one report is to the contrary. We are not, however, of opinion that any limitation law taken by itself can have this result. In the case of the ordinary debts of a ryot, the law limitation amounts to nothing more than a law by which the creditor is compelled to give the debtor a statement of his account. So far from this being an evil, it would seem to be the very best thing possible for the debtor. A fresh balancing of the account every year instead of every three years would, from this point of view, be better still. The only cost which the law puts upon the parties is the stamp, which is a comparative trifle,—namely, one anna for every hundred rupees on a promissory note, and two annas for every twenty-five rupees on a bond."

And again (paragraph 109):-

"We are unable, then, to avoid the conclusion that the reduction of the period of limitation has been the cause of considerable hardship to the debtor. The question follows whether it is desirable to alter the law in this respect, and to return to the old period. Our opinion is that for the following reasons it is not desirable to do so. In the first place, there is no law in the statute book which it is so desirable to keep free from change as the Limitation Law. There have been two Limitation Acts in the last sixteen years, and the present Act is only five years old. Secondly, for the reasons given at the head of this section, we conceive that, if creditor and debtor stand on fair terms with each other, a short limitation is advantageous to both parties. Thirdly, we believe that the present hardship results from causes which will in time work out their own remedy. We are of opinion, however, that something may be done to relieve the present hardship by providing that bonds and other instruments written by the agency which we propose should be appointed for the purpose, should acquire the extended limitation given to 'registered' instruments by the Limitation Act. The period for unsecured debts will then be extended from three to six years. There is no doubt that in the case of the agricultural debtor there are special reasons for considering an easy term of limitation desirable, for the ryot borrows chiefly against his annual income, and this annual income is uncertain."

Section 72 of the Deccan Agriculturists Relief Act provides that in any suit for the recovery of money alleged to be due to the plaintiff on account of money lent or advanced, or the price of goods sold, or on account stated between the plaintiff and defendant, or on a written or unwritten engagement for the payment of money of a kind not specially referred to, the period of limitation shall be, when the person sued was at the time when the cause of action arose an agriculturist, twelve years if the suit is founded on a written and registered instrument, and six years in other cases.

The Government of India will now be glad to receive opinion upon the proposal made in paragraph 62 of the Report of the Commission of 1891-92.

9. The proposal of the Commission for the amendment of section 337A of the Code of Civil Procedure is contained in paragraph 50 of their report. Section 266 of the Code exempts certain property—e.g., wearing apparel of the judgment-debtor and his family, tools of artisans, implements of husbandry, cattle necessary for an agriculturist to earn his livelihood as such, and materials of houses and other buildings used by agriculturists—from attachment and sale. Section 337A of the Civil Procedure Code empowers the Courts to make an order disallowing an application for the arrest and imprisonment of a judgment-debtor, if it appears to the Court that he is unable "from poverty or other sufficient cause" to pay the amount of the decree. The Punjab Courts have held that the possession of such property as is exempted under section 266 prevents them from holding a debtor

to be unable to pay the amount of the decree, and therefore from giving him the benefit of section 337A. It appears to the Government of India that this result is contrary to the intentions of the Code, and I am to ask for opinion upon the matter.

10. The reasons for the suggested alteration of section 525 of the Civil Procedure Code are stated in paragraph 58 of the Commission's Report. That section provides that when a matter has been referred to arbitration without the intervention of the Court, any person interested in the award may apply to the Court of lowest grade having jurisdiction in the matter that the award may be filed. The Court can then give notice to the other parties to show cause why the award should not be filed; and if it finds no ground for remitting it or setting the award aside, it must be filed as an award. The Commission found that this section was abused so as to convert agreements into awards, and thereby evade the registration laws and section 22 of the Deccan Agriculturists Relief Act. The Government of India are disposed to accept the opinion of the Commission, and I am to ask whether agree with this view.

11. Lastly, I am to refer to a proposal which has been made that Local Governments should be empowered to remit in any district or part of a district in which conciliators have not been appointed, half the fees in cases covered by the Bill now circulated in which the parties come to an agreement at the first hearing, and to remit in any or all districts institution fees on suits brought by agriculturists for redemption of mortgaged lands.

The following special exemptions have been made under the Court Fees Act in places where the Deccan Agriculturists Relief Act is in force:—

- (1) the fees on plaints in suits by agriculturists under section 16 for an account, etc., and for redemption or mortgage where any of the plaintiffs is an agriculturist, are remitted entirely except in the Satara District, where they are reduced to one-half;
- (2) fees in insolvency proceedings are remitted;
- (3) the fees in suits referred to in Chapter II to which an agriculturist is a party are reduced to one-half;
- (4) fees in suits before Village Munsiffs are remitted; and
- (5) where conciliation is not in force, half the fees are refunded if a compromise is effected at the first hearing.

The Governor General in Council desires to receive opinion

as to whether any concession in the matter of Court fees should be made in the case of suits to which Chapter II of the Bill under circulation refers.

I have the honour to be,

SIR,

Your most obedient Servant,

L. M. THORNTON,

Deputy Secretary to the Government of India.

MEMORANDUM.

The scheme of the Bill is to provide for the trial of suits of specified kinds, to which agriculturists are parties, a special form of procedure, but that such suits should be tried by the ordinary Courts subject to the proviso that no Small Cause Court shall take cognizance of any suit of the character referred to.

2 Chapter I.—Section 1, sub-section (3) enables the Local Government, with the previous sanction of the Governor General in Council, to apply the whole or any part of the provisions of the Bill to any district or part of a district administered by it.

3 Section 2 contains a definition of the term "agriculturist," which differs somewhat from that in the Deccan Agriculturists Relief Act. The question is discussed in paragraph 28 of the Report of the Commission, the members of which were of opinion that some alteration of the definition might, if the provisions of the Deccan Agriculturists Relief Act were extended to other Provinces, be found advisable with reference to local circumstances. The words "by members of his family or" have been added to the first of the rules which have under section 2 to be observed in construing the meaning of the term "agriculturist," and in explanation (a) the word "military" has been omitted. There seems to be no reason why the concession given to agriculturists employed in the Army by section 2 of the Deccan Agriculturists Relief Act should not be given to agriculturists in other Departments of the Government service. It might also be desirable to extend it to agriculturists taking other kinds of service at a distance from their homes, e.g., in Native States. An explanation (b) has been added to make it clear that for the purpose of determining whether a person is an agriculturist or not, the term "agriculture" shall be held to include pastoral pursuits. The definition of the term agriculturist is one of the points to which the Government of India desire to specially invite the attention of Local Governments and Administrations.

4 Chapter II.—Section 3 enumerates the classes of suits to which the procedure under this chapter is intended to apply. It is to be restricted to cases to which agriculturists are parties, and, as has been noticed above, such suits are to be tried by the ordinary Courts. This will, should the Bill be applied to any part of a province where rent suits are tried by Revenue Courts, make the procedure applicable to the trial of such suits by these Courts. The opinion of Local Governments is invited as to whether the provisions of Chapter II should be extended to any class of cases falling under clause (b) or clause (c) of this section in which the Plaintiff is an agriculturist.

5 Section 5.—In accordance with the suggestion of the Commission in paragraph 31 of their report the first sentence of section 7 of the Deccan Agriculturists Relief Act, which requires that in every case in which it seems to the Court to be possible to dispose of a suit at the first hearing, the summons shall be for the final disposal of the suit, has been omitted.

6 Section 5 (2) embodies a suggestion of the Commission (paragraph 32 of the report). It was not adopted by the Select Committee on the amendment of the Deccan Agriculturists Relief Act, but it is tentatively included in the Bill for the consideration of Local Governments and Administrations.

7 Section 5 (3) follows section 7 of the Deccan Agriculturists Relief Act in allowing the Court discretion to refrain from summoning and examining the defendant. Opinions are invited as to whether, with reference to the remarks on page 35 of the Commission's Report, this discretion should be retained.

8 Section 7 embodies in a somewhat altered form the main provisions of section 12 of the Deccan Agriculturists Relief Act. Sub-section (2) provides that where the amount of the claim is admitted, but the Court is either not satisfied that the admission is true, or has reason to believe that it has been made by the debtor without full knowledge, it may make such enquiry into the history and merits of the case as may in its opinion be necessary in order to enable it to do complete justice between the parties.

Enquiry, if made under these circumstances, has, under the Deccan Agriculturists Relief Act, to be made in accordance with the procedure laid down for disputed cases. It appears to the Government of India that sub-section (2) sufficiently provides for cases in which doubt is cast upon the validity of the admission of a claim, but the matter is one upon which the opinions of Local Governments and Administrations are specially invited.

Sub-section (3) is based upon the proposal of the Commission contained in paragraph 37 of the report. The Government of India agree with the Commission in thinking that compromises require to be subjected to the same scrutiny as admissions.

Section 9 reproduces section 13-A of the Deccan Agriculturists Relief Act. In paragraph 38 of their report the Commission expressed an opinion unfavourable to the policy of revising usufructuary mortgages with retrospective effect. If the views of the Commission, in which the Government of India are disposed to agree, approve themselves to Local Governments, it will be necessary to excise this section and the words "or setting off the profits of mortgaged property without an account in lieu of interest" in the second sentence of section 8. For the present these provisions are included tentatively subject to the views of Local Governments and Administrations.

Section 10—Makes provision for the discharge of the debt by the continuance in possession of the mortgagee in certain cases and is based upon the recommendation made by the Commission in paragraph 38 of their report.

It will be observed that sections 9 and 10, as drafted, include the case when, the mortgagee being in possession as such, the mortgagor holds from him as his tenant. It has been suggested that this case would be better dealt with separately on the lines of the draft clause below, which might be inserted as a sub-section of section 9; and the opinions of Local Governments and Administrations are invited upon this suggestion.

(2) *Where the mortgagor is in possession of the mortgaged property as tenant to the mortgagee, all sums paid by him to the mortgagee or on his account, whether by way of rent or otherwise, shall be treated as payments made on account of the mortgage-debt, and shall be credited accordingly in taking the accounts under section 8.*

Provided that if in such case any payments in kind have been made by the mortgagor in pursuance of an agreement to receive the same as rent and the Court is unable to determine the value thereof, the Court may fix a fair rent for the property and credit the mortgagor with the amount of such rent in respect of such payments in kind as aforesaid.

Provided further that the Court may, if it shall think fit, adopt in its discretion any agreement whereby the rent or profits of the mortgaged property are agreed to be taken in lieu of interest on the mortgage-debt, and shall in such case take the accounts under section 8 as from the date of the institution of the suit, and shall disallow all claims in respect of interest accrued prior to such date.

Section 11—Section 15 of the Deccan Agriculturists Relief Act, which contained provisions as regards arbitration, was repealed by Act VI of 1895. The Commission reported that the section had been a dead letter and the Bombay Government agreed to its repeal. But it appears to the Government of India that the Bill should contain provision for arbitration. Section 11 embodies the provisions of the Punjab Land Revenue Act upon the subject. The opinions of Local Governments and Administrations are specially invited as to whether these provisions or those contained in Chapter XXXVII of the Civil Procedure Code should be adopted; and also as to whether, in case the latter are adopted, they should or should not be made subject to the provisions of sub-sections (11), (12), (13) and (14) of the draft section 11.

It will be noticed that the provisions of sections 14 (3), (4), 16 and 17 might be conveniently embodied in sections 7 and 10. For the present the order of the Deccan Agriculturists Relief Act, which was necessitated by a complicated

classification of suits that has now been abandoned, has been followed for facility of reference. On the same ground, the form of the Deccan Act has in some cases been followed, even where the section might, and eventually will be improved by being recast.

Sections 18 and 20 contain provisions for carrying out the suggestions of the Commission (paragraph 47 of the report) regarding reasonable interest on instalments, and (paragraph 49) regarding the conferring of power on the Court to vary instalments.

Chapter III contains special provisions regarding the execution of decrees against agriculturists. These provisions, the Government of India would propose, should be made of general application to decrees in all suits against agriculturists, and not be limited to decrees in suits such as Chapter II refers to.

Section 21 is a new section proposed by Sir James Lyall, when Lieutenant-Governor of the Punjab.

Section 24.—The opinions of Local Governments are invited as to which of the alternative provisions is preferable.

Chapter IV relates to insolvency. The subject is dealt with in paragraph 54 of the Commission's report, and the Bill has been tentatively drafted on the lines suggested by the Commission. The draft makes it feasible for a Local Government to apply either the provisions of the Civil Procedure Code or those of any local law regarding insolvency, such as exists in the Punjab, with the modifications provided for in Chapter IV. The opinions of Local Governments and Administrations are specially invited on this chapter.

Chapter V relates to conciliation. The Commission recommended that, if conciliation were retained, the matter should be provided for under a separate Act. The Government of India have left the Chapter regarding conciliation in the present Bill, and invite the opinions of Local Governments and Administrations thereon.

The last sentence of section 38 of the Deccan Agriculturists Relief Act (corresponding to section 34 of the Bill) provides that a police patel appointed under Bombay Act VIII of 1867 shall not be considered an officer of police and so be debarred from appointment as a conciliator. The Government of India will be glad if Local Governments will consider whether there are any village officers, who might, under a strict interpretation of the term, be regarded as police officers, but who should not, in their opinion, be prohibited from being appointed as conciliators. No provision on the subject has for the present been embodied in the Bill.

The explanation to section 47 of the Deccan Agriculturists Act has been omitted. Local Governments and Administrations are invited to consider whether any similar explanation is required in the Bill.

Chapter VI of the Bill relates to superintendence, and corresponds to Chapter VII of the Deccan Agriculturists Relief Act regarding superintendence and revision. As it is intended that the provisions of the Bill shall be worked through the ordinary Courts, power is not taken to appoint a Special Judge, and in accordance with the suggestions of the Commission, the sections of Chapter VII of the Deccan Agriculturists Relief Act regarding revision and sections which prohibits appeals have not been reproduced.

Chapter VII is a redraft (with additions) of Chapter VIII-A of the Deccan Agriculturists Relief Act regarding the registration by agriculturists of instruments required by the Registration Act to be registered. The provisions of Chapter VIII of the Deccan Agriculturists Relief Act providing for registration by Village Registrars have, as suggested by the Commission, been omitted.

Chapter VIII relates to receipts and statements of Account (Chapter IX of the Deccan Agriculturists Relief Act). The Commission were of opinion that the provisions of the Deccan Agriculturists Relief Act on this subject, though theoretically unobjectionable, had proved practically inoperative. But they proposed that the Chapter should be retained.

Section 53 of the Bill contains an addition providing a penalty in case of the non-tender of receipts, devised with a view to making the section effective.

Section 57 contains a provision, based upon a suggestion of Sir James Lyall, empowering a Local Government to declare that, in order to be treated as "books of account regularly kept in the course of business" within the meaning of the Evidence Act, a money-lender's books must be kept in a prescribed form, language and character. This was formerly the law in the Punjab, but it was not preserved by the Punjab Laws Act of 1872. It provides a safeguard for ignorant and illiterate debtors, which appears to the Government of India to be very desirable.

Section 58 is also based upon a suggestion made by Sir James Lyall.

Chapter IX relates to legal practitioners. Some money-lenders regularly employ legal practitioners to act in the Subordinate Courts as their debt-collectors; with the result that the debtor either has to employ professional assistance, or runs the risk of being placed at a serious disadvantage. Additions have accordingly been made to section 59 which provide, (1) that the fees of a legal practitioner shall not be allowed as costs in a suit tried under the Bill by a Munsiff; and (2) that no legal practitioner shall be permitted to appear before a Subordinate Judge or Munsiff in any suit tried under the special provisions of the Bill, unless the subject matter of the suit is of the value of Rs. 100 or more. As regards this latter provision, there is a difference of opinion as to whether the denial of professional assistance to the debtor which it involves, may not place him at such a disadvantage as to outweigh the objections indicated above; and the opinions of Local Governments and Administrations are specially invited on this point.

Chapter X.—In section 61 an addition has been made with the object of recognizing mortgage liens and other charges on immovable property notified to revenue officers and entered in the registers or record of rights maintained by the revenue authorities. The Transfer of Property Act is not in force in the Punjab, and, in the absence of the rule contained in section 59 of that Act that where the principal secured exceeds Rs. 100, no mortgage can be effected except by a registered instrument, verbal contracts with possession recognized by mutation of names tend to increase in that province. The Government of India are in favour of encouraging the recognition of such unwritten contracts by agriculturists, even where the Act is in force.

Re Bill to provide for the relief of the agricultural classes.

The Bill seems to treat the Agricultural Classes as if they were perfectly helpless, & too ignorant & stupid to know & to protect their interests. I am unable to say whether they ought to be treated in this manner, but I doubt the wisdom of the treatment. If they be over-protected they are unlikely ever to become self-reliant, & learn to exercise any thrift & forethought. Moreover the very measures taken to protect them will make it very difficult for them to raise money whenever they need it. Money-lenders are unlikely to lend upon mortgages if they fear that for the agreement of the parties will be substituted the discretion of the Subordinate Judge for the time being. I doubt if the ill-effects of such measures will be worth the trouble & expense incidental to them.

Provide for the relief of the agricultural classes.

WHEREAS it is expedient to provide for the relief of the agricultural classes; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be cited as the Agriculturists' Relief Act, 1895: and

(2) it shall come into force at once.

(3) This section extends to the whole of British India. The rest of the Act may, by notification in the local official Gazette, be extended wholly or in part by the Local Government, with the previous sanction of the Governor General in Council, to any district or part of a district within the territories administered by it, and a notification so made may at any time in like manner be rescinded or modified.

2. In construing this Act, unless there is something repugnant in the subject or context, the following rules shall be observed, namely:—

1st.—"Agriculturist" shall be taken to mean a person (who by himself or by members of his family or by his servants or by his tenants earns his livelihood) wholly or principally by agriculture carried on within the limits of a district or part of a district to which this Act may for the time being extend, or who ordinarily engages personally in agricultural labour within those limits.

Explanations.—(a) An agriculturist who, without any intention of changing his status as such, temporarily ceases to earn his livelihood by agriculture or to engage personally in agricultural labour as aforesaid, or who is prevented from so earning his livelihood or engaging in agriculture by age or bodily infirmity or by necessary absence in Government service, does not thereby cease to be an agriculturist within this definition.

(b) The term "agriculture" shall, for the purposes of this section, be taken to include pastoral pursuits.

(c) An assignee of Government assessment or a mortgagee is not as such an agriculturist within this definition.

2nd.—The term "agriculturist," when used with reference to any suit or proceeding, shall

I have just seen the Report of the Commission referred to in the Memorandum annexed to the present Bill. Possibly experience has shown that it does require protection, and that my fears, as mentioned above, are unfounded.

Section 2 is not so much a definition as a list of persons who are to be included in the definition. It is not a definition of the word "agriculturist" but a list of persons who are to be included in the definition. It is not a definition of the word "agriculturist" but a list of persons who are to be included in the definition.

The definition & "Explanation" read together seem to make source of income, not personal occupation, the test of the applicability of the term defined. If that is the intention the definition may be shortened and explanation (a) be omitted by substituting the words "whose income is derived from" for the words "who by himself or by members of his family or by his servants or by his tenants earns his livelihood" and the words "principally" for the word "by" between "principally" & "agriculture". The words following "extended" might then be omitted. It would be the only one of (a) which would be an "exception" or "proviso" and not a "definition".

specified, and the Court shall examine the defendant as a witness.

(2) If the defendant fails to comply with the summons, the Court shall, without further expense to the plaintiff, compel his attendance as if he were a witness failing to comply with a summons to give evidence.

(3) Notwithstanding sub-section (2), the Court may by order dispense with the attendance and examination of the defendant if, for reasons to be recorded by it in writing, it deems it clearly unnecessary to compel such attendance.

Explanation.—The compulsory examination of the defendant shall not be dispensed with merely by reason of the fact that the defendant has filed a written statement.

6. (1) Every suit of the description mentioned in section 3, clause (b), sued where they reside, may, if the defendant, or when there are several defendants, any one or more of such defendants, is an agriculturist, be instituted and tried in a Court within the local limits of whose jurisdiction such defendant, or any one of such defendants, resides, and not elsewhere. [Sec. 11.]

(2) Nothing herein contained shall affect sections 22 to 25 (both inclusive) of the Code of XIV of 1882. Civil Procedure.

7. In any suit of the description mentioned in section 3, clause (b), History of transactions with agriculturist-debtors to be investigated, in which the defendant, or any one of the defendants, is an agriculturist, [Sec. 12.]

and in any suit of the descriptions mentioned in section 3, clause (d) or clause (e),

(1) when the amount of the claim is admitted and the Court, for reasons to be recorded by it, believes that such admission is true and is made by the debtor with a full knowledge of his legal rights as against the creditor, the Court shall not be bound to enquire further into the merits of the case, but may do so if it thinks fit;

(2) when the amount of the claim is admitted but the Court is not satisfied that such admission is true, or has reason to believe that it has been made by the debtor without such full knowledge as aforesaid, the Court shall ~~be~~ make such enquiry into the history and merits of the case as may in its opinion be necessary to enable it to do complete justice between the parties;

(3) when a compromise is arrived at between the parties, the Court shall, notwithstanding anything in section 375 of the Code of Civil Procedure, scrutinise the same, and may refuse to give effect thereto unless it appears to it to be fair and equitable;

(4) when the amount of the creditor's claim is not admitted, the Court shall examine both the plaintiff and the defendant as witnesses and shall

Section 5 (2)

I think that this is unnecessarily stringent. If the defendant do not appear after due service of summons, he must be taken to admit the claim.

This explanation is unnecessary. Sub-section (3) seems to be sufficient.

should result to suit should be as two debts and should not be treated as one.

Section 2 sub-section 3

Where does a man "earn his livelihood by agriculture"? Where he actually receives the income from his lands, or where the lands are situated? Take the case of a man in possession of some places other than those in which his land is situated. Does he earn his livelihood by agriculture where that agriculture is carried on, or where the rent & profits are actually received by him? Both

Section 3

I do not see why (b) & (c) should not be made equally applicable to suits instituted by agriculturists.

Why should a special procedure be laid down for suits to which agriculturists are parties merely because the plaintiff

a defendant, as the case may be, happens to be an agriculturist?

Where the debt or liability is connected with agriculture then possibly such special procedure may be desirable.

Section 7 (2) the words "be bound to" appear to be unnecessary.

include a person who, when any part of the liability, which forms the subject of that suit, or proceeding was incurred, was an agriculturist within the meaning of that word as then defined by law.

3rd.—An agriculturist shall be deemed to reside where he earns his livelihood by agriculture or, personally engages in agricultural labour as aforesaid.

4th.—"Money" shall be deemed to include agricultural produce, implements and stock.

5th.—"Lease" shall be deemed to include a counterpart, kabulyat, an undertaking to cultivate or occupy, and an agreement to lease.

6th.—"Standing crops" shall include crops of all sorts attached to the soil, and leaves, flowers, and fruits upon, and juice in, trees and shrubs.

CHAPTER II.

OF THE HEARING OF SUITS UNDER THE ACT.

[Sec. 3.] Suits to which Act applies. 3. The provisions of this Chapter shall apply to—

(a) suits for an account, whatever be the amount or value of the subject-matter thereof, when instituted by an agriculturist;

(b) suits, instituted against an agriculturist, for the recovery of money alleged to be due to the plaintiff—

on account of money lent or advanced to, or paid for, the defendant, or as the price of goods sold, or on an account stated between the plaintiff and defendant, or on a written or unwritten engagement for the payment of money not hereinbefore provided for;

(c) suits, instituted against an agriculturist—

for the recovery of money due on contracts other than the above, or for rent, or for moveable property or the value of such property, or for damages;

(d) suits for foreclosure or for the possession of mortgaged property, or for sale of such property, or for foreclosure and sale, when the defendant, or any one of the defendants, is an agriculturist; and

(e) suits for the redemption of mortgaged property when the plaintiff, or, where there are several plaintiffs, any one of the plaintiffs, is an agriculturist.

4. No Court of Small Causes shall take cognizance of any suit to which this Chapter applies. Jurisdiction of Small Cause Courts barred.

[Sec. 7, para. 2.] 5. (1) In every suit to which this Chapter applies, the summons shall order the defendant to appear in person in Court on the day therein

enquire into the history and merits of the case, from the commencement of the transactions between the parties and the persons (if any) through whom they claim, out of which the suit has arisen, first with a view to ascertaining whether there is any defence to the suit on the ground of fraud, mistake, accident, undue influence or otherwise, and, secondly, with a view to taking an account between such parties in manner hereinafter provided.

(5) Nothing herein contained shall affect any right of the parties to require that any matter in difference between them be referred to arbitration.

[Sec. 13.] 8. When the Court enquires into the history and merits of a case under section 7, it shall—
Mode of taking account.

notwithstanding any agreement between the parties or the persons (if any) through whom they claim, as to allowing compound interest on setting-off the profits of mortgaged property without an account in lieu of interest, or otherwise determining the manner of taking the account,

and notwithstanding any statement or settlement of account, or any contract purporting to close previous dealings and create a new obligation,

open the account between the parties from the commencement of the transactions and take that account according to the following rules (that is to say):—

- separate accounts of principal and interest shall be taken;
- in the account of principal there shall be debited to the debtor such money as may from time to time have been actually received by him or on his account from the creditor, and the price of goods, if any, sold to him by the creditor as part of the transactions;
- in the account of principal there shall not be debited to the debtor any money which he may have agreed to pay in contravention of section 257A of the Code of Civil Procedure;
- in the account of principal there shall not be debited to the debtor any accumulated interest which has been converted into principal at any statement or settlement of account or by any contract made in the course of the transactions, unless the Court, for reasons to be recorded by it, deems such debit to be reasonable;
- in the account of interest there shall be debited to the debtor, monthly, simple interest on the balance of principal for the time being outstanding, at the rate allowed by the Court as hereinafter provided:

XIV of 1882.

(f) all money paid by or on account of the debtor to the creditor or on his account, and all profits, service or other advantages of every description, received by the creditor in the course of the transactions (to be valued in such manner as the Court may direct), shall be credited first in the account of interest; and, when any payment is more than sufficient to discharge the balance of interest due at the time it is made, the residue of such payment shall be credited to the debtor in the account of principal;

(g) the accounts of principal and interest shall be made up to the date of instituting the suit, and the aggregate of the balances (if any) appearing due on both such accounts against the debtor on that date shall be deemed to be the amount due at that date, except when the balance appearing due on the interest-account exceeds that appearing due on the principal-account, in which case double the latter balance shall be deemed to be the amount then due.

9. In any suit for foreclosure or redemption [Sec. 13A.]

In certain cases rent of a mortgaged property, may be charged in lieu of profits, where the property mortgaged is in the possession of the mortgagee or his tenants and the Court is unable to determine what profits have been actually received, it may fix a fair rent for such property and charge to the mortgagee such rent as profits for the purpose of section 8:

Provided that, if it be proved that in any year there was an entire or serious failure of the crops, an abatement of the whole or part of such rent may be allowed for the year.

10. In any such suit as last aforesaid, [New.]

In certain cases mortgage-debt may be discharged by continuance of mortgagee in possession, where the property mortgaged is in the possession of the mortgagee or his tenants the Court may, with the consent of the mortgagor, ascertain the annual net profits therefrom, and, if such net profits appear to it to exceed the interest properly chargeable on the mortgage-debt, direct by its decree that such debt shall be discharged by continuing the mortgagee in possession for such further period (to be specified by it) as will, in its opinion, be sufficient to enable him to recover from the profits the amount of such debt, together with reasonable interest, and that on the expiry of such period the property mortgaged shall be restored to the mortgagor:

Provided that, so long as such decree remains in force, no further suit shall lie for the redemption of the property mortgaged.

Section 8 (2)

I understand the words "understand" to mean that the balance of interest that may be deemed shall not exceed the balance of principal due; but is that clearly expressed? If so - is this provision expedient?

The effect of this section seems to be to prevent usufructuary mortgages altogether - so that no more can such mortgages be revised but the revision is apparently, to have retrospective effect. This I think is undesirable. I do not see why the agreement between mortgagee & mortgagor should be interfered with in the absence of fraud or oppression.

These two sections will, I fear, do more harm than good to the mortgagee & will be evaded if possible by both. What is the meaning of Section 10. "properly charged"? Is it to be the standard - if the agreement of the parties is to be ignored?

Why should a mortgagee in possession be compelled to remain in possession, & upon terms which he may not agree? What is to happen if he declines?

In the memorandum it is proposed to add a subsection to section 9 providing for the case of a mortgagee holding the land as his mortgagee tenant. In the first proviso the agreement to pay to receive payments in kind as rent is subject to the Court being able to determine the value of the fruit or grain as rent, & to a "fair rent" being fixed by the Court in the event of its being unable to determine the value of the rent in kind. Accepting rent in kind is a speculation not likely to be entered upon by any under the circumstances - rent payments of rent in cash may be very difficult, in some cases & cause

(2) If none of the parties dissent from such reference to arbitration, the Court shall make an order of reference accordingly.

(3) If all the parties do not agree to such reference to arbitration, the Court may, with their consent, or with the consent of one of the parties only if he be the debtor, make an order referring the matter to arbitration in accordance with the following provisions of this section.

[Act XVII of 1887, s. 128.] (4) Every order under sub-section (3) shall specify therein the precise matter referred, the number of arbitrators which each party to the suit is to nominate, the period within which such arbitrators are to be nominated, and the period within which the award is to be delivered.

(5) The number of arbitrators which each party may nominate shall be the same and shall not exceed two.

(6) If from any cause arbitrators are not nominated, or an award is not delivered within the period fixed therefor in the order of reference, the Court may from time to time enlarge that period, or may cancel the order of reference.

[Act XVII of 1887, s. 129.] (7) When an order of reference has been made under sub-section (3), the parties may each nominate the number of arbitrators specified in the order, and the Court shall nominate one other arbitrator: Provided that the Court may, for reasons to be recorded by it, make an order, which shall be final, disallowing any nomination made by either party and requiring that party to make another nomination within a time to be specified in the order.

[Act XVII of 1887, s. 130.] (8) *If an arbitrator nominated by a party dies, desires to be discharged or refuses or becomes incapable to act, the party may nominate another person in his stead.*

[Act XVII of 1887, s. 131] (9) *The Court may itself nominate a person as arbitrator in any of the following cases, namely:—*

(a) if either of the parties fails to nominate an arbitrator under sub-section (7) within the period fixed in the order of reference, or

(b) if the nomination of an arbitrator has been disallowed under the proviso to sub-section (7) and another arbitrator is

Sections 11 to 14 are not likely to be much worked. Judging by ordinary civil suits I think that ~~most~~ their creditors will usually prefer to leave questions between them to be decided by the Court. Referrals to arbitration are not such unqualified successes that they are readily resorted to.

[illegible]

[The handwriting in this section is extremely faint and illegible.]

Spadina Staley

[Faint, illegible handwritten notes]

[Faint handwritten notes at the bottom of the page]

[Faint, illegible handwritten notes]

not nominated within the time specified in the order made thereunder, or, having been so nominated, his nomination also is disallowed, or

(c) if a party entitled to nominate an arbitrator in the place of another arbitrator under sub-section (8) fails to nominate him within one week from the date of the communication to him of a notice requiring him to make the nomination, or

(d) if an arbitrator nominated by the Court dies, desires to be discharged, or refuses or becomes incapable to act.

(10) The Court shall, on the application of [Act XVII of 1887, s. 132.] the arbitrators, issue the same processes to the parties and witnesses whom the arbitrators desire to examine as it may issue in any proceeding under this Act, before itself. Any such party or witness shall be bound to appear before the arbitrators in obedience to a process issued under this sub-section, either in person or by agent as the arbitrators may require, and every person so attending shall be bound to state the truth upon any matter respecting which he is examined or makes statements, and to produce such documents and other things relating to any such matter as may be specified in the process.

(11) The arbitrators shall make an award in writing under their hands concerning the matters referred to them for arbitration under sub-section (4), and shall state therein their reasons therefor, and any arbitrator dissenting from the award made by the majority of the arbitrators shall state the grounds of his dissent. The arbitrators shall present their award to the Court in person unless permitted to do so by agent.

(12) When the award has been received, the Court shall, if the parties are present, consider forthwith any objections which they, or any of them, may have to make, and, if the parties are not present, fix a date for the consideration thereof, and on the date so fixed or any subsequent date to which an adjournment may be made, hear any objections which they, or any of them, may have to make to the award; and the Court may, if it thinks fit, question the arbitrators as to the grounds of their award.

(13) Notwithstanding anything in section 518 [Act XVII of 1887, s. 135] of the Code of Civil Procedure, the Court may accept, or may for any reason which shall appear to it sufficient, modify or reject the award, recording its reason for doing so in its decision respecting the matter which was referred to arbitration.

(14) An appeal shall lie from the decision of the Court as if arbitrators had not been appointed. [Act XII of 1887, s. 135 (2)]

12. In a suit of the description mentioned in section 3, clause (e), the Court shall not refuse to pass a decree for redemption merely on the ground that the time fixed for the payment of the principal of the mortgage-money has not arrived, or on the ground that the mortgage-debt has not been completely discharged, or on both.

13. So far as it may be consistent with the provisions of this Act, Power of Court to name some future date for payment by the mortgagor, every decree of redemption or foreclosure of any mortgage, and every decree or order for the sale of any mortgaged property made at the instance of a mortgagee thereof, shall name such future day, not being less than six months after the date of such decree, as the Court may think reasonable for the payment by the mortgagor of the money payable under the decree, and no such foreclosure shall be made absolute nor shall any such sale take place before the day so named.

14. (1) The Court may in its discretion, in passing a decree for redemption, foreclosure or sale in any suit of the descriptions mentioned in section 3, clause (d) or clause (e), or in the course of any proceedings under a decree for redemption, foreclosure or sale passed in any such suit, whether before or after this Act comes into force, direct that any amount payable by the mortgagor under that decree shall be payable in such instalments, on such dates and on such terms as to the payment of interest, and, where the mortgagee is in possession, as to the appropriation of the profits and accounting therefor, as it thinks fit.

(2) If a sum payable under any such direction is not paid when due, the Court shall, except for reasons to be recorded by it, instead of making an order for the sale of the entire property mortgaged or for foreclosure, order the sale of such portion only of the property as it may think necessary for the realisation of that sum.

(3) In passing a decree for redemption or foreclosure in any such suit as aforesaid, the Court may direct that the amount payable by the mortgagor shall be discharged by continuing the mortgagee in possession for such further period (to be specified by it) as will, in its opinion, be sufficient to enable him to recover his principal with reasonable interest, and that on the expiry of such period the property mortgaged shall be restored to the mortgagor.

(4) When the amount payable to a mortgagee in possession has been determined in any such suit as aforesaid, the Court may in its discretion, instead of making an order for payment

Section 14 (3) provides for the Court "continuing the mortgage in possession" but not for the ~~best of~~ ~~the object of~~ contingencies. This objecting to remain in possession under conditions not agreed to by him.

What is "reasonable interest"? Is the property to be restored? The interest principal with reasonable interest" have in fact been re-
covered or not!

Section 146 (4) - See remarks on
sub-section (3)
was it too high?

~~reasonable intent~~

~~And then it would not?~~

Section 15 as seq.

The result of all this seems to be that
the agreement between the parties for nothing,
& the ~~agreement~~ ^{disposition} of the Judge for the time being
~~is not binding~~ ^{is substituted}.
Presumably the mortgage makes his arrangement
in the ~~original~~ ^{assumption} that the agreement is
binding. Not my own assumption but wise but
all the arrangements are made at once but

thereof, direct that the mortgagee be continued in possession for such period (to be specified by it) as will, in its opinion, be sufficient to enable him to recover from the profits the amount payable by the mortgagor together with reasonable interest, and that on the expiry of such period the property mortgaged shall be restored to the mortgagor.

Power to order payment by instalments in suits for possession of mortgaged property. —

(2) If a sum payable under any such direction is not paid when due, the Court may, if it thinks fit, instead of making any other order which it is empowered to make for the realisation of that sum, make an order directing that the mortgagee be put in possession of the whole or any portion of the property mortgaged.

16. (r) Any agriculturist whose principal and interest remaining unpaid on the mortgage and for a decree declaring the mortgage account of the amount of the mortgage may sue for an account.

(2) When any such suit is brought, the amount (if any) remaining unpaid shall be determined under the same rules as would be applicable under this Act if the mortgagee had sued for the recovery of the debt.

(3) At any time before the decree in the suit is signed the plaintiff may apply to the Court to pass a decree for the redemption of the mortgage, or the mortgagee, if he would then have been entitled to sue for foreclosure or sale, may apply to the Court to pass a decree for foreclosure or sale (as the case may be), instead of a decree merely declaring the amount remaining unpaid, and the Court may, if it thinks fit, grant the application.

(4) The provisions of section 14 shall apply to any decree passed under sub-section (3).

17. (1) Any agriculturist may sue for the amount of money lent or advanced to or paid for him by a creditor, or due by him to the creditor as the price of goods sold, or on a written or unwritten engagement for the payment of money, and of money paid by him to the creditor, and for a decree declaring the amount, if any, still payable by him to the creditor.

(2) When any such suit is brought, the amount of debts in such cases to be determined according to foregoing provisions, (if any) payable by the plaintiff shall be determined under the same rules as would be applicable under this Act if the creditor had sued him for recovery of the debt.

[Sec. 17.] 18. (1) A decree passed under section 17 may, besides declaring the amount due, direct that such amount shall be paid by instalments, with interest at the rate of six per centum per annum, unless the Court, for reasons to be recorded by it, thinks fit to disallow interest or to allow interest at any other rate; and, when any such decree so directs, the plaintiff may pay the amount of such decree, or the amount of each instalment fixed by such decree, as it falls due, in default whereof, unless the Court, as provided in sub-section (2), otherwise directs, execution of the decree may be enforced by the defendant in the same manner as if he had obtained a decree in a suit to recover the debt.

(2) The Court may at any time, on application made to it, vary the amount of any instalment fixed by any such decree or prohibit the execution of any such decree notwithstanding the default of payment of any instalment.

[Sec. 18.] 19. (1) The plaintiff in any suit instituted under section 17 may at any stage of such suit deposit in Court such sum of money as he considers a satisfaction in full of the defendant's claim against him.

(2) Notice of a deposit made under sub-section (1) shall be given by the Court to the defendant, and the amount of the deposit shall (unless the Court otherwise directs) be paid to the defendant on his application.

(3) No interest shall be allowed to the defendant on any sum deposited under this section from the date of the receipt of such notice, whether the sum deposited be in full of the claim or fall short thereof.

[Sec. 20.] 20. The Court may at any time, either in instalments in execution or otherwise,—

(a) order that the amount of any decree passed, whether before or after this Act comes into force, against an agriculturist, shall be paid by instalments with interest at the rate of six per centum per annum, unless the Court, for reasons to be recorded by it, thinks fit to disallow interest or to allow interest at any other rate;

Section 19 (3) (3)

What will be the legal effect of the withdrawal of the money?

Why should interest cease to be allowed? deposited money should be allowed? Why a Pledge cannot draw utilize it except under sub-section (3)?

~~Section 19 (3) (3)~~

(b) after hearing the parties, taking down their statements in writing and recording its reasons, vary the amount of any instalment fixed by any order made under clause (a);

(c) revise or vary, for reasons to be recorded by it, any order which may have been made directing that, on default of payment of any instalment, the whole amount due under any such decree as is referred to in clause (a) shall be recoverable in one sum.

CHAPTER III.

SPECIAL PROVISIONS AS TO THE EXECUTION OF DECREES AGAINST AGRICULTURISTS.

[Now.] 21. When any cattle or other moveable property belonging to an agriculturist is attached in execution of a decree or when in the course of execution of a decree against an agriculturist any cattle or agricultural produce is tendered in or towards satisfaction of the judgment-debt, the Court executing the decree shall fix an upset price on the property so attached or tendered and, if that price is not bid at auction, may direct that, unless the decree-holder takes the property at the upset price fixed under this section, the property shall be sold by auction at his risk to the extent of the difference (if any) between the upset price and the price realised.

[Sec. 71.] 22. The last clause of section 258 of the Code of Civil Procedure shall not apply to payments out of Court made in any proceeding under this Act, in any case where an acknowledgment by the judgment-creditor for the same is produced, or when the payment is either admitted by him or proved.

[Sec. 21.] 23. No agriculturist shall be arrested or imprisoned in execution of a decree for money passed whether before or after this Act comes into force.

[Sec. 22.] 24. (1) Immoveable property belonging to an agriculturist shall not be attached or sold in execution of any decree or order passed, whether before or after this Act comes into force, unless it has been specifically mortgaged for the repayment of the debt to which such decree or order relates, and the security still subsists. For the purposes of any such attachment or sale as

Section 20. If an agriculturist obtains a judgment against a non-agriculturist, he cannot arrest or sell that debtor's immoveable property. Sub-section 2 of section 24, no doubt, empowers the collector to take possession of the agriculturist's property & to deal with it for the benefit of the decree-holder, but this means that the decree-holder may be kept out of possession due to him for a considerable time.

Sections 23 and 24

If an agriculturist obtains a judgment against a non-agriculturist, he cannot arrest or sell that debtor's immoveable property. Sub-section 2 of section 24, no doubt, empowers the collector to take possession of the agriculturist's property & to deal with it for the benefit of the decree-holder, but this means that the decree-holder may be kept out of possession due to him for a considerable time.

(2) *Notwithstanding anything contained in sub-section (1), the Court, on application or of its own motion, may, when passing a decree against an agriculturist or in the course of any proceedings under a decree against an agriculturist passed whether before or after this Act comes into force, direct the Collector to take possession, for any period not exceeding seven years, of any such property of the judgment-debtor to the possession of which he is entitled, and which, in the opinion of the Collector, is not required for his support and the support of the members of his family dependent on him, and the Collector shall thereupon take possession of such property and deal with the same for the benefit of the decree-holder in manner provided by section 30.*

(3) The provisions of section 32 shall, *mutatis mutandis*, apply to any property dealt with under sub-section (2).

CHAPTER IV.

OF INSOLVENCY.

25. Subject to the provisions of this Chapter, the District Court shall have the [Sec. 24.] Jurisdiction of District powers conferred by sections 344 to 359 (both inclusive) of the Code of XIV of 1882. agriculturists insolvent. Civil Procedure, or by any other law or enactment for the time being in force, for the purpose of dealing with applications under such Code, law or enactment, or under this Act, to have agriculturists residing within the local limits of its ordinary jurisdiction declared insolvent.

26. Any agriculturist whose debts amount to fifty rupees or upwards, may apply to the District Court within the local limits of whose ordinary jurisdiction he resides, to be declared an insolvent, though he has not been arrested or imprisoned, and though no order of attachment has issued against his property in execution of a decree.

[Sec. 26.]
XIV of 1882. 27. Nothing contained in *clause (c) of section 351 of the Code of Civil Procedure shall be deemed to prevent the Court from declaring an agriculturist to be an insolvent.*

Alternative Proviso.—Provided that the Court, or when the decree is executed by the Revenue authorities, the Collector shall by order exempt from attachment and sale so much of the standing crop of an agriculturist as it or he may determine to be required for seed grain and for the subsistence until the harvest next following of the agriculturist, his family, and his cattle.

25

CHAPTER VIII.

[illegible]

CHAPTER IX.

India to the suggestion themselves. CHAPTER IX.
regard to the form of the bill, it appears to meet the object in view which would
falling outside the scope of the bill, by lender from employing professional assistance.
that the agriculturist should, however, be amended so as to allow the Court
These suggestions commenced, appear after seeing the parties to the suit.

27
26. Section 59 ~~and 66~~ ⁵⁹ referred to in paras. 8, 10 and 11 of the letter appear to be to prevent the introduction of a period of limitation from three to six years in Sub-section 3 of Section 59 ^{meto} discretion to permit pleaders to ^{on} bonds or on account stated; ^{of the Civil Procedure Code}

27. The only remaining point is whether Section 525 of the Civil Procedure Code requires the award to be made in writing. The court is of opinion that it does not. The award may be made orally and the terms of the award may be reduced to writing by the arbitrator. The award is valid and enforceable under the Registration Act as a document in writing.

- (i) The extension of the *and the Registration Act so as to make awards*
the case of suits or *grants on immovable property, registrable like suits*
of the Court fees chargeable in suits to which
(ii) The question of amend *all applies is necessary.*
empowering the Co is Government fully concurs in the views of
that there has been; the general law on these subjects should be
are fair and proper *to (iii), I am to state that the question*
which create an impediment passing of the Bill and that, as the Governor
(iii) Whether any remission *Chapter II of the Bill* modify the fees for sufficient cause shown, it is
at present.

28. In regard to (i) and (ii), the Commission is of opinion that the modified accordingly. With reference will be one for consideration after the General in Council has power to modify unnecessary to consider the question.

15/6/17

28. No person other than the Nazir of the [Sec. 27.]
Receiver. Court shall be appointed as
Receiver, and no Receiver
shall be entitled to commission.

29. In determining, under section 352 of the [Sec. 28.]
Code of Civil Procedure XIV of 1882.
Proof of debts. or any other law or enact-
ment for the time being in force, the amount of
any claim of the nature referred to in section 7
of this Act due by an insolvent agriculturist, the
Court shall proceed in the manner prescribed by
sections 7 to 11, both inclusive, and section 62
of this Act.

30. (1) No immoveable property of the insol- [Sec. 29.]
vent shall vest in the Re-
ceiver; but the Court, on
application or of its own
motion, may direct the
Collector to take into his possession, for any
period not exceeding seven years from the date
on which the Receiver has been appointed, any
immoveable property to the possession of which
the insolvent is entitled, and which, in the
opinion of the Collector, is not required for the
support of the insolvent and the members of his
family dependent on him, and, subject to any
rules which the Local Government may from time
to time make in this behalf, to manage the same
for the benefit of the creditors by letting it on
lease or otherwise:

*Provided that the Collector may, instead of
taking possession of the property as so directed
by the Court, assess it at a fair rent and
allow the insolvent to remain in possession
thereof subject to the payment of the rent so
assessed, paying the same when realised, after
first discharging thereout all public demands
in respect of the property, to the Receiver for
the benefit of the creditors:*

*Provided also that, if the insolvent or his repre-
sentative in interest at any time pays into Court
the balance of the scheduled debts then unpaid,
the Court may, subject to any rights created in
favour of other persons by the Collector, direct
that he be let into possession of such property
or be permitted to hold the same free from any
rent which may have been assessed thereon by
the Collector, as the case may be.*

(2) The Collector managing property under this
section shall during the management have all
the powers which the owner might as such have
legally exercised, and shall receive and recover
all rents and profits of such property, and for
the purpose of recovering such rents and profits
or any rent which he may have assessed thereon
under the powers hereinbefore conferred shall
have, in addition to any powers possessed
by an owner, all powers possessed by a Collec-
tor for securing and recovering the land-rev-
enue due to Government.

which this Act comes into force, is contemplated, any of the parties may apply to such Conciliator to effect an amicable settlement between them.

[Sec. 40.] 35. (1) If the application be made by one of the parties only, the Conciliator shall take down, or cause to be taken down, in writing a concise statement of the applicant's case, and shall thereupon, by summons or by such other means as he deems fit, invite the person against whom such application is made to attend before him at a time and place to be fixed for this purpose, and shall direct the applicant also to be present at such time and place.

(2) If such person fails to appear at the time or place first fixed, the Conciliator may from time to time may, if he thinks fit, from time to time extend the period for his appearance.

(3) A Conciliator empowered by the Local Government in this behalf may, instead of inviting, direct the person against whom the application is made to attend at the time and place either first or subsequently fixed.

(4) If an applicant, or a person against whom an application is made, fails to be present or attend at the time and place specified in a direction proceeding from a Conciliator under this section, he shall be deemed to have committed an offence under section 174 of the Indian Penal Code.

[Sec. 41.] 37. Whenever all the parties are present, the Conciliator shall call upon each in turn to explain his case regarding the matter in question, and shall use his best endeavours to induce them to agree to an amicable settlement or to submit such matter to arbitration.

[Sec. 42.] 38. The Conciliator shall hear, but shall not record, the statement of any statements of witnesses, witness, and shall peruse any book of account or other document produced by the parties, or so much thereof as may be necessary, and, if any party or witness consents in writing to affirm any statement upon oath in any form not repugnant to justice or decency and not purporting to affect any third person, shall provide for such oath being duly taken in the presence of all the parties.

[Sec. 43.] 39. If on the day on which the case is first heard by the Conciliator, or if at to be reduced on any subsequent day to writing, which he may adjourn the hearing, the parties come to any agreement, either finally disposing of the matter or for referring it to arbitration, such agreement shall be forthwith reduced to writing, and shall be read and explained to the parties, and shall be signed or otherwise authenticated by the Conciliator and the parties respectively.

Explanation.—A Conciliator may be appointed arbitrator under this section.

40. (1) When the agreement is one finally disposing of the matter, the Conciliator shall forward the same in original to the Court of lowest grade having jurisdiction in the place where the agriculturist, who is a party thereto, resides, and shall at the same time deliver to each of the parties a written notice to show cause before such Court, within one month from the date of such delivery, why such agreement ought not to be filed in such Court. [Sec. 44.]

(2) The Court which receives the agreement shall scrutinise the same, and if it thinks that it is a legal and equitable one finally disposing of the matter, and that it has not been made in fraud of the stamp or registration laws, it shall, after the expiry of the said period of one month, unless cause has been shown as aforesaid, order such agreement to be filed; and it shall then take effect as if it were a decree of the said Court passed on the day on which it is ordered to be filed.

(3) If the said Court thinks that the agreement is not a legal or equitable one, or that it does not finally dispose of the matter, or that it has been made in fraud of the stamp or registration laws, it shall of its own motion issue process for the attendance of the parties, and if after such inquiry as may be deemed necessary the Court finds that such agreement is a legal and equitable one finally disposing of the matter, and that it has not been made in fraud of the stamp or registration laws, it shall order such agreement to be filed; and it shall then take effect as if it were a decree of the said Court passed on the day on which it is ordered to be filed.

(4) If, on the other hand, the said Court finds that the agreement does not constitute a legal or equitable agreement, or that it does not finally dispose of the matter, or that it has been made in fraud of the stamp or registration laws, it shall return the said agreement to the Conciliator, and such Conciliator shall thereupon be bound to furnish on demand to the parties or any one of them a certificate under section 42.

(5) The Court may in any case, for reasons to be recorded by it, from time to time extend the period of one month allowed for showing cause under this section.

41. When the agreement is one for referring the matter to arbitration, the Conciliator shall forward it to the Court having jurisdiction in the matter, and such Court shall cause it to be filed and proceed thereon in manner provided by sections 523 and 524 of the Code of Civil Procedure. [Sec. 45.] XIV of 1882.

Section 40 (2)

How is it to be from an opinion of the Court to whether the agreement is legal & equitable? There is no provision for stamping or registering the agreement.

Section 37.

Has this scheme ever been tried? Judging from these usually futile attempts to settle civil suits by reference to arbitration. I think that these provisions as to the Official Conciliator will be practically useless, except, perhaps, for purposes of the arrangement of one by the other.

Section 39.

By whom is the agreement to be reduced to writing? The section should provide for the payment of the stamp to be affixed & the cost of registration, & declare by whom such costs are to be paid. The Conciliator should see that the document is duly stamped & registered.

(3) Nothing in this section shall authorise the Court to direct the Collector to take into his possession any house or other building belonging to and occupied by an agriculturist, save in so far as may be necessary for the proper cultivation of land which the Court has directed the Collector to take into his possession under section 24, sub-section (2) or under this section.

[Sec. 30.] 31. (1) When any scheduled debt is secured by a mortgage of any portion of the insolvent's immoveable property, the Court may,—

(a) if such immoveable property is in the possession of the scheduled creditor, with the consent of the insolvent ascertain the annual net profits therefrom and, if such net profits appear to it to exceed the interest properly chargeable on the scheduled debt, by order direct that such debt, shall be discharged by continuing the scheduled creditor in possession for such further period (to be specified by it) as will, in its opinion, be sufficient to enable him to recover from the profits the amount of the scheduled debt, together with reasonable interest, and that on the expiry of such period the said property shall be restored to the mortgagor; or,

(b) if the scheduled debt cannot be so discharged, on application or of its own motion, direct the Collector, if he can obtain a premium equal to the amount of the scheduled debt by letting the mortgaged property for a term not exceeding twenty years, to let the same, and, if he cannot so obtain such premium, to sell, under section 325 of the Code of Civil Procedure, the mortgaged property or so much thereof as may be sufficient to satisfy the scheduled debt.

XIV of 1882.

(2) So long as an order passed under sub-section (1), clause (a), remains in force, no suit shall lie for the redemption of the mortgaged property affected thereby.

(3) Where property is let under sub-section (1), clause (b), the premium shall be applied to the payment of the scheduled debt, and the rent, if any, shall for a period of seven years from the date of such letting be paid to the Receiver and thereafter to the insolvent or his representative in interest.

(4) When property is sold under sub-section (1), clause (b), the sale-proceeds shall be applied, first, to the payment of the scheduled debt, and the balance, if any, shall be paid to the Receiver.

Section 31 (1) (a).

Why is the insolvent's consent necessary? He may be colluding with his alleged creditor to get the property discharged. What does the Court mean by "the opinion of the Court" as to continuing the creditor in possession? Is it to be the opinion of the Court as to the propriety of continuing the creditor in possession? Is it to be the opinion of the Court as to the propriety of continuing the creditor in possession? Is it to be the opinion of the Court as to the propriety of continuing the creditor in possession?

Section 31 (1) (a) is a nullity.

Section 31 (1) (a) is a nullity.

32. (1) So long as any management under section 30 or letting under section 31, sub-section (1), clause (b), continues, or so long as the insolvent is allowed by the Collector to remain in possession under the first proviso to sub-section (1) of section 30, the insolvent and his representatives in interest shall be incompetent to mortgage, charge, lease or alienate the property managed or let, or of which he is allowed to remain in possession, or any part thereof.

(2) Any contract or transfer purporting to deal with any property in contravention of sub-section (1) is *ipso facto* null and void.

[Sec. 32.] 33. When the balance available for distribution among the scheduled creditors, under section 356 of the Code of Civil Procedure or any other law or enactment for the time being in force, has been distributed, the claims of such creditors shall be deemed to have been discharged, except as regards the right to share in the profits of any property managed by the Collector under section 30, or let by him under section 31, sub-section (1), clause (b), or in the rent assessed upon any property of which the insolvent is allowed to remain in possession under the first proviso to sub-section (1) of section 30.

CHAPTER V.

OF CONCILIATION.

[Sec. 38.] 34. (1) The Local Government may, from time to time, appoint any person other than an officer of police to be a Conciliator, and may cancel any such appointment.

(2) Every Conciliator appointed under this section shall be appointed only for a term not exceeding three years, but may, on the expiration of the period for which he has been appointed, be again appointed for a further term not exceeding three years.

(3) Every Conciliator so appointed shall exercise his functions under this Act in respect of matters affecting agriculturists residing within such local area as the Local Government may, from time to time, prescribe.

[Sec. 39.] 35. When any dispute arises as to, or there is a prospect of, litigation regarding any matter within the cognizance of a Civil Court between two or more parties, one of whom is an agriculturist residing within any local area for which a Conciliator has been appointed, or when application for execution of any decree in any suit to which any such agriculturist is a party, and which was passed before the date on

[Sec. 46.] 42. If the person against whom any application is made before a Conciliator cannot after reasonable search be found, or if he refuses or neglects, after a reasonable period has been allowed for his appearance, to appear before the Conciliator, or if he appears but the endeavour to induce the parties to agree to an amicable settlement or to submit the matter in question to arbitration fails, the Conciliator shall, on demand, give to the applicant, or when there are several applicants to each applicant, a certificate under his hand to that effect.

[Sec. 47.] 43. No suit, and no application for execution of a decree passed before the date on which this Act comes into force, to which any agriculturist residing within any local area for which a Conciliator has been appointed is a party, shall be entertained by any Civil Court unless such certificate is produced.

[Sec. 48.] 44. In computing the period of limitation prescribed for any such suit or application the time intervening between the application made by the plaintiff under section 35 and the grant of the certificate under section 42 shall be excluded.

[Sec. 49.] 45. The Local Government may from time to time make rules—

- (a) regulating the procedure before Conciliators in matters not provided for by this Act;
- (b) fixing the charges to be made by Conciliators for anything done by them under this Act; and
- (c) determining what record and accounts shall be kept by Conciliators and what returns shall be framed and furnished by them.

CHAPTER VI.

OF SUPERINTENDENCE.

[Sec. 50.] 46. The District Judge shall inspect, supervise and control the proceedings, under this Act, of all Courts subordinate to him and of all Conciliators.

[Sec. 51.] 47. The District Judge may withdraw case from Conciliator or subordinate Court,

- (a) transfer any application pending before a Conciliator to the file of any other Conciliator;
- (b) transfer from one Court subordinate to him to another such Court any suit or any agreement pending under section 40 of this Act; or transfer to his own file

Section 43. I think that

retrospective effect
should not be given to
this section.

Madrasly, Justice, Conf. 1
after hearing of, decided

any suit or other matter pending before any Court subordinate to him under this Act, and himself dispose of the same; or

(c) stay the proceedings in any such suit or matter, and sit together with the Judge of such subordinate Court as a Bench for trial of any case, to dispose of such suit or matter in accordance with the provisions of this Act.

If the members of any Bench sitting under this section differ in opinion, the opinion of the District Judge shall prevail.

[Sec. 52.] 48. (1) The Local Government may appoint the Judge of any Court subordinate to the District Judge to inspect and supervise, subject to the control of the District Judge, the proceedings of all Courts under this Act, and of all Conciliators in any district or part of a district to which this Act applies:

Provided that, if the Local Government thinks fit, the same Judge may be so appointed for two or more such districts or parts of districts, or districts and parts of districts.

(2) The District Judge may, by order, confer upon any Judge appointed under this section, as regards any district or part of a district for which he is so appointed, all or any of the powers specified in the order which vest in the District Judge under section 47.

CHAPTER VII.

OF THE EXECUTION BY AGRICULTURISTS OF INSTRUMENTS REQUIRED TO BE REGISTERED.

[Sec. 53A.] 49. (1) When an agriculturist intends to execute any instrument required by section 17 of the Indian Registration Act, 1877, to be registered under that Act, he shall

appear before the sub-registrar within whose sub-district the whole or some portion of the property to which the instrument is to relate is situate, and the sub-registrar, after satisfying himself in such manner as he deems fit as to the identity of the intending executant, and receiving the fee (if any) prescribed by the Local Government in this behalf and the stamp (if any) required by law shall write the instrument, or cause it to be written under his superintendence.

(2) After reading it aloud, or causing it to be so read, in the hearing of the executant, the sub-registrar shall require him to execute it in his presence, and shall himself attest it and, if the executant is unable to read the instrument, shall cause it to be further attested by two respectable witnesses, and shall then register the instrument in accordance with the provisions of the Indian Registration Act, 1877.

Section 49 (1)

Is the Registrar to be a lawyer? If not are the parties to depend upon his expressing himself correctly? Agric. will always want to sub. Registrar to have their documents written for them if they can get them written for nothing.

(3) For the purposes of this section every executant of any such instrument as aforesaid shall, notwithstanding anything contained in the Indian Registration Act, 1877, appear in person before the sub-registrar; but every other party thereto may appear either in person or by any agent, being his relative, servant or dependent, whom he has duly furnished with a power-of-attorney, executed and authenticated in such manner as the Local Government may, from time to time, by rule prescribe, authorising him to appear and act on his behalf:

Act III of 1877, s. 33, Proviso. Provided that, when the executant is—
(a) by reason of bodily infirmity unable without risk or serious inconvenience so to appear, or

(b) in jail under civil or criminal process, or
(c) exempt by law from personal appearance in Court,

he may appear by any agent duly authorised as aforesaid.

50. In every instrument written by, or under the superintendence of a sub-registrar under the last foregoing section, the amount and nature of the consideration (if any) shall be fully stated, and the sub-registrar shall also endorse upon the instrument a note under his hand, recording whether or not the transfer of the consideration stated therein, or of any part thereof, took place in his presence.

51. If an instrument executed under section 49 modifies, or wholly or partly supersedes, a previous instrument, such previous instrument shall be produced before the sub-registrar and shall be fully described in the instrument to be executed, and shall be marked by the sub-registrar under his hand for identification.

52. An instrument to which section 49 applies shall not be effectual for any purpose referred to in section 49 of the Indian Registration Act, 1877, unless it has been written, endorsed, executed and attested in the manner hereinbefore provided.

CHAPTER VIII.

OF RECEIPTS AND STATEMENTS OF ACCOUNT.

[Sec. 64.] 53. Every person to whom an agriculturist makes any payment of money in liquidation of a debt shall, at the time of such payment, tender to the agriculturist, whether he demand the same or not, a duly stamped receipt for the amount thereof, and, if such receipt be not tendered as aforesaid, the statement of the agriculturist as to the amount paid shall be conclusive proof that such payment was made and of the amount thereof.

54. Every agriculturist from whom any money is due under any instrument shall, on such date in each year as the Local Government, having regard to local custom, may from time to time, by notification in the official Gazette, fix, be entitled to receive, on demand, a statement up to that date of his account under such instrument. [Sec. 65.]

55. (1) Every agriculturist in whose name an account is kept by any trader or money-lender shall be entitled to receive from such trader or money-lender, on demand, a pass-book; and to require, from time to time, that his account up to date be written therein and authenticated by the signature or mark of the said trader or money-lender. [Sec. 66.]

(2) An entry so made in any such pass-book of any payment made to the trader or money-lender shall be deemed to be equivalent, for the purposes of section 53, to a receipt for the amount so entered.

(3) No person whose account has been written in a pass-book as required by this section shall be entitled also to demand an account under section 54.

56. Any person who, in contravention of section 53, 54 or 55, refuses or neglects to tender a receipt or a statement of account or a pass-book, or to write, or cause to be written, any account or any part of an account in a pass-book, or to attest the same when so written, shall be punished for each such offence with fine which may extend to one hundred rupees. [Sec. 67.]

57. On and with effect from such date as may be fixed by the Local Government in this behalf, no books of account, other than day-books and ledgers kept in such form, language and character as the Local Government may by rule prescribe, shall be deemed to be "books of account regularly kept in the course of business" within the meaning of section 34 of the Indian Evidence Act, 1872, so as to be relevant in any suit, between banker or professional money-lender and an agriculturist, to which this Act applies. [New.]

58. Notwithstanding anything contained in the Indian Stamp Act, 1879, no balance struck in a banker's or professional money-lender's books of account and signed by the debtor and a witness or witnesses shall, for the purposes of any suit to which this Act applies, be deemed invalid and inadmissible in evidence by reason only of its not being stamped as a bond or promissory note. [New.]

Section 55(1).

The agriculturist should be prohibited from making any entry in the pass-book.

CHAPTER IX.

OF LEGAL PRACTITIONERS.

[Sec. 68.] 59. (1) No pleader, vakil or mukhtar, and no Pleders, etc., excluded in certain cases. advocate or attorney of a High Court, shall be permitted to appear on behalf of any party to any case before a Conciliator:

Provided that any party to any such case may be permitted, on reasonable cause being shown to the satisfaction of the Conciliator, to employ any relative, servant or dependent who is not, and has not previously been, a pleader, vakil or mukhtar, or an advocate or attorney of a High Court, to appear either conjointly with, or in lieu of, such party.

(2) When a relative, servant or dependent appears in lieu of a party, he shall be furnished by him with a power-of-attorney defining the extent to which he is empowered to act:

(3) *Provided that no pleader, vakil, mukhtar, or advocate or attorney of a High Court shall be permitted to appear before a Subordinate Judge or a Munsif in any suit to which this Act applies, if the suit is not of the value of one hundred rupees:*

Provided further that in no suit under this Act tried by a Munsif shall the fees of any pleader, vakil, mukhtar, advocate or attorney as aforesaid be allowed as costs.

60. When in any suit or proceeding under Power of Court to this Act to which an agriculturist is a party, any pleader, vakil or mukhtar or any advocate or attorney of a High Court appears on behalf of any party opposed to such agriculturist, the Court, if it is of opinion that such agriculturist has not the means of obtaining proper professional assistance, may, with the consent of such agriculturist, direct the Government pleader or any other fit person (who is willing to do so) to appear on his behalf.

CHAPTER X.

MISCELLANEOUS.

[Sec. 70.] 61. (1) *Notwithstanding anything contained in the Transfer of Property Act, 1882, or in any other enactment or law for the time being in force, no mortgage, lien or charge of or upon any immoveable property belonging to an agriculturist shall be valid unless it is created by an instrument in writing under the hand of the person creating such mortgage, lien or charge, or has been notified to a Revenue-officer of such grade as the Local Government may, by notification in the local official Gazette, prescribe in this behalf, or has been entered in some register or record-of-rights maintained by a Revenue-officer under some enactment or law for the time being in force.*

Section 59 (3).

This may prove a hardship to the agriculturist - who is treated throughout this bill as if he were incapable of protecting himself against his creditors!

Section 60.

Is the Govt. Pleader or "other fit person" to be paid? If he is - then if the agriculturist who cannot afford to retain him, is indeed - helped - from what source is the pleader's fee to come? If the pleader is not to be paid then this is a hardship upon him. "Fit persons" have the remedy in their own hands; if they can decline to appear, let ~~the Govt. Pleader~~ be appointed.

(2) Nothing in this section shall apply to any mortgage, lien or charge created by mere operation of law, or in favour of the Government or of any officer of the Government in his official capacity.

62. In taking an account under section 7 or [Sec. 71A.] in any suit to which the Act applies and in which interest is chargeable, such interest shall be awarded at the following rates:

(a) the rate (if any) agreed upon between the parties or the persons (if any) through whom they claim, unless such rate is deemed by the Court to be unreasonable; or

(b) if such rate is deemed by the Court unreasonable, or if no rate was agreed upon, or when any agreement between the parties or the persons (if any) through whom they claim, to set off profits against interest and assessment and similar charges without an account has been set aside by the Court, such rate as the Court may deem reasonable.

63. (1) When the Collector has taken any immovable property of a judgment-debtor or insolvent into his possession under section 24, sub-section (2), or section 30, the Court may, by an order in writing, direct that any other such property not so taken shall be deemed to be reserved for the support of the judgment-debtor or insolvent and the members of his family dependent on him, and may rescind any order so made. [Sec. 73A.]

(2) While any order made under sub-section (1) continues in force in respect of any immoveable property, agricultural produce grown on that property shall not be attached or sold in execution of a decree passed whether before or after this Act comes into force, and shall not vest in the Receiver appointed in any insolvency-proceedings.

64. Except in so far as it is inconsistent with this Act, the Code of Civil Procedure shall apply in all suits and proceedings under this Act. [Sec. 74.]

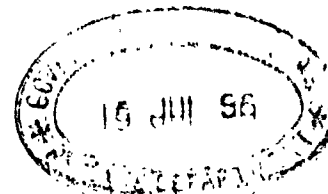
65. The Local Government may, from time to time, make all such rules as it may deem necessary for carrying out the provisions herein contained. [Sec. 75.]

66. All rules made by the Local Government under this Act shall be published in the local official Gazette, and shall thereupon, in so far as they are consistent with this Act, have the force of law. [Sec. 76.]

Public (1896) Department.

CURRENT No.

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.



From

The Registrar,
High Court of Judicature,
Madras.

No. 506.

Dated 11th September 1896.

Received 16.9.96

Registered 16.9.96

Enclosures - 1

Spare copies

SUBJECT.

Forwarding a transcript of the minutes
recorded by the Hon. Justices Subramania
Aiyar, Davies and Benson on the draft Bill
to provide for the relief of agricultural
classes.

Order

A
BILL
TO

Provide for the relief of the agricultural
classes.

BACK PAPERS.

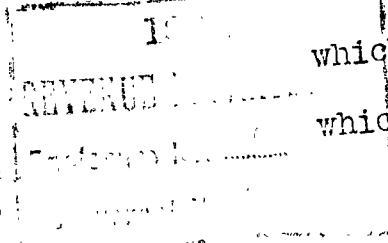
G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

Minutes.

Mr. Justice Subramania Aiyar:-- I regret that that I have not been able to find the time necessary to study the numerous and complicated provisions of this Bill with that care and attention which their importance demands. I must content myself with saying a word or two as to whether the circumstances of the agricultural population of this Presidency call for such a special law. My enquiries and my own experience lead me to the conclusion that that exceptional state of things which alone would justify such legislation does not exist here. The Madras raiyats according to the testimony of those entitled to speak on the point, have as a class, notwithstanding the indebtedness of portions thereof, been during the last 30 or 40 years in a fairly prosperous condition. Moreover much of the money due by agriculturists, who are in debt, has been found to be due to persons of the same calling as the debtors. And these raiyat creditors are, I have reason to think, generally free from the serious vices of the usurer. Nor has the power of disposing of immovable property, which has been enjoyed for generations by members of this class of the community in this part of India, been proved to have been used by them or their creditors to the detriment of the class as a whole. To curtail such power of disposition, as the present Bill would, if it becomes law, cannot but, I apprehend, damage the credit of the raiyats and their future welfare very seriously. I think I may add, without impropriety, that what is required to maintain the present satisfactory state of things in this Presidency, is not class legislation of the kind contemplated, but the continuance of the enlightened policy of keeping the Government demand on land within fair and moderate limits, which has prevailed here for the last 30 years or so, and which in my opinion has contributed in a very material degree



degree to the comparatively well to do condition of our raiyats. It is scarcely necessary to remark that nothing tends more to compel them ^{to borrow money on disadvantageous terms, than} the recurrence of demands for over assessed land revenue, coupled with local cesses the amount of which is made to depend upon the amount of that revenue.

Mr. Justice Davies:-----The advisability or otherwise of the measures proposed for the relief of the agriculturist seems to me to be a question rather for the Executive than for the Judicature. At all events I do not feel competent to express opinions on the matter.

Mr. Justice Benson:----- I have read the papers with much interest, but I find that it is impossible for me to adequately consider or discuss in the brief intervals I can spare from my daily Judicial work, the momentous and complicated issues raised by the proposed legislation. My general impression is that the Bill, if approved passed in its present form, will create in this Presidency, at least, quite as many evils and difficulties as it will remove. I will merely give as an example instance, the fact that the definition of "agriculturist" would probably be held to include the great landlords of Malabar, and the Bill would thus give them a variety of immunities and privileges of which they stand in no need, and to which they can lay no claim, E.G., most of the land in Malabar is held under these landlords on mortgages which are not redeemable before the expiry of 12 years. Section 12 of the Bill will enable a landlord to redeem at any time. Thus the little security of tenure which the tenant now has and which many authorities think ought to be increased will be at once swept away.

2. There is scarcely a section of the Bill that does not raise questions of a difficult and far reaching character which it is impossible to deal with in the few minutes which alone are available each day. Partial or cursory discussion would I think be worse than useless. I must therefore leave the Bill undiscussed.

(True copy.)

D. W. G. Cowie
Registrar.

No. 574

High Court of Judicature,
Madras, 11th September 1896.

From

D. W. G. Cowie, Esquire,
Registrar of the High Court of Judicature,
Madras.

To

The Honorable Mr. J. F. Price, C.S.I.,
Chief Secretary to the Government of Madras.

Honorable Sir,

With reference to G.O., No 804, Revenue, dated 9th December 1895, communicating for favor of opinion a letter from the Government of India, No. 22/1591, Home Department/Judicial, dated Simla 31st October 1895, together with copies of a Bill to provide for the relief of the agricultural classes and its memorandum, I am directed to forward a transcript of the minutes recorded by the Honorable Justices Subramania Aiyar, Davies and Benson, and to state that the Honorable the Chief Justice and Justice Shephard have no remarks to offer.

I have the honor to be,

Honorable Sir,
Your most obedient servant,

Registrar.

D. W. G. Cowie
Minutes.

Exd. 129.

Exd. 129.

Judicial (1896) Department.

CURRENT No.



From

*The Inspector General
of Registration,
Madras.*

Order

G.No. 6242

Dated 28th September 1896.

Received 2-10-96

Registered 2-10-96

Enclosures

Spare copies

SUBJECT.

*Submitting his opinion
on the Agriculturists'
Relief Bill.*

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

G.No. 6242

From

M.R.Ry.P.Rajaratna Mudaliyar, Avergal,
Dewan Bahadur,
Inspector General of Registration,
Madras.

To

The Honourable Mr.A.T.Arundel
Ag.Chief Secretary to Government,
Ootacamund.

Madras ,Dated 28th.September 1896.

Sir,

Referring to G.O.²⁴ 804, Revenue, dated 9th. December 1895, and reminder, dated 23rd. July 1896, No. 1455R, I beg to state that the papers connected with the Agriculturists' Relief Bill were taken by Dewan Bahadur. Srinivasa Raghavaiyengar, and have not yet been returned by him. I have been daily expecting to receive them with his note, and delayed sending a reply to the Government order.

2. My own opinion on the subject, which I had expressed before leaving the Board's office, is that an enactment of the kind referred to by Government of India, is not required in this Presidency, where, the condition of the agricultural classes has been repeatedly pronounced to be, on the whole, fairly satisfactory, or, at any rate, to be such as not to cause the least anxiety, even in the most backward districts.

The investigations made by Mr. Nicholson and Dewan Bahadur Srinivasa Raghavaiyengar show that the indebtedness of the ryots has nowhere assumed any serious proportions; that the bulk of ^{the} money lenders are themselves agriculturists, who are, generally, more considerate than 'Sahukars', or professional lenders, and that there has been a decided tendency, in recent years, towards a reduction in the rates ^{of interest} charged in several districts. In the face of these facts, it can hardly be contended that the agricultural population in this Presidency stands

stands in need of any special legislative protection, such as has been found necessary in the Deccan districts of Bombay, and some other Provinces of Northern India. Whatever assistance the poorer classes of ryots may require, can be easily extended to them, by affording them increased facilities for obtaining loans under the Land Improvement and Agriculturists' Loans Acts, which provide for the grant of advances by the State, at very favourable rates of interest, for every purpose connected with agriculture, whether it be the purchase of a plough, of seed-grain, manure, cattle etc, or the reclamation of land, or construction of wells, and other irrigation works. If these liberal provisions are carried out in a sympathetic spirit, and the ryot is assured of getting State aid without unnecessary delays, and without being subjected to petty annoyances and exactions, at the hands of subordinate officials, he need seldom resort to the money lender for help. The system of granting State loans could, I venture to submit, be developed to the greatest advantage, both to the ryot and to the Government, by the appointment of special officers, of unquestionable integrity and wide sympathies, whose duties shall be to constantly itinerate throughout their range, and see that applications for loans are promptly attended to, and that the applicants get the full benefit of the loans asked for. The enhanced rate of interest (5 per cent), recently proposed by the local Government, will more than cover the cost of any special establishment that may be employed, as well as any losses that may be incurred by Government, through the default of borrowers etc.

2. As I do not consider that a special Agriculturists' relief bill is required for this Presidency, I have not deemed it necessary to discuss the different sections of the bill. I think, however, that the modifications suggested by the Government of India, in paras 9 and 10 of its letter, in regard to the provision of section 337(a) and 525 of the Civil Procedure Code, would be useful, and may be carried out.

I have the honour to be
Sir
your most obedient servant

M. J. A. C.
Insp. Genl. of Registration.

Revenue (1896) Department.

CURRENT No.

Order

From
The Board of Revenue
Rev: Sett., L. Rand. Agri.
Madras.

No. 236 Press.

Dated 24th September 1896.

Received 19-10-96

Registered 10-10-96

Enclosures

Spare copies

SUBJECT.

Draft Agriculturists' Relief Bill.
Submitting to Government,
with remarks, the opinions of
Deputy Commissioners, Mr:
Clark and Mr. R. A. Dinarayana
Ayya given on the —.

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

BOARD OF REVENUE (REV. SETT., L. RDS. AND AGRI.), 24TH SEPT. 1896, No. 236.

PROCEEDINGS OF THE BOARD OF REVENUE (REVENUE SETTLEMENT, LAND RECORDS AND AGRICULTURE).

Read—again the following Proceedings of the Board of Revenue (R.S.L.R. and Agri.), dated 6th February 1896, Mis. No. 665:—

Read—the following G.O., No. 804, Revenue, dated 9th December 1895:—

Read—the following letter from L. M. THORNTON, Esq., Deputy Secretary to the Government of India (Home Department—Judicial), dated Simla, the 31st October 1895, No. 23, Judicial—1591:—

With Mr. Lyall's letter, No. 6/625-633, Judicial, dated 9th June 1894, copies of the Report of the Commission appointed to enquire into the working of the Deccan Agriculturists' Relief Act of 1879 were circulated for the use of Local Governments and Administrations.

2. The recommendations of the Commission in respect of the Act in force in the Deccan have been considered by the Government of India and the Government of Bombay and the legislation required to carry out the conclusions arrived at embodied in Act VI of 1895. I am now to forward a copy of a Bill which has been prepared to put into effect the proposal of the Commission for the enactment of a general law for the protection of agriculturists capable of being applied to any tract, in which a problem similar to that which led to the enactment of the Deccan Agriculturists' Relief Act has presented or may present itself. The necessity for legislation of this nature has been pressed upon the Governor-General in Council by the Punjab Government and the Central Provinces Administration, and His Excellency in Council has little doubt that there are other parts of the country in which a measure of this nature will be likely to have a beneficial effect.

3. Side references are given in the draft Bill herewith circulated showing the sections of Act XVII of 1879, as amended by subsequent legislation, which have been adopted in it, and the accompanying memorandum explains the chief changes and additions which have been made in it. I am now to ask that the Government of India may be favoured with the views of the Government of Madras as to the provisions embodied in the Bill, and to say that any suggestions, which approve themselves to His Excellency the Governor in Council in the direction either of altering or adding to them, will receive the careful consideration of the Governor-General in Council.

4. There are, however, two important points connected with the Bill which can most conveniently be referred to here. It is a question whether the provisions of section 24 of the Bill, or at least so much of them as declare land belonging to an agriculturist to be exempt from attachment or sale in execution of a decree for money for which it has not been specifically pledged, should not be made a part of the general law of India. The remarks of the Deccan Commission upon the beneficial operation of these provisions will be found in paragraph 51 of their report. The rights of certain classes of occupancy tenants are already exempted throughout a great part of India; while in several provinces land cannot be sold in execution of a decree without the sanction of the Executive. To hold land liable for money debts not specifically charged upon it is practically to put a creditor who lends his money without specific security (and charges higher interest for doing so) on the same footing in respect of his remedy as one who lends on mortgage, and thereby to deprive the borrower of an immunity for which he has paid. Local Governments are being separately consulted as to the advisability of restricting voluntary alienations of land. But so long as the creditor can obtain a compulsory transfer on account of debt, any such restrictions must be absolutely inoperative. The question of the liability of

agricultural land for unsecured debt is one of vital importance to both lenders and borrowers throughout India; and the Governor-General in Council, as at present advised, is of opinion that it is one that should be settled on general grounds by the Legislature for the country as a whole, rather than be left to be dealt with piecemeal by notifications under an enabling Act.

The further question arises, whether the exemption from attachment and sale of land belonging to an agriculturist should not be made absolute, so as to extend to such land, even when it has been specifically pledged. The Bill already gives the Courts discretion to substitute other

Sections 10 and 14 (3) and (4). processes for sale; and the suggested extension of the exemption would be a step further in the same direction. If the exemption is thus extended, it will be for consideration whether it should apply (1) to mortgages effected, and (2) to decrees for the sale of mortgaged land passed, before the new law comes into operation.

I am to invite an expression of opinion on all the points discussed in this paragraph.

5. The Commission, in addition to proposing a general Bill for the protection of agriculturists, made certain proposals for the amendment of the general law. Those relating to the amendment of the Contract and Evidence Acts and Act XXVIII of 1855 have already been referred for opinion to Local Governments and Administrations, and the replies received to the reference from the Governor-General in Council on these points are now under the consideration of His Excellency in Council.

6. There remain the following proposals of the Commission, viz. :—

- (1) That Village Munsiffs should be constituted under a separate Act;
- (2) that the period of limitation should be altered in suits on bonds or on accounts stated to six years;
- (3) that section 337-A of the Civil Procedure Code should be amended so as to prevent it from being used to defeat the intention of section 266 of the Civil Procedure Code or of any other law similarly exempting specified property from attachment; and
- (4) that section 525 of the Civil Procedure Code and the Registration Act should be amended so as to prevent the abuse of arbitration procedure.

7. In Madras and the North-Western Provinces and Oudh (North-Western Provinces and Oudh Village Courts Act of 1892) there are local Acts which provide for the establishment of Courts of Village Munsiffs. The Governor-General in Council agrees with the Commission in thinking that the establishment of such Courts should be dealt with by means of a measure separate from that for the relief of agriculturists.

It appears to His Excellency in Council desirable that the Local Legislatures of Bombay and Bengal should undertake the legislation necessary to legalize the establishment of Village Courts in the parts of those provinces where it may be desirable to constitute them, and that a Bill should be passed in the Legislative Council of the Governor-General making the necessary provision in the case of provinces in which there is no Legislative Council. The Governor-General in Council is also, subject to the advice which Local Governments and Administrations may have to offer on this subject, inclined to think that the North-Western Provinces and Oudh Village Courts Act provides the most suitable model upon which legislation for the establishment of Village Courts might be framed. Possibly, however, it may be considered that this Act leaves too little to be settled by rule, and section 49 is inconsistent with section 71 of the Deccan Agriculturists' Relief Act and with section 22 of the Bill now circulated. It may also be thought that section 69 is not entirely suited to Village Courts. The Governor-General in Council has called for the opinion of Local Governments and Administrations other than those of Madras and the North-Western Provinces and Oudh as to the legislation which should be adopted in order to provide for the constitution of Courts to be presided over by Village Munsiffs.

8. Turning to the proposal of the Commission, that period of limitation in suits on bonds or on accounts stated should be six years, I am to observe that the Commission of 1875 expressed themselves (paragraph 107) thus regarding the law of limitation :—

"It will be seen from the extracts quoted in the appendix that there is a general opinion that the short period of limitation (three years) now allowed for suits for unsecured debts has the effect of enabling the creditor to oppress his debtor. Only one report is to the contrary. We are not, however, of opinion that any limitation law taken by itself can have this result. In the case of the ordinary debts of a ryot, the law limitation amounts to nothing more than a law by which the creditor is compelled to give the debtor a statement of his account. So far from this being an evil, it would seem to be the very best thing possible for the debtor. A fresh balancing of the account every year instead of every three years would, from this point of view, be better still. The only cost which the law puts upon the parties is the stamp, which is a comparative trifle,—namely, one anna for every hundred rupees on a promissory note, and two annas for every twenty-five rupees on a bond."

And again (paragraph 109) :—

"We are unable, then, to avoid the conclusion that the reduction of the period of limitation has been the cause of considerable hardship to the debtor. The question follows whether it is desirable to alter the law in this respect, and to return to the old period. Our opinion is that for the following reasons it is not desirable to do so. In the first place, there is no law in the statute book which it is so desirable to keep free from change as the limitation law. There have been two Limitation Acts in the last sixteen years, and the present Act is only five years old. Secondly, for the reasons given at the head of this section, we conceive that, if creditor and debtor stand on fair terms with each other, a short limitation is advantageous to both parties. Thirdly, we believe that the present hardship results from causes which will in time work out their own remedy. We are of opinion, however, that something may be done to relieve the present hardship by providing that bonds and other instruments written by the agency which we propose should be appointed for the purpose, should acquire the extended limitation given to 'registered' instruments by the Limitation Act. The period for unsecured debts will then be extended from three to six years. There is no doubt that in the case of the agricultural debtor there are special reasons for considering an easy term of limitation desirable, for the ryot borrows chiefly against his annual income, and this annual income is uncertain."

Section 72 of the Deccan Agriculturists' Relief Act provides that in any suit for the recovery of money alleged to be due to the plaintiff on account of money lent or advanced, or the price of goods sold, or on account stated between the plaintiff and defendant, or on a written or unwritten engagement for the payment of money of a kind not specially referred to, the period of limitation shall be, when the person sued was at the time when the cause of action arose an agriculturist, twelve years if the suit is founded on a written and registered instrument, and six years in other cases.

The Government of India will now be glad to receive the opinion of the Government of Madras upon the proposal made in paragraph 62 of the Report of the Commission of 1891-92.

9. The proposal of the Commission for the amendment of section 337 (a) of the Code of Civil Procedure is contained in paragraph 50 of their report. Section 266 of the Code exempts certain property—e.g., wearing apparel of the judgment-debtor and his family, tools of artisans, implements of husbandry, cattle necessary for an agriculturist to earn his livelihood as such, and materials of houses and other buildings used by agriculturists—from attachment and sale. Section 337 (a) of the Civil Procedure Code empowers the Courts to make an order disallowing an application for the arrest and imprisonment of a judgment-debtor, if it appears to the Court that he is unable "from poverty or other sufficient cause" to pay the amount of the decree. The Punjab Courts have held that the possession of such property as is exempted under section 266 prevents them from holding a debtor to be unable to pay the amount of the decree, and therefore from giving him the benefit of section 337 (a). It appears to the Government of India that this result is contrary to the intentions of the Code, and I am to ask for the opinion of the Government of Madras upon the matter.

10. The reasons for the suggested alteration of section 525 of the Civil Procedure Code are stated in paragraph 58 of the Commission's Report. That section provides that when a matter has been referred to arbitration without the intervention of the Court, any person interested in the award may apply to the Court of lowest grade having jurisdiction in the matter that the award may be filed. The Court can then give notice to the other parties to show cause why the award should not be filed; and if it finds no ground for remitting it or setting the award aside, it must be filed as an award. The Commission found that this section was abused so as to convert agreements into awards, and thereby evade the registration laws and section 22 of the Deccan Agriculturists' Relief Act. The Government of India are disposed to accept the opinion of the Commission, and I am to ask whether His Excellency in Council agrees with this view.

11. Lastly, I am to refer to a proposal which has been made that Local Governments should be empowered to remit in any district or part of a district in which conciliators have not been appointed, half the fees in cases covered by the Bill now circulated in which the parties come to an agreement at the first hearing, and to remit in any or all districts institution fees on suits brought by agriculturists for redemption of mortgaged lands.

The following special exemptions have been made under the Court Fees Act in places where the Deccan Agriculturists' Relief Act is in force:—

- (1) The fees on plaints in suits by agriculturists under section 16 for an account, etc., and for redemption or mortgage where any of the plaintiffs is an agriculturist, are remitted entirely except in the Satara district, where they are reduced to one-half;
- (2) fees in insolvency proceedings are remitted;
- (3) the fees in suits referred to in Chapter II to which an agriculturist is a party are reduced to one-half;
- (4) fees in suits before Village Munsiffs are remitted;
- (5) where conciliation is not in force, half the fees are refunded if a compromise is effected at the first hearing.

The Governor-General in Council desires to receive the opinion of His Excellency in Council as to whether any concession in the matter of Court fees should be made in the case of suits to which Chapter II of the Bill under circulation refers.

Order—No. 804, Revenue, dated 9th December 1895.

Miscellaneous.

The letter read above with copies of the Bill and memorandum will be communicated to the Honourable the Judges of the High Court, the Advocate-General, the Board of Revenue, Mr. F. A. Nicholson, I.C.S., Mr. C. J. Weir, I.C.S., and the Inspector-General of Registration for favour of opinion.

2. Special mention should be made of the circumstances of the Khonds.

(True Extract.)

(Signed) E. GIBSON,
Secretary to Government.

To the Hon'ble the Chief Justice, with C.L. through the Judicial Department.

- " the Government Solicitor.
- " the Board of Revenue (Land Revenue).
- " the " (Revenue Settlement, Land Records and Agriculture).
- " the " (Separate Revenue).
- " the " F. A. Nicholson, Esq., I.C.S., Collector of Anantapur.
- " the Inspector-General of Registration.
- " C. J. Weir, Esq., I.C.S., Collector of Ganjam.

* With copies of the report of the Commission for perusal and return.

Read—also the following G.O., Mis. No. 388, Revenue, dated 28th January 1896:—
Read—again G.O., No. 801, Revenue, dated 9th December 1895.

Order—Mis. No. 388, Revenue, dated 28th January 1896.

Before replying to the Government Order read above, the Board of Revenue (Settlement) is requested to invite the opinions of Deputy Commissioners Mr. G. P. Clerk and M.R. Ry. M. Adinarayana Ayya Garu, Rao Bahadur, and to forward them to Government with its own observations on the proposed legislation.

(True Extract.)

(Signed) E. GIBSON,
Secretary to Government.

To the Board of Revenue (Revenue Settlement,
Land Records and Agriculture.)

Resolution—6th February 1896, Mis. No. 665.

The papers referred to will be forwarded to Mr. G. P. Clerk and M.R. Ry. M. Adinarayana Ayya Garu, Rao Bahadur, for early opinion.

(True Copies and Extract.)

(Signed) P. RAJARATNA MUDALIAR,
Secretary.

To G. P. Clerk, Esq., Deputy Commissioner of Revenue Settlement, No. III Party.
" M.R. Ry. M. Adinarayana Ayya Garu, Rao Bahadur, Deputy Commissioner, Revenue Settlement, No. V Party.

READ—again Proceedings of the Board of Revenue (R. S., L. R. and Agri.), dated 13th March 1896, Mis. No. 1290, recording, pending receipt of reply to B. P. dated 6th February 1896, Mis. No. 665, from M.R. Ry. Rao Bahadur M. Adinarayana Ayya Garu, the following letter from Mr. G. P. CLERK, Deputy Commissioner of Revenue Settlement, Party No. III, Gódvári and Kistna, to the Secretary to the Commissioner of Revenue Settlement and Director of the Department of Land Records and Agriculture, dated Cocanada, 6th March 1896, No. 115:—

As directed in the Board's Proceedings, dated the 6th February last, Mis. No. 665, I have the honour to submit the following few observations on the proposed Agriculturists' Relief Bill. I have not seen the report of the Commission referred to in the papers forwarded to me.

2. The Act will, I think, confer great benefits on agriculturists throughout the country, though this was not the view taken of it by the last Congress. The three districts in which I have more recently served are Madura, Tanjore and the Gódvári. In Madura much of the land has, I believe, passed into the hands of the Nattukkottai Chetties. In Tanjore the Brahmins long ago ousted the original holders of the land. In this district a very large number of the ryots are in debt, but the land, when sold, appears to be purchased chiefly by other agriculturists. One of the objections to the Bill taken by the Congress was that agriculturists would experience great difficulty in obtaining loans, but I do not think this will prove to be the case. The village money-lenders, practically speaking, have only this one outlet for their capital, and they will continue, therefore, to advance money on the land almost as freely as heretofore. In my opinion, too, the Act will conduce to better cultivation, for, the ryot will make

every effort to repay the loan he has been able to negotiate on such favourable terms, whereas at the present time, thousands of landholders know well that they are hopelessly in debt.

3. *Section 2 of the Bill.*—The term "agriculturist" as defined in the Bill seems to be all that is required, and the benefit of the Act might be extended to agriculturists taking service in Native States.

4. *Section 3.*—It seems desirable to apply the provisions of Chapter II in cases falling under (b) and (c) where the plaintiff is also an agriculturist.

5. *Sections 5 (2 and 3) and 7 (1 and 2).*—As it may be advisable in nine cases out of ten to ascertain whether the debtor has full knowledge of his legal rights, and as such inquiries would not occupy the Court more than a very short time, it might be suggested that the Court be directed to inquire into the history and merits of all cases, the presence of the defendant being compulsory.

6. *Sections 8 (2) and 9.*—I would suggest the retention of section 9 and the words "or setting off the profits of the mortgaged property without an account in lieu of interest." The Court is empowered under the Act to revise the accounts both as regards principal and interest and give retrospective effect thereto, and the usufructuary mortgages may likewise be revised with retrospective effect.

7. *Sections 10 (proviso) and 31 (2).*—I do not think the mortgagor should be debarred from recovering his property prior to the expiration of the period specified by the Court, should he, or his representative in interest, be in a position to pay into Court the balance of the debts.

8. *Section 11.*—The proposed provisions for arbitration seem desirable and sufficient.

9. *Section 24.*—It appears desirable that alienation of immoveable property should be prohibited in all cases, and that the Act be made applicable to all mortgages effected before the Act comes into force and to all decrees granted subsequent to a fixed date—say, the 1st January 1896. The proviso in the body of the Bill might be retained in preference to that suggested in the margin.

10. *Period of Limitation.*—It would seem only fair to the creditor that the period of limitation should be fixed in the manner provided for in section 72 of the Deccan Agriculturists' Relief Act, especially as the debtor is protected by sections 17 and 13 of the proposed Bill.

11. *Sections 337-A and 266, Civil Procedure Code.*—In consequence of the decisions of the Punjab Court, it appears advisable to amend section 337-A so as to prevent its being used to defeat the intentions of section 266.

12. *Section 525, Civil Procedure Code, and the Registration Act.*—The proposed amendments may be given effect to.

13. *Chapter IV, Insolvency.*—The provisions in this matter seem sufficient.

14. *Chapter V, Conciliation.*—Provision for conciliation should, I think, form part of the proposed Bill. If the Village Munsifs in this Presidency are Police Officers, it seems very desirable that they should not be prohibited thereby from being appointed as conciliators.

15. *Section 53.*—As this section stands, it places the creditor at a disadvantage in the event of the debtor wilfully destroying the receipt, and I would suggest that the debtor (agriculturist) should acknowledge in writing the receipt of the creditor for money paid.

16. *Chapter IX.*—It seems advisable to prohibit the appearance of legal practitioners except in suits of the value of Rs. 100 or more. I do not think that the debtor will thereby be placed at a disadvantage, for, the cases will be of a very simple nature in consequence of the several provisions of the Act, more especially if the creditor's books are kept in a prescribed form, language and character. This latter provision appears to be a very desirable one.

17. *Exemptions under the Court Fees Act.*—Concessions might be granted similar to those under the Deccan Agriculturists' Relief Act.

READ—also the following letter from M.R. Ry. Rao Bahadur M. ADINARAYANA AYYA GARU, Deputy Commissioner of Revenue Settlement, in charge of Party No. I, Bellary and Anantapur Districts, to the Secretary to the Commissioner of Revenue Settlement and Director of the Department of Land Records and Agriculture, dated Anantapur, 26th May 1896, No. 154:—

I have the honour to submit the following remarks with reference to the proposed Bill for the relief of agriculturists communicated with the B. marginally noted.
B. P., dated the 6th February 1896, Mis. No. 665.
B. P., dated the 13th March 1896, Mis. No. 1290.

2. The object of the Bill is to prevent the alienation of land from the hands of hereditary agricultural classes and its absorption by professional money-lenders or *Sahukars*, through the mere operation of law. Though there is in this Presidency also a considerable amount of indebtedness among the agricultural population, much of the lending is done by persons who are themselves agriculturists. *Komatis* and *Chettis*, who are professional trading classes, also lend money, but most of these men also are settled agriculturists of their respective villages, their trading and lending operations being their distinguishing professions, just as in the case of village artizans, who are also holders of land, their several industries distinguish them from the other ryots of the village. Except perhaps in some limited localities, there does not appear to be any tendency in this Presidency to such an extensive transfer of land to an unsympathetic money-lending class as to constitute a political danger. However, the proposed legislation, which is in the nature of an enabling statute intended to be applied to particular localities, the circumstances of which may render resort to its provisions necessary, is unobjectionable (clause 3, section 1 of the Bill).

3. *Explanation (a) attached to clause (1)—Section 2 of the Bill.*—I do not think it necessary that the concession allowed by the section should be extended generally to all Government servants or servants of Native States holding landed property. The object of this Bill is to protect the interests of *bona fide* agriculturists, who as a class are generally ignorant, illiterate and not capable of taking proper care of their own affairs. Government servants generally are intelligent men, and many of them acquire landed property from savings without having been themselves agriculturists or members of agriculturist families when they started in life. It is not contemplated, I think, that a merchant or a person engaged in any other profession, who acquires or holds land, but who mainly relies on his trade or other profession for his income and living, should be treated as an agriculturist under the Bill (paragraph 28 of the report of the Commission of 1891-92). Government service is equally a profession. There are obvious reasons why an exception should be made in the case of men employed in the military service of Government, but beyond this it seems unnecessary to extend the concession generally to all Government servants. The matter is one which might be left to the discretion of the Courts to decide in each case, subject to the main rule, that the concession should be allowed only in the case of those who by entering Government service have "only temporarily ceased to earn their livelihood from agriculture."

4. In other respects the definition of the term "agriculturist," as given in the Bill, appears to be adequate.

5. *Chapter II, Section 3.*—It does not seem necessary to extend the provisions of chapter II so as to cover any cases specified in clauses (b) and (c), in which the plaintiff is an agriculturist. Generally in cases of the kind referred to, the agriculturist plaintiff will be found to be an enterprising money-lender capable of taking proper care of his interests.

6. Section 5 (2) may be retained, but the discretion to dispense with the attendance and examination of the defendant contemplated by section 5 (3) should be continued. There will be several cases in which both from the general intelligence of the defendants and the circumstances of the cases themselves, it will be found unnecessary to insist on the personal attendance and examination of the defendants.

7. For the same reason, in clause (4), section 7 of the Bill also, words should be inserted, as in section 12 of the Deccan Agriculturists' Relief Act XVII of 1879, allowing discretion to the Court to dispense with the examination of the plaintiff and defendant as witnesses.

8. It is undesirable to open the way for a fresh account being taken with retrospective effect, where, under the terms of the original mortgage, the understanding was that the profits from the lands should be set off in liquidation of interest. It will unnecessarily complicate the work of the Courts and may often prove unfair to the mortgagee. It is only when the profits have risen in value that a suit for redemption will be launched by the mortgagor, and it will be sufficient, for all practical purposes, to empower Courts, as contemplated by section 10 to extinguish the debt by revising the terms of the mortgage, *prospectively*. In this view I submit that section 9 may be omitted altogether, and also the words "or setting off the profits of mortgaged property without an account in lieu of interest" in the second sentence of section 8.

9. Section 11.—As drafted, does not shut out resort to the provisions regarding arbitration embodied in Chapter XXXVII of the Civil Procedure Code. When all the parties agree, clauses (1) and (2) of the section provide for a reference to arbitration being made under the Civil Procedure Code. Where, however, such universal consent is not forthcoming, an alternative course is provided for in clauses (3) to (14). It seems unnecessary to adopt both these systems in the Bill. The latter course is the more elastic of the two. Both for purposes of revision and for initial reference, the provisions in clauses (3) to (14) of section 11 confer more latitude on the Courts, and this is necessary considering the class of cases which will fall to be adjudicated upon under the Agriculturists' Relief Bill. Resort to the procedure under the Civil Procedure Code may therefore, I think, be omitted from the Bill. It is true that where arbitrator's awards are held liable to revision [clause (13), section 11], at the discretion of the Courts, there will not be much inclination manifested to resort to arbitration, but as the object of the Bill is to safe-guard an illiterate and ignorant peasantry against its own mistakes, the provisions contemplated in the above clauses seem necessary.

10. Section 24.—Of the two alternative provisos, the simpler one to work will be that provided in the body of clause (1), restricting sale to not more than one-half of the standing crop. This will also be fair to the decree-holder, who can then be sure of some return. To the agriculturist also, it will act as a stimulant not to neglect his cultivation. For, under the alternative proviso assuring him of his subsistence allowance, he might remain content with indifferent cultivation. There may be cases also in which so much as one half will not be necessary for seed-grain and for subsistence of the agriculturist, his family and cattle, till the next following harvest. If this can be shown or proved by the decree-holder—and the *onus* of this should rest with him—the difference should also be held available for satisfaction of the decree. I would therefore suggest that the following sentence may be added at the end of the proviso in clause (1) of section 24: "If, however, it is proved that so much as one-half of what is left, after setting apart the quantity required for meeting the demand of Government or of the landlord for revenue or rent, is unnecessary for seed-grain and for the subsistence of the agriculturist, his family and cattle, until the harvest next following, then the surplus beyond what is required for the above purposes may also be attached and sold in execution."

11. Chapter IV.—I have no remarks to offer on this chapter, except that I apprehend that the provisions of sections 30 and 31 might throw on Collectors an amount of work in managing the properties of insolvent debtors, which they cannot well attend to with their present establishments.

12. Chapter V.—Provided suitable men, with the required leisure and willing to take up the work, can be found in the several localities, the conciliation system will be a decided advantage. But though there may be some difficulty in securing such men, it does not seem necessary, on that account, to omit the provisions under this head from the Bill.

13. I am not aware of any class of Village Officers who are also Police Officers, but whom it would still be unobjectionable to appoint as conciliators. The Talayaries in permanently-settled estates and in inam and shrotriem villages are really Police Officers, and such men can never be appointed as conciliators.

14. Chapter IX.—It seems sufficient to provide that costs incident to the engagement of legal practitioners will not be allowed. The proviso that no legal practitioner shall be allowed to appear in suits, the subject-matter of which is not of the value of Rs. 100 or more, goes too far, and may in some cases work against the interest of the agriculturist-debtor.

15. Chapter X.—The addition to section 61 in favour of recognizing liens notified to Revenue Officers and entered in the Revenue registers seems unobjectionable.

16. Proceeding to the several points raised in the letter from the Government of India, dated the 31st October 1895, No. 23—1591, Judicial, I beg to submit the following remarks.

17. Section 24.—There seems to be no objection to incorporating in the general law the provision embodied in this section which declares that land belonging to an agriculturist shall be exempt from attachment or sale in execution of a decree for money for which it has not been specially pledged. This will not contravene any specific understanding as between the parties when the loan was raised.

18. At the same time it is undesirable to extend such exemption to cases in which the land has been specifically pledged. In a vast majority of cases, lands are held by very poor ryots, and stringent restrictions might force on outright voluntary sales, which would be a worse evil. Moreover, with the ample safe-guards provided in the Bill and with the facilities afforded for investigations proceeding behind the bonds and account statements, there is the less reason for tying down land so absolutely.

19. There should be but one general limitation law for all classes of the community, and I see no objection to the extension of the period, in the case of suits on bonds or on account, from 3 to 6 years, as part of the general law.

20. Sections 337 and 525 of the Civil Procedure Code—should be altered as indicated by the Government of India in its letter.

21. As regards special exemptions under the Court Fees Act, it will, it seems to me, be sufficient to reduce the court fees by one half in the case of suits referred to in Chapter II of the Bill, and, in addition thereto, to remit the fees fully in insolvency proceedings, and to refund half the fees if a compromise is effected at the first hearing in localities where conciliation is not in force.

22. I return herewith the Bill and memorandum received with B.P., Mis. No. 1290, dated the 13th March 1896.

READ—also memorandum from Government, R. No. 106, Revenue, dated 3rd June 1896, requesting to send an early reply to G.O., dated 28th January 1896, Mis. No. 388.

RESOLUTION—dated 24th September 1896, No. 236.

With reference to G.Os., Nos. 804 and 388, Mis., Revenue, dated 9th December 1895 and 28th January 1896, respectively, the Board begs to forward herewith the opinions of Deputy Commissioners, Mr. G. P. Clerk and M.R. Ry. M. Adinarayana Ayya Garu, Rao Bahadur, on the proposed legislation for the protection of agriculturists, and to submit the following observations of the Acting Commissioner of Revenue Settlement, Land Records and Agriculture.

2. The proposed enactment is intended by the Government of India to be applied to tracts in which "a problem similar to that which led to the enactment of

the Deccan Agriculturists' Relief Act has presented or may present itself." The main object of the Deccan Act was "to prevent the gradual transfer of proprietary interests in land from the martial and cultivating classes to the trading and money-lending castes of Hindu society," an evil which was found to be a growing one in the Deccan, owing to the ignorance, improvidence and helplessness of the ryots, and the rapacity and sharp practice of the "Baniyas" who monopolised the money-lending business. In this Presidency, the ryots do not appear to be so ignorant and helpless as in the Deccan, nor is money-lending so much in the hands of professional sowcars, except perhaps among the hillmen of the Agency Tracts. Mr. Nicholson,

Vide Report on Land and Agricultural Banks, Volume I, pages 230-231.

who has made a special study of the problem of agricultural indebtedness of this Presidency, is of opinion that "the rural creditors or lenders of this Presidency are, for the vast bulk of the loans, ryots and not men of the Marwari class," and that though, in the Tamil districts, "there are classes (of money-lenders) who are fully equal to Marwaris in keenness," yet, "owing to competition among such classes, and to the fact that, for ordinary purposes, the ryots are largely lenders among themselves, they have not, as a class, earned the evil reputation of the Deccan usurers, and no serious exploitation of the ryot is heard of such as is depicted in the Deccan." It is therefore unnecessary to legislate on the proposed lines for this Presidency as a whole, as suggested by Mr. Clerk: nor is it expedient, in the absence of clear and pressing necessity, to interfere, in the manner contemplated by the provisions of the draft Bill, with freedom of contract and the rights of private property.

3. It is worthy of notice that the words "Sabukar," "Baniya," "Mahajan" and "Marwari" are all entirely foreign to this Presidency. So far as the Acting Commissioner is aware, there is not a single Dravidian word which conveys the opprobrious shade of meaning generally attaching to these words, and the very word "usurer" or "wucherer" can only be expressed in these languages by a periphrasis. This is an interesting ethnological fact, and confirms the opinion entertained by the Acting Commissioner that usury, in its worst form, is not generally at home in this Presidency, and that, as a rule, the usurer, in the worst sense of the term, is here either unknown or

* It is natural that the usurer should leave an impression on the language of the country in which he works, and that his character should even be reflected in different shades of meaning. Thus "wucherer" is a much more opprobrious term than "usurer," due to influence of the lower type of German Jew, whose presence has largely led to the anti-semitic agitation in Germany and Austria.

is a foreigner.* The fact that Marwaris come down a long distance to ply their trade in Madras tends to show that there is an opening for their machinations not filled by the local practitioner. There may be Marwaris whose mode of operation is not synonymous with usury at its worst, but those whom the Acting Commissioner has had the opportunity of observing are of two classes; the large operator, who devours

the great zemindar and public officers, and his jackal who picks up the scraps. The poorer Marwari money-lender, sniffing the prey from afar, comes to this Presidency on speculation, penniless, often alone, sometimes with a wife, and content to herd in a single room or corner of a public serai, or, when fortune favours him a little, in a small room in a private house. These are the Russian or Polish Jew of this Presidency, and confine their operations to the Presidency town. These borrow—on interest—a few rupees from their richer fellow-countrymen, and lie in wait for the petty clerk, the domestic servant and other such small fry. They may, by degrees, fatten up to a condition of wealth, in which case they fly at higher game. They resemble the Chinese in their attachment to their native place, to which they return at intervals, keeping up their connection with it always. It may, however, be accepted as a general fact that the money-lender of the mofussil is of a different class, and that the really dangerous usurer—in this Presidency—is to be found only in the Presidency town. The Nattukottai Chettis of Madura are a solitary instance of a great banking community somewhat resembling the Oppenheims and Werthauers, but more merchants than

usurers. The Chettis and Komatis are often money-lenders, but, though good men of business, not notoriously beasts of prey. The Komati, indeed, is, in Tamil folklore, very often a bye-word for stupidity and a butt for practical joking. The money-lender of the mofussil is generally of agricultural caste and a land-owner himself. His prosperity depends very much on the favour and repute which he enjoys amongst his clientèle, and his relations with the latter, with no doubt exceptions, are friendly enough. We do not hear in this Presidency of money-lenders whose lives are taken, or whose houses, with the bonds they contain, are burnt down, by exasperated debtors. The mofussil money-lender is associated closely with the joys and woes of his fellow villagers. He helps them in time of marriage and death, and when the seasons are unfavourable. He no doubt accumulates money, but on a small scale, and public opinion and his own interests, together with the all-pervading influence and brotherhood of Hinduism, are considerable checks to prevent the borrower from being mercilessly exploited.

4. The great danger which threatens the agriculturist in this Presidency comes from the proletariat of the literary classes. Though overflowing with lip-loyalty, this class shuns investments in the public funds or in railways. It has no trust or confidence in a Government which it hates, but whose existence is as the breath of its nostrils. The Mogul, or the French, or the English, or the Russian may come or go, but the land remains. The proletariat neither toils nor spins, and adds nothing to the wealth of the country. Others shall toil and moil and spin for him. He watches for the richer lands in tracts adjoining the Presidency town, in the river villages, under the best tanks, or in the fat Deltas, where our leniency of assessment leaves room for the middleman, and then he swoops down and battens on the soil. Wherever these men go, discontent will be rife, and the cultivators tend to become more and more *adscripti glebæ*. These men too will lend. A little sum on mortgage, a friendly renewal or two, and then the land becomes their own, and the erst-while owner tills it, paying tribute to the lender. The Government of India, in its Despatch to the Secretary of State, dated 18th June 1895, No. 33, printed in G.O., No. 328, Revenue, dated 13th July 1896, has laid stress on the importance of obtaining the full share of the State from the land, and, apart from other considerations, this is most desirable as tending to eliminate the middleman. Theoretically there is no place for a middleman when the profits of the land are fairly divided between the cultivator and the State; and, practically, the middleman only exists because, for one reason or another, the State does not take its full share, and it is becoming daily more and more difficult to do this, owing to the shrieks of the proletariat at each revision of the assessment. The agitations against the latter are mostly based, not on the ground that the revision is unfair, but that the middleman is not to be left from 15 to 20 per cent. on his investment. This, however, is not likely ever to be admitted. It may sound paradoxical, but there can be no doubt that the prosperity of the ryot is largely involved in the taking, by the State, of its full share, and, the more the State insists on this, the less will the middleman covet the land.

It is not so long since one of the declared objects of revision of the settlement was the creation of the middleman. In its Proceedings, dated 4th October 1867, No. 6334, the Board observed:—

"When the revision of the assessment throughout the Presidency was undertaken in 1855, the avowed expectation was that there would be a large sacrifice of existing revenue. The assessments then were, as a rule, too high for the ryots to pay and prosper, and there were anomalies and inequalities in almost every district, restrictive of agricultural enterprise and prosperity. It was then determined, after all due consideration, that the demand of the State should be limited to a share of the produce, calculated on certain established principles. This determination of the share of the State was not influenced by any consideration of gain or loss of revenue, but by the conviction of its necessity in order to stimulate extension and improvement of cultivation; to admit of the accumulation of capital in the hands of ryots; to lead to the creation gradually of a class of landlords between the Government and the actual cultivators of the soil; and to give stability to the Land Revenue and contentment to the people."

The landlord then contemplated was a landlord of the cultivating class, not a rack-renting absentee, to whom the touch of a plough would be degrading. The elimination of the latter is to be devoutly desired. Were it certain that the margin left in the revision of settlements would go to the actual cultivator, the existence of such

margin would not be regrettable, but the tendency is that it should be absorbed by the middleman, and, where it is considerable, by the literary proletariat. In the opinion of the Acting Commissioner, the salvation of the agricultural classes is not to be looked for from special legislation, but from their own gradual enlightenment. The Joint Hindu Family is a great obstacle to progress, and the customary extravagance in connection with marriage and other domestic ceremonies will have to be curtailed before the ryot can shake himself free. Our system of education should be largely directed to the dissemination of healthy views on such subjects, and the inculcation of thrift. Above all—and here the Missionary can largely help—the Panchama classes—the grit and backbone of agricultural life, who stoop like a strong ass between two burthens—should be our constant care. In raising them the whole pyramid of society will be raised. The extension of railways has large influence in this direction. Wherever the railway comes, wages rise, and, as wages rise, the proletariat finds its profits diminish. Emigration, especially to Burmah, is a valuable factor in awakening the Panchama to a sense of his own value and the sense of freedom.

5. The present Bill involves considerable interference with the rights of different classes of persons, and it is not easy to foresee all the consequences which might flow from its application to any particular tract. It is only "after the event" that it is easy to be wise. It is not altogether clear that the Deccan Act has produced all the results which were expected from it, or with which the Committee credits it.

6. Considering the Bill on its merits, apart from the question whether its application is called for in any part of this Presidency, it may be observed that its application to any large area would involve heavy additional expenditure, as the existing Judicial establishment would be quite inadequate to cope with the increase of work entailed thereby. The proposed enactment prescribes a procedure more lengthy and more tedious than that of the Civil Procedure Code, for the suits which fall under it; and such suits form the bulk of the litigation of the Presidency; nearly 90 per cent. of the suits in Civil and Revenue Courts being for money, rent or moveable property, or relating to mortgages, and the classes proposed to be protected by the draft Bill forming no less than 70 per cent. of the population of the Presidency. In the four districts of the Deccan, in which the Deccan Agriculturists' Relief Act is in force, the ordinary Courts had to be strengthened, in order to work the Act, by an additional staff costing Rs. 55,000 per annum, and the annual extra cost to the State, caused by the Act, came to nearly a lakh of rupees more.

Vide paragraph 17 of the Deccan Commission Report of 1891-92, and foot-note on the same page.

7. There are no "martial classes," properly so called, in this Presidency. The Musalman has taken to trade, when he is not effete, and the Kshatria has turned his sword into a reaping hook. He is no longer keen to fight for honour, or for the love of fighting, but holds that his caste would be imperilled by joining the army, and babbles of special allowances and "mokhasas" to be given to induce him to join. This was the view of the delegate, in one place, of the Telugu Kshatrias. It is possible that some of the provisions of the proposed enactment might produce beneficial results in exceptional localities like the Agency Tracts, where a foreign class of money-lenders is stated to take advantage of the simplicity of the hillmen to drive hard bargains. But it is questionable whether any special legislation should be undertaken for the Scheduled Districts alone, considering that the administration of Civil Justice in those tracts is governed by rules framed by the Local Government, and any reforms that may be considered necessary can be effected by executive orders. Powers have been taken to refuse to execute judgments against lands in these tracts, and Government has also the power to prohibit any particular person from living there, a power which might be used to extirpate the money-lender and the Pathan. Certainly, if any race deserves paternal protection, it is the noble race inhabiting the Agency Tracts. The Telagas press him in the lower lands, and the Reddi—not the Konda Reddi—is approaching his fastnesses in the hills, but the love of truth distinguishes him still from the dwellers in the plains. He may be rude and uncouth, but he will not lie, though looking death in the face. He is, however, threatened with education, and as the

civilisation Octopus extends its arms into these wild tracts, the Koya will learn to lie like his neighbour. What is chiefly wanted in these tracts is, not new laws, but an Outram.

8. If the proposed legislation be considered necessary in other parts of India, there is no objection to the passing of an enabling Act, of the kind in question, which Local Governments may make use of, when and where they deem it fit to do so. In this view, the Acting Commissioner would offer the following remarks on the provisions of the draft Bill and the proposals contained in the memorandum and letter received therewith.

9. *Chapter I of the Bill—Local extent.*—Considering that the object of the Act is the protection of agriculturists among the backward classes of people who are too simple to be able to help themselves, the proper course would seem to be to extend to such classes the benefit of the Act, without limit of area. But, if "local extent" which implies specification of areas, should necessarily be stated in an Act, it is desirable that the Local Government should be empowered to declare that the Act shall apply to specified classes of people, wherever they may reside, as well as to specified areas.

Definition of "Agriculturist."—It is proposed to include in this term those agriculturists who are prevented from earning their livelihood by agriculture or from engaging in agriculture, by necessary absence in Government service or in the service of Native States. It is not clear why any distinction should be made in this respect between the servants of Government or Native States, and those who are in the service of trading firms or private individuals, or those who are engaged in any other profession. As stated by M.R.Ry. Adinarayana Ayya, there are obvious reasons why an exception should be made in the case of men employed in the military service of Government, but such reasons do not exist in the case of other Government servants. Even in this Presidency, it may be doubted if the sepoy or his native officer require any special protection. They obtain leave easily, and generally have relatives who look after their lands. Chapter XXXII of the Civil Procedure Code and the Circulars

* High Court's Circulars Nos. 3985 and 847, dated 18th December 1883 and 18th March 1892, respectively.

of the Local High Court noted in the margin * seem to give them all the protection they require here. It is, however, probable that the case is different in the North.

10. *Chapter II (Sections 3 to 20).*—The Government of India enquires whether the provisions of this chapter should be extended to any class of cases falling under clauses (b) and (c) of section 3 in which the plaintiff is an agriculturist. Clauses (b) and (c) of section 3 refer to suits for money, rent or moveable property instituted against an agriculturist, and the only provisions of chapter II which govern such suits are those contained in sections 4, 5, 6, 7, 8, 11 and 20, all of which are intended to afford special protection to the defendant and none to the plaintiff. In these circumstances, and considering that, of the suits in which the plaintiff is an agriculturist, those instituted against agriculturists are, as the draft Bill now stands, covered by chapter II, the Acting Commissioner is of opinion that those instituted against non-agriculturists need not be brought under that chapter, as a non-agriculturist defendant does not require any special protection as against an agriculturist plaintiff.

The compulsory attendance of defendants required by section 5 (2) is likely to work hardship in cases where the defendants are females, and the discretionary power given to Courts by clause 3 of the section is therefore necessary. Discretion should also be allowed to the Courts, as suggested by M.R.Ry. Adinarayana Ayya, to dispense with the examination of plaintiffs and defendants required by section 7 (4).

Mr. Clerk thinks that the enquiry into the history and merits of a case, required by the latter section, should be made compulsory in all cases, and not confined to those falling under clause 4, inasmuch as such enquiry will take but a short time, and the cases that may not absolutely require such enquiry will be very few. It seems to the Acting Commissioner that any provision requiring the Courts to disregard the admissions of a party, made truly and with a full knowledge of his legal

rights, is inconsistent with the general spirit of the Bill, which favours arbitration, compromise and such other methods of settlement out of Court; and he would therefore propose no alteration in this respect in the provisions of section 7.

The provisions for revising usufructuary mortgages with retrospective effect were tried and declared a failure in the Deccan, and, considering the difficulty of calculating the actual profits derived from lands in years gone by, such provisions are likely to do more harm than good. They would certainly breed a large crop of perjury. Section 9 should therefore be struck out and the necessary correction made in clause 2 of section 8. The proposed sub-section to section 9 will then become unnecessary.

Section 10 provides for the discharge of a debt, where the mortgagee is in possession, by revising prospectively the net profits of the mortgaged property, when such net profits appear to exceed the interest properly chargeable on the mortgage-debt, and by continuing the mortgagee in possession for a specified period calculated with reference to such increased profits. This seems unobjectionable; but the mortgagor should not, as contemplated in the proviso to this section, be debarred from redeeming the property before the expiry of the term specified by the Court, if, in the meanwhile, he should be in a position to pay into Court the balance of the debt.

The procedure, prescribed in section 11 for arbitration in cases where only the debtor agrees to it, is better and more elastic than that given in the Civil Procedure Code, and should, in the opinion of the Acting Commissioner, be adopted even in cases where all parties agree to arbitration.

It is observed that the Government of India propose to recast the sections of Chapter II, embodying in sections 7 and 10 the provisions of section 14 (3), 14 (4), 16 and 17.

11. *Chapter III—Sections 21 to 24.*—This chapter contains special provisions regarding the execution of decrees against agriculturists. Section 21 provides that where cattle or moveable property is attached in execution of a decree, or is tendered by a debtor in execution proceedings, the creditor should be compelled to take it at an upset price fixed by the Court, if the bid at auction fall below that price, or to make good the difference between the amount of such bid and the upset price. The justice of forcing upon the creditor a thing which he does not want is not apparent. An attempt to recover a loan advanced on fair terms, or reduced to fair proportions by the operation of the provisions of the proposed enactment, is not an offence which requires to be punished in the manner proposed by the section. Courts generally sit in large towns, where good prices should be obtainable. It is from the debtor's side that any combination to reduce the price is to be feared, and he need not be protected against himself. Section 21 should therefore be struck out.

The proposal to abolish arrest and imprisonment of judgment-debtors in execution of decrees for money (section 23) does not also commend itself to the Acting Commissioner. It is likely to impair the personal credit of agriculturists and put them in a worse position than now. The main object of this proposal is stated to be to protect the person of the judgment-debtor in those cases in which he possesses no other property than that exempted from attachment and sale by section 266 of the Civil Procedure Code, but in which the Punjab Courts have held that he is still liable to arrest and imprisonment, section 337-A of the Code notwithstanding. Such cases should be provided for by an amendment of section 337-A of the Civil Procedure Code, rather than by the total prohibition of arrest and imprisonment. As a fact, the imprisonment for debt of an agriculturalist by his creditor is, the Acting Commissioner believes, in this Presidency, practically unknown. Outside the largest towns, imprisonment for debt, in any case, is of the rarest. If the debtor can pay, and will not, he deserves no sympathy. If, on the other hand, he really cannot pay, the fact will be known to the creditor, and the latter is not likely to enforce the law against the debtor's person when he knows that he will have to pay *batta* for his maintenance in prison.

The exemption of immoveable property from attachment and sale, unless specifically pledged, (section 24), seems unobjectionable, as it will not contravene any specific understanding between the parties when the loan was raised, and it is not unfair to deny to unsecured debts the advantages possessed by secured debts. It is likely

that such exemption will force the agriculturist to contract mortgage-debts in lieu of simple bond-debts; but such a result is, in the opinion of the Acting Commissioner, beneficial rather than otherwise, as it will make the agriculturist more chary of his credit, and will secure to him money at lower rates of interest. The proposal to extend this exemption to cases in which immoveable property has been specifically pledged, does not commend itself. Such a course will seriously injure the credit of the agriculturist, and will compel him to resort to outright sale of his land, where a short-term mortgage would have enabled him to tide over his pecuniary difficulties. It is in the nature of things that the land should change hands, and its value must depend on its being able to do so. It is only under a theocracy that jubilee restitution can take place, and in theocracies usury is prohibited. To obstruct alienations would often be to prevent a good and careful agriculturist from developing his energies. Even under English law, no man can own land, but only an interest in land, and the change of ownership is a very old story.

"Nam propriae telluris herum natura neque illum,
Nec me, nec quemquam statuit. Nos expulit ille;
Illum aut nequities, aut vafri insecit iuris,
Postremo expellet certe vivacior haeres.
Nunc ager Umbreni sub nomine, nuper Ofelli
Dictus erat, nulli proprius; sed cedit in usum
Nunc mihi, nunc alii."

And the poet, himself a farmer, adds—

"quodcirca vivite fortes,
Fortiaque adversis opponite pectora rebus."

In fact all agricultural wisdom may be summed up in the proverb "a stout heart to a stiff brae."

As regards the proviso to section 24 of the draft Bill, the Acting Commissioner would accept the suggestion made by M.R.Ry. Adinarayana Ayya, to the effect that, when one-half of the standing crop is more than sufficient to meet the necessary expenses of the debtor, the demands of Government and of the landlord, the surplus should also be made liable to attachment and sale in execution.

12. *Chapter IV—Sections 25—33.*—M.R.Ry. Adinarayana Ayya apprehends that sections 30 and 31, requiring Collectors to manage the immoveable property of insolvent agriculturists, might throw on Collectors an amount of work which they cannot well attend to with their present establishments. But if the Act is applied only to exceptional tracts or classes of people, there would not be much work for the Collector to do, especially because so much of the property as is required for the support of the insolvent and the members of his family will be left untouched, and it is only the excess, if any, and this in most cases will be *nil*, that will have to be managed by the Collector. The Acting Commissioner fears that the provision of special facilities for getting themselves declared insolvent will only impair the credit of agriculturists and put them in a worse position than now.

13. *Chapter V—Sections 34—45.*—The success of the provisions of this chapter depends upon the facility with which suitable men, having the required leisure, and willing to work as conciliators, can be got in the localities in which the conciliation system is tried. In many cases, the village headmen will do well as conciliators, but if, as is laid down in section 43, it be made a condition precedent to the institution of any suit or execution proceedings that resort should be had to conciliation, more than one conciliator will be required for some villages. The Government of India enquires whether there are any village officers who are also police officers, and who may yet be appointed conciliators. The only village officers who are competent to perform the duties of a conciliator are the headman and the karnam, and neither of them is a police officer in this Presidency.

14. *Chapter VIII—Sections 53—58.*—The Acting Commissioner considers that the penalty prescribed in section 53, for non-tender of receipts by creditors, offers an inducement to debtors to perjure themselves. The remedy suggested by Mr. Clerk, viz., that the debtor should be required to acknowledge, in writing, the receipt of the creditor, will not meet the case of an agriculturist who is an illiterate and ignorant person.

The Acting Commissioner considers that the provision contained in section 57 which requires that the money-lender's books of account, in order to be admissible in evidence, should be kept in a prescribed form, may advantageously be made applicable even to suits falling outside the scope of the proposed Act.

15 *Chapter IX—Sections 59–60.*—It is objected to the provisions of this chapter that they would work prejudicially to the interest of agriculturists, and it is stated that it would suffice to provide that vakils' fees shall not be allowed as costs in the cases referred to in section 59. This will not, however, secure the object in view. Vakils may be trusted to recover their costs in any case, and the refusal to allow vakils' fees as costs will only go to swell those necessary expenses generally incurred by litigants, but not decreed as costs by Courts. In the opinion of the Acting Commissioner, however, there is no harm in prohibiting the employment of legal practitioners in the cases going before conciliators, who ordinarily would not be men of any high education and would only be embarrassed by the arguments of vakils. In respect of suits before District Munsifs and Sub-Judges, the provisions of the Bill require the Judges to take special care of the interests of the agriculturists, and they are not therefore likely to suffer by the provisions of section 59.

16. The Acting Commissioner considers that there is no good reason for extending the period of limitation for suits on bonds or on accounts stated. The sooner the debtor is brought face to face with his liabilities, and the sooner compound interest ceases, the better. As a fact, the law does not touch the debtor so quickly. After the period of limitation come the delays of the law. In fact, what with the provisions of clauses 4 and 5 of article No. 179 of the second schedule of the Limitation Act, a decree holder, who has probably already lost a year or two in getting his decree from the Court, need be under no hurry to take out execution proceedings. He generally waits until the time arrives for putting the machinery of law in motion with a fair chance of success. The decree will not carry compound interest, and it is likely not to allow as much interest as the bond. The period of limitation may safely be left as it is.

17. The Acting Commissioner would accept the proposal to amend section 525 of the Civil Procedure Code, so as to prevent the abuse of arbitration procedure with a view to evade the Stamp and Registration laws. It is objected that the proposed amendment might hamper free resort to arbitration, but it is observed that only those awards in which the *bona fides* of the parties is questioned will be affected by the proposed change.

18. With reference to the last paragraph of the Government of India letter, the Acting Commissioner considers that the remission of Court fees should be allowed in all cases in which it is now allowed under the Deccan Agriculturists Relief Act.

19. The Acting Commissioner much regrets the delay in disposal of this reference. The paper received in this department was originally noted to lie over for disposal by the Full Board; but, during his absence on tour, a Full Board replied to the reference in the Land Revenue Department, and the Proceedings of the latter only reached this department on the 11th September. The present file reached the Commissioner on the 14th instant, when boarding the steamer for a second tour. The subsequent delay of ten days has been due to continued interruptions on tour.

(True Copies and Extract.)

P. V. Srinivasan
Secretary.

To the Secretary to Government, Revenue Department.

Copy to Land Revenue Department.

" G. P. Clerk, Esq.

" M.R.Ry. M. Adinarayana Ayya Garu, Rao Bahadur.

REVENUE DEPARTMENT.

1896.

Board of Revenue

(Revenue Settlement, Land Records
and Agriculture),

MADRAS.



Printed October 11.

Proceedings, 24th Sept. 1896, No. 236.

Draft Agriculturists' Relief Bill.—Submitting
to Government, with remarks, the opinions of
Deputy Commissioners, Mr. Clerk and M.R.By.
Adinarayana Ayya Garu on the —.

Revenue (1896) Department.

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SUBJECT.

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BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.



Upper Newwood.

9th October 1896.

22/P

From

F. A. Nicholson, Esq. I.C.S.

London.

To

G. Stokes Esq.

As Secretary to Government
Revenue Department
Madras.

Sir

I have the honour to reply to G.O. No. 1455 of 23rd July last, requiring me to state when I can submit the opinion desired of me in G.O. 804 Rev. of 9th Dec. 1895 relative to the Govt of India Agriculture Relief Bill.

2. In reply I beg to request permission to defer giving my opinion on the subject until the necessity for some such law has been thoroughly ascertained by a critical examination of the facts of the Presidency.

There are two major questions to be answered.

- (1) Whether any such law is required;
- (2) the form such law should take.

See para. 2. of the letter of the Govt of India for forwarding the Bill.

3. The first question is by far the most important, and I submit that we are not, at present, in a position to say, from positively ascertained data, whether such a law is necessary or expedient. If we legislate on agrarian subjects in a hurry, we may work profound mischief; if we refuse to legislate because we are not quite sure whether legislation is or is not needed, we may be permitting the development of most dangerous agrarian difficulties. When we proceed to touch, even with the lightest finger, the tenures, the liberties, the business relations of the cultivators, who form some three fourths of our vast population, we can only do so with the greatest caution, and only when a previous, wide, and special examination of the facts has taken place and compels interference; when we reject soberly proposed legislation found a ~~thought~~ necessary in other Provinces by the highest authority, we can do so only when we have the clearest facts to establish our rejection.

Now I respectfully submit that we have not as yet made the slightest examination of the facts of the country relevant to the questions at issue as raised by the Bill, such as the indebtedness of the agriculturists, the progress or decrease of such indebtedness whether absolute or relative

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to the increase in land & other values, the relations between agriculturists and lenders, &c. &c.: consequently we have data neither to accept nor to reject such laws: we have nothing but individual opinions usually of a very general nature, and very apt to be one-sided or based on very imperfect information. We cannot even claim public opinion one way or other, whether as expressed by the local officers of Govt., by the Press, or by the ryots themselves; no one has suggested such a law for the Presidency, and yet the absence of such a suggestion is no ground, or no sufficient ground, for assuming that all is peace and well-being, for the Decan riots were wholly unexpected, and local disturbances have been claimed as agrarian.

I consider then that we can neither accept nor reject agrarian legislation, whether of the proposed or other nature, till we know our ground, and that wide enquiry must precede opinion.

4. The second question is that of the form of any required legislation. I submit that agrarian legislation cannot easily be Imperial; what is suitable for the N.W. Provinces or for Bengal can hardly fit the conditions of our wholly different ryotwar Provinces; even in Germany the necessity for different agrarian laws for States differing chiefly in locality and soil, and only partially in tenure or in customs, is

X
Indebtedness
and Land
Transfer

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b. I try to apologize for my delay in replying; I have had to finish Vol. II of my report on Banks, which occupied me till the end of July, while the mere perusal of the Govt of India papers and of ~~for~~ other papers on the Land transfer question, has occupied much of my subsequent time.

I am, Sir, Yours truly,
Wm. Lushington

See,

Sir,
Your most obedient servant
F. A. Nicholson.
D.C.S. (in leave).

Revenue (1896) Department.

CURRENT No. 171

From

F. A. Nicholson Esq. I.C.
Upper Harwood.

No.

Dated 9th October 1896

Received 2nd Nov.

Registered 3rd

Enclosures -

Spare copies -

SUBJECT.

Submitting certain remarks
in continuation of his letter of
the 9th instant on the Agriculture
and Relief Bill.

From
F. A. Nicholson Esq. I.C.
(in care)

To Mr. Revenue Secretary
Government.
Madras.

Subject.

Reply to G.O. 804
Rev. of 9th Decr 1895
re ~~the~~ Agriculture
Relief Bill.

Order

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3/11

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BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

Upper Norwood.

9th October 1896.

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From F.A. Nicholson. Esq. I.C.S.

To G. Stokes. Esq.
Revenue Secretary to Govt
Fort St George.

Sir
In continuation of my letter of
the date on the Agriculturists Relief Bill,
I have the honour to submit the following
remarks.

2. In addition to the above subject the
Govt of India have forwarded for considera-
-tion the much larger subject of the
indebtedness of the agricultural population,
coupled with suggestions for the limitation,
either in fact or by method, or even for the
removal of the power of landholders to
mortgage or alienate their land. On these
momentous suggestions of the Govt of India
(see their Note and Memorandum), involving,
as they do, a possible reversal of, or at least
a serious change in, the free trade policy

in land which has subsisted in the
Presidency for a century under British
rule - and is not even of British origin -
The Madras Gov^t has ordered Collectors
to send in certain statements regarding
mortgages and mortgagees, and has also
required my opinion on the proposals in
general.

3. I think it probable that the required statistics are not yet available for digestion, consideration and orders. I submit, however, that even these statistics will not give sufficient data for a complete answer ^{— whether for or against} to the suggestions of the Govt of India: They will not show the indebtedness of the ryots, whether such indebtedness is increasing either absolutely or relatively to the increase in agricultural values, whether the mortgagees or transferees are really ryots or merely moneylenders, whether the relations between debtors and lenders are unsatisfactory and oppressive or are beneficial, whether the transferees are worse or better landholders than the ex-ryots, whether the relations between the new landholders and the ex-ryots are satisfactory or otherwise, &c. &c.: In fact the statistics obtained may, from the manner of their collection be inaccurate, while their interpretation will probably be open to serious error if not assisted by wide subsequent

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enquiry into the facts evidenced or supposed
to be evidenced by the statistics. I have
in my special studies of the past 5 years
seen what hopelessly erroneous inferences may
be drawn from statistics apparently of the
clearest, and I may appeal to Mr. Rogers'
inferences from Madras statistics in support
of my argument. I hold, then, that the
statistics as ordered by the above G.O. may
be inaccurate, will be open, per se, to
erroneous inference, and will certainly be
insufficient for the decision of such important
issues.

4. Accordingly I would beg the Madras Govt to make a wider and deeper enquiry before answering the Govt of India, whether for or against ~~not~~ any of their suggestions: I know of no subject of greater seriousness and difficulty than that of peasant indebtedness coupled with the alienation of peasant properties and with quasi-serfdom, not to a Govt. or to a squire, but to the money lender; assuredly I know of none in which more serious consequences ~~would~~ follow a mistake in policy. On the one hand it is possible, as urged by the Govt of India, that persistence in the present free trade policy in mortgage and transfer, may lead to ~~the~~ fatal national results; on the other hand the reverse policy of restrictions and limitations ^{to}, or even ~~reports~~ ^{to} ~~the~~ transfer demands of, the right of transfer might lead to the ~~present~~ ^{greatest} discontent and uproar. Hence ^{whether} for the migration

of a new or for the maintenance of the present policy a thorough and detailed enquiry is necessary.

(though haste is less necessary)
5. This enquiry is the more necessary, because there has been no public outcry or movement in the Presidency on this particular phase of rural difficulty; on the contrary I am not aware of any question in the Legislative Council, of any discussions or complaints in the Press, or of any recital of such grievances in the numerous addresses presented to Governors on tour, although such questions, complaints, discussions, or petitions are freely found in matters of Settlement, revenue collection and other matters of rural difficulty; I have seen no suggestions that Madras ryots ^{in general} are losing their lands unwrightfully to the benefit of land-grabbing, rackrenting, absentees or non-farmers, or that the transferees of land are worse cultivators or do less for agriculture than the original ryots; the restriction of transfer or the diminution of any proprietary rights has never even been hinted at either by officials or non-officials.

It is, then, prima facie probable that the questions raised and the suggestions made by the Gov^t of India, are not applicable to any serious extent to the Presidency.

Nevertheless such absence of outcry is no sufficient answer to the Gov^t of India proposals; in the first place it is expressly suggested ^{by the Gov^t of India} that the difficulties in

question may arise in the early future though not at present existent or acutely felt; in the second place absence of outcry is perfectly compatible with much silent and unknown discontent, as exemplified by the Deccan ^{riots} ~~ryots~~. And it is certain that whether indebtedness and land alienation ^{or are not} so destructive of rural stability in the Madras Presidency as they are represented to be elsewhere, they are of very serious importance, and that indebtedness imposes an outrageous economic burden on the ryots while undermining their independence and hindering their progress; hence an enquiry into the amount and results of such indebtedness is an absolute necessity. I consider then that, both in order to furnish a satisfactory reply on the issues involved in the reference, and to obtain an accurate ~~and~~ diagnosis of any complaints that may affect the rural body politic, a leisurely and complete enquiry should be made in the districts, in such way as may seem good.

Indeed I would suggest that not only should such special enquiry be held, but that ^{there} should thereafter be ^{periodical} stock-taking of the estate; this is deemed necessary in all agricultural countries, and the splendid decennial "Enquête agricole" of France, is a case in point.

6. I should like to add that the subject of present indebtedness and

Consequent expropriation is, at this moment,
 attracting much attention amongst European
 Governments and economists; statesmen and
 others are everywhere endeavouring ^{in the one hand} to find remedies
~~in the one hand~~ for rising and indebtedness,
 on the other ~~to~~ to retain the present on
 the soil and to ensure stability and progress
 in ^{his} cultivation and status. Nevertheless, though
 the difficulties of the presents are vast
 and pressing, enquiry, discussion, and action
 are most cautious, and I see no attempts
 at any hasty legislation: on the contrary,
 material is being gathered, discussion is
 conducted at length, and, as one economist
 says on ~~the~~ particular proposals (homestead
 exemption, ~~of~~ the organization of credit, and
 the development of agricultural associations),
 the remaining years of the century will have
 to prepare the materials for subsequent
 action. I may also add, as an evidence
 of ~~the~~ ^{German} anxiety, that in answer
 to a letter to the Prussian Minister of
 Agriculture on the subject of agricultural
 banks, he expressed his desire to discuss
 not only that but the whole land question
 as regards small proprietors, and I am
 visiting Berlin ^{for} the purpose. I shall
 report anything of interest in due course.

I have the honour to be

Sir

Your most obedient servant.

F. A. Nicholson

J.C.S. (on leave).

29/11/97
4/3/97.

Abstract of G.O. No.804, Revenue, dated 9th December
1895 read in G.O. No.519 Revenue, dated 2nd July 1897:-

Papers received from the Government of India relating
to an Agriculturists' Relief Bill, communicated for favor of opi-
nion to the Hon'ble the Judges of the High Court, the Advocate-Ge-
neral, the Board of Revenue, Messrs. F.A.Nicholson, I.C.S., and -
C.J.Weir, I.C.S., and to the Inspector-General of Registration.

From

F.A.Nicholson
J.C.S.

To

The Revenue Secretary
Government
Madras.

25th 9th Dec 1896.

Subject.

Suggesting further
enquiry in the districts
on right-undisturbed
and the situation
of lands, in connection
with G.O. Rev. No. 97
of 3rd March 1896.

22/2/1907
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REVENUE DEPARTMENT.

No.

From

Dated

189

FOR ORDERS.

This is a ^{very} long note but it is a very carefully compiled & considered one. There can be no objection to having an act of this kind on the statute book. Any question ~~which~~ will arise only when it comes to its application to particular circumstances or localities. That there are localities & classes to which it might be advantageous to apply it, is plain even in this Presidency. That it need not be generally applied is, I think, equally clear. The first 13 pages of the note deal with points of general interest & on the points set out on pages 4 & the following pages ~~orders~~ are needed.

The Hon. Mr. Grose, C.F.E
The Hon. Mr. Bliss, C.F.E
H.E. The Governor.

It is an excellent note, and as there are more than 50 points (some of which are very doubtful) which require order it could not be much abbreviated. I have made notes beginning at page 6.

I quite agree.
JG
19/3/97
24/3/97

The note is an excellent one. What is the name of the officer who prepared it?

The measure proposed by the Govt. of India is a revolutionary one, — interfering, as it would, with the civil rights of parties and tampering with the ordinary law of property. It is a desperate remedy for which only a desperate evil would be justification. We have a consensus of the best opinions obtainable that no such evil exists in Madras. In this, Hon. Members agree, but they think that by the Act is as
C. 11/3/97

Committee the note was prepared by
Ramanujachari.

Abstract of 804
§. 12 75

FOR ORDERS.

no harm in allowing it to pass. I venture to think that Madras should be expressly excluded from its operation. The Madras Bill is in the operation of the Bill, - even though its provisions be not applied, - their very existence and the knowledge that they might be applied at any moment, - would tend to disturb the public mind, to affect the value of property, and probably to raise the rate of interest. Why needlessly incur the risk of these evils? If, at some future time, circumstances should so change in Madras as to make such a measure desirable (which Heaven forbid), it would be easy to pass an Act extending the proposed Act to Madras.

I would report fully to India, submitting the amendments suggested by us, but asking that Madras be expressly excluded from the operation of the Act.

This matter was discussed in Council on the 30th ult. when I understood Hon. Members to agree to the same conclusion.

24th 2.5.97

Draft 20.
H. M.

REVENUE DEPARTMENT.

1896.

Board of Revenue.

(Land Revenue),

MADRAS.

C. Nos. 170, 3616, 6194, 6653, 7051, 7397, 7681 and 7894 of 1896.

FOR ORDERS.

With its letter No. 23, Judicial—1591 dated 31st October 1895, the Government of India forwarded a draft Bill to provide for the relief of the agricultural classes generally, together with a memorandum explaining the chief changes and additions made therein, and invited an expression of the views of this Government on the provisions embodied in the Bill, together with suggestions if any which approved themselves to it in the direction either of altering or adding to those provisions. The letter enumerated also certain important points for consideration.

2. The Bill and memorandum were referred for the remarks of the officers noted on the margin (G.O., No. 801, dated 9th December 1895). The currents read above are their replies.

3. It is necessary at the outset to set out briefly the circumstances which led to the passing of an Act for the relief of the agricultural classes in the Bombay Presidency, the objects intended to be attained thereby and the results of its working.

4. In 1875 certain riots took place in four districts of the Bombay Presidency, and an enquiry into the causes of those riots showed that the relations subsisting between the agriculturists and the money-lending classes in those districts were unsatisfactory, and that they required to be put on a better footing. Act XVII of 1879 was enacted accordingly.

5. The Act proposed to help the agriculturists in the following ways:—

(1) by directing an investigation of the entire history of the transactions between them and their creditors, and insisting that substantial justice should be done to them;

(2) by restricting the sale of their land in execution of decrees and providing an insolvency procedure more liberal to them than that contained in the Civil Procedure Code;

(3) by arranging for the settlement of disputes between them and their creditors by conciliation as far as possible; and

(4) by providing safe-guards against money-lenders committing frauds at their expense.

Printed August 1896 by the Chief Justice.
Government Solicitor.
Board of Revenue (all departments).
Inspector-General of Registration.
Messrs. Weir and Nicholson.

Pr.

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REVENUE DEPARTMENT.

1896.

Board of Revenue

(Land Revenue),

MADRAS.

Printed August th.

Proceedings, No. 9th August 1896.

Submitted to Government the Board's opinion on the provisions of the Agriculturists' Relief Bill and on the suggestions for the amendment of the general law made by the Government of India with reference to the report of the Commission appointed to enquire into the working of the Deccan Agriculturists' Relief Act of 1879.

31. *Section 61 of the Bill and paragraph 30 of the memorandum.*—The Board considers that the alternative clause providing for the recognition of mortgages notified to Revenue officers and entered in the record of rights should be retained.

32. In conclusion the Board would draw attention to the fact that the Commission has found very little positive evidence of the good done by the Act in the area to which it was supposed to be so particularly applicable. As already stated, the Board is not in favour of introducing any such measure into the Madras Presidency as a whole, and the provisions of the Bill have been discussed on the assumption that it is to be applied to special localities, where the march of civilization has not yet placed the agriculturist beyond the need of State interference with his private dealings.

(True Copies and Extract.)

Reelan
Acting Secretary.

To the Secretary to Government, Revenue Department.

APPENDIX.

FIRST MEMBER'S MINUTE.

The conditions in Madras are fortunately almost entirely dissimilar to those with which the Government of India propose to grapple. None of the artificial means of relief suggested in the papers are required here. They appear to me to contain elements of danger in themselves, which should prevent their introduction to such a tract being contemplated for a single moment. I doubt whether the idea of applying such desperate remedies to even such fiscally backward and impoverished tracts as Bombay and the Central Provinces is sound or prudent. If we in Madras found ourselves confronted with the undesirable state of things which appears to prevail in those parts of the country, I fancy that we would not be found trifling with diseased conditions by using doubtful remedies. We should rather devote ourselves to discovering what might be wrong in our own administration, and be tending to retard the material progress of the cultivating classes or to cause positive deterioration. To tamper with the civil rights of parties, by re-adjusting the ordinary law which governs the dealings of man with man, can never, in my opinion, form a permanent or efficient remedy. On the other hand, such measures, by injuring the credit of borrowers, and in other ways also, are likely to be positively hurtful and to defeat the object aimed at. For these reasons, I apprehend not good, but bad, results from exempting land from execution in satisfaction of a money decree as well as from restricting the voluntary alienation of land (paragraph 4 of India's letter). This latter measure would in Madras amount to the wholesale confiscation of property in land, which has, for nearly a century, been recognised by the British Government in pursuance of the policy of previous Governments through a course of ages in the South of India. The immediate effect would be most disastrous. The tendency of such a measure would be to assert a right in land on the part of the State, which is unknown here, and which must eventually lead to increased demands on the ryot in the shape of "rent," whereas what has hitherto been levied from him is land tax or land assessment. I am aware that the title of the ryot elsewhere is somewhat different, and that the claims of Government are tinged with the Muhammadan doctrine of State right in all the soil of a country. But this doctrine is utterly foreign to Madras, and there is no urgency whatsoever to justify its attempted assertion. I do not propose pursuing the subject further on this occasion, as it has been fully dealt with in a paper on the economic condition of the ryot with reference to a proposal for the establishment of Agricultural Banks.

I likewise am entirely opposed to extending the limitation period on bonds and accounts beyond the statutory limit of three years. The more often, I submit, that the borrower is brought face to face with the state of his affairs, and the more frequent the opportunity afforded to him of checking the charges against him, the better.

With regard to paragraph 9 of the same letter, it appears to me that when the property of the debtor has become reduced to the items alluded to, he ought to have the benefit of the provisions of section 337-A of the Civil Procedure Code.

In pursuance of the views above expressed, I am against making any alteration in section of the Civil Procedure Code. The agricultural classes should be encouraged to resort to arbitration in any form. Such awards are in accordance with the customs of the country and with the genius of its original institutions.

Finally, I consider that, in respect of the proposals in paragraph 11, the Government should not make any concession in the matter of court fees. The remissions contemplated, while made at the expense of the whole tax-paying body and therefore inequitable, are calculated to foment litigation, and would tend to prevent amicable settlement of disputes.

Exd. C. M. Thambuswamy.

the agriculturist not to neglect his cultivation, while on the other hand the creditor will not be materially prejudiced, as he can in the case of such large land-holders execute his decree in other ways than by the sale of standing crops.

22. *Chapter IV of the Bill and paragraph 19 of the memorandum.*—As pointed out in paragraph 54 of the report of the Commission, the main object of the provision of a special insolvency procedure is to oust chapter XX of the Civil Procedure Code; the sections as drafted will answer this purpose. But the Board believes that these special insolvency arrangements are not really called for, as they are not likely to be resorted to in the areas, to which the proposed Act would be extended, any more than in the Deccan where they appear to have been a dead letter. If the chapter is struck out, the necessary portion of section 30 should be inserted in section 24, sub-section (2).

23. *Chapter V of the Bill and paragraph 20 of the memorandum.*—From the report of the Commission, the Board finds that the conciliation clauses have not worked well in the Deccan where they have been tried; and as they form no essential portion of the Bill, it may, no doubt, be said that they should be omitted and a revised experiment made where it is most wanted. The Board, however, believes that the provisions will work well in certain areas in the Northern Circars and is therefore disposed to retain the chapter.

24. *Section 34 of the Bill and paragraph 21 of the memorandum.*—There are no Police officers in this Presidency, who should not be debarred from appointment as conciliators. The village headman in Madras is a Magistrate and not a Police officer.

25. *Section 43 of the Bill and paragraph 22 of the memorandum.*—No such explanation as is appended to section 47 of the Deccan Agriculturists' Relief Act is required in the present Bill, so far as this Presidency is concerned.

26. *Chapter VI, sections 46 to 48.*—The portions of these sections which relate to the superintendence of the work done by conciliators should, the Board considers, be embodied in chapter V which deals with conciliation.

27. *Chapter VII of the Bill and paragraph 24 of the memorandum.*—The Board would suggest the omission of this chapter, inasmuch as, for the reasons assigned in paragraph 60 of the report of the Commission, the objections to the system of executing instruments before sub-registrars—the trouble and expense to parties in the case of small bonds and the untrustworthiness of much of the evidence—outweigh any advantages that might be secured thereby. The Board believes that sections 7 and 8 of the Bill, if properly worked, would give the necessary relief to agriculturists. Further, the Board fears that the sub-registrars having jurisdiction over the areas to which the Bill may be extended, could not get through the work of drafting instruments properly, if the provisions of the chapter were freely resorted to. It is to be noted in this connection that there are no sub-registrars in the scheduled districts in this Presidency.

28. *Chapter VIII, section 53 of the Bill and paragraph 26 of the memorandum.*—In paragraph 26 of the memorandum it is stated that the clause in italics added at the end of this section is intended as a penalty to make the section effective. But as a penalty is already provided in section 67 of the Deccan Agriculturists' Relief Act (corresponding to section 56 of the present Bill) and as it has not been shown that this was insufficient, the additional penalty provided in the clause in question appears to be unnecessary and should be omitted. If, however, the clause is retained, provision must be made for the debtor (agriculturist) acknowledging in writing the delivery to himself of the creditor's receipt for money paid, or he may otherwise be tempted to wilfully destroy the receipt granted by the creditor, and to declare that he has paid a larger amount than is actually the case.

29. *Sections 54–58 of the Bill and paragraphs 27 and 28 of the memorandum.*—The provisions contained in these sections will be very useful and should be retained.

30. *Chapter IX of the Bill and paragraph 29 of the memorandum.*—The Board is of opinion that though fees may not be awarded as costs in petty suits, pleaders must be allowed to appear except before conciliators, as in the hill tracts of Vizagapatam, for instance, ignorant ryots would not think of taking their cases into the Courts without a pleader's help.

18. *Section 21 of the Bill and paragraph 17 of the memorandum.*—This section appears to be a dangerous one, but in special circumstances it might prove valuable, as for instance when prices of cattle or other movable property are unduly low owing to a threatened famine. The Local Government might be empowered to put this section into force in cases such as those above indicated.

19. *Section 23.*—It appears to the Board that in advocating the retention of this section the Commission has been chiefly influenced by considerations of hardship connected with the arrest under section 337-A of the Civil Procedure Code of judgment-debtors, who have no other property except of the kinds expressly exempted from attachment and sale, and that it has failed to establish the necessity for the general exemption from arrest provided in the section. This general exemption is specially to be deprecated in the interests of the borrowers. To deprive the agriculturists of one of the chief securities on which they can borrow money—their own personal liberty—would be inflicting a serious wrong. People with little or no property may be able to get on well enough in ordinary times, but need temporary help in times of adversity; and where, as in the zemindaris of the Northern districts, a large number of the agriculturists have no saleable interest in the lands occupied by them and but little other property from which their debts can be realised if their persons are exempt, the proposed exemption would make it almost impossible for them to borrow money however respectable they might be.

20. *Sub-section (1) of Section 24.*—As already observed in paragraph 2 (a) above, this provision is likely to force the ryot to contract permanent or lasting debts secured on his land in place of the temporary accommodation which he now obtains from his money-lender during the seasons when he has no money coming in; and in this view the Board is confirmed not only by a comparison of the statistics of sales and mortgages of land in the Deccan in 1883 and 1891, as given in the report of the Commission, but also by the fact that though the Deccan Agriculturists' Relief Act has been in force since 1879, the Commission has failed to furnish any very positive evidence in its report in favour of the provisions in sections 23 and 24, or to show that the startling increase in the recorded burdens on landed property between the years 1883 and 1891 was accompanied by any decrease in the rate of interest.

The figures are as follows:—

	In 1883.				In 1891.			
	To non-agriculturists.		To agriculturists.		To non-agriculturists.		To agriculturists.	
	Extent of land.	Value of land or amount of debt secured thereon.	Extent of land.	Value of land or amount of debt secured thereon.	Extent of land.	Value of land or amount of debt secured thereon.	Extent of land.	Value of land or amount of debt secured thereon.
Lands sold ..	ACS. 18,810	RS. 2,97,137	ACS. 38,608	RS. 5,93,902	ACS. 41,978	RS. 6,10,328	ACS. 64,703	RS. 9,27,123
Lands mortgaged with possession ..	38,436	5,31,864	29,881	5,77,053	99,376	12,57,151	75,708	11,01,232
Lands mortgaged without possession ..	10,018	1,52,309	5,439	81,690	70,931	5,70,785	31,281	3,94,398
Total ..	65,264	9,81,310	73,928	12,52,645	212,284	24,38,269	171,692	24,22,753

The Commission seems to the Board to have made little or no attempt to explain this enormous increase.

21. *Proviso to sub-section (1) of section 24 of the Bill and paragraph 18 of the memorandum.*—The Board prefers the proviso in the body of the Bill which exempts half the standing crops from attachment. Under this proviso, it is only in cases where the holdings of the agriculturists are large that there will be any surplus left with the debtor over and above what is required for his maintenance and for seed grain. In this class of cases, the exemption of half the crops will, on the one hand, afford an inducement to

the agriculturist not to neglect his cultivation, while on the other hand the creditor will not be materially prejudiced, as he can in the case of such large land-holders execute his decree in other ways than by the sale of standing crops.

22. *Chapter IV of the Bill and paragraph 19 of the memorandum.*—As pointed out in paragraph 54 of the report of the Commission, the main object of the provision of a special insolvency procedure is to oust chapter XX of the Civil Procedure Code; the sections as drafted will answer this purpose. But the Board believes that these special insolvency arrangements are not really called for, as they are not likely to be resorted to in the areas, to which the proposed Act would be extended, any more than in the Deccan where they appear to have been a dead letter. If the chapter is struck out, the necessary portion of section 30 should be inserted in section 24, subsection (2).

23. *Chapter V of the Bill and paragraph 20 of the memorandum.*—From the report of the Commission, the Board finds that the conciliation clauses have not worked well in the Deccan where they have been tried; and as they form no essential portion of the Bill, it may, no doubt, be said that they should be omitted and a revised experiment made where it is most wanted. The Board, however, believes that the provisions will work well in certain areas in the Northern Circars and is therefore disposed to retain the chapter.

24. *Section 34 of the Bill and paragraph 21 of the memorandum.*—There are no Police officers in this Presidency, who should not be debarred from appointment as conciliators. The village headman in Madras is a Magistrate and not a Police officer.

25. *Section 43 of the Bill and paragraph 22 of the memorandum.*—No such explanation as is appended to section 47 of the Deccan Agriculturists' Relief Act is required in the present Bill, so far as this Presidency is concerned.

26. *Chapter VI, sections 46 to 48.*—The portions of these sections which relate to the superintendence of the work done by conciliators should, the Board considers, be embodied in chapter V which deals with conciliation.

27. *Chapter VII of the Bill and paragraph 24 of the memorandum.*—The Board would suggest the omission of this chapter, inasmuch as, for the reasons assigned in paragraph 60 of the report of the Commission, the objections to the system of executing instruments before sub-registrars—the trouble and expense to parties in the case of small bonds and the untrustworthiness of much of the evidence—outweigh any advantages that might be secured thereby. The Board believes that sections 7 and 8 of the Bill, if properly worked, would give the necessary relief to agriculturists. Further, the Board fears that the sub-registrars having jurisdiction over the areas to which the Bill may be extended, could not get through the work of drafting instruments properly, if the provisions of the chapter were freely resorted to. It is to be noted in this connection that there are no sub-registrars in the scheduled districts in this Presidency.

28. *Chapter VIII, section 53 of the Bill and paragraph 26 of the memorandum.*—In paragraph 26 of the memorandum it is stated that the clause in italics added at the end of this section is intended as a penalty to make the section effective. But as a penalty is already provided in section 67 of the Deccan Agriculturists' Relief Act (corresponding to section 56 of the present Bill) and as it has not been shown that this was insufficient, the additional penalty provided in the clause in question appears to be unnecessary and should be omitted. If, however, the clause is retained, provision must be made for the debtor (agriculturist) acknowledging in writing the delivery to himself of the creditor's receipt for money paid, or he may otherwise be tempted to wilfully destroy the receipt granted by the creditor, and to declare that he has paid a larger amount than is actually the case.

29. *Sections 54–58 of the Bill and paragraphs 27 and 28 of the memorandum.*—The provisions contained in these sections will be very useful and should be retained.

30. *Chapter IX of the Bill and paragraph 29 of the memorandum.*—The Board is of opinion that though fees may not be awarded as costs in petty suits, pleaders must be allowed to appear except before conciliators, as in the hill tracts of Vizagapatam, for instance, ignorant ryots would not think of taking their cases into the Courts without a pleader's help.

RESOLUTION—No. 311, dated 19th August 1896.

The Board begs to submit its remarks on the Agriculturists' Relief Bill and on the several questions raised and suggestions made in the Government of India letter and memorandum received with the Government Order read above. The reference has been dealt with as a Full Board subject, but the papers have not been noted upon by the Fourth Member, who is at present absent from Madras. The Board in the Settlement Department has been directed by Government to obtain and submit the views of the two Deputy Commissioners, M.R.Ry. M. Adinarayana Iyah Garu and Mr. G. P. Clerk, and will take this opportunity of reporting the opinion of the Settlement Commissioner upon the Bill.

2. The Board will, in the first instance, deal with the points specially referred to in the Government of India letter—

(a) *Paragraph 4 of the Government of India letter.*—The proposal to make the provision relating to the non-liability of agricultural land for *unsecured* debt of general applicability would, in the opinion of the Board, seriously injure the credit of borrowers and force them to contract permanent or lasting mortgage-debts in the place of the temporary loans that can now be easily obtained under the ordinary law. The further exemption of agriculturists' land from attachment and sale for the recovery of mortgage-debts due thereon is therefore out of the question; but in any case it is premature to decide on the necessity for such exemption, while the question of restricting the voluntary alienation of land is under discussion. If voluntary alienation is forbidden, the prohibition of sale of pledged land will follow.

(b) *Paragraph 8 of the Government of India letter.*—The Board is in favour of the recommendation made by the Deccan Commission to the effect that the period of limitation prescribed in the general law for suits on bonds or on accounts stated (*vide* articles 64 and 66—8 of schedule II to Act XV of 1877) should be extended from three to six years in cases where the suits are not founded on registered instruments. The First Member of the Board dissents from this view and has recorded his opinion in a separate minute.

(c) *Paragraph 9 of the Government of India letter.*—The Board is of opinion that when the property of the debtor has been reduced to the items exempted from attachment and sale under section 266 of the Civil Procedure Code, he ought to have the benefit of section 337-A of the Code. As the latter section has been held not to give the Courts the necessary powers in this direction, the Board considers that the law should be amended accordingly.

(d) *Paragraph 10 of the Government of India letter.*—The majority of the Board are in favour of the recommendation of the Commission that section 525 of the Civil Procedure Code should be amended as indicated in paragraph 58 of its report. The First Member dissents from this view and his reasons for so doing are specified in his separate minute.

(e) *Paragraph 11 of the Government of India letter.*—The Board considers that it will probably be advisable to allow some concessions in the matter of the court fees payable in suits filed under chapter II of the proposed Agriculturists' Relief Act, and in backward tracts where the Act is most needed, such a concession will certainly be desirable. But the extent to which concessions may be called for cannot be determined until the tracts to which the Act should be extended have been decided upon.

3. The Board will now proceed to discuss the various provisions of the Bill drawn up by the Government of India. The First Member is not a party to this discussion, as he is of opinion that legislation of this nature is undesirable, at any rate, in this Presidency. The separate minute, to which allusion has already been made, is appended to these Proceedings. The majority of the Board understands that the proposed Act is required in many parts of India, and consequently it will be of advantage to have upon the statute book a measure which can be extended by notification to those localities where it is required. It is presumed that if the Act ever comes into force in this Presidency at all, it will do so only in a few backward and exceptional tracts, for the Board is of opinion that in such localities only is any legislation of this nature

ever likely to be required. The provisions contained in the several sections of the Bill will accordingly be considered with regard to the circumstances prevailing in such tracts and not in the Presidency generally.

4. *Section 1, Clause (3).*—The Local Government should be given power to declare that the members of any particular caste or race living in any local area to which the Act may be extended should not have the benefit of the Act even though they are agriculturists, and that debts due to certain classes only should come within its operation. The Board would instance the case of the "Soondies" in Jeypore and the Pathans in Malkangiri in the Vizagapatam district. The "Soondies" are a caste of liquor sellers who are penetrating further and further into the hills as they become more accessible; these men lend money at extortionate rates of interest and are gradually getting the whole of the surrounding hill tribes into their power. Wherever a Soondie settles the ryots speedily grow poor. The Pathan settlers in Malkangiri also live by usury and are even worse than the Soondies in their rapacity. It is more than probable that similar conditions prevail in other backward localities, where country inhabited by aboriginal tribes is becoming gradually accessible to the more advanced population of the neighbourhood.

5. *Section 2, Clause 1st (Agriculturist), and paragraph 3 of the memorandum.*—The definition of the term as it originally stood in the Deccan Agriculturists' Relief Act, 1879, was apparently meant to meet the case of agriculturists going to serve as sepoys and returning to the family lands while on furlough or after they have earned a pension. As amended in the present Bill, it might be held to apply to all persons in Government service and appears in this respect to be too wide. It is true that under taking employment in Government service, would impliedly cease to be entitled to the benefits of the Act, but this point is not very clear. The Board considers that such a highly paid officer as, for instance, a Deputy Collector in the Revenue Department, who does not earn his livelihood wholly or principally by agriculture, should be excluded from the scope of the definition and, accordingly, suggests that either the words "by the tenants" occurring in the definition of the term be omitted or that the words "without any intention of changing his status as such" occurring in the first clause of explanation (a) should be so transposed as to govern the second clause which refers to persons in Government service. Subject to the above limitation, service in Native States or foreign territories may also be included in the explanation.

6. *Section 3 of the Bill and paragraph 4 of the memorandum.*—The provisions of chapter II should, in the Board's opinion, be made applicable to suits falling under clause (b) of this section in which the plaintiff is also an agriculturist; bearing in mind that the Act will be applied to very backward tracts, it may often happen that in such suits the plaintiff will be the poorer and more ignorant of the two parties.

7. *Section 5 of the Bill and paragraphs 6 and 7 of the memorandum.*—(a) Sub-section 2 as now drafted should be retained.

(b) The discretion conferred by sub-section 3 should be left to the Civil Court, as abuse of it is provided against by requiring the Court to record its reasons in writing and as, moreover, in suits falling within clauses (a) and (e) of section 3 where the defendant is a non agriculturist, the Court may frequently consider it unnecessary to enforce his attendance. If, however, it is ultimately decided that this sub-section should be struck out, the following amendment should be made in sub-section 1 so as to exclude from its scope such suits as fall within clauses (a) and (e) of section 3:—

For the clause "to which this chapter applies", substitute the words "of the description mentioned in section 3, clauses (b), (c) and (d)".

8. *Section 7, Sub-section 2 of the Bill and paragraph 8 of the memorandum.*—Sub-section 2 may stand as drafted by the Government of India.

9. *Section 8 of the Bill and paragraph 10 of the memorandum.*—(a) The Board presumes that bonds in which future interest for a term of years is added to the money actually advanced and interest is made chargeable on the total amount after the term of the bonds expires, fall under agreements to allow compound interest. If not, such agreements should be expressly declared to come within the scope of the section.

It is a common practice in some parts of the country for money-lenders to extort higher rates of interest by this means.

(b) For the reasons assigned in paragraph 39 of the report of the Commission of 1891-92, the Board considers that the following amendment may be made in clause (d) of this section; it indicates more clearly the object desired without unduly fettering the discretion of the Court:—

For the clause "unless the Court deems such debit to be reasonable," substitute the following:—

"Such conversion shall not be accepted by the Court, if, for reasons to be recorded by it, it deems the conversion to be unreasonable. In deciding whether the conversion is unreasonable, it shall consider *inter alia* the length of the rests, the rate of interest and the nature of the security".

(c) The Board agrees with the Government of India that the words "or setting off the profits of mortgaged property without an account in lieu of interest" occurring in this section, as well as section 9 should be cut out.

(d) The Board would suggest the insertion of a provision in clause (b) of this section, on the analogy of the one contained in clause (f) in the case of *produce* delivered to the creditor, to the effect that the prices of *goods sold* by the creditor to the debtor are liable to revision by the Court.

10. *Section 10.*—It appears to the Board that section 10 has been inserted with reference to section 9, and should be cut out together with that section (*vide* paragraph 9, clause (c) above), the matter being sufficiently dealt with by sub-sections (3) and (4) of section 14 or by such a re-arrangement of the sections contemplated in paragraph 14 of the memorandum as may be determined at the final drafting.

11. *Paragraph 12 of the memorandum.*—As already stated the Board considers that section 9 may be struck out and it follows that the second proviso to the proposed sub-section becomes unnecessary. The sub-section itself and the first proviso seem sufficiently met by rule (f) in section 8 which may nowever be amplified if necessary.

12. *Section 11 of the Bill and paragraph 13 of the memorandum.*—The provisions of section 11 are preferable to those contained in Chapter XXXVII of the Civil Procedure Code.

13. *Section 12.*—It would perhaps be well to provide specifically that in cases in which the Court is satisfied that time was of the essence of the contract and that the contract was not inequitable, it may refuse to pass a decree for redemption before the time fixed for the payment of the principal. The Board presumes that the clause "or on the ground that the mortgage debt has been completely discharged", which occurs towards the close of this section, will be amended at the final drafting with reference to the remarks made thereon in paragraph 43 of the report of the Commission (at page 49).

14. *Section 15.*—This section would *ordinarily* cause unnecessary interference with the terms of valid contracts, but it is easy to conceive circumstances under which money-lenders might by its help be prevented from reducing a large proportion of the ryots of a village situated in backward tracts to the position of mere agricultural labourers.

15. *Section 16.*—With reference to paragraph 46 of the report of the Commission, provision should be made in this section to the effect that the Court should adjourn the case for a reasonable time after judgment is pronounced and before the decree is signed, in view to give the mortgagor time to ascertain whether he can raise the amount required for redeeming the mortgaged property or not.

16. *Section 19.*—The Board considers that the plaintiff in suits instituted under section 16 should also be given the benefit of the provision contained in this section.

17. *Chapter III of the Bill and paragraph 16 of the memorandum.*—The Board considers that all the provisions of this chapter excepting those contained in sections 23 and 24 should be made applicable to decrees in all suits against agriculturists with prospective effect.

18. *Section 21 of the Bill and paragraph 17 of the memorandum.*—This section appears to be a dangerous one, but in special circumstances it might prove valuable, as for instance when prices of cattle or other movable property are unduly low owing to a threatened famine. The Local Government might be empowered to put this section into force in cases such as those above indicated.

19. *Section 23.*—It appears to the Board that in advocating the retention of this section the Commission has been chiefly influenced by considerations of hardship connected with the arrest under section 337-A of the Civil Procedure Code of judgment-debtors, who have no other property except of the kinds expressly exempted from attachment and sale, and that it has failed to establish the necessity for the general exemption from arrest provided in the section. This general exemption is specially to be deprecated in the interests of the borrowers. To deprive the agriculturists of one of the chief securities on which they can borrow money—their own personal liberty—would be inflicting a serious wrong. People with little or no property may be able to get on well enough in ordinary times, but need temporary help in times of adversity; and where, as in the zemindaris of the Northern districts, a large number of the agriculturists have no saleable interest in the lands occupied by them and but little other property from which their debts can be realised if their persons are exempt, the proposed exemption would make it almost impossible for them to borrow money however respectable they might be.

20. *Sub-section (1) of Section 24.*—As already observed in paragraph 2 (a) above, this provision is likely to force the ryot to contract permanent or lasting debts secured on his land in place of the temporary accommodation which he now obtains from his money-lender during the seasons when he has no money coming in; and in this view the Board is confirmed not only by a comparison of the statistics of sales and mortgages of land in the Deccan in 1883 and 1891, as given in the report of the Commission, but also by the fact that though the Deccan Agriculturists' Relief Act has been in force since 1879, the Commission has failed to furnish any very positive evidence in its report in favour of the provisions in sections 23 and 24, or to show that the startling increase in the recorded burdens on landed property between the years 1883 and 1891 was accompanied by any decrease in the rate of interest.

The figures are as follows:—

	In 1883.				In 1891.			
	To non-agriculturists.		To agriculturists.		To non-agriculturists.		To agriculturists.	
	Extent of land.	Value of land or amount of debt secured thereon.	Extent of land.	Value of land or amount of debt secured thereon.	Extent of land.	Value of land or amount of debt secured thereon.	Extent of land.	Value of land or amount of debt secured thereon.
Lands sold	ACS. 18,810	RS. 2,97,137	ACS. 38,608	RS. 5,93,902	ACS. 41,978	RS. 6,10,323	ACS. 64,703	RS. 9,27,123
Lands mortgaged with possession	36,436	5,31,864	29,881	5,77,053	99,375	12,57,151	75,708	11,01,232
Lands mortgaged without possession	10,018	1,52,309	5,439	81,690	70,931	5,70,785	31,281	3,94,398
Total	65,264	9,81,310	73,928	12,52,645	212,284	24,38,259	171,692	24,22,753

The Commission seems to the Board to have made little or no attempt to explain this enormous increase.

21. *Proviso to sub-section (1) of section 24 of the Bill and paragraph 18 of the memorandum.*—The Board prefers the proviso in the body of the Bill which exempts half the standing crops from attachment. Under this proviso, it is only in cases where the holdings of the agriculturists are large that there will be any surplus left with the debtor over and above what is required for his maintenance and for seed grain. In this class of cases, the exemption of half the crops will, on the one hand, afford an inducement to

10. The reasons for the suggested alteration of section 525 of the Civil Procedure Code are stated in paragraph 58 of the Commission's Report. That section provides that when a matter has been referred to arbitration without the intervention of the Court, any person interested in the award may apply to the Court of lowest grade having jurisdiction in the matter that the award may be filed. The Court can then give notice to the other parties to show cause why the award should not be filed; and if it finds no ground for remitting it or setting the award aside, it must be filed as an award. The Commission found that this section was abused so as to convert agreements into awards, and thereby evade the registration laws and section 22 of the Deccan Agriculturists Relief Act. The Government of India are disposed to accept the opinion of the Commission, and I am to ask whether His Excellency in Council agrees with this view.

11. Lastly, I am to refer to a proposal which has been made that Local Governments should be empowered to remit in any district or part of a district in which conciliators have not been appointed, half the fees in cases covered by the Bill now circulated in which the parties come to an agreement at the first hearing, and to remit in any or all districts institution fees on suits brought by agriculturists for redemption of mortgaged lands.

The following special exemptions have been made under the Court Fees Act in places where the Deccan Agriculturists Relief Act is in force:—

- (1) The fees on plaints in suits by agriculturists under section 16 for an account, &c., and for redemption or mortgage where any of the plaintiffs is an agriculturist, are remitted entirely except in the Satara district, where they are reduced to one-half;
- (2) fees in insolvency proceedings are remitted;
- (3) the fees in suits referred to in Chapter II to which an agriculturist is a party are reduced to one-half;
- (4) fees in suits before Village Munsiffs are remitted; and
- (5) where conciliation is not in force, half the fees are refunded if a compromise is effected at the first hearing.

The Governor-General in Council desires to receive the opinion of His Excellency in Council as to whether any concession in the matter of Court fees should be made in the case of suits to which Chapter II of the Bill under circulation refers.

Order—No. 804, Revenue, dated 9th December 1895.

Miscellaneous.

The letter read above with copies of the Bill and memorandum will be communicated to the Honourable the Judges of the High Court, the Advocate-General, the Board of Revenue, Mr. F. A. Nicholson, I.C.S., Mr. C. J. Weir, I.C.S., and the Inspector-General of Registration for favour of opinion.

2. Special mention should be made of the circumstances of the Khonds.

(True Extract.)

(Signed) E. GIBSON,
Secretary to Government.

To the Hon'ble the Chief Justice, with C.L.*
through the Judicial Department.

the Government Solicitor
the Board of Revenue (Land Revenue).
the " " (Revenue Settlement, Land Records and Agriculture).
the " " (Separate Revenue).
F. A. Nicholson, Esq., I.C.S., Collector of Anantapur.*
the Inspector-General of Registration.*
C. J. Weir, Esq., I.C.S., Collector of Ganjam.

* With copies of the report of the Commission for perusal and return.

8. Turning to the proposal of the Commission, that the period of limitation in suits on bonds or on accounts stated should be six years, I am to observe that the Commission of 1875 expressed themselves (paragraph 107) thus regarding the law of limitation:—

"It will be seen from the extracts quoted in the appendix that there is a general opinion that the short period of limitation (three years) now allowed for suits for unsecured debts has the effect of enabling the creditor to oppress his debtor. Only one report is to the contrary. We are not, however, of opinion that any limitation law taken by itself can have this result. In the case of the ordinary debts of a ryot, the law of limitation amounts to nothing more than a law by which the creditor is compelled to give the debtor a statement of his account. So far from this being an evil, it would seem, to be the very best thing possible for the debtor. A fresh balancing of the account every year instead of every three years would, from this point of view, be better still. The only cost which the law puts upon the parties is the stamp, which is a comparative trifle,—namely, one anna for every hundred rupees on a promissory note, and two annas for every twenty-five rupees on a bond."

And again (paragraph 109):—

"We are unable, then, to avoid the conclusion that the reduction of the period of limitation has been the cause of considerable hardship to the debtor. The question follows whether it is desirable to alter the law in this respect, and to return to the old period. Our opinion is that for the following reasons it is not desirable to do so. In the first place, there is no law in the statute book which it is so desirable to keep free from change as the limitation law. There have been two Limitation Acts in the last sixteen years, and the present Act is only five years old. Secondly, for the reasons given at the head of this section, we conceive that, if creditor and debtor stand on fair terms with each other, a short limitation is advantageous to both parties. Thirdly, we believe that the present hardship results from causes which will in time work out their own remedy. We are of opinion, however, that something may be done to relieve the present hardship by providing that bonds and other instruments written by the agency which we propose should be appointed for the purpose, should acquire the extended limitation given to 'registered' instruments by the Limitation Act. The period for unsecured debts will then be extended from three to six years. There is no doubt that in the case of the agricultural debtor there are special reasons for considering an easy term of limitation desirable, for the ryot borrows chiefly against his annual income, and this annual income is uncertain."

Section 72 of the Deccan Agriculturists Relief Act provides that in any suit for the recovery of money alleged to be due to the plaintiff on account of money lent or advanced, or the price of goods sold, or on account stated between the plaintiff and defendant, or on a written or unwritten engagement for the payment of money of a kind not specially referred to, the period of limitation shall be, when the person sued was at the time when the cause of action arose an agriculturist, twelve years if the suit is founded on a written and registered instrument, and six years in other cases.

The Government of India will now be glad to receive the opinion of the Government of Madras upon the proposal made in paragraph 62 of the Report of the Commission of 1891-92.

9. The proposal of the Commission for the amendment of section 337 (a) of the Code of Civil Procedure is contained in paragraph 50 of their report. Section 266 of the Code exempts certain property—e.g., wearing apparel, of the judgment-debtor and his family, tools of artisans, implements of husbandry, cattle necessary for an agriculturist to earn his livelihood as such, and materials of houses and other buildings used by agriculturists—from attachment and sale. Section 337 (a) of the Civil Procedure Code empowers the Courts to make an order disallowing an application for the arrest and imprisonment of a judgment-debtor, if it appears to the Court that he is unable "from poverty or other sufficient cause" to pay the amount of the decree. The Punjab Courts have held that the possession of such property as is exempted under section 266 prevents them from holding a debtor to be unable to pay the amount of the decree, and therefore from giving him the benefit of section 337 (a). It appears to the Government of India that this result is contrary to the intentions of the Code, and I am to ask for the opinion of the Government of Madras upon the matter.

agricultural land for unsecured debt is one of vital importance to both lenders and borrowers throughout India; and the Governor-General in Council, as at present advised, is of opinion that it is one that should be settled on general grounds by the legislature for the country as a whole, rather than be left to be dealt with piecemeal by notifications under an enabling Act.

The further question arises, whether the exemption from attachment and sale of land belonging to an agriculturist should not be made absolute, so as to extend to such land, even when it has been specifically pledged. The Bill already gives the Courts discretion to substitute other processes for sale; and the suggested extension of the exemption would be a step further in the same direction. If the exemption is thus extended, it will be for consideration whether it should apply (1) to mortgages effected, and (2) to decrees for the sale of mortgaged land passed, before the new law comes into operation.

I am to invite an expression of opinion on all the points discussed in this paragraph.

5. The Commission, in addition to proposing a general Bill for the protection of agriculturists, made certain proposals for the amendment of the general law. Those relating to the amendment of the Contract and Evidence Acts and Act XXVIII of 1855 have already been referred for opinion to Local Governments and Administrations, and the replies received to the reference from the Governor-General in Council on these points are now under the consideration of His Excellency in Council.

6. There remain the following proposals of the Commission, viz.:—

- (1) That Village Munsiffs should be constituted under a separate Act;
- (2) that the period of limitation should be altered in suits on bonds or on accounts stated to six years;
- (3) That section 337-A of the Civil Procedure Code should be amended so as to prevent it from being used to defeat the intention of section 266 of the Civil Procedure Code or of any other law similarly exempting specified property from attachment; and
- (4) that section 525 of the Civil Procedure Code and the Registration Act should be amended so as to prevent the abuse of arbitration procedure.

7. In Madras and the North-Western Provinces and Oudh (North-Western Provinces and Oudh Village Courts Act of 1892) there are local Acts which provide for the establishment of Courts of Village Munsiffs. The Governor-General in Council agrees with the Commission in thinking that the establishment of such Courts should be dealt with by means of a measure separate from that for the relief of agriculturists.

It appears to His Excellency in Council desirable that the local Legislatures of Bombay and Bengal should undertake the legislation necessary to legalize the establishment of Village Courts in the parts of those provinces where it may be desirable to constitute them, and that a Bill should be passed in the Legislative Council of the Governor-General making the necessary provision in the case of provinces in which there is no Legislative Council. The Governor-General in Council is also, subject to the advice which Local Governments and Administrations may have to offer on this subject, inclined to think that the North-Western Provinces and Oudh Village Courts Act provides the most suitable model upon which legislation for the establishment of Village Courts might be framed. Possibly, however, it may be considered that this Act leaves too little to be settled by rule, and section 49 is inconsistent with section 71 of the Deccan Agriculturists Relief Act and with section 22 of the Bill now circulated. It may also be thought that section 69 is not entirely suited to Village Courts. The Governor-General in Council has called for the opinion of Local Governments and Administrations other than those of Madras and the North-Western Provinces and Oudh as to the legislation which should be adopted in order to provide for the constitution of Courts to be presided over by Village Munsiffs.

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

BOARD OF REVENUE (LAND REVENUE), No. 311, 19TH AUGUST 1896.

PROCEEDINGS OF THE BOARD OF REVENUE
(LAND REVENUE).

FULL BOARD.

READ—the following Government Order, No. 804, Revenue, dated 9th December 1895:—

Read—the following letter from L. M. THORNTON, Esq., Deputy Secretary to the Government of India (Home Department—Judicial), dated Simla, the 31st October 1895, No. 23, Judicial—1591:—

With Mr. Lyall's letter No. 6/625-633, Judicial, dated 9th June 1894, copies of the report of the Commission appointed to enquire into the working of the Deccan Agriculturists Relief Act of 1879 were circulated for the use of Local Governments and Administrations.

2. The recommendations of the Commission in respect of the Act in force in the Deccan have been considered by the Government of India and the Government of Bombay and the legislation required to carry out the conclusions arrived at embodied in Act VI of 1895. I am now to forward a copy of a Bill which has been prepared to put into effect the proposal of the Commission for the enactment of a general law for the protection of agriculturists capable of being applied to any tract, in which a problem similar to that which led to the enactment of the Deccan Agriculturists Relief Act has presented or may present itself. The necessity for legislation of this nature has been pressed upon the Governor-General in Council by the Punjab Government and the Central Provinces Administration, and His Excellency in Council has little doubt that there are other parts of the country in which a measure of this nature will be likely to have a beneficial effect.

3. Side references are given in the draft Bill herewith circulated showing the sections of Act XVII of 1879, as amended by subsequent legislation, which have been adopted in it, and the accompanying memorandum explains the chief changes and additions which have been made in it. I am now to ask that the Government of India may be favoured with the views of the Government of Madras as to the provisions embodied in the Bill, and to say that any suggestions, which approve themselves to His Excellency the Governor in Council in the direction either of altering or adding to them, will receive the careful consideration of the Governor-General in Council.

4. There are, however, two important points connected with the Bill which can most conveniently be referred to here. It is a question whether the provisions of section 24 of the Bill, or at least so much of them as declare land belonging to an agriculturist to be exempt from attachment or sale in execution of a decree for money for which it has not been specifically pledged, should not be made a part of the general law of India. The remarks of the Deccan Commission upon the beneficial operation of these provisions will be found in paragraph 51 of their report. The rights of certain classes of occupancy tenants are already exempted throughout a great part of India; while in several provinces land cannot be sold in execution of a decree without the sanction of the executive. To hold land liable for money debts not specifically charged upon it is practically to put a creditor who lends his money without specific security (and charges higher interest for doing so) on the same footing in respect of his remedy as one who lends on mortgage, and thereby to deprive the borrower of an immunity for which he has paid. Local Governments are being separately consulted as to the advisability of restricting voluntary alienations of land. But so long as the creditor can obtain a compulsory transfer on account of debt, any such restrictions must be absolutely inoperative. The question of the liability of

Revenue (1896) Department.

CURRENT No. 311 P.

From The Prov. of Revenue,
Land Revenue



No. 311 P.

Dated 19 August 1896

Received 28.8.96

Registered 28.8.96

Enclosures

Spare copies

SUBJECT.

Subs: B.D.'s opinion on the provisions of the Agriculturists' Relief Bill & on the suggestions of the amendment of the General Law made by the G.O. with reference to the report of the Commission appointed to enquire into the working of the Deccan Agriculturists' Relief Act of 1879.

substantive law in the Bill would for reasons given above be likely for some years to come to be more effective than the proposals regarding procedure in suits.

The proposal regarding the non-alienability of land under any circumstances referred to in letter of Government of India would be if adopted I consider an advantage to the Khonds generally.

I have the honor to be,
Sir,
Your most obedient servant,

B. J. Wain
Collector.

copied
for

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not I am afraid, make the money lender keep regular accounts or make the Khond demand and keep receipts. I may say here that Sec: 53 of the Bill seems to me a most dangerous one. If the agriculturist is to be believed without any corroboration as seems to be intended it is indeed a Bill for the relief of the agricultural classes with a vengeance and the rest of the Bill is quite superfluous. Even the agriculturist can lie and so can the Khond and Sora. I presume however the Court would require proof of the tender or non-tender of the receipt and it would be a question of witnesses: the longest purse and the sharpest wit would win. The Section I think would then be either intensely mischievous or else useless.

17. To sum up I consider that a great deal of the Bill would be for various reasons specified above be inapplicable to the Agency Tracts at present; but if the Bill be approved in principle for the rest of India, some of its provisions might usefully be adopted for the Khonds.

The provisions selected for introduction of the Bill should be simplified and adapted to the primitive races dealt with and introduced as Agency Rules. The

Substantive

refused further advances or credit on any terms and might suffer hardship.

15. Apparently the Bill contemplates such men becoming insolvents and adopting the procedure laid down in Chap IV B but in the mahlis we could not with our very limited staff of officials possibly undertake the duties laid on Revenue Officials by that Section. Indeed I may remark here that I think in any part of this Presidency these Sections if recourse to them is largely made would throw an intolerable amount of extra work on the already overburdened Collector.

16. I am inclined to think that the problem of protecting the Khonds and Soras against themselves is a well nigh insoluble one. On one side there is utter ignorance, thriftlessness and recklessness in the matter of borrowing. On the other generally unscrupulousness on which we have no check and can have no real check. The remedies provided by this Bill might be effectual where there exist on the one side agriculturists fairly intelligent who keep some record of their debts or could produce some reliable evidence regarding them and on the other side money lenders who keep regular accounts. The merely passing of the Bill into law will

not

Bill and those in Chap. III afford ^{Q.P.} effective protection of the agriculturists and if approved for other parts of India should be made applicable to the Khonds and Sonas. but as long as the Courts are so little resorted to their effectiveness will be limited.

14. The proposal before the Government of India to exempt the lands of agriculturists from attachment and sale under all circumstances even when specifically pledged would I consider be more effectual.

There is no doubt I think that if the money lender knew that he could not in the last resort fall back on the land of the Khond he would be unwilling to make advances with the facility he does at present. It is true he is now generally content to let the debt stand unsecured but he knows that if he chooses to demand a mortgage or conveyance of the land he could at once get it.

The immediate effect of exempting the land from liability would be to diminish the borrowing powers of the Khonds and this would be an advantage at all events for such of them as have not fallen completely into the hands of their Sowcars. Those of them who are hopelessly indebted would probably be

The Bill is mainly framed for the protection of agriculturists who are being sued in Courts and expropriated by Court decrees but as I have pointed out above the Sowcars have so far abstained from the Courts. It seems to me therefore that the Act if introduced would at present be to a considerable extent inoperative.

12. Chap. II however regarding conciliation would I think be useful even now. The Conciliator can interfere before any suit is filed when a dispute arises or there is a prospect of litigation. The Head men Patros, Bessoyes, Molikos or Gomangos might be appointed conciliators.

As regards debts between hill men they exercise as a matter of fact such functions already and as a rule all parties acquiesce. It is true that they would probably be inclined to favor the Hill men but the powers of conciliators are limited and subject to revision. The Patros and Head men can nearly always write and in any case could command the services of some one who could write.

I fear the provisions of the Bill regarding arbitrators would be difficult to work.

13. The provisions of Sec. 12-20 in the

Bill

political evil unless he alters his ways. *GP*

On the other hand it is quite true that advantage is taken of the ignorance and simplicity of the Khond to swindle him wholesale and probably Government would desire if possible to put an end to this.

11. This brings me to the question whether the present Bill would be effective to protect the Khond. What struck me first on reading the Bill was that it was designed for races more civilized than the Khonds and their creditors and that it contemplates at least the creditors keeping regular accounts and the debtors having some understanding of the amounts of their borrowings and repayments. Take for instance Section 8 of the Bill. How could any court adjudicating between a Khond and his Sowcar make out a satisfactory account. At the best he would have on one side cadjan accounts probably fraudulent, on the other hand only the vaguest statements. I do not overlook the provisions of Chap VIII of the Bill but I consider it would be almost impossible to enforce these provisions.

It is obvious indeed that a great deal of the Bill i. e. Chap VI and VII could not be introduced in the Maliahs as we have not the necessary official machinery to work it.

present but as yet the money lender has not found it advisable to openly assume the ownership of the land. As population increases and the country is cleared and advances in civilization they (the money lenders) will probably find it safe and to their interests to do so.

In the less accessible tracts the prospect of the ownership passing from the Khonds is more remote. As to whether the transfer of land to the money lenders is likely to lead to an outbreak on the part of the Khonds, I find some difficulty in giving a decided opinion. The Chokapad Khonds who interviewed me seemed excited and angry; but I found that the cases in which the Sowcars had taken over their lands were as yet comparatively few and I am disposed to think that a dread of violence will always restrain the Sowcar from pushing his rights to the extreme until it is safe for him to do so.

10. Whether the Khond deserves special protection is another question. He is certainly an unprofitable tenant of Government. They are probably the most thriftless race in the Presidency. They contribute nothing to Government and on the other hand are destroying as fast as they can the fine sal forests of their country. The gradual suppression of the Khond as a landholder would scarcely be a political

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and as a rule the debt will be realised out of the
next year's crop and ~~there~~ the transaction ends. Of
recent years it is true that low country traders
are penetrating more and more into the Maliahs.
They sell articles to the Khonds on credit and come
back at harvest time and get grain and other
produce from their creditors at very low rates but
the process of accumulation of the debt does not
go on and I believe the Khonds do not remain
permanently indebted to these traders.

This however cannot I fear be said of the
Sowahs and the Paidi traders in the Parlakinedi
Maliahs and I would invite attention to Mr. Colvins
remarks on this subject. These Paidis are giving
a good deal of trouble to the Sowahs and when
I was recently in these hills some of the head
men asked me to prohibit them from settling
in their muttahs.

The Paidi Traders it is said keep no accounts
at all and trust to their memories.

9. To sum up I would state it as my
opinion that if things are allowed to take
their course in the more accessible parts of
the country the Khond or Sowra cultivator
will cease in a few years to be an independent
landholder and will drift into the position of
an under-cultivator for the Sowah. Indeed
this is practically the state of things at
present

On going into individual cases, I found one where,
a Khond had borrowed grain worth about Rs 8 some
8 years ago and had now given the Sowah land
yielding yearly produce worth Rs 8.

In the present state of affairs however
where the debts are practically never disputed
and where only one party to the transaction keeps
accounts and keeps them exactly as he likes
the rate of interest is hardly of first
importance. The Sowah charging 10 per cent
could easily by manipulating his accounts
make out that the Khond was just as much
in his debt as though he charged 50 per cent.

8. Turning now to the Khonds in the remoter
tracts it may be said generally they are free
men and if they were not self indulgent
and improvident to an extraordinary degree
they would be very well off. Amongst these
Khonds there is a good deal of borrowing
and lending between themselves and the
Panos. The Panos are a [low caste long
settled in the hills who do a good deal
of trade. They are identical with the
Shombs of Central Provinces. As I have
said before the rate of interest on
these transactions is 50 per cent, but the
loan is generally in grain or in kind the
creditors are on the spot and are neighbours

and

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The unhealthiness of the climate and the difficulty of obtaining outside cultivators and the dread of violence alone preserve the Khond in his status of land owner.

6. In Chokaped Khondam which although in the Maliahs is comparatively accessible, a deputation of Khonds waited upon me and complained of the exactions of the Sowcars. In this Khondam some Sowcars have settled and outside cultivators are available. The Khonds complained the Sowcars were taking away their lands. On inquiry I found that this was done simply by the threat of stopping supplies. There were ^{ordinarily} no instruments of transfer. The Sowcar simply said "give me that piece of land or else I will lend you no more money."

7. As regards the rate of interest it is commonly said to be 50 per cent per annum. This is indeed the recognised rate of interest in the Maliahs and is charged by the Khonds among themselves. It is impossible to say whether the low country Sowcars charge at this rate: the Chokaped Khonds told me they did. I asked them if they agreed to pay this rate of interest. They said they did although they grumbled at it. They added "we have expenses over our funerals and marriages and must get the money and must agree to what the Sowcar says."

him to cultivate and to take at each harvest the whole or nearly the whole produce of the land. During the rest of the year the Sowcar keeps the Khond more or less. He doles him out on market days rice and salt and perhaps receives from the Khond some minor hill produce. The Khond has of course no record either of his borrowings or repayments and as far as I can make out he has as a rule very little idea of the extent of his indebtedness. The Sowcar keeps his account on cadjan leaves if he keeps any account at all and he has his debtor entirely at his mercy. The Khonds are wonderfully staunch to their own Sowcars and apparently hand over each year's crop without a murmur. They are utterly thriftless and probably know that even if they should dispose of their crops to outsiders they would shortly be in need of loans again and would not be able to get them.

5. In this way the Uriya Sowcars of Bakhampore and Belligunta (the large market for hill produce near Russellkonda) manage without having resort to courts or to documents to obtain nearly all the produce of lands cultivated by this particular class of Khonds. The Khonds are left nominally the land holders but are really tenants cultivating for the Sowcars for a subsistence.

The

there is a great distinction to be drawn between the Khonds who live close to the plains and to markets where the ordinary type of money lender is to be found and the Khonds who live in less accessible tracts. The former class includes the Khonds settled in the low country in the northern and eastern mottaks of Goomsur and along the foot of the Ghats in that Taluk and also the Mohiri Hill Khonds in the neighbourhood of Berhampur. Of these it may be said that they are steeped in debt and are entirely in the hands of the low-country (Kriya Sowcars).

The 2^d class are much less involved and their debts are as a rule owed either to fellow Khonds or to Panos and itinerating Mahajans who visit the hills only occasionally during the year; indeed it may be said roughly that the indebtedness of the Khonds varies inversely as their distance from civilization.

4. The figures furnished by the District Registrar show that the mortgages and sales effected by the 1st class are few in number and altogether petty. The fact is that unless the land lies near civilization and the money lender can get outsiders to cultivate it he does not ask to have it mortgaged or sold to him. It suits him far better to leave the Khonds in possession and to allow

him

During my recent tours in the Maliahs I made inquiries whenever possible into the subject of the present reference from the subordinate officials and the Hill men themselves. My inquiries extended also to the Sowcars who in this matter stand in the same position as the Khonds.

2. It has been found quite impossible to collect any statistics on the subject. I have indeed obtained some figures from the District Registrar (copy enclosed) as to the mortgages and sales of lands by Khonds in the plains of Goomsur and the Mohiri Hills near Berhampur. For reasons to be given hereafter I do not however consider that these figures can be taken as affording any measure of the indebtedness of the Khonds even in these tracts. In the rest of the District inhabited by Khonds and Sowcars the Registration Act is not in force. True there are Civil Courts but suits between the money lender and Hill men have up to date been exceedingly rare as the money lenders have been so far able to get all they want without the intervention of our Courts.

3. As a result of my inquiries I have found that in the matter of indebtedness

there

Dis. No. 696
Ver. 76.

Ganjam Collectorate
Dated Chatrapur 8th May 1896.

From

410
C. J. Weir Esquire, J. C. S.,
Collector of Ganjam.

To

The Secretary to Government,
Revenue Department.

Sir,

I have the honor to submit the remarks
called for from me in G. O. Revenue dated 12-95,
No. 804.

I would premise my remarks by
stating that subsequent to receipt of the
G. O., I ascertained by a demi official
correspondence with the Revenue Secretary
that a general criticism of the Bill and
the proposals in the letter from the Govern-
ment of India was not expected from me
but that I am expected to report after
inquiry on the condition of the Khonds in the
matter of indebtedness and express my opinion
as to how far the proposed legislation was
necessary for their protection and how far it
would be effective.

Endorsement.

I enclose copies of a letter addressed
to 3 of the Divisional Officers on the subject
and of the replies received thereto.

* Reply from Mr. Rice
not received.

the hands of the Khonds and Sonas, either by the
instrumentality of the Civil Courts or by volun-
tary alienations.

I do not ask for exhaustive information
on the above points, but I believe that a
little local inquiry would elicit sufficiently
accurate information for present purpose.

189/C. J. Weir.

Collector.

(True Copy)

Collector.

293
C. J. Weir

96
4
3616

11/01
Collector's endorsement on G. O. N° 806, Rev.,
dated 9th December 1895 to divisional Officers Ref. C.
N° $\frac{67}{24}$ of 96 dated 17-1-96.

The 3 copies now received will be forwarded
to Messrs E. A. Elwin, S. P. Rice and B. Narayana-
murthi with a request that they will report at an
early date on the condition of the Khonds and
Sowas in their divisions, in the matter of
indebtedness.

I would like information on the following
points, especially.

(a) where Khonds and Sowas get into debt to
low country Sowars or others what record if any
is kept of the debt.

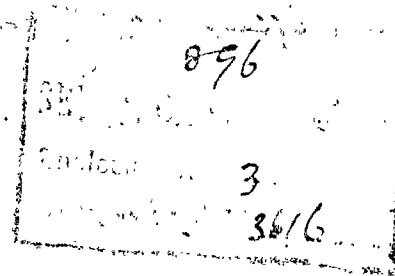
Is it merely an entry in Sowars' books
or are documents taken.

(b) are the lands usually mortgaged and if
so have there been many cases of foreclosure.

(c) are the Khonds and Sowas often sued
in civil courts for the debts.

(d) Is not the position often this: the
Khond or Sowa is hopelessly indebted but has
no idea of the amount. He gives the whole of
his crop and is in return kept alive during
the rest of the year and does not dispute
the Sowars' claim.

(e) whether the lands are passing out



142p
in para 2, but as the reference is an urgent
one I think it better to submit a report based
on such information as is forthcoming at
present instead of delaying my reply till the
end of my tour.

I have &c.
180/2. A. Blum.
Asst. P. Asst. Agent.

(True Copy)

to the
Collector.

copy
Gin

copy
A.A.

the amount. He gives the whole of his crop
and is in return kept alive during the rest
of the year and does not dispute the Sover's
claim?

The Bissoyis say that such is not the
case. The Saura always knows the amount of the
principal due by him, though he may not be
aware of what the interest amounts to owing to
the extortionate rates that the Paidis endeavour
to impose. It appears that the Bissoyi often
stands between the Saura and his creditors and
with the help of a purchaser settles any
disputes as to the interest to be paid. I
believe, however, that in the Gunpur taluk
where there are no Bissoyis and the Jeyphore
min takes, as a rule little or no interest
- the welfare of the Sauras that the position
is often as supposed by the Agent. The Gunpur
wrahs are to my knowledge, many of them,
- a hopeless state of bondage to the
Sondis of the town.

(2) Whether the lands are passing out of the
hands of the Sauras either by the instrumen-
mentality of the Civil Courts or by voluntary
alienations?

My answer to question (2) applies to this
question as well.

4. I have so far had the opportunity
of questioning only the 4 Biss- foreclosures

138

Kondapadus are never mortgaged at all. Paddy lands are never actually mortgaged, except to fellow Saurahs, though the Paidi Sowcar thinks nothing of entering upon the Sauras' holding and carrying off the whole of ^{his} crop on account of interest due on a loan. If a Saura is very much pressed by his Paidi Sowcar, he mortgages his paddy land to a fellow Saura for cattle and hands the cattle over to the Paidi in satisfaction of the claim. Cases of foreclosure are not very frequent. The Gummia Bissayi says that where a Saurah is hopelessly indebted and has mortgaged his paddy land to a fellow Saura, the creditor sometimes applies to him for foreclosure and if he considers that nothing can be done for the debtor he arranges for foreclosure to take place. The Bissayi believes that the fact that it is quite contrary to the hillman's ideas to encumber his Kondapadu in any way is the salvation of the Saura, as however indebted he may be he will always realize enough from that form of cultivation for his bare subsistence.

(c) Are the Saurahs often sued in Civil Courts for their debts?

No, such cases are almost unknown.

(d) Is not the position often this. The Saura hopelessly indebted, but has no idea of

3. (a) Where Sauras get into debt to low country Sowcars or others, what record if any, is kept of the debt? Is it merely an entry in the Sowcar's books or are documents taken?

It is but seldom that the Saurahs of the Parlakimedi hills resort to low country Sowcars for loans and when they do documents are not taken from them but a mere entry of the transaction is made in the Sowcar's books. The Paidis or Hill Pariahs are the chief Sowcars in this agency. When these men advance money or lend grain to the Sauras, they keep as a rule, no record of the transaction, though sometimes if they are educated they make an entry of the loan on a cadjan leaf. Sauras not infrequently take loans from other Saurahs, especially from their kinsmen but the person who gives the loan trusts entirely to his memory in the matter. It may be said, then, that the Sowcars of the Sauras rarely keep any account of the loans given by them. The chief reason for this is that the Sauras are particularly honest and never repudiate a debt. They themselves are in the habit of tying a knot in a string whenever they take a loan, each knot representing a puthi of grain or a rupee, as the case may be.

(b) Are the lands usually mortgaged and if so have there been many cases of foreclosure?

no 272 of 96.

Encl no 3 to Dis no 626 of 1896

120/

From,

E. A. Blain Esquire,
as Principal Asstt Agent,
Ganjam.

To,

The Collector of
Ganjam.

Dated Camp Namanagarum 2^d February 1896.

Sir,

I have the honor to reply to your reference
dated 18-1-96 on C no ⁶⁷/₂₂₄ of 96.

2. Indebtedness of the Savaraks: Accounts vary
very much. The Gumma Bissoyi says that his
Savaraks are, with the exception of the Gomangos
and some half dozen persons in each village, is
almost all in debt. The Bissoyis of Savango,
affaigodo and Namanagarum on the other hand,
do not admit that indebtedness prevails amongst
the Savaraks of their Muttahs to any appreciable
extent. The Parlakimedi Deputy Tahsildar seems
to think that the Savaraks are generally speaking
in a state of indebtedness and such is my
^{own} opinion of those living in the Gumpur taluq
of Vizagapatnam formed after several years
acquaintance with them.

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The cultivation of wet lands owned by low country Sowahs and Khonds, is not attended with so many difficulties and these lands therefore pass into the hands of Sowcars in several cases.

I have &c.

182/ B. Narayanamurti.

General Deputy Collector.

(True Copy)

Sub

Collector.

CD
Eg
Camp
Mh

affirmative from my long experience of Khonds and Sowahs here and elsewhere.

(c) In some cases lands pass out of the hands of Khonds and Sowahs by voluntary alienations, but there are cases where they are obtained through the instrumentality of Civil Courts in pursuance of ex parte decrees. The passing of lands into the hands of low country Sowcars, is almost confined to lands owned by low country Khonds and Sowahs. Sowcars of the low country hardly speculate to take lands from Maliah Sowahs and Khonds proper, as far as my knowledge goes. In their case they simply go on claiming balances year after year and these balances are more fictitious than real. They go on receiving hill produce mostly on account of interest and the debtors rely upon their Cadjan entries. The Sowcars have very good reasons not to go in for lands on the hills.

Firstly:- They cannot stand the climate.

Secondly:- They cannot get them cultivated.

Thirdly:- The Hill cultivation does not pay them.

Fourthly:- This is attended with much risk of all sorts even in case of wet cultivation.

consists only in the mere entry in the Sowcar's
Cadjan account leaves. Documents are taken on
stamp paper when the Sowcar thinks that the
debt is large and wishes to take possession of
the land and turn the man out closing his books
against him. This is a precaution taken by
Sowcars so that the ignorant Khond may not
in his last moment of trial and struggle,
attempt to dispute his claim. I may say
that in 90 out of 100 cases documents are
not taken.

(b) Lands are generally taken under mortgage
for the accumulated balances struck on
Cadjan accounts but there are not many
cases of foreclosure.

(c) Khonds are not often sued in Civil Courts. When
they are sued they generally become ex parte or
admit the claim if they at all appear. The
Sowcar rushes at times into the Court to
establish his claim to the land and be on the
safe side, whenever he chooses to take the land
of the debtor. In his economic sense, natural to
him, he very often allows the debtor to cultivate
the land for him retaining ownership thereof
to himself as it would be expensive to get
the land cultivated in jungle parts by paid
agency.

(d) I answer this question certainly in the
affirmative

usually advanced in the shape of food grains and
small sums in cash at intervals and produce
- different sorts is delivered to the Sowcar in
repayment of debt and the Sowcar's accounts
invariably show some balance against the debtor,
who hardly disputes its correctness. The same
Sowcar or his heirs are, as a rule, resorted to
by Khond debtors and their descendants in
majority of cases. The Shrewd Sowcar freely
lends his aid to these men on occurrence of
death or marriage or some such event in
their families and wins their faith to such an
extent that he is for the time being looked upon
as an Angel of relief; while his merciless
intentions are really to snatch away all
the produce of their labour. It is only when
the last drop of his life blood was suck and
when the land could be cultivated by the
Sowcar himself safely and without much
trouble independent of the Khond, he goes in
for his land, but in other cases he will allow
him to be in possession of his land looking
upon him as his farm servant and nothing
more.

2. Now with regard to the points on which
information is especially called for, I beg to
answer them seriatim.

(a) In most cases the record of the debt
consists

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Re. 77/96.
Rw

1507
From,

M. R. B. Narayana Murthi Pantulu Garu,
General Deputy Collector,
Russellkonda.

To

C. J. Weir, Esquire,
Collector of Ganjam.

Dated Russellkonda 8th February 96.

Sir,

With reference to your footnote R.C. No. 67^{ver} of 18th January 96, to G.O. No. 804, dated 9th December 1895, requesting a report on the condition of Khonds or Sowahs in the matter of indebtedness, I have the honour to report that there are no Sowahs in my division, but Khonds most of whom are styled as low country Khonds. The Khonds residing in the Bybilli Muttah, closely resemble Maliah Khonds proper. All these Khonds with rare exceptions, are indebted to the low country Sowahs, who strike their balances from year to year, the transactions never coming to an end. If one dies in indebtedness, his son voluntarily undertakes the burden of debt and continues clearing and borrowing, paying perhaps interest at about 50 per cent. per annum. Debts are

generally

96

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Enrol- to No 496 of 1886

Statement showing the extent and value of mortgages and sales executed by Khonds in the sub districts of Berhampur and Gumsur during the years 1893-94, 1894-95.

Name of Office.	No of mortgages	Total extent of lands mortgaged.	Total value of mortgages.	No of sales.	Total extent of lands sold.	Total value of sales.	Remarks.
		acres.	Rs 1893-94.		acres	Rs.	
Berhampur.	14	69.69.	831-on 12		60-90	1757-on	
Gumsur.	7	37-44	2743-12-n		..	..	
Total	21	107.13.	3574-12-n 12		60-90	1757-on	
			1894-95.				
Berhampur.	9	127.12	677-on 2		9.76	760-on	
Gumsur.	10	129.36	956-4-n 5		22.66	564-on	
Total	19	256.48	1633-4-n 7		32.42	1324-on	

Ganjam Registrar's Office. }
Chhatrapur 5. February 1896

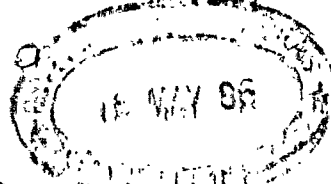
/s/ A. Kanakaray.
for Registrar.

True Copy,

G. A. ...
Collector.

copy made
for ...

Rev 1896 Dept



From

C. J. Wain, Esquire, J.C.S.,
Collector of Ganjam

Lawrence number 3616

The Secretary to Government,
Revenue Department,

Dated Chattrapur 8 May 1896

Desp? 20 1896

Rec? 10596

No 596
ver 826

Enc 4

Subject

Submitting remarks on
the introduction of the
'Agriculturists' Relief Bill'.

paid? If he is then, if the agriculturist who cannot afford to retain
him, is unsuccessful, from what source is the pleader's fee to come?

If the pleader is not to be paid, then this is a hardship upon
him. "Fit persons" have the money in their own hands for they can
decide to appear but not the Government Pleader apparently.

J H Spring Branson

Advocate General.

M e d r a s.
7th July 1896

True Copy

James B. B. B.

Government Solicitor.

30/2

2 of Section 24 no doubt empowers the Collector to take possession of the agriculturist's property and to deal with it for the benefit of the decree holder, but this means that the decree holder may be kept out of what is due to him for a considerable time.

Section 31 (1) (a) Why is the Insolvent's consent necessary? He may be colluding with his alleged creditor and mortgagee. What is the meaning of "interest properly chargeable"? Does "properly" refer to the agreement of the parties, or to the opinion of the Court?

As to continuing the creditor in possession & see remarks on Section 14 (3).

Section 37 Has this scheme ever been tried? Judging from the usually futile attempts to settle civil suits by reference to arbitration, I think that these provisions as to the Official Conciliator will be practically useless, except perhaps for purposes of the annoyance of one party by the other.

Section 39 By whom is the agreement to be reduced to writing? The section should provide for the payment of the stamp to be affixed and the cost of registration, and declare by whom such costs are to be paid. The Conciliator should see that the document is duly stamped & registered.

Section 40 (2) How is the Court to form an opinion as to whether the agreement is legal and equitable?

Section 43 I think that retrospective effect should not be given to this section.

Section 49 (1) Is the Sub-Registrar to be a lawyer? If not, are the parties to depend upon his expressing himself in correct legal phraseology?

Agriculturists will always resort to Sub-Registrars to have their documents written for them if they can get them written for nothing.

Section 55 (1) The agriculturist should be prohibited from making any entry in the pass book.

Section 59 (3) This may prove a hardship to the agriculturist who is treated throughout this bill as if he were incapable of protecting himself against his creditor.

Section 60 Is the "Government Pleader" or "other fit person" to be

Section 12 will probably be looked upon as rendering the reference to arbitration a mere useless waste of time. The award will not be final, subject only to being set aside for causes mentioned in the Civil Procedure Code; but it will be made subject to revision, modification or rejection by the Court. That being so, time and money will be saved if the Court settle the matter in dispute without any reference to an arbitration which may prove useless.

Section 14 (3) provides for the Court "continuing the mortgage in possession", but not for the contingency of his objecting to remain in possession under conditions not agreed to by him.

What is "reasonable interest"?

Is the property to be restored, whether "principal with reasonable interest" have in fact been recovered or not?

Section 14 (4) See remarks on Sub-section (3).

Section 15 at seq. The result of all this seems to be that the agreement between the parties goes for nothing, and the "discretion" of the Judge for the time being is substituted. Presumably the mortgagee makes his arrangements on the natural assumption that the agreement is binding. Not only may that agreement be set aside, but with it all the arrangements based thereon.

Section 19 (2) (3) What will be the legal effect of the withdrawal of the money?

Why should interest cease when the amount deposited falls short of the claim allowed? Plaintiff cannot draw and utilize it, except under Sub-section (2).

Section 20 Every thing appears to be left to the discretion of the Court at every stage until the debt is completely paid off. During that period the Judges may change, and then another disturbing element is introduced which must be taken into consideration by a would be creditor. Under these circumstances, I fear that the agriculturist will find great difficulty in getting any credit.

Sections 23 & 24 If an unsecured creditor obtain a judgment against a ryot how is he to enforce it? He cannot arrest or imprison his debtor, or attach or sell that debtor's immoveable property. Sub-section

2 1/2 of

shall be deemed to be the amount then due" to mean that the balance of interest that may be accrued shall not exceed the balance of principal due: but is that clearly expressed? If so, is this provision expedient?

Section 9. The effect of this section seems to be to prevent usufructuary mortgages altogether. Is that necessary?

Moreover under this section not only can such mortgages be revised, but the revision is, apparently, to have retrospective effect. This, I think, is undesirable. I do not see why the agreement between mortgagor and mortgagee should be interfered with in the absence of fraud or oppression.

These sections will, I fear, do more harm than good to the mortgagors, and will be evaded if possible by both mortgagor and mortgagee.

Section 10. What is the meaning of "properly chargeable"? What is to be the standard, if the agreement of the parties is to be ignored?

Why should a mortgagee in possession be compelled to remain in possession, and upon terms to which he may not agree?

What is to happen if he declines?

In the memorandum it is proposed to add a Sub-section to Section 9, providing for the case of a mortgagor holding the land as his mortgagee's tenant. In the first proviso the agreement to give and receive payments in kind as rent is to be subject to the Court being able to determine the value of the grain &c so given, and to a "fair rent" being fixed by the Court in the event of its being unable to determine the value of the rent in kind. Accepting rent in kind is a speculation not likely to be entered upon by many under these circumstances, yet, payment of rent in cash may often be very difficult and cause hardship.

Sections 11 to 14 Sections 11 to 14 are not likely to be much worked. Judging by ordinary civil suits, I think that ryots and their creditors will usually prefer to leave questions between them to be decided by the Court. References to arbitration are not such unqualified successes that they are readily resorted to.

Form an "Exception" or Proviso.

How is the "intention" of the agriculturist referred to in the explanation to be ascertained? What length of time is covered by the word "temporarily"?

As personal engagement in agricultural labour is not necessary to bring a man within the definition, why should he be deemed to be an agriculturist when, and so long as he ceases to earn his livelihood by agriculture, i.e. ceases to be an agriculturist within the very wide definition of that word given in this section?

Section 2 Sub Section 3. Where does a man "earn his livelihood by agriculture"? Where he actually receives the income from his lands, or where the lands are situated?

Take the case of a man in Government service at some place other than that in which his land is situated. Does he earn his livelihood by agriculture where that agriculture is carried on, or where the rents and profits are actually received by him?

Section 3. I do not see why (b) & (c) should not be made equally applicable to suits instituted by agriculturists.

Why should a special procedure be laid down for suits to which agriculturists are parties merely because the plaintiff or defendant, as the case may be, happens to be an agriculturist?

Where the debt or liability is connected with agriculture, then possibly such special procedure may be harmless.

Section 5 (2) I think that this is unnecessarily stringent. If the defendant do not appear after due service of summons, he must be taken to admit the claim.

Section 7 (2) The words "be bound to" appear to be unnecessary.

Section 9. I think that the words "or setting off the profits of mortgaged property either an account in lieu of interest" should be struck out, as usufructuary mortgages should not be revised with retrospective effect.

As to the advisability of interfering with the agreement of the parties, and practically preventing usufructuary mortgages see remarks on S.9.

Section 9 (g) I understand the words "double the latter balance

Highland 22/2
Re Bill to provide for the relief of the agricultural classes.

O P I N I O N

The Bill seems to treat the agricultural classes as if they were perfectly helpless, and too ignorant and stupid to know and to protect their interests. I am unable to say whether they deserve the character they appear to have acquired or not, but I doubt the wisdom of the treatment. If they be over-protected, they are unlikely ever to become self-reliant, and to learn to exercise any thrift and resourcefulness. Moreover the very means taken to "protect" them will make it very difficult, if not impossible, for them to raise money, however urgent may be their need thereof.

Money lenders are unlikely to lend upon mortgages if they fear that, for the agreement of the parties, will be substituted the discretion of the District Judge for the time being.

I doubt if the inebriety of ryots is due to the expenses incidental to their calling. I believe it is due to their extravagance in the performance of marriages &c. This can be cured by education alone, and part of that education must surely be the suffering which extravagance causes. The Legislature cannot supply the ryots with common sense, or remove temptation far from them.

I have not seen the Report of the Commission referred to in the Memorandum annexed to the present Bill. Possibly experience has shown that ryots do require protection, and that my fears above mentioned are unfounded.

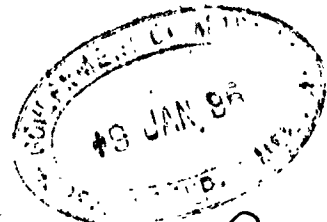
Section 2. The definition and "explanation" read together seem to make source of income, not personal occupation, the test of the applicability of the term defined. If that is the intention, the definition may be shortened and explanation (a) be omitted, by substituting the words "whose income is" for the words "who by himself or by members of his family or by his servants or by his tenants earns his livelihood," and the words "derived from" for the word "by" between "principally" and "agriculture". The words following "extend" might then be omitted. Explanation (b) would be the only one and (c) would

Revenue (1896) Department
Current Number 118
From Ernest Barclay
Government Solicitor
Madras

To Mr Secretary to Government
Revenue Department
Madras

N° 13

Dated 8 January 1896
Recd 9



Forwarded with reference
the Order of Government
dated 9 December 1895
'804. Revenue Department
Ernest Barclay
Government Solicitor

Revised
of
the

It is provided that "standing crop"
shall be deemed to be
"ing and selling"

I am directed to point out that Head of Village
this Presidency are magistrates rather than P.
officers, though they certainly in practice
some Police functions. They would no doubt
available to act as conciliators, but they
likely to prove no better than the other residents
of the village.

With reference to this Chapter
say that, in the opinion of the

encumbrance on immovable property
ordinary mortgages; and

draft has been amended in the
to H.E.'s & H.M.'s remarks on
draft.

of His Excellency in Council /

To the Hon. Law Officer, Bangalore,
Please send these papers
copy to the P.

OK
1/7/97

Chapter IX

His Excellency the Governor in Council
considers that the retention of section
33 laying down a special procedure
cases of insolvency of agriculturists
the Relief Act is necessary. It may
be urged that these provisions will not
resorted to in this Presidency any
than in the Decan and that they
will impair the credit of agriculturists.
Former argument is not valid
as regards the latter I am to
mark that the whole principle of
insolvency laws is that on the
side it is for the good of the community
that a person in embarrassed circum-
stances shall be able to clear himself
make a fresh start.

From Sir H. W. Bliss K.C.J.E.

From Mr. G. Stokes C.J.E.

From

THE HON'BLE MR. G. STOKES, I.C.S.,

ACTING SECRETARY TO THE GOVERNMENT OF MADRAS,

REVENUE DEPARTMENT.

To

THE SECRETARY TO THE GOVERNMENT OF INDIA,

REVENUE AND AGRICULTURAL DEPARTMENT.

SIR,

In reply to your letter of the 31st October 1895, No. 23, Judicial 1591, inviting an expression of opinion on the provisions of a Bill framed by the Government of India for the protection of agriculturists, I am directed to forward a copy of the Proceedings of this Government embodying the opinion of the various officers and bodies consulted on the subject and to offer the following remarks in connection therewith.

2. Before examining the provisions of the Bill in detail, I am desired to point out that the measure proposed by the Government of India is, in the opinion of His Excellency the Governor in Council, a revolutionary one, interfering with the civil rights of parties and tampering with the ordinary law of property, and will be justifiable only when there is a desperate evil to grapple with. So far as the circumstances of this Presidency are concerned, there is a consensus of the best opinions obtainable that no such evil exists. It is an admitted fact that indebtedness is not due merely to the action of the usurer but to the necessity of the borrower. More than ninety per cent. of the ryots of this Presidency hold less than 25 acres in extent, and, their capital being locked up in their lands and stock, they must necessarily borrow for carrying on their vocation and for celebrating marriages, &c. Credit is therefore a necessity to the small agriculturists and its utility cannot but be recognized. No doubt borrowing may be abused and indebtedness may be a symptom, and even a cause, of danger, if the conditions of credit are unsound or defective and if borrowing is not a mere temporary, productive mobilization of capital but the result of ignorance, imprudence or recklessness. In the opinion of those best qualified to form an opinion, there is no reason to suppose that the agricultural classes in this Presidency are so ignorant, imprudent or helpless as to require the special interference of Government in the direction proposed; nor is money-lending monopolised by professional sowcars who drive hard bargains. The conditions in this Presidency differ widely from those in the Bombay Deccan, where the money-lending classes are reported to be foreigners, different in religion from their clients, entirely out of sympathy with them, and accustomed to retire with their profits after a sufficiently long course of business to their homes in Rajaputana. More than two-thirds of the mortgage loans in this Presidency are granted by ryot lenders, and personal credit is chiefly among the ryots themselves. This, as pointed out by Mr. Nicholson in his report on agricultural banks, is a very remarkable and interesting fact, and places the character of Madras indebtedness in a position wholly different from that of the Deccan. Moreover, in Madras, lending in general, though expensive, is hardly usurious in the sense of being the result of calculating greed and opportunity and the interest charged is, as a general rule, not ruinous. Even in localities where there are money-lenders corresponding to the Marwari classes they have not earned the evil reputation of their confrères in the Deccan, owing partly to the competition that exists amongst their own class and partly to the fact that for ordinary purposes the ryots are largely lenders

Note. The

No 520 & 2nd July 1897.

June 1897
+ No 519 & 2nd July 1897

26/6/97
28
29/6/97 But

them/

b.c.

9

among themselves. ~~It must be admitted that loans between ryots are less objectionable than those between the professional and his client and though the ryot lender may be keener than the professional in his desire to obtain local influence and wider lands his loans are frequently friendly and purely helpful.~~ The measure now proposed would considerably reduce the credit of the agriculturist ~~which is already little~~ and would defeat the object aimed at. In these circumstances His Excellency the Governor in Council is of opinion that as far as this Presidency is concerned the proposed enactment is open to very grave objections and is uncalled for. It may be said that there can be no objection to having an enabling Act on the Statute Book which can be applied if circumstances render it necessary. Though the provisions of the Act may not now be applied still their very existence and the knowledge that they might be applied at any moment would tend to disturb the public mind, to affect the value of property and probably to raise the rate of interest. For these reasons, His Excellency in Council considers that Madras should be expressly excluded from its operation. If at any future time circumstances should so change in Madras, ~~which is most unlikely~~, as to make such a measure desirable, it would be very easy to pass an Act extending the proposed Act to Madras.

3. Having premised the above general remarks, I am now to convey the views of this Government on a detailed examination of the sections of the Bill. ~~The various suggestions made by the officers and bodies consulted will no doubt receive in due course the consideration of the Government of India.~~ The only sections of the Bill on which His Excellency in Council thinks it necessary to make any special remarks are the following:—

CHAPTER I.

4. *Section 2.*—The definition of the term "agriculturist" to which the Government of India invites special attention rightly includes persons who are in Government Service and who are thus temporarily unable to follow their agricultural pursuits. ~~The Commissioner of Revenue Settlement points out that there is no reason why persons in private service under similar circumstances should be excluded from the definition.~~ The Government considers that ~~there is a distinction between the two cases. Those in Government employ cannot obtain leave except according to rules, and are practically prevented from throwing up their appointments by fear of losing their pension which may be termed their deferred pay. Indeed in some cases they are prevented from leaving it at will by the statutory provision of penal consequences. Men in private service are under no such disabilities. For this reason, this Government considers that the latter should not be included in the definition and, if included at all, such private service should be out of British India or, at least, outside the province in which their district is situated.~~

~~As the Act is intended to benefit agriculturists, a proviso should be added to the definition empowering Local Governments to exclude therefrom such classes as do not stand in need of the special immunities and privileges which are conceded by the proposed measure, such as the Jannis of Malabar, &c.~~

3/ The expression "where he earns his livelihood by agriculture" occurring in rule 2 of the section is ambiguous, as it may mean, in the case of the absentee landlord, the place where that agriculture is carried on, or where the rents are actually received by him, although livelihood is stated to be ~~earned~~ by agriculture only where the agriculture is carried on and ~~no~~ where else.

CHAPTER II.

5. *Section 3.*—The section enumerates the classes of suits for which a special procedure is prescribed by the Act and the Government of India enquires whether this Chapter should be made applicable to any classes of suits falling under clause (b) or (c) of this section in which the *plaintiff* is an agriculturist. ~~No doubt it may be argued that~~ an agriculturist who is in a position to lend money

new in principle
from engaging
in the definition

ordinarily

in that

to another has, by that very circumstance, proved his fitness to look after his own interests and that he may therefore be left to the remedies provided by the general law. ~~But it must be remembered that a person is liable to be defrauded by the tradesman to whom he sells his produce as he is by the sower from whom he borrows money. This Government therefore considers that the Chapter should be made applicable to suits by an agriculturist for the recovery of the value of the produce of his holding, sold or paid in liquidation of an advance.~~ *amended with remarks*

6. Section 5.—Sub-Section (1) provides that in every suit under Chapter II the summons shall order the defendant to appear in person. This assumes that the defendant will be an agriculturist in every case. But as an agriculturist may file a suit against his creditor, a money lender, falling under clauses (a) and (c) of Section 3, the defendant will be the money lender. This Government considers that personal attendance of the defendant in these cases is unnecessary. Whenever the Court considers it necessary to examine him, it can do so by summoning him under the general law. The Sub-Section should accordingly be amended by substituting for the clause "to which this chapter applies" the words "of the description mentioned in Section 3, clauses (b), (c) or (d)."

Sub-section (2) has been inserted in accordance with the recommendation of the Commission appointed to enquire into the working of the Deccan Agriculturists' Relief Act that the expense of enforcing the attendance of the defendant when he fails to comply with the first summons should not be thrown on the plaintiff. ~~The Advocate General considers that this is unnecessarily stringent and that if the defendant does not appear after due service of summons he must be considered to admit the claim. In the opinion of His Excellency the Governor in Council this argument has not much force. The Sub-section as drafted is fair to both the parties to the transaction and should be retained as part of the Act.~~ *b.c.f.*

Sub-section (3) gives the Court discretion to dispense with the attendance and examination of the defendant in any case. The Commission considers that there should, as far as possible, be no discretion in the matter. Cases may, however, occur in which the personal attendance of the defendant will be perfectly unnecessary and this Government is accordingly of opinion that some discretion should be allowed to the Court to dispense with it. Abuse of the discretion is provided against by requiring the Court to record its reasons in writing.

7. Section 6.—*May* in line 3 of this section should be altered into *shall*.

8. Section 7, Sub-section (2).—Under the Deccan Agriculturists' Relief Act, in cases in which the defendant admits the claim but doubt is thrown on the validity of the admission, the enquiry has to be conducted in the same manner as in disputed cases. The Sub-section as now drafted by the Government of India presumes that only such enquiries need be made as will enable the Court to do complete justice between the parties. This view meets with the approval of this Government.

sub-section (4) — "Disparities in the intelligence and circumstances of the parties" may be added
9. Section 8 proposes to set aside with retrospective effect two classes of agreements between the parties which are valid under the general law, viz., (1) agreements to allow compound interest and (2) agreement to set off the profits of mortgaged property in lieu of interest without taking an account. In favour of the proposal to set aside of the former, it is urged that the debt is unduly swollen by frequent rests and consolidation of interest with principal. His Excellency in Council agrees with the remarks of the Commission in para. 39 of its report that the total abolition of compound interest in the case of loans to agriculturists will lead either to an evasion of the law or loss to agriculturists and that it is necessary to allow the Courts to accept not merely conversions of, but also agreements to convert, accumulated interest into principal where such conversions or agreements are considered to be fair. As pointed out by the Commission, the best way of meeting the difficulty is to provide that any such conversion or agreement shall not be

*Insisting
Defence*

accepted by the Court if, for reasons to be recorded in writing, the Court deems it to be unreasonable, and, that in deciding whether it is unreasonable or not, the Court should consider, *inter alia*, the length of the rests, the rate of interest and the nature of security. In this connection, I am also to point out that there is a practice in this Presidency by which future interest for a term of years is added to the money actually advanced and the interest is made chargeable on the total amount after the term expires. As this is practically a case of levying compound interest, the necessary provision will have to be made in the Bill.

As regards the second class of agreements, it is argued that, as such agreements proceed on the calculation that profits of mortgaged property would be equivalent to a reasonable interest on the loan, there can be no hardship in providing that the approximate estimate of the profits made by the parties shall be set aside, and an actual account taken, reasonable interest being at the same time allowed to the mortgagee. This Government agrees with the arguments of the Commission in para. 38 of its report against the policy of revising usufructuary mortgages with retrospective effect and considers that the clause on the subject in section 8, and section 9, should accordingly be omitted. ~~As pointed out by the Board of Revenue (L. R.),~~ Provision should be made in clause (b) empowering the Courts to consider whether the price of goods has been reasonably stated.

10. *Section 10.*—The wording of this section will have to be altered with reference to the recommendation made above that section 9 should be omitted.

11. The Government of India invites the opinions of Local Governments and Administrations in regard to the insertion of a sub-section in section 9 dealing with cases in which the mortgagee is in possession of the land, and the mortgagor holds from him as his tenant. ~~Rule (f)~~ in section 8 would seem to provide for the cases to be dealt with by the proposed sub-section and the words in brackets therein will render the first proviso to the proposed sub-section unnecessary. It would be sufficient to insert the second proviso after omitting the word *further*, as clause (h) of section 8 and to add the following explanation to clause (f) in the same section.

“*Explanation.*—Payments made by a mortgagor in possession of the mortgaged property as tenant of the mortgagee, whether designated rents or otherwise, are payments to the creditor within the meaning of this ~~rule~~.” clause/

12. *Section 11* embodies the provisions of the Punjab Land Revenue Code in regard to arbitration which, in the opinion of this Government, are calculated to deal with suits in which agriculturists are parties in a more satisfactory manner than the provisions of the Civil Procedure Code and may accordingly be adopted.

13. *Section 12* removes the restriction which now exists under the general law (section 60 of the Transfer of Property Act) that the mortgagor cannot file a suit for redemption until the time when the principal money becomes payable has expired. It would, in the opinion of this Government, be inequitable to do away with the restriction in cases in which time is of the essence of the contract as in the case of the Kanom tenure of Malabar. The clause “or on the ground that the mortgage debt has not been completely discharged” is ambiguous as pointed out by the Commission in para. 43 of its Report. It means no doubt that, although the mortgage debt has not been completely discharged, the mortgagor must be ready to discharge it. ~~In such cases it might be provided that~~ the mortgagor (Plaintiff) shall pay into Court with his plaint the amount still owing on account of both principal and interest of the mortgage debt. in such cases/

14. *Section 14.*—*Sub-sections (3) and (4).* When a case comes up before a Court, the amount due should be ascertained once for all, and if this is done, there will be no necessity to make a distinction, as in the Bombay Act, between the cases in which ~~the amount due and~~ the period for which possession of the mort-

gagee should be continued have been ascertained and those in which they have not been. This distinction appears to have been overlooked in the drafting of Sub-section 3 (*vide* the words undertaken). Sub-sections 3 and 4 would appear to be unnecessary, as the necessary provision has already been made in Section 10.

15. *Section 16.*—The Commission point out that, as the plaintiff can know the amount due only after judgment is pronounced, he must be given time to ascertain whether he can raise the money or not and that the Court should therefore adjourn the case for a reasonable time after judgment is pronounced and before decree is passed. A clause to this effect should be added to the Sub-section.

CHAPTER III.

16. *Section 21.*—This Section requires that the decree holder should either take the moveable property of an agriculturist attached or tendered in execution proceedings at the upset price fixed by the Court, or should forego the portion of the decree amount equal to the difference between the upset price and the price realized by sale. If the upset price fixed by the Court is not realized at the auction, the result must be due either to combination among the bidders or to the upset price having been fixed unduly high. In either case, there is no reason why the decree holder should suffer for no fault of his own, and the Section should, therefore, be omitted.

17. *Section 22* removes the restriction under the ordinary law that no payment by the judgment debtor made out of Court shall be recognised as payment of the decree unless the payment has been certified. The restriction is a wholesome one and tends to prevent disputes and should not be removed in the case of agriculturists to protect whom legislation is now undertaken.

18. *Section 23.*—It is reported by the Commission that, in the Punjab, the Courts have held that, when the judgment debtor was in possession of property specially exempted under Section 266 of Civil Procedure Code, they would not be justified (with reference to the terms of Section 337-A, Civil Procedure Code) in holding that the debtor was unable to pay the amount of the decree, the consequence being that the power of imprisoning debtors is used to compel them to give up such property. As the general law is thus insufficient, it is proposed to exempt agriculturists from arrest and imprisonment. In the opinion of this Government, the more satisfactory solution of the difficulty will be to modify the general law so as to provide "that the possession of property expressly exempt from attachment, or of property which is not liable to attachment and sale without special sanction should not of itself justify a court in holding that a debtor is able to pay the amount decreed and in sentencing him to imprisonment in default." ~~As pointed out by the Board of Revenue.~~ The power of arrest and imprisonment is a valuable remedy for creditors in the case of personal debts, and there is no reason why if the debtor has property other than that exempted from attachment and sale and can therefore pay the debt, but will not, he should be shown any consideration. The section should therefore be struck out, the general law being modified as indicated above.

19. *Section 24.* provides that immoveable property belonging to an agriculturist shall not be attached or sold in execution of a decree or order passed unless it has been specifically mortgaged for the repayment of the debt to which such decree or order relates and the security still subsists. The Government of India enquires whether this provision should not be made a part of the general law of India and whether the exemption from attachment and sale of land belonging to an agriculturist should not be made absolute so as to extend to such land even when it has been specifically pledged and if so whether it should apply (1) to mortgages effected, and (2) decrees for the sale of mortgaged land passed before the new law comes into operation. As at present advised, His Excellency the Governor in Council is opposed to the retention of the section and *a fortiori* to its further extension in the direction suggested by the Government of India. It

and it is not easy to foresee all the consequences which might flow from its application to any particular tract." It is submitted that these objections are somewhat vague and that the only proper way is to take up each section and fully examine it, showing how far and in what respects it affects the rights of others than the agricultural classes. This will be done later on.

O. No. 3616.

21. Even assuming that the Act is needed and that it will not affect any one prejudicially, Mr. Weir, the Collector of Ganjam, points out that it will be inoperative. The Khonds who are settled in the low country "are steeped in debt and are entirely in the hands of the low country Uriya sowcars." "If things are allowed to take their course . . . the Khond or Sowra cultivator will cease in a few years to be an independent landholder, and will drift into the position of an under-cultivator for the sowcar. Indeed this is practically the state of things at present; but as yet the money-lender has not found it advisable to openly assume the ownership of the land." "Unless the land lies near civilization and the money-lender can get outsiders to cultivate it, he does not ask to have it mortgaged or sold to him. It suits him far better to leave the Khonds in possession and to allow him to cultivate and to take at each harvest the whole or nearly the whole produce of the land" . . . "The Khond has of course no record either of his borrowings or repayments and . . . he has as a rule very little idea of the extent of his indebtedness. The sowcar keeps his account on cadjan leaves, if he keeps any account at all, and he has his debtor entirely at his mercy."

From the above extracts from Mr. Weir's letter it would follow that the case of the Khonds of the Ganjam district is a suitable one for the application of the proposed Act. Yet owing to the fact that neither the Khond nor the money-lender has as yet resorted to the Civil Courts, the Collector apprehends that the proposed Act, if passed, would be ineffective. He considers, however, that sections 12-20 and Chapter III will afford effective protection to the agriculturists, and that if they be approved for other parts of India they could be made applicable to the Sowras and Khonds.

22. The fifth and last objection put forward is that the administration of the

proposed Act would involve heavy additional expenditure. The reply is that it is unlikely that the Act would be extended to any large area, and that even if this were the case, if the extension of the Act were needed, Government must incur the requisite expenditure.

23. Having examined the general objections raised by the officers who have reported on the draft Bill, it has now to be determined whether the introduction of the proposed Act will be necessary into any part of the Presidency, and whether in that case a detailed examination of it, section by section, may be undertaken. It will be seen from paragraph 21 above that the circumstances of the Khonds in Ganjam are not dissimilar to those of the people in Bombay for whom legislation was undertaken. The Board (Land Revenue) observes: "The majority of the Board understands that the proposed Act is required in many parts of India, and consequently it will be of advantage to have upon the Statute Book a measure which can be extended by notification to those localities where it is required." It is presumed that if the Act ever comes into force in this Presidency at all, it will do so only in a few backward and exceptional tracts; for, the Board is of opinion that in such localities only is any legislation of this nature ever likely to be required." The Settlement Commissioner also, who strongly objects to the Bill, states: "It is possible that some of the provisions of the proposed enactment might produce beneficial results in exceptional localities like the Agency tracts, where a foreign class of money-lenders is stated to take advantage of the simplicity of the hillmen to drive hard bargains." He questions, however, the necessity for special legislation for the Scheduled districts alone, as reforms in those places could be effected by executive orders. This may be true. These reforms require consideration by the Government before they can be introduced and here is an opportunity given for such consideration. Hence a case has, it is submitted, been made out for examining the draft Bill in detail.

24. Section 1, sub section (3) of the Bill is so framed as to permit of the Act being extended by a notification of the Local Government in whole or in part to any district or part of a district.

This is a convenient provision. One or two sections only may be required in a

Paragraph 3 at page 5 of C. No. 6194.

Page 12, paragraph 7 of C. No. 7397.

Paragraph 9 of C. No. 7397.
Do. 4 of " 6194.

When the act is extended to
these I do not think that particular
classes should be included or
excluded. This would always
have an invidious appearance
& sufficient discretion is given
to the Court to enable them
to deal properly with Soondies,
Pathans & the like.

Here I agree with the note. Jg
The Act itself will have an invidious 19/3/97
appearance to those who are opposed
to the classes which it is designed to protect. I do not
think that on this ground we should reject a suggestion
Act XVII C. No. 170 of 1879.
which will certainly enable the Court to deal with
such cases with more elasticity. I would not trust too much
to the discretion of the Court.

particular tract, and the Bill permits of
these only being introduced. The Board
of Revenue in both the departments sug-
gests that power should be taken to extend
the Act to specified classes of people, or to
exclude certain classes from its benefit.
The instances of Soondies in Jeypore and
of the Pathans in Malkangiri are specially
mentioned. These are stated to lend
money at extortionate rates of interest and
to gradually get the whole of the surround-
ing hill tribes into their power, so much
so that wherever a Soondie settles the
ryots speedily grow poor. The Pathans
also live by usury and are even worse than
the Soondies in their rapacity. This sug-
gestion is good; but it is submitted that
the proper place for inserting it is sec-
tion 2 in which the term "Agriculturist"
is defined. As the Act is intended to
benefit agriculturists, such classes as
should be excluded from the benefit of the
Act should be excluded from the definition
of the term and the Local Government
should be given power to do this by the
insertion of an appropriate proviso.

25. The definition of the term "Agriculturist" in section 2 is taken from the
Dekhan Agriculturists' Relief Act (here-
inafter referred to as the Bombay Act) with
the additions recommended by the Special
Commission at page 31 of their Report.
Agriculture is stated to include pastoral
pursuits, and "Agriculturist" to include a
landholder who earns his livelihood wholly
or principally by agriculture and also an
agricultural labourer.

The Advocate-General points out that
the test of the applicability of the term
defined is source of income, not personal
occupation, and proposes to shorten the
definition as follows:—

"Agriculturist shall be taken to mean a
person whose income is wholly or princi-
pally derived from agriculture carried on
... extend."

It is submitted that the words "who
... earns his livelihood wholly or
principally by agriculture" occurring in
the section are as good as the Advocate-
General's amendment and may be retained.
The words "by himself or by members of
his family, or by his servants or by his
tenants" explain that the earning of liveli-
hood need not be by personal occupation,
and should, it is submitted, be retained, as
otherwise it might be held that personal
occupation in agriculture is essential.
The Advocate-General's amendment may
therefore be negatived.

I think it should not be adopted Jg

19/3/97

Paragraph 23 at page 31 of the Report.

The words "by members of his family or" have been inserted in accordance with the recommendation of the Commission. This addition, it is submitted, is necessary in this Presidency. Otherwise in a family consisting of a father and a son, of whom the latter only is engaged in agriculture, the special provisions of the Act will be held not to apply to the father, however desirable it may be that they should be applied. For, it may be held that the father does not earn his livelihood in one of the ways prescribed.

C. No. 170.

The Advocate-General suggests the omission of the words "or who ordinarily engages personally in agricultural labour within those limits." Such a person is an agriculturist, as he earns his livelihood wholly or principally by agriculture, and the words are therefore redundant. Their insertion is apparently to explain that an agricultural labourer is also an agriculturist. If so, it may be so stated.

*The purpose seems more evident.
I don't think any alteration
is needed.*

C. No. 170.

19/3/97

26. Explanation (a) attached to the first rule in the same section, the Advocate-General thinks, may be omitted altogether. The object of the explanation seems to be to lay down the rule that a person does not cease to be an agriculturist by ceasing to earn or by being prevented from earning his livelihood by agriculture. In other words, the Court has to presume that he intends to retain his status as an agriculturist. This presumption may be rebutted by showing that he had or expressed a contrary intention. The explanation is therefore necessary. The interruption to earning one's livelihood by agriculture should, however, be temporary; and the word "temporarily" has accordingly been inserted.

The Advocate-General asks how the intention is to be ascertained; and what length of time is covered by "temporarily." As pointed out in the preceding sub-paragraph, the intention is to be presumed, so long as a contrary intention does not appear; and the interruption should be for a reasonable time with reference to the circumstances of each case, the reasonableness being determined by the Court.

C. No. 6653

Memorandum, paragraph 3.

Paragraph 5 at page 6 of C. No. 6194.

Paragraph 9 page 13 of C No. 7397.

employed in the army and has accordingly replaced the words "the military service of Her Majesty" by "Government service."

The Board (Land Revenue) is of opinion that to confine the benefit of the Act to persons who need it, and not to extend it to Government servants who can take care of themselves, the words "by his tenants" occurring in rule 1 should be omitted or that the words "without any intention of changing his status as such" in explanation (a) should be transposed so as to govern the second clause referring to persons in Government service. The necessity for either alteration is not clearly made out. It is impossible by a mere definition to exclude from the benefit of the proposed Act every Government servant who is competent to take care of himself. It must be left to the court to decide as each case comes up how far the benefit of the Act should be granted to such persons. The Settlement Commissioner thinks it unnecessary to include in the explanation persons employed either in the military or civil service of Government. If this be done, there is no reason why the servants of trading firms or private individuals should not have the same benefit. He observes that the sepoy or his native officer have relatives to look after their lands and that Chapter XXXII of the Civil Procedure Code and the Circulars of the Local High Court afford them sufficient protection. It is submitted, however, that the amendment carried out by the Government of India may be approved. A number of agriculturists take service in the army or are employed as menial servants in the Civil Department; and the Bill proposes to continue to them the privileges granted to them in their character of agriculturists. They are not better in many cases than those who remain agriculturists and deserve the same treatment. If this view is approved, it is necessary to extend the concession to persons who enter private service as urged by the Settlement Commissioner and also service in Native States as suggested by the Government of India.

Mr. Justice Benson points out that the definition of "Agriculturist" will include the great landlords of Malabar, and that they would thus be given a variety of immunities and privileges of which they stand in no need and to which they can lay no claim. This is true, but the remedy is to except the jenmis of Malabar from the definition by means of a proviso as suggested in paragraph 24 above.

I should draw a distinction between Govt and private services. A man in Govt service is handicapped by inability to obtain leave except according to rule & is practically prevented from throwing up his employment & from going to private service, which may be termed his deferred pension. Indeed, in some cases, men in Govt service are prevented from leaving it at all by statutory provisions of penal consequences. Men in private service are under no such disabilities. I would not include them. If they are to be included, the private service should be out of British India at least outside the province in which their estate is situated. 19/1/97

~~Mr. Justice Benson~~
~~Mr. Justice Benson~~
~~Mr. Justice Benson~~

*See 3 (1), a Jami landowner who had just got a 12 g. can Kanam
for an acre 12 the court might give the Kanamdar as much as he
absurd to give him under the protection afforded by the Act. However,
the Act is certain not to be extended to tracts where there are many
Jamis or Jami-dars, as I have said above, I do not think there is
in any exception of particular classes of agriculturists where the Act is
extended to a specified tract. 19/1/97*

*Why not? The tenantry
may, of course, be
and assumed protection
in that the Jami-dar
is not a landlord.*

Memorandum, paragraph 3.

With the exception has a right
extension as to be given to (a) it seems
the right Advocate-General C. No. 170.

19/1/97
I don't think Sec 2 rule 3 is an-
big one, though the Adv. Gen. thinks
it is. Money is earned by agriculture
when the agriculture is carried on —
no when else.

No harm in
drawing attention to 19/1/97
the possible doubt which may
arise

Memorandum, paragraph 4.

Section 3, clause 3 (v) and (x), of Act XVII
of 1879.

I don't think clause 2 & c need be
extended to cases in which agriculturists
are plaintiffs. It is only when they
are defendants that they need
protection.

19/1/97
I am not so sure. A ryot is as liable
to be defrauded by the bagasman to whom he sells
his produce as he is by the moneylender from whom he borrows
money; and is, as a fact, belated often the so defrauded —
I think these clauses might be extended to suits by an
agriculturist for the recovery of the value of the produce of
his holding sold or paid in liquidation of a loan made
to him.

The Government of India invites special
attention to the definition of "Agricultur-
ist" contained in section 2 of the Bill.
It is submitted that the definition is suit-
able with one or two exceptions as above
shown and that that Government may be
informed accordingly.

27. Section 2, rule 3.—The expression
"where he earns his livelihood by agri-
culture" is ambiguous, as it may mean in
the case of an absentee landlord, the place
where that agriculture is carried on or
where the rents are actually received
by him. This has to be pointed out to the
Government of India.

28. Sections 3 & 4.—Cap. II prescribes
a special procedure for certain classes of
suits to which agriculturists are parties.
The former section enumerates the
classes of suits and the latter declares that
they shall be tried by the ordinary civil
courts (and not by Courts of Small Causes).
An agriculturist will appear as defendant
in suits arising out of (1) simple loans or
(2) mortgage debts. Clauses (b) and (d)
of section 3 relate to these classes. He
will appear as plaintiff when in connection
with the same debts, he wishes to obtain
an account of the money repaid by him
and of that still payable or to redeem his
mortgaged property. Such classes of
suits come under clauses (a) and (e).
Apparently the suits referred to in clause
(c) are simple ones for which the special
procedure prescribed in the chapter is not
fully required. For, the only sections in
that chapter applicable to them appear to
be sections 4 and 5. All the other sec-
tions refer to one or other of the remain-
ing clauses of the section.

The Government of India enquires
whether chapter II should be made appli-
cable to any classes of suits falling under
clause (b) or clause (c) of section 3 in
which the plaintiff is an agriculturist.
The corresponding clauses in section 3 of
the Bombay Act appear to include the
classes of suits under consideration. It
is submitted, however, that they should
be excluded as proposed in the draft Bill.
The only excuse for prescribing a special
procedure on behalf of agriculturists is that
they are too poor and ignorant to take care
of themselves. But an agriculturist, who
is in a position to lend money to another,
has by that very circumstance, proved his
fitness to look after his own interests, and
he may therefore be left to the remedies

provided by the general law. The Settlement Commissioner concurs in this view. But the Board (Land Revenue) and the Advocate-General consider that Chapter II should be made applicable to suits under clause (b) or (c) filed by an agriculturist. Their reports do not, however, contain a reply to the argument against such extension of the Act. The Advocate-General enquires why a special procedure should be laid down with reference to the status of the parties and not with reference to the nature of the debt or liability, i.e., as being connected with agriculture. The reply is that it is intended to help agriculturists as a class in all their dealings with others, and not merely in connection with agriculture.

29. Section 5—Sub-section (1) authorises a wide departure from the course allowed in sections 64, 66 and 67 of the Civil Procedure Code. These sections, while giving power to the court to require the personal appearance of the defendant in any particular case, generally permit him to appear either in person or by a pleader. The present Bill, however, requires his personal attendance in every case. It is urged in support of this provision that a ryot is frequently unable to discern his own interest or understand the nature and consequences of contracts into which he has entered. It is therefore essential that he should be examined in person, so that the court may be in a position to make a full investigation into his case and fix the instalments by which he should pay the sum decreed against him. On the other hand, it is contended that it is a hardship to compel a defendant to appear when he does not wish to do so, that he fails to appear only when he has no defence to make, and that the section enables the creditor to harass his agricultural debtor by dragging him to court when agricultural operations demand his presence on the land. These objections have been considered by the Commission and overruled. They have discovered no tendency on the part of creditors to harass their debtors in the manner stated. On the other hand, it appears that the courts, to some extent, consult the convenience of the defendant in issuing process, and that the compulsory attendance of the defendant has resulted in the establishment of a good defence in a considerable number of cases.

Act XIV of 1882.

Paragraph 32, Commission Report (page 35).

Paragraph 32 at page 24 of the Report.

Paragraph 32 of the Report at page 35.

When the defendant is an agriculturalist needing protection, he should generally be made to appear, but the discretion given to the Court by Sub Sec 3 should be allowed to meet extraordinary cases. As pointed out in Cf. Section 100 of the Civil Procedure Code.

Now, the defendant is (a) & (e) and not the agriculturist & they should be exempted

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Paragraph 7, page 6 of C. No. 6194.
Paragraph 32, Commission Report (page 35).

Memorandum, Paragraph 6.

Report at page marked with tape in Part V, of the Gazette of India Volume for 1895.

C. No. 170.

Memorandum, paragraph 7.

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As the defendant has to appear in person in every case, there can be no objection to requiring the court to examine him as a witness. In this respect also, the Bill differs from section 118 of the Civil Procedure Code, which leaves the examination of the defendant to the option of the court. Hence under the Bill there is no room for *ex parte* decisions.

30. A slight error appears to have crept into sub-section (1) of section 5, as it assumes that the defendant will be an agriculturist in every case. But as an agriculturist may file a suit against his creditor, a money-lender, falling under clause (a) or clause (e) of section 3, the defendant will be the money-lender and it is doubtful whether his personal attendance should be enforced in every case. Whenever the court considers it necessary to examine him, it has power to summon him under the general law (Section 66, Civil Procedure Code).

The section may be amended by replacing the clause "to which this chapter applies" by the words "of the description mentioned in section 3, clauses (b), (c) or (d)."

31. The Commission suggested that the expense of enforcing the attendance of the defendant, when he fails to comply with the summons, should not be thrown on the plaintiff. This suggestion has been accepted and added tentatively as sub-section (2) of section 5 subject to the consideration of the Local Government. The Government of India observes that this suggestion was not adopted by the select committee which dealt with the Bill which has become Act VI of 1895, but no reason for ignoring it is stated in its report. It is submitted that the sub-section as now drafted is fair and that it should be retained as part of the Act. The Board (Land Revenue) agrees; but the Advocate-General considers the provision to be unnecessarily stringent.

32. In sub-section (3) of section 5, discretion is given to the court to dispense with the attendance and examination of the defendant in any case. The Government of India enquires whether this discretion should be retained. At page 35 of their Report, the Commission state that in places where the provisions of the Relief Act are applied, the examination of the defendant is necessary and that there

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should, as far as possible, be no discretion in the matter. With all deference to these remarks, it is submitted that cases may occur in which the personal attendance of the defendant will be perfectly unnecessary, and that some discretion should, therefore, be given to the court to dispense with it. Abuse of the discretion is provided against by requiring the court to record its reasons in writing. The Board (Land Revenue) and the Settlement Commissioner agree.

Paragraph 7, page 6 of C. No. 6194 and paragraph 10, page 13 of C. No. 7397.

Explanation III to section 17.

"May" in line 3 of this section
shd be altered into "shall"

33. Section 6.—Section 17 of the Civil Procedure Code permits the institution of a suit in a court within whose jurisdiction the cause of action arises, and the cause of action in suits arising out of contract may arise at the place where the contract was made. The framers of the first Bombay Act apprehended that the provisions of the Act might be defeated by creditors entering into contracts with agriculturists at places outside the district in which the Act was in force. In such a case, it might be stated that the cause of action arose at the place where the contract was made, i.e., outside the district and by filing a suit in the court which had jurisdiction over that place, the plaintiff might induce the court to decide the case in accordance with the general law. To prevent this result section 11 of the Bombay Act was added requiring that every suit against an agriculturist should be filed in the court within whose jurisdiction he resided. This section appears as section 6 in the present Bill with slight verbal alteration. Reading it with section 2, rule 3, it will be observed that any attempt to defeat the provisions of the Bill in the way apprehended will be frustrated.

34. Section 7.—From sections 102 and 117 of the Civil Procedure Code and from its general tenor it would appear that when a defendant admits the plaintiff's claim on any point, the court should record the admission and raise no issue on that point. When the defendant happens to be an agriculturist, however, the present Bill directs that the court should satisfy itself in the first place that the admission is true and that it was made by the defendant with a full knowledge of his legal rights as against his creditor. Unless this is done and the reasons for its belief are recorded by the court, it has no power to withhold further enquiry into the merits

of the case. When the claim is denied, the court is bound to examine both the plaintiff and the defendant as witnesses, and to enquire into the history and merits of the case from the commencement of the transactions out of which the suit has arisen, whether those transactions took place between the parties themselves or the persons through whom they claim.

35. *Sub-section (2) of section 7.*—In disputed cases, a full enquiry as explained in the preceding paragraph of this note is required by sub-section (4); if, however, the plaintiff's claim is admitted, but doubt is thrown on the validity of the admission, should the enquiry be conducted in the same manner as is now done in disputed cases under the Bombay Act? The Government of India is disposed to leave it to the discretion of the court, merely requiring it to do complete justice between the parties. It is submitted that this view may be accepted. The Board (Land Revenue) and the Settlement Commissioner agree. The Advocate-General has no remarks to offer, except that the words "be bound to" in the section should be omitted.

36. *Sub-section (3) of section 7.*—has been added on the recommendation of the Commission that compromises should be safeguarded in the same way as admissions are.

37. *Sub-section (4) of section 7.*—One of the objects of the enquiry required by this sub-section is to ascertain whether there is any defence to the suit on the ground of fraud, mistake, accident, undue influence or otherwise. In other words, the Bill requires that when a reasonable suspicion is created, as for instance, by the disparity in the intelligence and circumstances of the parties, the court should do for the debtor what the ordinary law leaves him to do for himself.

38. *Section 8.*—proposes to set aside with retrospective effect two classes of agreements between the parties which are valid under the general law. They are (1) agreements to allow compound interest, (2) agreements to set off the profits of mortgaged property in lieu of interest without taking an account. The reason assigned for setting aside the first class of agreements is that the debt is unduly swollen by frequent rests and consolidations of interest with principal. On the other hand, as pointed out by the Commission, if compound interest is prohibited by law, the result will be that the parties will evade the law or that creditors will be forced into court in self-defence, even though they are willing to give their

Memorandum, paragraph 8.

These words are emphatic & should retain them. The language of the Bill is likely to be against the report. It is well to guard against this. This is a very trifling matter.

Paragraph 37, Commission Report (page 37) and paragraph 9 of the Memorandum.

By the way, the Pte. Com. may have in these cases the Court should have discretion to dispense with the exam. of the Pte. & D. of the Bill as in Sec 12 of the Bombay Act. I can't find the passage referred to & think no alteration should be made.

I should be disposed to specify this after fraud &c as a possible ground of defence.

Paragraph 39, Commission Report (page 41.)

Paragraph 39, Commission Report (page 42).

debtors time. Though prompt settlements of accounts should be encouraged in order to prevent accumulation of debt, an unfavourable season at the critical moment may render a prompt settlement impossible. The Commission are therefore of opinion that in certain cases conversions of accumulated interest into principal and also agreements to effect such conversions should be allowed. Rule (d) in the section allows only conversions actually effected, but requires the court to record its reasons for allowing them. The Commission point out that this provision of the law has been misunderstood and recommend that the wording of the section should be improved somewhat as follows: "such conversion shall not be accepted by the court if, for reasons to be recorded by it, it deems the conversion to be unreasonable. In deciding whether the conversion is unreasonable, it shall consider *inter alia* the length of the rests, the rate of interest and the nature of the security." The amendment will, the Board (Land Revenue) considers, make the section clearer. The Board (Land Revenue) states that in some cases future interest for a term of years is added to the money actually advanced, and interest is made chargeable on the total amount after the term expires. This is practically a case of levying compound interest. The attention of the Government of India should be called to this practice.

Paragraph 9, page 6 of C. No. 6194.

*I agree
yes 19/12/97*
It seems to me so obvious a case of levying compound interest that I do not think the attention of the S. of J. need be called to it.
Jg 19/12/97
Resharu in doing so

Commission Report (pages 39 and 40).

39. The reason for setting aside the second class of agreements is that an agreement to take the profits of mortgaged property in lieu of interest usually proceeds on the calculation that the profits will be equivalent to reasonable interest on the loan. Hence, it is argued, there can be no hardship in providing that the approximate estimate of the profits made by the parties shall be set aside, and an actual account taken, reasonable interest being at the same time allowed to the mortgagee. The Commission, however, consider that the effect of the law has been in many places to substitute for usufructuary mortgages, out and out sales of land accompanied by a verbal promise on the part of the vendee to reconvey the property on repayment of the purchase money and that the vendor is generally continued in occupation of the land as tenant-at-will paying interest in the name of rent. They also refer to the difficulty in taking an account owing to the fact that past profits cannot be calculated with

Memorandum, paragraph 10.

Paragraph 9, page 7, of C. No. 6194.
" 10, " 14, " 7394.
and 170.

So do I.

19/3/97

Paragraph 40, Commission Report (page 42).
Paragraph 10 (d) at page 7 of C. No. 6194.

*I think the Ct. should have power to
consider whether the price of goods has been
reasonably stated.*

*No change to be made
in this report.*

19/3/97

See G.O. 6th Dec 1894.

See 2390. Just 1/19/21

*The Adv. Gen. also doubts if the intention
is clearly expressed. I think it is, & that
it is expedient to protect agricultural
into the damp debt doctrine.*

*Yes - with the power given back
at the beginning of the transactions
between the parties, the protection will
probably not be ineffective.*

Yes
19/3/97

Act IV of 1882.

any reasonable degree of accuracy. The Government of India is disposed to agree with the Commission and, if Local Governments are willing, to cut out section 9 and the words "or setting off the profits of mortgaged property without account in lieu of interest" in the second sentence of section 8. The Board in both the Departments and the Advocate-General concur.

40. Subject to the remarks in the two preceding paragraphs, the rules prescribed in section 8 for account taking are reasonable and are favourably reported on by the Commission. The Board (Land Revenue) suggests that in clause (b) of section 8, provision should be made for revision by the Court of the prices of goods sold by the creditor to the debtor; and this recommendation is made on the analogy of clause (f)—*vide* the words enclosed within brackets. In clause (f), provision is made for valuing "profits, service or other advantages," the money value of which cannot be readily stated; but in the case of goods sold, there is no such difficulty.

41. Special reference should be made to rule (g) which requires that so much of the balance on the interest account finally ascertained as is in excess of the balance on the principal account should be foregone. This is what the rule practically enjoins, when it states that double the balance on the principal account shall be deemed to be the amount due. The Advocate-General doubts the expediency of this provision.

42. Section 9—adopted from section 13-A of the Bombay Act provides a solution of the difficulty sometimes felt in taking an account. In cases in which the profits actually received by a mortgagee in possession of the mortgaged property cannot be ascertained, the section authorizes the court to fix a fair rent and charge it to the mortgagee in lieu of profits, allowing an abatement when necessary owing to an entire or serious failure of the crops. This section, as stated in paragraph 39 of the note, will go out if mortgagees are to be allowed to take profits in lieu of interest without having to account for them.

43. Section 10—makes provision for one mode of discharging a mortgage debt without a resort to the sale of the mortgaged property. Under the general law (section 86 of the Transfer of Property

Paragraph 11 of the memorandum.

C. No. 170.

Paragraph 10, page 7 of C. No. 6194.

The words "as last aforesaid" however, make no sense of the Section if Sec. 9 is struck out.

*JH
19/3/97
The wording will in that case, never be altered JH*

Please see Sir Alexander Miller's speech at page 137 of Part VI of the *Gazette of India*, dated 23rd February 1895.

Act) the alternatives are (1) payment of the amount decreed on a day fixed by the court or (2) foreclosure or sale. If, however, the mortgagee is already in possession and the possession is a beneficial one, the debt may be discharged without any sale of the property and without any necessity for the debtor paying any sum in cash by merely continuing the mortgagee in possession for a limited time. In this way he would work the whole debt off and restore possession to the mortgagor without any further claim.

The section contains the words "properly chargeable on the mortgage debt." The Advocate-General enquires what those words mean and what is to be the standard. The reply will be found in section 62 of the Bill which shows the rate of interest to be allowed.

He further enquires what is to happen if the mortgagee declines to remain in possession. The proviso to this section directing that no further suit shall lie for the redemption of the mortgaged property shows that the mortgagee is a consenting party. If not, there are other modes of directing the repayment of the debt.

The Board (Land Revenue) thinks that this section has been inserted with reference to section 9, and that it should be cut out along with it. This view appears to be incorrect. Section 9 related to the calculation of *past profits* under a usufructuary mortgage; but section 10 relates to a *future* arrangement for the repayment of the debt.

The method of discharging a mortgage debt laid down in section 10 was suggested by the Commission at page 41 of the Report, though curiously enough a similar provision already appears in sub-sections (3) and (4) of section 14 which have been taken from the Bombay Act. Again, the Bombay Act drew a distinction between these two sub-sections. Sub-section (3) related to cases in which neither the amount due nor the period for which possession of the mortgagee is to be continued was ascertained at the time of passing the decree. Sub-section (4) on the other hand assumed that the amount due had been determined by taking an account between the parties, and that the period could be specified by the court. This distinction appears to have been overlooked in the drafting of sub-section (3) of the present Bill (*vide* the words

italicised therein). It is a point for consideration whether this distinction should be maintained. It is desirable that when a case comes up before the court, the amount due should be ascertained once for all. If this procedure is to be adopted, section 10 is sufficient and sub-sections (3) and (4) of section 14 may be cut out. The Settlement Commissioner suggests the omission of the proviso to section 10 and states that if the agriculturist be in a position to pay before the expiry of the term specified by the Court, he should be allowed to redeem the property.

44. The Government of India enquires whether the following may be added as sub-section (2) under section 9 of the Bill:—

"(2) When the mortgagor is in possession of the mortgaged property as tenant to the mortgagee, all sums paid by him to the mortgagee or on his account, whether by way of rent or otherwise, shall be treated as payments made on account of the mortgage debt, and shall be credited accordingly in taking the accounts under section 8.

"Provided that if in such case any payments in kind have been made by the mortgagor in pursuance of an agreement to receive the same as rent and the court is unable to determine the value thereof, the court may fix a fair rent for the property and credit the mortgagor with the amount of such rent in respect of such payments in kind as aforesaid.

"Provided further that the court may, if it shall think fit, adopt in its discretion any agreement whereby the rent or profits of the mortgaged property are agreed to be taken in lieu of interest on the mortgage debt, and shall in such case take the accounts under section 8 as from the date of the institution of the suit, and shall disallow all claims in respect of interest accrued prior to such date."

Rule (f) in section 8 appears to provide for the case to be dealt with by the proposed sub-section and the words in brackets therein will render the first proviso unnecessary. If any doubt is felt in the matter, the following explanation may be added under rule (f):—

"Explanation.—Payments made by a mortgagor in possession of the mortgaged property as tenant of the mortgagee whether designated rents or otherwise, are payments to the creditor within the meaning of this rule."

The second proviso suggested by the Government of India will, however, be required if agreements that mortgagees may take the profits of mortgaged property in lieu of interest without having to account for them are not to be set aside.

45. Section 11—contains a provision for arbitration. With regard to a similar provision contained in section 15 of the Bombay Act, the Commission pointed out

I think this will be the best way
Paragraph 10, page 14 of C. No. 7397. 19/3/97

As the Court has ordered the mortgagor to be continued in possession, if he finds the means of paying his debt before that. I think it will be better to let the decree be final.

19/3/97
The Commission is inclined to agree with the two officers named.

This explanation should be added to Rule (f) & the 2nd proviso should (with all the verbiage) be added to Sec 8 as sub-clause (h).

19/3/97

Memorandum, Paragraph 13.

Act XVII of 1887.

W. Clarke
 The Bill, the P. & A. Commission & Admiration
 have all like the provisions about
 arbitration "when all the parties do
 not agree" (Sec 3). I think they will be
 adopted. Admiration as a result of the P. & A.
 Commission which must even when all the
 parties agree (Sec 4 & 2) the same provision
 will be enforced & recover for the Arbitration
 Section of the Civil Procedure Code.
 I do not see. Cf. Section 510 of the Civil Procedure Code.
 I have stopped. I would not change the
 Section at all.

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 19/3/97 W

Paragraph 12, page 7 of C. No. 6194:
 " 10, " 14 of C. No. 7394.

Section 506 of the Civil Procedure Code.

that the section was practically a dead letter, as the courts hesitated to force arbitration on unwilling parties, mainly because trustworthy men who were willing to arbitrate could not be found. They recommended the repeal of the section and the Government of Bombay, being willing, it has been cut out from the Act. The Government of India is, however, desirous of retaining the provision for arbitration, and has adopted for this purpose sections 128 to 135 of the Panjab Land Revenue Code. The point for consideration is whether section 11 as now drafted or the provisions of the Civil Procedure Code should be preferred. Sub-sections (4) to (9) refer to the appointment of arbitrators, and it must be a matter of indifference whether these provisions are adopted or those in the Civil Procedure Code. The rules laid down in the draft Bill, however, appear to be preferable. Each party has to appoint the same number of arbitrators not exceeding two and the court appoints one other arbitrator; so that there will be either three or five persons to arbitrate. The court has power to disallow a nomination and appoints an arbitrator on behalf of the parties only in exceptional cases. Sub-section 10 is similar to section 513 Civil Procedure Code. The most important portions of the section are sub-sections (11) to (14). They provide for the award being presented in person, for the examination of the arbitrators as to the grounds of their award, for the award being modified or rejected by the court and for an appeal from the court's decision. On the first two of these four points, the Civil Procedure Code is silent. It does not allow the court to modify the award except for obvious errors (section 518) and provides for no appeal (section 522). The provisions of the Bill appear calculated to deal with agriculturists' suits in a more satisfactory manner.

46. Sub-sections (1) to (3) of section 11—appear to show that the consent of all the parties should be obtained to a reference to arbitration under the Civil Procedure Code, but that the consent of the debtor alone is sufficient when the provisions of sub-sections (4) to (14) are to be applied. Apparently this distinction is due to the greater power which the section gives to the court in respect of the award and of the arbitrators.

Paragraph 43 of the Report at page 49.

I agree with the Board but, when
there is of the essence of the
contract & the contract is not
inequitable, the court should not
be empowered to pass a decree for
redemption before the time fixed
for payment of the principal, as
an instance of a case where there
is of the essence of a contract,
I may mention the Karam of
Malabar. Vide note on p. 13.

JG
19/3/97

Paragraph 13, page 7 of C. No. 6194.

No doubt this means that, although the mort-
gagee has not been completely discharged, the mortgagor
must be ready to discharge it. This should be made clear. I
think it might also be provided that in such cases
the mortgagor (Plaintiff) must pay into Court with his
plaint the amt. still owing in acct. of with principal &
interest of the mortgage debt. JG

Paragraph 43, Commission Report (page 49).

I find it as difficult to
understand as the Commission
did. No doubt, as the HD says,
the phrase will be amended at
the final drafting. So far as I
can see, it ought to be cut out
altogether.

JG
19/3/97

47. Section 12.—Under the general law—
section 60 of the Transfer of Property
Act—no suit for redemption can be filed
by the mortgagor until the time when
the principal money becomes payable has
expired. Section 12 of the Bill removes
this restriction. The Commission report
that the provision has worked well and
without injustice, as time is probably not
of the essence of the contract in petty
agricultural contracts. It hesitates,
however, to recommend the extension of
this section to agricultural mortgages
generally, as where capital is invested on
a large scale in mortgage security, time
may be of the essence of the contract.
The general scope of the Bill is to help
an agriculturist to get back his land,
whenever the mortgagee has received the
amount of his advance with reasonable
interest, and to set aside the terms of any
agreement which prevent this being done.
The present section has been framed on
this principle. If the mortgagor is in a
position to discharge the debt, it should be
open to him to file a suit, even though he
has bound himself to repay the debt only
on a certain date. Orders are requested
as to whether consideration for the creditor
or for the helplessness of the agriculturist
debtor should prevail. The Board (Land
Revenue) suggests that when time is of
the essence of the contract, and the court
is satisfied that it is so, it may refuse to
pass a decree for redemption before the
expiry of the time fixed.

48. It is but equitable, as explained in
the preceding paragraph, to permit an
agriculturist to file a suit for redemption
when he is ready to pay the full amount
due to the mortgagee. The section appa-
rently proposes to remove the restriction
that he should be so ready. Please see
the words "or on the ground that the
mortgage debt has not been completely
discharged" occurring towards the close
of the section. The Commission do not
understand this part of the section. They
observe "as it stands it appears to be
simply declaratory of the ordinary law—
that a court can decree redemption subject
to a certain payment. The clause can
hardly be supposed to mean
that a court can oust a
mortgagee before the mortgage debt is
paid."

49. Section 13—is based on section 15-
A.A. of the Bombay Act added by section
8 of the Amending Act (VI of 1895). The
effect of this section is thus explained by

Paragraph 137, *Gazette of India*, dated 23rd February 1895.

* Bombay Act.

Sir Alexander Miller: "when a suit is brought for foreclosure or redemption it is in every case the duty of the court to take an account, but at the time when the decree for the account is made ordinarily the decree goes on to direct that the mortgagor shall pay to the mortgagee the amount which shall be found due on taking the account with interest and costs, and that, in default of payment, he should be foreclosed or the property sold. Now, section 8* provides, by a new section, 15-A.A., that in such a case a foreclosure or sale cannot take place until a certain date which shall not be less than six months after the decree, and which will therefore give the mortgagor a reasonable time after the account has been taken, and after the amount which is due from him is known, before he can be foreclosed or his property sold, and gives him a proper opportunity of raising the money and redeeming his property." It is submitted, however, that sections 86, 88 and 92 of the Transfer of Property Act give time to the mortgagor to pay the decree amount. Please see the words "on a day within six months from the date of declaring in court the amount due, to be fixed by the court"—occurring in these sections. The amount due to the mortgagee is either stated in the decree itself or it is declared on a subsequent date, and six months are allowed from the date of the decree or from the date of declaration. The present Bill requires that the court shall fix a reasonable date not less than six months after the date of the decree. The only difference appears to be that a little more time is given under the special law, and it is a question for consideration whether for this small advantage this section should be retained.

50. Sections 14 (1) and (2), 18 and 20. —The principle on which these sections are based is thus stated by the Commission. "A necessary condition to the securing of the proper obedience of orders is that the orders should be in fact capable of fulfilment. If the judgment-debtor is in a position to discharge the debt in a lump sum, he should be made to do so; but, if he has not the means of so paying, it is * * * obviously futile to pass a decree for the immediate realization of the whole sum."

This principle is recognised in section 210, Civil Procedure Code, which states that in all decrees for the payment of

No objection - Besides, it will be an advantage to have this provision in this report.
I think it should be retained.
28
19/3/97

Paragraph 49, Commission Report (Page 50).

money the Court may, for any sufficient reason, order that the amount shall be paid by instalments, with or without interest. The substance of this section is embodied in section 18 (1) with this difference, viz. (1) the rate of interest is fixed at 6 per cent. per annum; and (2) if interest is disallowed, or any other rate of interest is allowed, the Court should record its reasons for its decision. This section of the Civil Procedure Code only deals with decrees for the payment of money, but does not apply to decrees for redemption, foreclosure or sale of mortgaged property. Section 14 (1) deals with these cases. The Commission recommend that the provisions of this section might be made part of the ordinary law, as the Court should have the same discretion to order payment by instalments as in the case of money decrees.

51. The Civil Procedure Code does not give the Court power after the passing of a decree to order payment by instalments except with the consent of the decreeholder. Section 20 removes this defect by dispensing with his consent altogether. It is proposed to give it retrospective effect, as it is only equitable that decrees passed before the Act comes into force should be executed as liberally as those passed since. Clause (b) of section 20 goes further and authorizes the Court to vary the amount of an instalment fixed under clause (a). The reasons for giving this increased power to Courts will appear from the following extract from the Commission's Report (page 51): "The way in which decrees can be satisfied depends on the circumstances of the debtor, and a sufficient change in those circumstances fully justifies an alteration in the terms of the decree. Fixed instalments are only suitable in the case of persons with fixed incomes; but in the case of agriculturists, whose annual income fluctuates from year to year, some power to alter instalments on good cause shown is necessary in the interests of justice. It is clearly out of the question to expect a ryot, whose crops have entirely failed, and whose revenue has had, in consequence, to be remitted or suspended, to be able to satisfy private creditors. On the other hand, the same ryot may in another year have a bumper crop, out of the proceeds of which he may be able to pay more than the instalment due."

Paragraph 44 of the Report at page 49 (regarding section 15-B of the Bombay Act).

Mr. J. do not ask for
any opinion about this
Section 210.

95
19/3/97

I see no objection
to

This is a good thing, I think
to

52. Clause (c) of section 20 is intended to deal with the practice obtaining in the Deccan of annexing a proviso to decrees ordering payment by instalments to the effect that on failure to pay one or more instalments the whole amount due under the decree should be recoverable in one sum. As pointed out by the Commission (page 51), this proviso is totally inconsistent with the principle on which payment by instalments is regulated.

Sections 14 (3) and (4).—These have been referred to in paragraph 43 in connection with section 10. The Advocate-General raises two questions identical with those put by him under section 10, and may be replied to in the same way. His third question whether mortgaged property should be restored even the principal with reasonable ~~though~~ interest be not fully recovered may be answered in the affirmative *vide* the words—the amount payable shall be discharged, &c). The Court is authorized to fix the period so that it may be sufficient to recover the principal with reasonable interest; and it is to be presumed that it will do its work properly.

53. *Section 15*—is based on section 15-C of the Bombay Act. The Commission state that (page 50) there is not much practical utility in retaining this section. "If the mortgagee is entitled to possession under the terms of a valid contract, there seems no sufficient reason for refusing him this relief. If the defendant merely disputes the amount due, the Court must determine the amount under section 12 and the defendant can satisfy the debt by paying it or sue for redemption under the other provisions of the Act." The omission of this section may, therefore, be suggested.

The Advocate-General and the Board (Land Revenue) agree in this recommendation; but the reason assigned by them is that under this section valid contracts would be unnecessarily interfered with and that the discretion of the Judge for the time being would be substituted for the agreement between the parties.

54. *Sections 16 and 17*—enable an agricultural debtor to ascertain the balance of money due by him—the former in respect of mortgage debts and the latter

though

K. J. |
19/3/97

I don't see any harm in retaining this section. It may be useful in certain cases KJ

I think it should be omitted.

J. |
19/3/97

But this is rather the object of legislation of this kind KJ

Paragraph 46, Commission Report (page 50).

for simple debts. There appears to be no such provision in the general law. Under these sections the plaintiff asks for a decree declaring the amount due. But if he can pay the amount of a mortgage debt, it will simplify matters if he can apply to the Court to pass a decree for redemption also. This is accordingly provided in sub-section (3) of section 16. He can know what amount has to be paid only after judgment is pronounced. To give him time to ascertain whether he can raise the money or not, the Court (as suggested by the Commission) should adjourn the case for a reasonable time after judgment is pronounced and before the decree is signed. A clause to this effect has to be added to the sub-section.

55. Section 19.—Sections 376—378 of the Civil Procedure Code provide for the defendant depositing the amount due by him in Court pending the decision of the suit. When a debtor files a suit for account under section 16 or 17, he becomes a plaintiff and cannot, for this reason, take the benefit of the sections in the Civil Procedure Code. This difficulty is removed by section 19, which closely follows the Civil Procedure Code.

With reference to sub-section (2) of this section, the Advocate-General enquires "what will be the legal effect of the withdrawal of the money." The meaning of this question is not understood.

The Advocate-General objects, and it is submitted with reason, to that portion of sub-section (3) which says that no interest shall be allowed on the difference by which the sum deposited falls short of the claim allowed. The words "whether the sum deposited . . . thereof" may be omitted.

56. Sections 21—24 contain special provisions for the execution of decrees against agriculturists. The Government of India desires that they should apply to decrees in all suits against them and not merely in those disposed of under chapter II of the Bill.

57. Section 21—is not found in the Bombay Act. It was proposed by Sir James Lyall, and requires that the decree-holder should either take the moveable property of an agriculturist attached or tendered in execution proceedings at the upset price fixed by the Court, or should

Naturally, that the debt will, so far, be discharged

I do not think it has any meaning

*I don't see why any changes should be made
If the debtor says he owes Rs 50
+ the Plff deposits Rs 30 in Court
declaring this is all that is due why not
admit he all owes on that Rs 30?*

Memorandum, paragraph 16.

(Scapye 26 about Sec 20)

Memorandum, paragraph 17.

Limit 30 - If interest is to be allowed, it is to be on the Rs 20 difference, if ultimately found to be due. The intention of course is to compel the debt to draw the money deposited at once but to allow him any interest on account of his own losses in declining to do so

*As the section stands, I don't see
how it could be worked - But I
would omit it* *KW*

Section 18 paragraph 8, of C. No. 6194.

Paragraph 11, page 14 of C. No. 7397.

*I don't like this section. The Court is
being worked all through the Act in a
very usual (and some may say undesirable)
manner to protect the agriculturists, it will
be much better, in my opinion, to follow the*

Statement of Objects and Reasons, page 102,
Gazette of India, dated 31st March 1894.

*usual rule of refusing to recognize transactions
conducted otherwise than through the Court. If
they are allowed to be recognized, disputes will
be sure to arise, in certain* *KW*

forego the portion of the decree amount equal to the difference between the upset price and the price realized by sale. It is submitted that this is a very unjust proposal and that its omission should be recommended. If the upset price fixed by the Court is not bid at auction, it is clear that there is combination among the bidders or that the upset price has been fixed high. In either case there is no reason why the decree-holder should be made to suffer. The Board (Land Revenue) admits that this is a dangerous section; but considers that it might prove valuable when prices of cattle or other property are unduly low owing to a threatened famine. It accordingly proposes to bring this provision into force only in such cases. It may be asked what the creditor can do in such cases and whether he should be made to lose for the sake of the Agriculturists. The Settlement Commissioner would strike out the section.

58. Section 22—is based on section 71 of the Bombay Act added by the amending Act VI of 1895. Section 258 of the Civil Procedure Code states that no payment by the judgment-debtor made out of Court shall be recognized as a payment of the decree unless the payment has been certified. Section 22 of the Bill proposes to remove this restriction. If the decree-holder does not certify the payment, it is the judgment-debtor who will suffer, and he is generally ignorant of his legal rights.

59. Sections 23 and 24—contain very important provisions for the relief of agriculturists. After the passing of the Act they cannot be arrested or imprisoned in execution of a decree, nor can their immoveable property be attached or sold unless it was specifically mortgaged for the repayment of the debt. The necessity for the relief provided by section 23 is that the general law is insufficient for the protection of that portion of the judgment-debtor's property which is exempted by section 266, Civil Procedure Code, from attachment and sale in execution of a decree. The property thus exempted may in some cases be sufficient to discharge the decree and this circumstance may induce Civil Courts to grant an application for the arrest and imprisonment of the judgment-debtor or to continue his retention

Paragraph 50, Commission Report (page 52).

Page 14 of C. No. 7397.
Paragraph 19, page 8 of C. No. 6194.

Sec 23 shd be struck out, but
the general law shd be amended
RS JS
19/3/97

The balance of evidence is in
favour of letting the clause stand as
it is exempting from sale immovable
property not specifically pledged. The
exemption shd not be extended to
land specifically pledged unless the
general law made is altered so as to make
prohibit alienation of land
altogether. The question whether the
shd be done is under consideration
RS

Paragraph 51, Commission Report (page 53).
19/3/97

I can't say I like the section. It is a step in
the direction of prohibiting the alienation of
land altogether. But alienation may be the case
Paragraph 20, Page 8 of C. No. 6194.
Paragraph 20, Page 15 of 7397.

elsewhere, as to which I express no opinion. The
high prohibition seems to me advisable in this
Res 7 RS

in custody if he has been arrested, and in this manner to deprive him of the benefit provided by section 337-A, Civil Procedure Code. In other words, the power of imprisoning debtors may be used to compel them to give up property specially exempted from attachment and sale. This defect can be remedied by amending the general law to the effect that the possession of property expressly exempt from attachment and sale shall not of itself justify a Court in holding that a debtor is able to pay the amount decreed, and in sentencing him to imprisonment for default. The Board in both the departments are opposed to the retention of this section. The power of arrest and imprisonment is a valuable remedy for creditors in the case of personal debts. If the debtor has property other than that exempted from attachment and sale and can therefore pay, but will not, he deserves no sympathy. If he cannot pay, the power of arrest will rarely be put in force by the creditors. The Commission are in favour of the retention of the section in the Deccan, as otherwise the improvement which the Act has effected in the material and moral condition of agriculturists might be affected.

60. Sub-section (1) of section 24.—The exemption of immovable property from attachment and sale in execution of a decree is justified on the ground that the rate of interest usually charged on secured debt is generally lower than that charged on unsecured debt; that "no sensible person would borrow money on a bond at 24 per cent. or more when he could borrow on a mortgage at 12 per cent. unless he thought that the higher rate of interest saved him from liability to lose his land;" and that "to make land liable for debts not specifically charged upon it is to import a liability which was not contemplated by the parties." It is conceded that the effect of this section has been to extend mortgage debt in the Deccan, but the Commission observe that the extension has been chiefly confined to men of bad or doubtful credit and that it has not entailed any increase in indebtedness, the only change being in the character of the debt, which places the debtor and creditor on practically the same footing as they were on under the ordinary law. The Settlement Commissioner welcomes the change, but the Board (Land Revenue) is opposed to it on the ground that the agriculturist will be forced to contract permanent debts secured on his land. It is of opinion that the Commission has not made out a case. It will be

observed that the Board has not grasped the distinction drawn by the Commission between secured and unsecured debt or the fact that the sale of land for a debt not secured thereon imports a liability not contemplated by the parties.

61. Section 24—treats standing crops as moveable property so as to admit of their being attached or sold in execution of a money decree. It is, however, necessary to restrict the power of doing this to some extent. The Commission observe: "The object of exempting land from attachment and sale in execution of money decrees was to secure to the ryot, as far as possible, a means of subsistence. The land, however, is only of use to the ryot in so far as it enables him to grow crops on it. If then all the crops are attached and sold, the land becomes practically valueless to the ryot, and it is essential that some return must be preserved to him if the land is to be tilled at all." In accordance with this principle two alternative provisos are added, and the Government of India inquires which of them is preferable. One of them proposes that one half of the standing crop shall be left to the agriculturist, while the other saves only so much of it as is required for seed-grain and for the subsistence until next harvest of the agriculturist, his family, and his cattle. The latter alternative is unworkable in the case of small holdings, as all the produce might not suffice to support the ryot and pay his revenue. In such cases there would be no surplus from which the creditor could recover. In the case of big holdings, the former alternative, by leaving to the ryot more than he is entitled to, might work unfairly to the creditor. But, as pointed out by the Commission, the decree can be more easily executed in other ways when the debtors are large holders. It is submitted, therefore, that the proviso on the left-hand side of the Bill exempting half the standing crops from attachment may be approved. This course is approved by the Board (Land Revenue) and also by the Settlement Commissioner. The latter will grasp for the benefit of the creditor, the surplus, if any, of the half left to the debtor after satisfying his needs.

62. Sub-section (2) of section 24—provides a mode of executing a money decree without resorting to the sale of the immoveable property of the judgment-debtor, and this is to leave it under the Collector's management for a period not exceeding seven years. To save the judgment-debtor from starvation, it is provided that so much of the property as is required

Paragraph 52, Commission Report (page 54).

I don't approve the better of the proposed restrictions—Assuming the land to have some value in itself (which is necessary basis of discussion, for if it has no value, why take so much trouble to preserve it to the agriculturist?), the ryot system certainly maintains himself until next harvest & pay his rent or even

Memorandum, paragraph 18.

though the current year's crops are sold. The ryot is in my opinion quite sufficiently secured by the rules as to payment in instalments.

BS

Paragraph 52, Commission Report (page 55).

Yes, but I agree with a deduction of 1/2 of the standing crop is more than what is sufficient to meet the necessary expenses of the debtor, the demands of the landlord, the surplus should be liable to attachment & sale.

Paragraph 21, page 8 of C. No. 6194.
Do, 11, " 15 of C. No. 7394.

9.

19/3/97

This section (24(2)) could never be worked in this Presy. I think it essential that there should be a power reserved to go to smaller rules as to the classes of cases in which it shall be compulsory on the Collector to carry out the Collector's management.

BS

Chapter IV

Paragraph 54 at page 57 of the Report.

Memorandum, paragraph 19.

I think, for the reasons given by the Commission, the retention of a special insolvency procedure in the Relief Act is necessary. The (L.R.) clause it might be struck out Paragraph 22, page 9 of C. No. 6194 and Do. 12, " 15 of C. No. 7397. not because it will do any harm but because it is not likely to be resorted to.

I don't think this a good reason - As to the argument that the power to declare himself insolvent will impair the credit of agriculturists, the whole principle of the Insolvency Law is that a man who is in the good of the community that a man who is in an embarrassed state shall be able to clear himself and make a fresh start. This argument seems to be applied by agriculturists as well as to other classes. Section 26 is in the ordinary principle that a man may declare himself insolvent, even though not indebted. It is to be much a reality of it will give the District Court more than enough to do.

Paragraph 54, Commission Report (page 58).

for his support and the support of his family should be left in his possession. This clause has been practically a dead letter in the Deccan (where many of the holdings are small) owing mainly to the surplus above what was required for the ryots' support being nil.

63. Sections 25-33—modify the insolvency procedure contained in the Civil Procedure Code in some respects. Similar provisions in the Bombay Act have remained practically inoperative, but the Commission consider that they should be retained. The Government of India has drafted these sections on the lines suggested by the Commission and invite special attention to them. The first of these sections is introductory and states that the powers conferred by sections 344 to 359, Civil Procedure Code, shall be exercised subject to the provisions of chapter IV of the Bill. The Board (Land Revenue) thinks that these provisions will not be resorted to in this Presidency any more than in the Deccan and the settlement Commissioner that they will impair the credit of agriculturists.

64. Section 26.—Section 344, Civil Procedure Code, requires as a preliminary to an application to be declared an insolvent being filed that the judgment-debtor has been arrested or imprisoned or that his property has been attached in execution of a decree for money. But under the operation of sections 23 and 24 of the Bill, neither condition may be found in the case of many agriculturists, who may nevertheless be deeply involved in debts and wish to be placed on a sound footing. Section 26 has been devised in order to help this class of debtors.

65. Section 27.—Clause (c) of section 351, Civil Procedure Code, requires the applicant to satisfy the Court that he has not recklessly contracted debts or given an unfair preference to any of his creditors. Section 27 of the Bill proposes to remove this restriction. The Commission doubt the advisability of retaining the corresponding section in the Bombay Act, but observe that the doctrine of unfair preference is probably beyond the intelligence of Deccan ryots, who naturally seek to relieve themselves of the importunity of those creditors who put most pressure upon them.

66. Section 28—proposes to save the applicant the commission which would be deducted from the available assets under section 356, Civil Procedure Code, and this saving is to be effected by appointing the Court Nazir as the Receiver.

67. Section 29—contains an important provision. The provisions of sections 7 and 8 of the Bill apply only to the *suits* against agriculturists specified in section 3. In inquiries which follow the filing of an application to be declared an insolvent therefore, the procedure prescribed in those sections will not of necessity be applied unless there is a special direction of law that it should be. This direction is given in section 29.

68. Section 30.—Under the general law—section 354, Civil Procedure Code—all the properties of the insolvent vest in the Receiver including his immoveable property, whereas, if he had not filed the application, his immoveable property would have been safe under section 24 of the Bill. His position under chapter IV of the Bill would thus be much worse off than if he were an ordinary judgment-debtor. This result is obviated by excluding immoveable property from properties vesting in the Receiver.

69. In order to prevent creditors from being injuriously affected by such exclusion the produce of such immoveable property is made available by authorizing the Court to put the property under the Collector's management for a period not exceeding seven years. The first proviso to sub-section (1) is based on a recommendation of the Commission at page 58 of their Report. The remaining portions of this section appear to be suitable.

70. Section 31 prescribes three modes by which a scheduled debt secured by a mortgage of the insolvent's immoveable property may be discharged—

(1) by continuing the scheduled creditor in possession of the property if such possession is beneficial to the insolvent;

(2) by directing the Collector to let it on lease for a term not exceeding twenty years; and

(3) in the last resort by selling so much of it as may be sufficient to satisfy the scheduled debt.

Sub-section (1), clause (a), requires the consent of the insolvent to be taken for continuing the mortgagee in possession. The Advocate-General enquires why this is necessary. Apparently, as he is the person to be benefited, his consent is to be taken. The point may be brought to the notice of the Government of India. The remaining remarks of the Advocate-General under this section have been noticed already in paragraph 43 above.

I understand this to mean that the Court is not to ascertain the annual net profits to, unless the insolvent, thinking that this will be advantageous to him, asks it to do so. I don't think we need say anything about the matter to India.

28
19/12/97

I don't see why the insolvent's consent should be needed. If a man goes into the Ch. as an insolvent, it is for the Ch. to judge what is best to do with his property.

Sub-sections (3) and (4) direct how the premium and rent if the land is leased and the sale-proceeds if it is sold should be disposed of. It will be noticed that preference is given to the secured debt over an ordinary debt, and this is in accordance with the policy underlying section 24 of the Bill (*vide* also paragraph 60 of this note). It will be observed also that for the benefit of persons whose debts are not secured, the rents are to be paid to the Receiver for a period of seven years only as in section 24 of the Bill.

71. Section 32.—As the immoveable property of an insolvent does not vest in the Receiver, he may transfer it to others by sale, mortgage or lease and thus defraud his creditors. This section has been drafted to prevent this result. The next section does not call for any special remarks. On the whole, the provisions of chapter IV appear to have been carefully drafted and are suitable.

72. Sections 34 to 45—deal with conciliation. They have been framed with a twofold object—(1) to give some relief to Courts by inducing the parties to a dispute to come to an agreement among themselves and (2) to arrange for the disputes being decided quickly and cheaply by means of an unofficial agency which can be trusted to inquire sufficiently into the merits of each case, to act honestly and to decide sensibly. The following is the substance of these sections, which have been copied from the Bombay Act. The conciliator is appointed by the Local Government for a term not exceeding three years in view to his dealing with matters affecting agriculturists. His functions in a case begin on the application of a party to a dispute (section 36). He takes down a statement of the applicant's case and invites the other party to attend before him on a particular date, requiring also the applicant to be present at the time. If he is empowered by Government, he may direct the defendant to appear. The difference between these modes of summoning the defendant is that in the latter case, the defendant will, when he makes default, be liable to be punished under section 174, Indian Penal Code (section 36). When the parties are brought together, the conciliator hears each party in turn, and also their witnesses, peruses the documents produced by them, and uses his best endeavours to induce

Chapter IV

28
1913/19

Generally speaking, I don't believe that this chapter could be worked in this Bill, I should say so. I don't of course mean that in no village in the Presidency could a competent & trustworthy person be found to act as Conciliator, but I feel sure that they would be so few in number that it would be useless to legislate on the basis of their existence. NB

the parties to arrive at an amicable settlement or refer their dispute to arbitration (sections 37 and 38). If the parties agree, the agreement is reduced to writing, is read over and explained to them, and is then signed by them and by the conciliator (section 39). If the agreement finally disposes of the matter in dispute, it is forwarded to the Court, where, after scrutiny and such inquiry as the Court may consider fit, it is filed taking effect as if it were a decree of the Court. The Court may refuse to file the agreement if it is not a legal or equitable agreement, or if it does not finally dispose of the matter, or if it was made with the object of defrauding Government of revenue under the Stamp and Registration laws (section 40). If the agreement is for referring the matter to arbitration, the Court shall file it and refer the dispute to arbitration (section 41). In cases in which the agreement is returned to the conciliator without being filed in Court, and in cases in which no agreement can be arrived at for any cause, the conciliator gives the applicant a certificate as his authority for filing a suit (section 40, clause 4). To induce parties to a dispute to apply for the conciliator's help, it is provided that no suit and no application for the execution of a decree shall be filed without this certificate (section 43).

73. The Special Commission are unable to state whether the system of unofficial conciliation prescribed by the Act has produced the results anticipated, and are opposed to its retention in its present shape. The objections to the system are:

(1) that the conciliator has no power to summon witnesses to give evidence and produce documents. He has therefore to hear only such evidence oral and documentary as the parties may choose to produce;

(2) he has no power to require a witness or party to take an oath unless he consents to do so in writing;

(3) he cannot reject an agreement, however illegal, unfair or unreasonable it may be. But a more serious objection to the system is the difficulty and in some places the impossibility of finding proper persons to discharge the functions of a conciliator.

The Commission recommend that the system should be given a further trial, and that the law should be amended in the following particulars:—

(1) the conciliator should have power to refuse to record an agreement which he may consider unreasonable;

Paragraph 56 at page 60 of the Report.

Paragraph 56 at page 61 of the Report.

(2) when he records an agreement, he should draw up a memorandum of the facts as stated by the parties;

(3) the agreement should not be filed in Court or have the effect of decrees;

(4) the parties should be empowered to file suits on the agreement as on ordinary agreements; and

(5) the memorandum drawn up by the conciliator should be deemed by the Court *prima facie* evidence of the statements made by the parties to him.

In any case, the Commission consider that conciliation should be provided for by a Special Act, as it has no special connection with the relief of agricultural indebtedness. The Advocate-General considers the above provisions to be practically useless. The Board of Revenue (Land Revenue) believes that they would work well in certain parts of the Northern circars and will therefore retain the chapter as part of the proposed Act. This is also the view expressed by Mr. Weir, who states "chapter V regarding conciliation would, I think, be useful even now. The conciliator can interfere before any suit is filed when a dispute arises or there is a prospect of litigation. The Headmen, patros, bessoyis, molikos, or gomangos might be appointed conciliators."

74. Section 34, sub-section (1)—authorises the appointment as conciliator of any person *other than* an officer of Police. The Government of India observes that a Police Patel in Bombay is not debarred from appointment as a conciliator on the ground of his being an officer of Police and enquires whether there are any village officers in this part of India who might be regarded as Police officers, but who might nevertheless be appointed conciliators. The head of the village in this Presidency is a Magistrate and not a Police officer.

75. Section 39.—The Advocate-General enquires by whom the agreement should be reduced to writing. This chapter imposes much clerical work, as the taking down of depositions, the issue of notices, the grant of certificates, &c., but provision will be made therefor by rules under section 45, clause (b). The suggestion of the Advocate-General that provision should be made for the agreement being duly stamped and registered, and as to the person by whom the stamp and registration fee should be paid will, it is presumed, be met by rules under section 45, clause (a).

C. No. 170.
Paragraph 23, page 9 of C. No. 6194.

C. No. 3616.

Memorandum, paragraph 21.

done
28/11
19/1/97

28/11
19/1/97

I suppose he means that the Court
not having evidence before it is
not in possession of the matter
to exercise an opinion; but still
a good opinion may be formed without
that.

12/12/97
Memorandum, paragraph 22.

Board (Land Revenue), paragraph 25, page 9
of C. 6194.
C. No. 170.

There is no valid objection
to its having retrospective
effect

12/12/97

Board (Land Revenue), paragraph 26, page 9
of C. No. 6194.

I agree. The parts of Sec 46 & 47
which refer to Conciliators should be placed
in Chap V, & Sub Sec C of Sec 47
should be struck out. The parts of Sec
46 which does not refer to Conciliators
& Sec 47 should contribute the Chapter

It seems to me more convenient
to deal with all questions of Subordinate
Courts in the same Chapter. The
provisions of S. 27 of Act of 1873 may not exist in this
Provinces - I don't see any objection to S. 47(c)

I agree with the Board (L.R.) & the
Adv. Gen. that the Chapter may be
omitted. The Adv. Gen. urges that
Sub-Registrars are not lawyers & may
not use correct legal phraseology &
that if the agriculturists can get
their documents written by them
for nothing they will not go elsewhere.
He decides this, but there are the objections
noted by the Comm. vide page 34

Fully concur

76. Section 40 (2).—The Advocate-General enquires how the Court should decide that an agreement is legal and equitable. His difficulty is not understood.

77. Section 43.—In section 47 of the Bombay Act corresponding to this section an explanation is added that the expression "Civil Court" does not include a Mamlatdar's Court. The Government of India enquires whether a similar explanation is needed in the Bill. As the term "Civil Court" has not been defined in the Bill or in the General Clauses Act, or in any other enactment so far as is known so as to include a Tahsildar, no explanation such as that given in the Bombay Act is required. The Advocate-General suggests that retrospective effect should not be given to this section; but does not explain why.

Chapter VII
78. Sections 46 to 48—provide for the superintendence of Subordinate Courts. The portions of these sections which relate to superintendence of the work done by conciliators should, it is submitted, be dealt with in chapter V treating of conciliation. The remaining portions of section 46 and of clauses (a) and (b) of section 47 will become superfluous as the powers given by them are already conferred by section 27 of the Madras Civil Courts Act (III of 1873) and section 25 of the Civil Procedure Code, respectively. It is doubtful whether clause (c) of section 47 should be retained. A case which requires the District Judge to sit together with a Subordinate Court as a Bench can hardly be conceived. Section 48 empowering the Local Government to appoint a Sub-judge to aid the District Judge may be retained, as it may in some cases be necessary to provide such help.

Chapter VIII
79. Sections 49 to 52—provide for agriculturists executing certain classes of instruments before the Sub-Registrar. The first of the sections states that the agriculturist shall appear before the Sub-Registrar, who shall then write the instrument or cause it to be written under his superintendence, then read it aloud in his hearing, require him to execute it in his presence and himself attest it. To carry out these directions, it is necessary that the executant should appear in person before the Sub-Registrar and that he should be excused only in exceptional circumstances. This is provided for in sub-section (3) of the same section. The next two sections require the Sub-Registrar (1) to state fully the amount and nature of the consideration; (2) to record whether the transfer of the consideration or of any part

thereof took place in his presence; and (3) to describe any previous agreement which is modified or wholly or partly superseded and mark it under his hand for identification. The last section states that in the event of these provisions not being complied with the new instrument shall not be received in evidence.

The following is the opinion of the Commission upon similar provisions *re* registration by *village* Registrars contained in the Bombay Act: "The system of registration provided by the Act practically prevents the forgery of bonds and the repudiation of duly executed bonds by debtors." On the other hand "where a registrar is conscientious, and explains the terms of the documents to the people, his efforts appear to be appreciated by intelligent ryots; but where he is lazy or corrupt, the trouble and expense must be very serious. To any one acquainted with the average Deccan ryot, and his apparently absolute inability to remember or understand anything unless surrounded and continually prompted by his friends, there is considerable force in the objection made by the people of Kusegaon that, 'it is a bad system because the ryot goes off alone with the money-lender to a strange village, and gets confused'. Again 'registration affords no security as to the payment or the nature of the alleged consideration. The evidence shows conclusively, what was generally believed before, that the bulk of the people treat the recital in a bond, or a statement to a registrar as to the receipt and nature of the consideration, as a mere matter of form. So far is this carried that money is sometimes passed before the Registrar only to be returned outside the office. In this respect registration is positively harmful to the debtor, as it raises a strong presumption against him when he disputes the nature or the payment of the consideration.' On the whole, the Commission consider that the objections to the system—the trouble and expense to the parties, especially in the case of small bonds, the doubtful character of much of the agency, and the untrustworthiness of much of the evidence which the system affords—outweigh its advantages. As sections 7 and 8 of the Bill, if properly worked, will give ample relief to the agriculturist, viz., by enabling the Court to ascertain whether there is any defence to a suit on the ground of fraud, &c., and also by

Paragraph 60, Commission Report (page 63).

Paragraph 60, Commission Report (page 64).

Paragraph 60, Commission Report (page 64).

C. No. 170, paragraph 27, page 9 of C. No. 6194.

Chapter VIII

I agree with Mr. Weir that the Section as it stands is extremely mischievous in case a person is an agriculturist and always lies to the effect that he had not tendered a receipt, & had paid any money he likes to mention. It is suggested that he might be compelled to give a written acknowledgment of the receipt that I have had this and on office. The last clause of Paragraph 26 of the Memorandum should be struck out.

Yes *KS* 19/3/97

Board (Land Revenue), paragraph 28, page 9, of C. No. 6194.
Settlement Commissioner, paragraph 14, page 15, of C. No. 7397.
Mr. Weir, C. No. 3616.

KS 19/3/97

setting aside inequitable contracts, there is no reason why anything further should be done for him. The omission of chapter VII is therefore suggested by the Advocate-General and the Board (Land Revenue).

80. Section 53—requires a person receiving payment of money from an agriculturist in liquidation of a debt to tender a duly stamped receipt, and section 56 proposes to fine him up to Rs. 100 for not doing so. Similar provisions are contained in sections 58 and 64 of the Indian Stamp Act (I of 1879), but they relate to payments exceeding Rs. 20 and the person who pays the money has to demand a receipt. The provisions of sections 53 and 56 may perhaps be retained, but it is submitted that the penalty added at the end of the former section is unreasonable. If the agriculturist's word should prevail, there is nothing to prevent him from making away with the receipt furnished and alleging that he paid a larger amount than he actually did. In any case, it will be necessary for the money-lender on the passing of this section in its present form to insist on payment being made to him in the presence of third parties so that he may have evidence ready of his having tendered a receipt.

81. The remaining sections of chapter VIII (sections 54—58) may be approved. They provide for annual statements of accounts and pass-books being furnished to agriculturist debtors and a penalty for neglect or refusal to do so. They also empower the Local Government to prescribe the "form, language and character" in which day-books and ledgers shall be kept by bankers and professional money-lenders and declare that no other books of account shall be deemed to be "books of account regularly kept in the course of business" within the meaning of section 34 of the Indian Evidence Act. Please see in this connection paragraph 13 of Mr. Nicholson's letter printed at page 9 of G.O., No. 2670, dated 6th November 1894. The last section (section 58) remits the stamp-duty chargeable on acknowledgment of debts by the creditors signing the balance struck in bankers' accounts. The Settlement Commissioner suggests that the provision in regard to the form of day-books and ledgers should also be made applicable to suits falling outside the scope of the proposed Act. The Advocate-General suggests that the agriculturist

Yes, they are all good //
KA 29
19/3/97

I appear of 53 59 (1) & (2) & Sec
60, but not of 59 (3). The ordinary
from agriculturists will not go into
Court unless he puts a vakil
to go with him, and it is much more
likely that the Court will calculate
the extra charge for a vakil
as a cost than the vakil himself.

I think would leave these two
sections as they stand with the same
modification. I think it may often
be found to

Memorandum, paragraph 29.
hope the agriculturist that he should be allowed a
pleader & I would then make 59(3) and pro-
vide subject to the permission of the Court which will
judge from seeing the parties, whether a pleader should
be allowed or not.

Paragraph 30, page 9, of C. No. 6914.
" 15, " 16, " " 7397.

C. No. 170.

should be prohibited from making any
entry in the pass-book. These sugges-
tions may be approved. Chapter IX

82. Sections 59 and 60—prohibit the
appearance of Vakils, by whatever desig-
nation they are known, before (1) concilia-
tors; (2) Sub-Judges and Munsifs trying
suits under the Bill of the value of less
than Rs. 100.

Apparently, they may appear when the
value is Rs. 100 and upwards. But in
suits tried by a Munsif no Vakils' fees are
to be awarded as costs. If a money-lender
is allowed to employ professional assist-
ance, the agriculturist debtor will be
compelled to do likewise in order that he
may not be placed at a serious disadvan-
tage. The object is therefore to take
away this power from the former. It is
doubted whether this provision, instead of
helping the agriculturist, will not place
him at a serious disadvantage outweighing
the objection indicated above, and the
Government of India accordingly invites
the opinion of the Local Government on
this point. The provisions in section 59
of the Bill are similar to the recommend-
ation recently made by the Board in
connection with the Madras Hereditary
Village Offices Act (III of 1895). (*Vide*
Board's Proceedings, No. 68, dated 20th
February 1896, paragraph 3, and G.O.,
No. 402, dated 11th August 1896).
The Board (Land Revenue) considers that
pleaders must be allowed to appear except
before conciliators and that fees may not be
awarded as costs in petty suits. The above
will not however secure the object in
view. For, Vakils will recover their fees
in any case and the refusal to allow the
fees as costs will only swell the necessary
expenses generally incurred by litigants,
but not decreed by courts as costs. The
Settlement Commissioner would leave
section 59 as it stands. In cases going
before conciliators, the arguments of
Vakils will only embarrass them and Sub-
Judges and Munsifs have to take special
care of the interests of agriculturists.
He concludes therefore that Vakils are
not needed in either case. Section 60
providing gratuitous professional assist-
ance to an agriculturist when his opponent
appears by Vakils is a useful piece of pater-
nal legislation. The Advocate-General
points out that this provision will not
work, as Vakils except the Government
Pleader will decline to interfere; if they

are to be paid, he enquires how the funds will be found if the agriculturist is unsuccessful. The attention of the Advocate-General has apparently not been drawn to the words "who is willing to do so" in section 60. It is unlikely that no one will be found to appear for a poor agriculturist if the Court desires him to do so.

83. Section 61—requires all mortgages of immoveable property and all liens or charges thereon to be created by a written instrument when the property belongs to an agriculturist. A proposal to this effect was made to the Government of India so far as related to mortgages (vide paragraph 8 (2) of G.O., No. 1020, dated 5th October 1892). The Government of India is disposed to encourage unwritten contracts by agriculturists if accompanied by delivery of possession, and has accordingly inserted an alternative, viz., that the creation of the mortgage, lien or charge should be notified to a Revenue officer, &c.

84. Section 62.—The corresponding section in the Bombay Act originally appeared in chapter III and was numbered as 14, but has been transferred to the last chapter so as to be of wider application. The same procedure is followed in the Bill also. The section states that the rate of interest agreed upon between the parties should be awarded, if reasonable, and that the Court should fix a rate if the one agreed upon is unreasonable or if no rate was fixed.

85. Section 63.—The first portion of this section reiterates the exemption contained in sections 24 and 30 in favour of the judgment-debtor or insolvent of a portion of his immoveable property from being placed under the Collector's management, and the second portion states that while this exemption continues, agricultural produce grown on that land shall also be exempt.

86. Attention is now solicited to certain questions referred to in paragraphs 4 to 11 of the Government of India letter which require to be considered. The first of these is, whether the principle of section 24 of the Bill declaring that immoveable property, not specially pledged for a debt, shall not be attached and sold in execution of a decree for that debt, should not be made of general application. Please see paragraph 60 of this note for the *pro*

Chapter X

*I approve of his action -
as done to Road (R.R.)*

*I don't see any harm in
it. It is, in fact, in part a
move towards Sir C. Buckle's
idea of a separate written documents system
in the first book. J.R.*

*app. and
19/3/97*

*app. and
19/3/97*

*As I have said above at
page 30 I do not think it
advisable to expect a
very high rate of interest to be allowed
if it is not to be a
Government of India letter, paragraph 4.*

*See p. 30
J.R.*

and *cons* of the question. The Board (Land Revenue) opposes this proposal on the ground that it will seriously injure the credit of borrowers and force them to contract permanent mortgage debts. The Honourable Mr. Crole concurs—paragraph 2, page 5, and Minute at page 10 of Current No. 6194.

Government of India letter, paragraph 4.

I think not. V. 12/3/97

87. The second question is, whether in the case of agriculturists the sale of even property specifically pledged may not be prohibited. It is pointed out that under the Bill [sections 10, 14 (3) and (4)] the Courts have discretion to provide for the discharge of mortgage debts without the sale of the property. But this is to be done only when the debt can be so discharged. Otherwise, the power of sale should be retained if agriculturists are to be permitted to borrow. The Honourable Mr. Crole characterises this proposal as wholesale confiscation of property and the Board (Land Revenue) and the Settlement Commissioner also object. The latter observes "it is in the nature of things that land should change hands, and that to obstruct alienation would often be to prevent a good and careful agriculturist from developing his energies." On the other hand Mr. Weir is in favour of it. In any case, the consideration of this question should be deferred till the larger question of restricting transfers of land is taken up. Whatever may be the ultimate decision on this point to introduce this rule with retrospective effect would be unjust.

Government of India letter, paragraph 8.

88. In paragraph 62 of their Report the Commission make the following recommendations:—

(1) that a period of three years is sufficient limitation for simple money or shop debts;

(2) and that the period for suits on bonds or on account stated should be extended to six years. The Government of India invites the opinion of the Local Government on these suggestions. The argument in favour of a short period of limitation is that it compels the creditor to give the debtor a statement of his account, and that so far from this being an evil, it would be the very best thing possible for the debtor. On the other hand, it is urged that a short period leads to renewals of bonds at enhanced amounts and the rapid accumulation of debt. The Commission are of opinion that simple money or shop debts being generally of

small amount may be paid off in three years without difficulty. The period prescribed in the General Law (Act XV of 1877) for suits on bonds or on account stated is three years, and as there is greater difficulty in paying these debts, they recommend its extension to six years. It is thought that these recommendations may be approved. This is the view taken by the Board (Land Revenue); but the Honourable Mr. Crole and the Settlement Commissioner dissent.

Government of India letter, paragraph 9.

89. The next question relates to the amendment of section 337 (a) of the Civil Procedure Code. It was stated in paragraph 59 of this note that the power of imprisonment given by the Code is used to induce the judgment-debtor to give up property specially exempted from attachment and sale by section 266. An amendment of the former in the direction pointed out in the note is therefore necessary. The Board (Land Revenue) and the Honourable Mr. P. Rajaratna Mudaliar agree.

Government of India letter, paragraph 10.

Paragraph 58, Commission Report (page 62).

90. The next question relates to the amendment of section 525, Civil Procedure Code. When any matter has been settled by arbitration without the intervention of a Court, any person interested in the award may apply to the Court to file the award, which will take effect as an award under the Code. The Commission point out that to evade the Stamp and Registration Laws, the money-lender takes his debtor before a third party and obtains from him a so-called arbitration award even where no dispute of any kind exists; that apart from the Government Revenue being affected, there is no guarantee that the agriculturist is being justly dealt with. They therefore recommend that the section should be amended so that the Court may satisfy itself that there has been a real dispute and that it may have power to refuse to file the award unless its terms are fair and proper. The Government of India is disposed to accept this recommendation and it is submitted that this decision may be approved. The Board (Land Revenue), the Honourable Mr. P. Rajaratna Mudaliar and Settlement Commissioner agree, but not the Honourable Mr. Crole.

Government of India letter, paragraph 11.

91. Lastly, the Government of India enquires whether any remission of the court-fees chargeable in suits dealt with in chapter II of the Bill is considered necessary. On the passing of the Bill, it

will have to be ascertained whether the condition of agriculturists in any part of the Presidency is such as to call for the application of the Act, and it can only be decided then whether the still further concession in the matter of court-fees is needed. The question, it is submitted, may lie over till then. This is the view taken by the Board (Land Revenue). The Settlement Commissioner would follow the Bombay practice and would remit the court-fees in all cases in which they are now remitted in that Presidency. Mr. Crole is opposed to remissions as the result would be to foment litigation, and as remission of fees would be unjust to the whole tax-paying community.

*Yes, it would not form the
subject of an Act. The S.G.
can modify the fees whenever
cause is shown.*

NA 26/3/97 JG 19/3/97

*Initiated by
the first draft
on the rough draft -
below -*

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*remission of
fees*

*NO
26/2/97*

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Yes, it would not form the
subject of an Act. The Board
can modify the fees whenever
cause is shown.

HA 24/3/97 JG 19/3/97

Initiated by
the first of the
on the rough draft
below.

1. Mr. Thompson

From

THE HON'BLE MR. G. STOKES, I.C.S.,

ACTING SECRETARY TO THE GOVERNMENT OF MADRAS,

REVENUE DEPARTMENT.

To

THE SECRETARY TO THE GOVERNMENT OF INDIA,

REVENUE AND AGRICULTURAL DEPARTMENT.

SIR,

In reply to your letter of the 31st October 1895, No. 23, Judicial 1591, inviting an expression of opinion on the provisions of a Bill framed by the Government of India for the protection of agriculturists, I am directed to forward a copy of the Proceedings of this Government embodying the opinion of the various officers and bodies consulted on the subject and to offer the following remarks in connection therewith.

2. Before examining the provisions of the Bill in detail, I am desired to point out that the measure proposed by the Government of India is, in the opinion of His Excellency the Governor in Council, a revolutionary one, interfering with the civil rights of parties and tampering with the ordinary law of property, and will be justifiable only when there is a desperate evil to grapple with. So far as the circumstances of this Presidency are concerned, there is a consensus of the best opinions obtainable that no such evil exists. It is an admitted fact that indebtedness is not due merely to the action of the usurer but to the necessity of the borrower. More than ninety per cent. of the ryots of this Presidency hold less than 25 acres in extent, and, their capital being locked up in their lands and stock, they must necessarily borrow for carrying on their vocation and for celebrating marriages, &c. Credit is therefore a necessity to the small agriculturists and its utility cannot but be recognized. No doubt borrowing may be abused and indebtedness may be a symptom, and even a cause, of danger, if the conditions of credit are unsound or defective and if borrowing is not a mere temporary, productive mobilization of capital but the result of ignorance, imprudence or recklessness. In the opinion of those best qualified to form an opinion, there is no reason to suppose that the agricultural classes in this Presidency are so ignorant, imprudent or helpless as to require the special interference of Government in the direction proposed; nor is money-lending monopolised by professional sowcars who drive hard bargains. The conditions in this Presidency differ widely from those in the Bombay Deccan, where the money-lending classes are reported to be foreigners, different in religion from their clients, entirely out of sympathy with them, and accustomed to retire with their profits after a sufficiently long course of business to their homes in Rajaputana. More than two-thirds of the mortgage loans in this Presidency are granted by local lenders, and personal credit is chiefly among the ryots themselves. This, as pointed out by Mr. Nicholson in his report on agricultural banks, is a very remarkable and interesting fact, and places the character of Madras indebtedness in a position wholly different from that of the Deccan. Moreover, in Madras, lending in general, though expensive, is hardly usurious in the sense of being the result of calculating greed and opportunity and the interest charged is, as a general rule, not ruinous. Even in localities where there are money-lenders corresponding to the Marwari classes they have not earned the evil reputation of their confreres in the Deccan, owing partly to the competition that exists among their own class and partly to the fact that for ordinary purposes the ryots are largely lenders

Correct the Draft to: *11/10/97*

Is it? I don't know. I thought this was the only question regarding which we were collecting info which has still to come in.

I am on the revenue record as this point as the Hon. Mr. Stokes. I would leave the draft as originally printed.

But:

Submit & remarks below
BS
16/10/97

Draft added. subject to Mr. Nicholson's report 21.10.97

for [], read "them"
BS

What does this come from? It may be quite true, but it is a very faint line.

Please see page 22 of Mr. Nicholson's report.

say that "lending" is expensive is a queer idea. I should have thought that it was "borrowing" that was expensive.

BS

3. Having premised the above general remarks, I am now to convey the views of this Government on a detailed examination of the sections of the Bill. ~~The various suggestions made by the officers and bodies consulted will no doubt receive in due course the consideration of the Government of India.~~ The only sections of the Bill on which His Excellency in Council thinks it necessary to make any special remarks are the following:—

CHAPTER I.

4. *Section 2.*—The definition of the term agriculturist to which the Government of India invites special attention rightly includes persons who are in Government Service and who are thus temporarily unable to follow their agricultural pursuits. The Commissioner of Revenue Settlement points out that there is no reason why persons in private service under similar circumstances should be excluded from the definition. The Government considers that there is a distinction between the two cases. Those in Government employ cannot obtain leave except according to rules, and are practically prevented from throwing up their appointments by fear of losing their pension which may be termed their deferred pay. Indeed in some cases they are prevented from leaving it at will by the statutory provision of penal consequence. Men in private service are under no such disabilities. For this reason, this Government considers that the latter should not be included in the definition and, if included at all, such private service should be out of British India or, at least, outside the province in which their district is situated.

As the Act is intended to benefit agriculturists, a proviso should be added to the definition empowering Local Governments to exclude therefrom such classes as do not stand in need of the special immunities and privileges which are conceded by the proposed measure, such as the Jenmis of Malabar, &c.

The expression "where he earns his livelihood by agriculture" occurring in rule 4 of the section is ambiguous, as it may mean, in the case of the absentee landlord, the place where that agriculture is carried on, or where the rents are actually received by him, although livelihood is stated to be *earned* by agriculture only where the agriculture is carried on and no where else.

CHAPTER II.

5. *Section 3.*—The section enumerates the classes of suits for which a special procedure is prescribed by the Act and the Government of India enquires whether this Chapter should be made applicable to any classes of suits falling under clause (b) or (c) of this section in which the *plaintiff* is an agriculturist. No doubt it may be argued that an agriculturist who is in a position to lend money

[illegible]

The papers were given time for
drafting on the 14th day - as the
subject was almost new time,
the order was given to them
preparing for permanent and
also, it took me longer to
draft them and therefore
have been the cause of finishing
the drafting and also the making
of the map by the 21st day.

5.5
resting is whether men in private
- are prevented by their status from
giving in agriculture. I think they are
"cultivated" in contact with the Hon. Mr. Gurney.
R.H.

to particular classes and
be excluded. It will be only
relations to the
G. 2
7th Feb. The same: 3. 4

the Mrs. Alice [unclear] has been
I think it is unnecessary

[illegible]

It has been suggested that:

This is in accordance with the Hon. Mr. Bliss' views, The Hon. Mr. Grose would extend the Concessions to persons in private employ without any reserve.

This is in accordance with the Hon. Mr. Bliss's views. The Hon. Mr. Groves considers it would be inadvisable to include or exclude particular classes.

The Hon. Mr. Grosse thinks there is no ambiguity. The Hon. Mr. Bliss considers there is no harm in drawing attention to the possible doubt that may arise.

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1. Introduction

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admitted

They have
lately

1

and is believed to be frequently so defrauded.

The Hon. Mr. Goss is not in favour of extending clause 1 to suits by agriculturists. The Hon. Mr. Bliss is for Chap. applicable to suits whose nature is described in

b) a clause (1) making the draft.

to another has, by that very circumstance, proved his fitness to look after his own interests and that he may therefore be left to the remedies provided by the general law. But it must be remembered that a ryot is as liable to be defrauded by the tradesman to whom he sells his produce as he is by the sowcar from whom he borrows money. This Government therefore considers that the Chapter should be made applicable to suits by an agriculturist for the recovery of the value of the produce of his holding, sold or paid in liquidation of an advance.

6. Section 5.—Sub-Section (1) provides that in every suit under Chapter II the summons shall order the defendant to appear in person. This assumes that the defendant will be an agriculturist in every case. But as an agriculturist may file a suit against his creditor, a money lender, falling under clauses (a) and (e) of Section 3, the defendant will be the money lender. This Government considers that personal attendance of the defendant in these cases is unnecessary. When ever the Court considers it necessary to examine him, it can do so by summoning him under the general law. The Sub-Section should accordingly be amended by substituting for the clause "to which this chapter applies" the words "of the description mentioned in Section 3, clauses (b), (c) or (d)."

Sub-section (2) has been inserted in accordance with the recommendation of the Commission appointed to enquire into the working of the Deccan Agriculturists' Relief Act that the expense of enforcing the attendance of the defendant when he fails to comply with the first summons should not be thrown on the plaintiff. The Advocate General considers that this is unnecessarily stringent and that if the defendant does not appear after due service of summons he must be considered to admit the claim. In the opinion of His Excellency the Governor in Council this argument has not much force. The Sub-section as drafted is fair to both the parties to the transaction. and the stand as part of the Act.

Sub-section (3) gives the Court discretion to dispense with the attendance and examination of the defendant in any case. The Commission considers that there should, as far as possible, be no discretion in the matter. Cases may, however, occur in which the personal attendance of the defendant will be perfectly unnecessary and this Government is accordingly of opinion that some discretion should be allowed to the Court to dispense with it. Abuse of the discretion is provided against by requiring the Court to record its reasons in writing.

7. Section 6.—May in line 3 of this section should be altered into shall.

8. Section 7, Sub-section 2.—Under the Deccan Agriculturists' Relief Act, in cases in which the defendant admits the claim but doubt is thrown on the validity of the admission, the enquiry has to be conducted in the same manner as in disputed cases. The Sub-section as now drafted by the Government of India presumes that only such enquiries need be made as will enable the Court to do complete justice between the parties. This view meets with the approval of this Government.

9. Section 8 proposes to set aside with retrospective effect two classes of agreements between the parties which are valid under the general law, viz., (1) agreements to allow compound interest and (2) agreement to set off the profits of mortgaged property in lieu of interest without taking an account. In favour of the proposal to set aside of the former, it is urged that the debt is unduly swollen by frequent rests and consolidation of interest with principal. His Excellency in Council agrees with the remarks of the Commission in para. 39 of its report that the total abolition of compound interest in the case of loans to agriculturists will lead either to an evasion of the law or less to agriculturists and that it is necessary to allow the Courts to accept not merely conversions of, but also agreements to convert, accumulated interest into principal where such conversions or agreements are considered to be fair. As pointed out by the Commission, the best way of meeting the difficulty is to provide that any such conversion or agreement shall not be

The Hon. Mr. Bliss considers that the words "he is" which appear in the Advocate General's clause are emphatic & should be retained. The Hon. Mr. Goss considers this a trifling matter. No reference is made to it.

and to "may" or "shall" before

creditors bring self defence

by both parties or to proceed into Court in

which plaintiffs and the provisions of these exceptional provisions. 11/1/97

and of defence after "undue in" "rule"

The Hon. Mr. Grosse considers that this is so obvious a
large compound interest that the attention of the
need not be called to it. The Hon. Mr. Bliss thinks there
is drawing the attention of that fact to the matter.

That there is no harm

28 11/6/97

A. H.

The Hon. Mr. Grosse does not consider that any change
made, but the Hon. Mr. Bliss considers that the
same as stated in the draft.

Proviso to Section 10. The Hon. Mr. Grosse would let
final. The Hon. Mr. Bliss would allow the most
the property before the expiry of the term specified.
No remarks have been inserted in the draft.

28 11/6/97

any opinion about the proviso.

28 11/6/97

A. H.

The Hon. Mr. Grosse is for omitting the clause altogether as
Hon. Mr. Bliss is for making it clear & for adding
as in the draft.

be made clear and

I think the Hon. Mr. Bliss's view should be adopted.

A. H.

I don't understand it

28

Section 15. The Hon. Mr. Grose is for omitting the Hon. Mr. Bliss considers there is no harm in & that it may be useful in certain cases. Should be inserted in the draft regarding this section

The Hon. Mr. Grose has not expressed any opinion on this section.

remarks need be made if it is decided to retain it. For the reasons given in the note I do not think it is needed.

J.W. retain the Section. The very 12/6/97 object of this legislation is to give the widest possible discretion to the Ct. — I am assuming that this exceptional legislation is necessary. J.W. 12/6/97

do

do

N.H.

12/6/97
J.W.

The Hon. Mr. Grose is in favour of letting this stand but is not in favour of the extension contemplated by India. The Hon. Mr. Bliss is not in favour of the extension. In the draft, recommendation has been made in subsection.

is a doubtful case, but the evidence is in favour of retaining the clause exempting from the law above property not specifically mentioned.

in fact - 4/7/11 under reply.

12/6/97 I cannot agree. I shall let the para. stand as printed. J.W. 12/6/97

In the opinion of H. S. in Council
 decided that standing crops shall be
 one — 1
 12/6/97

This is in accordance with the Hon. Mr. B.
 The Hon. Mr. Grose for retaining the provision
 on half of the standing crop to the agriculturist
 the reservation that when $\frac{1}{2}$ the standing crop
 is sufficient to meet the necessary expenses
 of the debtor, the demands of Govt or of the landlord
 surplus should be liable to attachment.
 I agree with the Hon. Mr. B.
 12/6/97

The Hon. Mr. Grose has not expressed any
 on this section.

Chap IV, Section 31 sub-section (1), clause (a)

Hon. Mr. Grose is not opposed to the inclusion
 of consent being obtained. The Hon. Mr. Bliss
 considers the insolvent's consent necessary. If
 anything be said about the matter to him,
 Hon. Mr. Grose is not for saying anything. I think
 I don't think we need say anything about it.
 12/6/97

Chap VI. The Hon. members differ from each
 regarding the retention of sections 4 & 6
 the arrangement of the sections in the chapter.
 Should any mention be made in the draft
 of any of the sections?

I think my opinion is right
 but my suggestions are not
 important & need not be
 noticed.
 12/6/97

attorney the Governor in Council considers that,
 reasons given by the Commission, the retention
 of sections 25 to 33 laying a special procedure in cases
 of insolvency of agriculturists in the Relief Act is
 necessary. The Board of Revenue (L.R.) is of opinion
 that these provisions will not be resorted to in this
 country any more than in the Deccan and the
 present course that they will impair the credit
 of agriculturists. The former argument is not valid,
 as regards the latter I am to remark that
 the principle of the Insolvency Laws is that
 in whole it is for the good of the community that
 a man in embarrassed circumstances shall be
 able to clear himself and make a fresh start.

It is not clear from the Hon. ^{members} notes that
reference should be made in the draft to the
suggestions in his letter printed at page 7
2670 of 6.11.94. ^{para 13} ^{Class B} ^{unmarked}

The Hon. Mr. Grose does not approve of section
but the Hon. Mr. Bliss would let it & the pre-
sented subject to the permission of the Court
in the draft. I do not object to the

Orders have not been passed on the m.s.
para 28(ii). It is presumed that the
recommendation in para 58 may be as

4
8
15
21.6
as, and

OK.
4/6/97

accepted by the Court if, for reasons to be recorded in writing, the Court deems it to be unreasonable, and, that in deciding whether it is unreasonable or not, the Court should consider, *inter alia*, the length of the rests, the rate of interest and the nature of security. In this connection, I am also to point out that there is a practice in this Presidency by which future interest for a term of years is added to the money actually advanced and the interest is made chargeable on the total amount after the term expires. As this is, practically a case of levying compound interest, the necessary provision will have to be made in the Bill.

As regards the second class of agreements, it is argued that, as such agreements proceed on the calculation that profits of mortgaged property would be equivalent to a reasonable interest on the loan, there can be no hardship in providing that the approximate estimate of the profits made by the parties shall be set aside, and an actual account taken, reasonable interest being at the same time allowed to the mortgagee. This Government agrees with the arguments of the Commission in para. 38 of its report against the policy of revising usufructuary mortgages with retrospective effect and considers that the clause on the subject in section 8, and section 9, should accordingly be omitted. ~~As pointed out by the Board of Revenue (L. R.),~~ provision should be made in clause (b) empowering the Courts to consider whether the price of goods has been reasonably stated.

10. Section 10.—The wording of this section will have to be altered with reference to the recommendation made above that section 9 should be omitted.

11. The Government of India invites the opinions of Local Governments and Administrations in regard to the insertion of a sub-section in section 9 dealing with cases in which the mortgagee is in possession of the land, and the mortgagor holds from him as his tenant. Rule (f) in section 8 would seem to provide for the cases to be dealt with by the proposed sub-section and the words in brackets therein will render the first proviso to the proposed sub-section unnecessary. It would be sufficient to insert the second proviso after omitting the word *further*, as clause (h) of section 8 and to add the following explanation to clause (f) in the same section.

“Explanation.—Payments made by a mortgagor in possession of the mortgaged property as tenant of the mortgagee, whether designated rents or otherwise, are payments to the creditor within the meaning of this rule.”

12. Section 11 embodies the provisions of the Punjab Land Revenue Code in regard to arbitration which, in the opinion of this Government, are calculated to deal with suits in which agriculturists are parties in a more satisfactory manner than the provisions of the Civil Procedure Code and may accordingly be adopted.

13. Section 12 removes the restriction which now exists under the general law (section 60 of the Transfer of Property Act) that the mortgagor cannot file a suit for redemption until the time when the principal money becomes payable has expired. It would, in the opinion of this Government, be inequitable to do away with the restriction in cases in which time is of the essence of the contract as in the case of the Kanom tenure of Malabar. The clause “or on the ground that the mortgage debt has not been completely discharged” is ambiguous as pointed out by the Commission in para. 43 of its Report. It means no doubt that, although the mortgage debt has not been completely discharged, the mortgagor must be ready to discharge it. In such cases it might be provided that the mortgagor (Plaintiff) shall pay into Court with his plaint the amount still owing on account of both principal and interest of the mortgage.

14. Section 14.—Sub-sections (3) and (4). When a case comes up before a Court, the amount due should be ascertained once for all, and if this is done, there will be no necessity to make a distinction, as in the Bombay Act, between the cases in which the amount due and the period for which possession of the mort-

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gaged should be continued have been ascertained and those in which they have not been. This distinction appears to have been overlooked in the drafting of Sub-section 3 (*vide* the words *underlined*). Sub-sections 3 and 4 would appear to be unnecessary, as the necessary provision has already been made in Section 10.

15. Section 16. The Commission point out that, as the plaintiff can know the amount due only after judgment is pronounced, he must be given time to ascertain whether he can raise the money or not and that the Court should therefore adjourn the case for a reasonable time after judgment is pronounced and before decree is passed. A clause to this effect should be added to the Sub-section.

CHAPTER III.

16. Section 21.—This Section requires that the decree holder should either take the moveable property of an agriculturist attached or tendered in execution proceedings at the upset price fixed by the Court, or should forego the portion of the decree amount equal to the difference between the upset price and the price realized by sale. If the upset price fixed by the Court is not realized at the auction, the result must be due either to combination among the bidders or to the upset price having been fixed unduly high. In either case, there is no reason why the decree holder should suffer for no fault of his own, and the Section should, therefore, be omitted.

17. Section 22 removes the restriction under the ordinary law that no payment by the judgment debtor made out of Court shall be recognised as payment of the decree unless the payment has been certified. The restriction is a wholesome one and tends to prevent disputes and should not be removed in the case of agriculturists to protect whom legislation is now undertaken.

18. Section 23.—It is reported by the Commission that, in the Punjab, the Courts have held that, when the judgment debtor was in possession of property specially exempted under Section 266 of Civil Procedure Code, they would not be justified (with reference to the terms of Section 337-A, Civil Procedure Code) in holding that the debtor was unable to pay the amount of the decree, the consequence being that the power of imprisoning debtors is used to compel them to give up such property. As the general law is thus insufficient, it is proposed to exempt agriculturists from arrest and imprisonment. In the opinion of this Government, the more satisfactory solution of the difficulty will be to modify the general law so as to provide "that the possession of property expressly exempt from attachment, or of property which is not liable to attachment and sale without special sanction should not of itself justify a court in holding that a debtor is able to pay the amount decreed and in sentencing him to imprisonment in default." As pointed out by the Board of Revenue, the power of arrest and imprisonment is a valuable remedy for creditors in the case of personal debts, and there is no reason why if the debtor has property other than that exempted from attachment and sale and can therefore pay the debt, but will not, he should be shown any consideration. The section should therefore be struck out, the general law being modified as indicated above.

19. Section 24, ^{sub-section (1)} provides that immoveable property belonging to an agriculturist shall not be attached or sold in execution of a decree or order passed unless it has been specifically mortgaged for the repayment of the debt to which such decree or order relates and the security still subsists. The Government of India enquires whether this provision should not be made a part of the general law of India and whether the exemption from attachment and sale of land belonging to an agriculturist should not be made absolute so as to extend to such land even when it has been specifically pledged and if so whether it should apply (1) to mortgages effected, and (2) decrees for the sale of mortgaged land passed before the new law comes into operation. As at present advised, His Excellency the Governor in Council is opposed to the retention of the section and a fortiori to its further extension in the direction suggested by the Government of India. It

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"Standing crops" is defined as moveable property for purposes of attachment and sale, and as it is necessary that some return must be preserved to the agriculturist for his means of subsistence and for seed grain, &c., it is proposed to restrict the power of attachment and sale (in execution of a money decree) To secure this object, two alternative clauses are added, and the Government of India enquires which of them is preferable. One of them saves from attachment and sale one-half of the crops, while the other saves only so much of ~~it~~ as is required for seed grain and for the subsistence of the agriculturist, his family and his cattle until the next harvest. In the opinion of this Government, neither of the alternatives is called for. Assuming the land to have some value (for otherwise it is not worthwhile to preserve it to the agriculturist) the ryot can certainly maintain himself until next harvest and pay his rent, &c., even though the current year's crops may be sold. The interests of the ryot are sufficiently guarded by the rules as to payment in instalments and the further concessions proposed would deprive him of his credit by diminishing the value of the security he can offer.

Sub-section 2.—This section cannot be worked in most parts of this Presidency and it is essential that the Government should have power to make rules as to the classes of cases in which it shall be compulsory on the Collector to carry out the Courts' orders as to assuming the management.

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20. Generally speaking, the provisions of this chapter cannot be worked in this Presidency under present circumstances. The persons ^{who} could be found in villages competent to act as conciliators are so few in number that ^{it is} ~~it is~~ ^{would} in the opinion of this Government ^{be} ~~useless to~~ legislate on the basis of their existence.

32. Section 34.—With reference to the enquiry of the Government of India whether there are any village officers in this part of India who might be regarded as Police Officers, but who might nevertheless be appointed as conciliators, I am to state that there are none such.

23. Section 43.—With reference to the enquiry of the Government of India as to whether an explanation should be added to this section similar to the one in Section 47 of the Bombay Act, I am to point out that it is unnecessary to do so, as the term "Civil Court" so far as is known, is no where defined so as to include the holder of the office corresponding to Mamlatdar in Bombay.

24. ~~With reference to the Chapter - Sam Bonyer,~~
25. This Government agrees with the Board of Revenue (I.R.) and the Advocate General that this Chapter should be omitted. On the one hand ~~as pointed out by the former, Sections 7 and 8 of the Bill, if properly worked, will give ample relief to the agriculturist by enabling the Court to ascertain whether there is any defence to a suit on the ground of fraud, &c., and also by setting aside inequitable contracts. On the other hand, as observed by the Advocate General, Sub-Registrars are not lawyers and may not use correct legal phraseology. Moreover, if agriculturists are allowed to get their documents written by them for nothing, they will, in all cases, resort to them and to no one else.~~

Moreover, all agriculturists are allowed to go to the Police Office for nothing, they will, in all cases, resort to them and to no one else.

Para 22 seems to be misleading - His direct answer to the question was doubtless - But the more correct impression would be conveyed by pointing out that Village Headmen might rather than Police Officers, though they certainly in practice exercise some Police functions, & by saying that that would be as available as Constables or other residents, if (which is not the case) they or others were likely to be competent to the office if (which is not the case).

I think the Hon. Mr. Polier is right in this.

is a measure calculated to prohibit the alienation of land altogether and whatever may be the case elsewhere, as to which this Government has no information, no such prohibition is called for in this Presidency. ~~I am to invite the special attention of the Government of India to the dissenting minute of the First Member of the Board of Revenue and to state that the final opinion of this Government on the subject must be deferred till it is in possession of the statistics called for in G. O., No. 97, dated 3rd March 1896. But whatever may be the ultimate decision on the subject there can be no doubt that it would be unjust to introduce it with retrospective effect.~~

~~"Standing crops" is defined as~~ moveable property for purposes of attachment and sale, and as it is necessary that some return must be preserved to the agriculturist for his means of subsistence and for seed grain, &c., it is proposed to restrict the power of attachment and sale in execution of a money decree. To secure this object, two alternative clauses are added, and the Government of India enquires which of them is preferable. One of them saves from attachment and sale one-half of the crops, while the other saves only so much of it as is required for seed grain and for the subsistence of the agriculturist, his family and his cattle until the next harvest. In the opinion of this Government, neither of the alternatives is called for. Assuming the land to have some value (for otherwise it is not worthwhile to preserve it to the agriculturist) the ryot can certainly maintain himself until next harvest and pay his rent, &c., even though the current year's crops may be sold. The interests of the ryot are sufficiently guarded by the rules as to payment in instalments and the further concessions proposed would deprive him of his credit by diminishing the value of the security he can offer.

Sub-section 2.—This section cannot be worked in most parts of this Presidency and it is essential that the Government should have power to make rules as to the classes of cases in which it shall be compulsory on the Collector to carry out the Courts' orders as to assuming the management.

CHAPTER V.

~~21 20.~~ Generally speaking, the provisions of this chapter cannot be worked in this Presidency under present circumstances. The persons ~~that~~ could be found in villages competent to act as conciliators are so few in number that it is in the opinion of this Government ~~useless to legislate on the basis of their existence.~~

~~22 21.~~ Section 34.—With reference to the enquiry of the Government of India whether there are any village officers in this part of India who might be regarded as Police Officers, but who might nevertheless be appointed as conciliators, ~~I am to state that there are none such.~~

~~23 22.~~ Section 43.—With reference to the enquiry of the Government of India as to whether an explanation should be added to this section similar to the one in Section 47 of the Bombay Act, I am to point out that it is unnecessary to do so, as the term "Civil Court" so far as is known, is nowhere defined so as to include Court of a Tahsildar the officer corresponding to Mamalatdar in Bombay.

CHAPTER VII.

~~24 23.~~ This Government ~~Agrees with the Board of Revenue (L.R.) and the Advocate General that this Chapter should be omitted.~~ On the one hand ~~as pointed out by the former,~~ Sections 7 and 8 of the Bill, if properly worked, will give ample relief to the agriculturist by enabling the Court to ascertain whether there is any defence to a suit on the ground of fraud, &c., and also by setting aside inequitable contracts. On the other hand, ~~as observed by the Advocate General,~~ Sub-Registrars are not lawyers and may not use correct legal phraseology. Moreover, if agriculturists are allowed to get their documents written by them for nothing, they will, in all cases, resort to them and to no one else.

MIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU

DEPARTMENT

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CHAPTER VIII.

2524. Section 53.—~~As remarked by Mr. Wein,~~ This section would be highly mischievous in its effect for, if an agriculturist's word is to prevail, he can make away with the receipt furnished and allege that he paid a larger amount than he actually did. It is suggested that this can be met by compelling the agriculturist to give an acknowledgment of the receipt but this Government considers that such a provision would be insufficient, and that the last clause of the section should be deleted.

5/ 2625. Sections 54 to 58.—I am to invite the attention of the Government of India to the suggestions of the Settlement Commissioner that the provision in regard to the form of day book and ledger should also be made applicable to suits falling outside the scope of the proposed Act and to that of the Advocate General that the agriculturist should be prohibited from making any entry in the pass book. These suggestions commend themselves to His Excellency in Council.

CHAPTER IX.

2726. Section 59 ~~and 60~~ appear to meet the object in view which would appear to be to prevent the money lender from employing professional assistance. Sub-section 3 of Section 59 may, however, be amended so as to allow the Court discretion to permit pleaders to appear after seeing the parties to the suit.

2827. The only remaining points on which an expression of this Government's opinion are required are those referred to in paras. 8, 10 and 11 of the letter under reply. They are

- (i) The extension of the period of limitation from three to six years in the case of suits on bonds or on account stated;
- (ii) The question of amending Section 525 of the Civil Procedure Code empowering the Court before it files the award to satisfy itself that there has been a real dispute and that the terms of the award are fair and proper, and *the Registration Act so as to make awards which create registrable like*
- (iii) Whether any remission of the Court fees chargeable in suits to which Chapter II of the Bill applies is necessary.

2928. In regard to (i) and (ii), this Government fully concurs in the views of the Commission and is of opinion that the general law on these subjects should be modified accordingly. With reference to (iii), I am to state that the question will be one for consideration after the passing of the Bill and that, as the Governor General in Council has power to modify the fees for sufficient cause shown, it is unnecessary to consider the question at present.

H. K. B. N.

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6. To carry out the first object, section 12 of the Act was added. It directed that an enquiry should be held into the history and merits of each case, unless the agriculturist—defendant admitted the amount of the claim against him and the court was satisfied that the admission was true and that it was made by the defendant with a full knowledge of his legal rights as against his creditor. The object of the enquiry was partly to ascertain whether there was any defence to the suit on the ground of fraud, &c., and partly to obtain particulars wherewith to take an account between the parties. The next section provided rules for taking an account. Three of these rules deserve special mention—

(1) All profits and advantages received by the creditor in connection with the transaction should be brought to credit at a rate to be determined by the court ;

(2) Compound interest should be disallowed unless the court, for reasons to be recorded by it in writing, should consider it to be fair and equitable to allow it;

(3) If the balance due on the interest account exceeded that appearing on the principal account, double the latter balance should be taken to be the amount due. In other words, the excess of the interest due over and above the outstanding principal should be left out of account. Section 14.* gave the court power to fix a reasonable rate of interest.

• Repealed by section 3 of Act VI of 1895
and restored as section 71-A.

7. To carry out the second object, viz., restriction on the sale of land in execution of decrees, it was enacted (section 22) that immovable property not specifically mortgaged for the repayment of a debt should not be attached or sold in execution of a decree for the recovery of that debt. Even in cases in which immovable property was specifically mortgaged, the court was empowered to dispense with a sale by directing the defendant to pay the amount of the decree in instalments or putting the property under the Collector's management for the benefit of the creditor for a period not exceeding seven years. The insolvency chapter (chapter IV) allowed an agriculturist to apply to be adjudicated an insolvent, without the restrictions imposed by sections 344 and 351 of the Civil Procedure Code, and also saved his immovable property from vesting in the receiver for the benefit of the creditors. Such property was, however, to be utilized for the purpose of paying the insolvent's debts by being let for a term not exceeding twenty years or by being placed under the Collector's management for not more than seven years. The sale of the property was permissible only

when a debt secured by a mortgage of the property could not be discharged by any other means.

8. Chapter VI of the Act dealt with conciliation. The conciliator was to be appointed by Government and was to invite the parties to a dispute for discussion and induce them to effect an amicable settlement between them. The settlement was to be reduced to writing, and to be forwarded to the court, where it was filed and took effect as if it were a decree of the court. To induce the parties to go to the conciliator, it was enacted that no suit should be filed, unless a certificate was obtained from him that the parties could not come to an agreement between them.

9. The last object was to be attained by chapters VIII and IX, which provided that every written obligation for the payment of money by an agriculturist should be written by or under the superintendence of a village registrar and be attested by him; and that money lenders should give receipts to agriculturists for all payments made by them, render accounts and furnish pass books.

10. This Act (XVII of 1879) has since been amended several times, the last occasion being in 1895 in which Act VI of 1895 was passed. A copy of the Act embodying all the amendments is not available in this office. But the draft Bill under consideration may be taken to represent it as it now stands, the portions in italics being the alterations or additions which it is proposed to make therein in view to rendering it suitable for extension to other parts of India.

11. In 1891 the Government of India appointed a Special Commission to enquire into the working of the Act as amended by subsequent enactments. Pages 1 to 66 of their Report contain all the information relevant to the present Bill. The Special Commission deal in the first place with the general effect of the Act on the agricultural classes of the four districts in which it has been in force, and answer certain objections which had been brought against it. They then discuss the several provisions of the Act and point out in what directions they may be improved still further.

12. The following passages extracted from the Report show the conclusions arrived at by the Commission:—

“One great effect of the Act has undoubtedly been to make the professional money-lender more cautious in advancing loans except on the

By Acts **XXIII** of 1881.
Do. **XXII** of 1882.
Do. **XXIII** of 1886.

Paragraph 9 of the Report of the Commission
(page 5).

security of the land, and the agriculturist more reluctant to borrow where the security of the land is required. The evidence collected by the Commission during their local inquiries shows that this result has been accompanied by a marked reduction in unnecessary borrowing; while the provisions of the Act as to compound interest, and the limitation of the amount of interest which a court can award, undoubtedly discourage long credit and renewals, and tend to prevent the accumulation of new debt.

Paragraph 11, Commission Report (page 6).

"While, however, it is impossible to say whether the amount of debt is greater or less than it was thirteen years ago, there is a considerable body of evidence to show that the position of the ryot is much stronger and more independent than it was. Some have become more thrifty and manage to get along without borrowing. Dealings with fellow ryots have to a much greater extent than formerly taken the place of dealings with professional money-lenders. There was a considerable number of these agricultural money-lenders at the time of the Riot Commission, but the amount of their business was then small. Though the terms demanded by both classes of lenders appear in most cases to be identical, there is no question that the agriculturist creditor is more amenable to public opinion and more considerate in his treatment of the debtor than the Sahukar. Most important of all, however, is the fact that the custom of making over the crop to the local "baniya" has lost ground, and the ryot now, as a rule, takes the harvested produce into the market. Much of this striking improvement is doubtless due to the great expansion of trade and the opening of new fields for labour . . . ; to the introduction in places of irrigation from canals and tanks; and to a run of seasons . . . apparently above the average; but there can be no question that the Act has materially helped the ryot to profit from these advantages."

13. At pages 24 to 29, of ^{their} this report the Commission notice the objections advanced by the opponents of the Act. They were (1) that the Act has extinguished or at least seriously impaired the credit of the ryot;

(2) that it has restricted business and injured commercial activity;

(3) that it has caused injustice to money-lenders by throwing practical difficulties in the way of their recovering sums decreed to them, and revising inequitable contracts;

(4) that it has impaired the relations between the agriculturist and the money-lender, substituting mutual distrust and dislike for mutual confidence and goodwill;

(5) that it has demoralized the ryot by offering a premium to agrarian crime, by discouraging thrift and enterprise as a result of substituting State for self-help, and by permitting him to repudiate unsecured debt; and

(6) that, lastly, it has checked land improvement.

14. The Commission consider that these objections have not been borne out by the facts. On the first point, they state "The evidence recorded in Appendix I shows conclusively that the great majority of ryots can borrow freely. Probably, however, the best evidence on this point is that afforded by the character of the revenue collections. The average Deccan ryot is not a man of capital, nor is the outturn from his land a constant quantity. If credit were generally impaired, some difficulty in collecting the revenue must inevitably be experienced. Yet the revenue is now generally admitted to be collected with greater ease than formerly."

* * * * *

"Men of no credit must of course suffer in bad years, but it is a mistake to think that the Sahukar supported such men in times of difficulty. In the famine, they had to emigrate and shift for themselves, and the Act has not placed them in any worse position than they were in before."

The Commission admit that when land was exempted from attachment and sale unless specifically pledged, it was only natural that creditors should endeavour to obtain some security for advances made. But from enquiries made, they find that security was insisted on only in the case of borrowers whose credit was low.

On the second point, the Commission point out that the facilities for the recovery of debt offered by the law as it stood before 1879 had called into existence an inferior class of money-lenders dealing at exorbitant rates of interest with the lower strata of the agricultural poor; that the Act has merely restricted business to its legitimate limits, the worst class of borrowers being prevented from borrowing, while sound business remains unchecked; and that the capital thus set free has found a more suitable outlet in shop dealing, grain dealing and investment in land.

To the third objection the Commission reply that the Act in its original shape by exempting standing crops from attachment and sale left nothing against which creditors could proceed in several cases, but that this defect was soon detected and remedied.

15. The Commission conclude their Report with the recommendation that the Act, subject to the modifications suggested by them at pages 31 to 65 thereof, should not only be retained in the Deccan, but that it may with advantage

Paragraph 18 of the Report of the Commission (page 24).

Concluding portion of paragraph 18 at page 25 of the Report.

Paragraph 19 at page 25 of the Report.

Paragraph 20 at page 26 of the Report.

Vide section 7 of Act XXIII of 1886 amending section 22 of the Dekhan Agriculturists' Relief Act.

Paragraph 63 at page 66 of the Report.

The first objection against the passing of the Act (which is an enabling act & will not come into force until the Local Govt. with the previous sanction of the S.G.C. extends any part of it to any tract & notifies that it is so extended), is that it is not required.

Mr. Nicholson Report on Agricultural Banks, page 33. says, we have no data on which we can determine whether the law is needed or not. There is a general belief that agriculturists in this Presidency (except in a few cases) do not require protection against professional money lenders. I agree in this, but I do not think it negates the expediency of placing an enabling act in the Statute Book. A strong Commission has concluded that it has done good in the Bombay Decan, & has recommended a general law for the whole of India. The Govt. of the Punjab & the Central Provinces are pressing for such a law, & the S. of I. has little doubt that it is desirable elsewhere. It seems clear, too, that ^{small} Paragraph 3 of first letter.

here may be ^{small} tracts in this Presidency where it will be useful. The second objection is that it will injure agriculturists by giving them too much protection instead of leaving them to protect themselves & so debilitating them, & by making it difficult for them to borrow money. As regards debilitation the

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be extended to other provinces where the problem of agricultural indebtedness has presented itself. It is with reference to this suggestion that the draft Bill forwarded by the Government of India has been prepared.

16. Before examining the provisions of the draft Bill in detail, it is necessary to determine whether a Bill for the relief of the agricultural classes on the lines of the Bombay Act is required in this Presidency. The officers who have reported on the draft Bill have accordingly addressed themselves to this question first. As observed by Mr. Nicholson, the normal condition of the agricultural classes is indebtedness. "The lesson of universal Agrarian history from Rome to Scotland is that an essential of agriculture is credit. Neither the condition of the country, nor the nature of the land tenures, nor the position of agriculture affects the one great fact that agriculturists must borrow. If the country is undeveloped, . . . the early settlers, harassed by the uncertainty of season, acting upon defective methods, are forced to borrow. If the country is highly civilized and populous, its farmers are driven to intensive agriculture, for which their own capital is seldom sufficient. . . . It is then wholly unlikely that the Indian peasant, especially the small ryot of Madras and Bombay, will escape this necessity, in fact he has not done so. . . . The peasantry of India must, by the very conditions of their existence and tenure borrow and borrow freely, annually and continuously." The normal condition of the agriculturist being that he is dependent on the money-lender, cases may be conceived in which the former owing to ignorance, improvidence, and helplessness is entirely at the mercy of the latter and cannot help himself under the general law. The draft Bill proposes to deal with this class of cases.

17. Now, what is the condition of the agricultural classes in this Presidency? Are they ignorant, improvident and helpless to an extent calling for the special interference of Government as proposed? Mr. Nicholson observes: "we have not as yet made the slightest examination of the facts of the country relevant to the questions at issue . . . such as . . . the relations between agriculturists and lenders, &c. Consequently, we have no data either to accept or to reject such law. We have nothing but individual opinions

Factory operatives, especially
miners & several other
classes are also protected, notably
the Irish agriculturist & a middle class
between the English farmer
RS

question is one for Government
to decide in each case.
It has been decided again
& again that the special circumstances
of particular classes, with few
exceptions, justify special protection.
For instance, I saw in one protection
against hardship in Bengal, contracts
of ryots given up night of occupying
or agree not to acquire houses and
debt and null & void. As regards
injury to credit, the Commission found
that when they got the credit of ryots
they had not suffered in any way,
because the Ryots Act had been in
operation in the Deccan districts for
many years.

The third objection is that it
proceeds on a wrong principle, since
the credit it deals with cannot be
remedied by interfering with civil
rights, but only by removing defects
in administration. It is true
that the Act will be palliative
not remedial, but that is no
valid objection. It will not
prevent the removal of defects in
administration.

The fourth objection is that it
will be inoperative in some of
the worst tracts — as in the case
of the Khandas of any area, when
the borrowers keep no accounts
whether the borrowers move the land
to court. The answer to this
is that the Act need not be applied
to tracts where it will be inoperative
& it would be long before men
the circumstances of the Khandas
begin to keep accounts
& seek the help of courts.

The fifth objection is
it will cost a great deal
to administer the Act. So it is a

(See page 23 of the Commission's Report)
but will may exist with justifying
cost in incurring the cost, & that
cost will Page 10 of C. No. 7397. be less in
the Presidency than elsewhere, be-
cause it will have to be applied
to small C. No. 7051. tracts only.

I think, therefore, that these
objections fail; and that an enabling
act should be placed in the Statute Book
C. No. 6653.

19/3/97
I think that it is clear that the principle
of the Act, which may be stated to be that
special classes require special protection,
has been accepted over & over again, both
in India & in England, and indeed was
completely Page 10 of C. No. 6194. frequently
there then was. I also think that circumstances
may easily arise in which, even in this
Presidency, such Pages 10 and 11 of C. No. 7397. an Act
will be useful. The case of the Khandas is
an instance, & that of the tenantry in
Malabar, I imagine, another. It can certainly
do no harm, as far as regards the
Presidency, that the Act should pass, for
it would not apply it unless we please.
I should therefore support this legislation.
It will be noticed that its extension
to this Presidency may be made wholly or
in part, so that we shall be able to
take those provisions only which appear
suitable to our circumstances & to
those which we think likely to
be injurious

C. No. 7051.

24/3/97

C. No. 6653.

usually of a general nature, and very apt
to be one-sided or based on very imperfect
induction."

The Settlement Commissioner states.
"In this Presidency the ryots do not
appear to be so ignorant and helpless as
in the Deccan."

The Honourable Mr. P. Rajaratna
Mudaliar. — "The condition of the agricul-
tural classes has been repeatedly pronoun-
ced to be . . . fairly satisfactory, or,
at any rate, to be such as not to cause the
least anxiety, even in the most backward
districts."

Mr. Justice Subramania Aiyar. — "My
enquiries and my own experience lead
me to the conclusion that that excep-
tional state of things which alone would
justify such legislation does not exist here.
The Madras ryots, according to the testi-
mony of those entitled to speak on the
point, have as a class, notwithstanding the
indebtedness of portions thereof, been
during the last 30 or 40 years in a fairly
prosperous condition."

The Honourable Mr. Crole. — "The con-
ditions in Madras are fortunately almost
entirely dissimilar to those with which the
Government of India propose to grapple."

18. Next as regards money-lenders. — The
Settlement Commissioner: Money-lending
is not "so much in the hands of pro-
fessional sowcars, except perhaps among
the hillmen of the Agency tracts. Mr.
Nicholson, who has made a special study
of the problem of agricultural indebted-
ness of this Presidency, is of opinion that
"the rural creditors or lenders of this
Presidency are for the vast bulk of the
loans, ryots and not men of the Marwari
class," and that though in the Tamil dis-
tricts "there are classes (of money-lenders)
who are fully equal to the Marwaris in
keenness," yet "owing to competition
among such classes, and to the fact that,
for ordinary purposes, the ryots are largely
lenders among themselves, they have not,
as a class, earned the evil reputation of
the Deccan usurers, and no serious exploita-
tion of the ryot is heard of such as is
depicted in the Deccan."

The Honourable Mr. Rajaratna Mudaliar.
— The bulk of the money-lenders are
themselves agriculturists, who are gene-
rally more considerate than sowcars or
professional money-lenders.

Mr. Justice Subramanya Aiyar. — Much
of the money due by agriculturists, who
are in debt, has been found to be due to
persons of the same calling as the debtors.
And these ryot creditors are, I have
reason to think, generally free from the
serious vices of the usurer.

In this connection the remarks on page 254 of the "Forty years' memorandum" may also be perused. It will be found stated therein that while money-lenders in this Presidency belong to the agricultural classes in not less than 80 per cent. of the cases, those in the Bombay-Deccan are foreigners, different in religion from their clients, entirely out of sympathy with them, and accustomed to retire with their profits after a sufficiently long course of business to their homes in Rajputana.

19. If the opinions quoted in the two preceding paragraphs be considered to have been carefully arrived at (and in this connection the remarks of Mr. Nicholson in paragraph 17 *supra* deserve attention), the necessary inference is that the proposed legislation is not needed in this Presidency. The Advocate-General takes exception to it from another point of view. If the agricultural classes "be over-protected, they are unlikely ever to become self-reliant, and to learn to exercise any thrift and forethought. Moreover, the very means taken to 'protect' them will make it very difficult, if not impossible, for them to raise money, however urgent may be the need therefor. Money-lenders are unlikely to lend upon mortgages if they fear that for the agreement of the parties will be substituted the discretion of the District Judge for the time being." The second objection raised by the Advocate-General is also repeated by the Honourable Mr. Crole, in his minute printed on page 10 of C. No. 6194. There is considerable force in the first objection put forward by the Advocate-General. But at certain stages of civilization protective legislation of some kind or other is found to be necessary in all countries. The second objection has already been replied to by the Commission *vide* paragraph 14 above).

20. In the preceding paragraphs two objections to the proposed Act have been stated, viz., that it is not required, and that it will injure the agricultural classes themselves. A third objection is stated by the Honourable Mr. Crole and the Settlement Commissioner. The former observes, "To tamper with the civil rights of parties by re-adjusting the ordinary law which governs the dealings of man with man can never, in my opinion, form a permanent or efficient remedy." And the Settlement Commissioner, "The present Bill involves considerable interference with the rights of different classes of persons,

C. No. 170.

Minute on page 10 of C. No. 6194.

Paragraph 5 at page 12 of C. No. 7397.

as minister to act. So is a

(b) *Are the lands usually mortgaged and if so have there been many cases of foreclosure?*
Kondapadus are never mortgaged at all. Paddy lands are never actually mortgaged except to fellow Sowras, though the Paidi Sowcar thinks nothing of entering upon the Sowras holding and carrying off the whole of his crop on account of interest due on a loan. If a Sowra is very much pressed by his Paidi Sowcar, he mortgages his paddy land to a fellow Sowra for cattle and hands the cattle over to the Paidi in satisfaction of the claim. Cases of foreclosure are not very frequent. The Gumma Bissoyi says that where a Sowra is hopelessly indebted and has mortgaged his paddy land to a fellow Sowra, the creditor sometimes applies to him for foreclosure and if he considers that nothing can be done for the debtor he arranges for foreclosure to take place. The Bissoyi believes that the fact that it is quite contrary to the hillman's ideas to encumber his Kondapadu in any way is the salvation of the Sowra, as however indebted he may be he will always realize enough from that form of cultivation for his bare subsistence.

(c) *Are the Sowras often sued in Civil Courts for their debts?*
No, such cases are almost unknown.

(d) *Is not the position often this.—The Sowra is hopelessly indebted, but has no idea of the amount. He gives the whole of his crop and is in return kept alive during the rest of the year and does not dispute the Sowcar's claim?*

The Bissoyis say that such is not the case. The Sowra always knows the amount of the principal due by him, though he may not be aware of what the interest amounts to owing to the extortionate rates that the Paidis endeavour to impose. It appears that the Bissoyi often stands between the Sowra and his creditors and with the help of a Panchayat settles any disputes as to the interest to be paid. I believe, however, that in the Gunupur taluk where there are no Bissoyis and the Jeypore amin takes as a rule little or no interest in the welfare of the Sowras that the position is often as supposed by the agent. The Gunupur Sowras are to my knowledge, many of them, in a hopeless state of bondage to the Sondis of the town.

(e) *Whether the lands are passing out of the hands of the Sowras either by the instrumentality of the Civil Courts or by voluntary alienations?*

My answer to question (b) applies to this question as well.

4. I have so far had the opportunity of questioning only the four Bissoyis named in paragraph 2, but as the reference is an urgent one I think it better to submit a report based on such information as is forthcoming at present instead of delaying my reply till the end of my tour.

From M.R.Ry. B. NARAYANAMURTI PANTULU Garu, General Deputy Collector, Russellkonda, to the Collector of Ganjam, dated 8th February 1896, R.C. No. 77-Rev.

With reference to your foot-note, R.C. No. 67-Ver., dated 18th January 1896, to G.O., No. 804, dated 9th December 1895, requesting a report on the conditions of Khonds or Sowras in the matter of indebtedness, I have the honour to report that there are no Sowras in my division, but Khonds most of whom are styled as low-country Khonds. The Khonds residing in the Bybilli muttah closely resemble Maliah Khonds proper. All these Khonds with rare exceptions are indebted to the low-country Sowcars, who strike their balances from year to year, the transactions never coming to an end. If one dies in indebtedness, his son voluntarily undertakes the burden of debt and continues clearing and borrowing, paying perhaps interest at about 50 per cent. per annum. Debts are generally advanced in the shape of food-grains and small sums in cash at intervals and produce of different sorts is delivered to the Sowcar and in repayment of debt and the Sowcar's accounts invariably show some balance against the debtor, who hardly disputes its correctness. The same Sowcar or his heirs are, as a rule, resorted to by Khond debtors and their descendants in majority of cases. The shrewd Sowcar freely offers his aid to these men on occurrence of death or marriage or some such event in their families and wins their faith to such an extent that he is for the time being looked upon as an angel of relief; while his merciless intentions are really to snatch away all the produce of their labour. It is only when the last drop of his life blood was sucked and when the land could be cultivated by the Sowcar himself safely and without much trouble independent of the Khond, he goes in for his land, but in other cases he will allow him to be in possession of his land looking upon him as his farm servant and nothing more.

2. Now with regard to the points on which information is especially called for, I beg to answer them *seriatim*.

(a) In most cases the record of the debt consists only in the mere entry in the Sowcar's cadjan account leaves. Documents are taken on stamp paper when the Sowcar thinks that the debt is large and wishes to take possession of the land and turn the man out closing his books against him. This is a precaution taken by Sowcars so that the ignorant Khond may not, in his last moment of trial and struggle, attempt to dispute his claim. I may say that in 90 out of 100 cases documents are not taken.

(b) Lands are generally taken under mortgage for the accumulated balances struck on cadjan accounts but there are not many cases of foreclosure.

(c) Khonds are not often sued in civil courts. When they are sued they generally become exparte or admit the claim if they at all appear. The Sowcar rushes at times into the court to establish his claim to the land and be on the safe side, whenever he chooses to take the land of the debtor. In his economic sense natural to him, he very often allows the debtor to cultivate the land for him retaining ownership thereof to himself as it would be expensive to get the land cultivated in jungle parts by paid agency.

(d) I answer this question certainly in the affirmative from my long experience of Khonds and Sowras here and elsewhere.

(e) In some cases lands pass out of the hands of Khonds and Sowras by voluntary alienations, but there are cases where they are obtained through the instrumentality of civil courts in pursuance of exparte decrees. The passing of lands into the hands of low-country Sowcars is almost confined to lands owned by low-country Khonds and Sowras. Sowcars of the low-country hardly speculate to take lands from Malia Sowras and Khonds proper, as far as my knowledge goes. In their case they simply go on claiming balances year after year and these balances are more fictitious than real. They go on receiving bill produce mostly on account of interest and the debtors rely upon their cadjan entries. The Sowcars have very good reasons not to go in for lands on the hills.

Firstly.—They cannot stand the climate.

Secondly.—They cannot get them cultivated.

Thirdly.—The hill cultivation does not pay them.

Fourthly.—This is attended with much risk of all sorts even in case of wet cultivation.

The cultivation of wet lands owned by low country Sowras and Khonds is not attended with so many difficulties and these lands therefore pass into the hands of Sowcars in several cases.

STATEMENT showing the extent and value of mortgages and sales executed by Khonds in the sub-districts of Berhampur and Goomsur during the years 1893-94 and 1894-95.

Name of office.	Number of mortgages.	Total extent of lands mortgaged.	Total value of mortgages.	Number of sales.	Total extent of lands sold.	Total value of sales.
1893-94.						
Berhampur	14	69-69	831 0 0	12	60-90	1,751
Goomsur	7	37-44	2,743 12 0	..	..	..
Total ..	21	107-13	3,574 12 0	12	60-90	1,751
1894-95.						
Berhampur	9	127-12	677 0 0	2	9-76	760
Goomsur	10	129-36	956 4 0	5	22-66	564
Total ..	19	256-48	1,633 4 0	7	32-42	1,324

READ—the following Proceedings of the Board of Revenue (Land Revenue), No. 311, dated 19th August 1896 :—

FULL BOARD.

READ—the following Government Order, No. 804, Revenue, dated 9th December 1895 :—

Read—the following letter from L. M. THORNTON, Esq., Deputy Secretary to the Government of India (Home Department—Judicial), dated Simla, the 31st October 1895, No. 23, Judicial—1591 :—

With Mr. Lyall's letter No. 6/625-633, Judicial, dated 9th June 1894, copies of the report of the Commission appointed to enquire into the working of the Deccan Agriculturists' Relief Act of 1879 were circulated for the use of Local Governments and Administrations.

2. The recommendations of the Commission in respect of the Act in force in the Deccan have been considered by the Government of India and the Government of Bombay and the legislation required to carry out the conclusions arrived at embodied in Act VI of 1895. I am now to forward a copy of a Bill which has been prepared to put into effect the proposal of the Commission for the enactment of a general law for the protection of agriculturists capable of being applied to any tract, in which a problem similar to that which led to the enactment of the Deccan Agriculturists' Relief Act has presented or may present itself. The necessity for legislation of this nature has been pressed upon the Governor-General in Council by the Punjab Government and the Central Provinces Administration, and His Excellency in Council has little doubt that there are other parts of the country in which a measure of this nature will be likely to have a beneficial effect.

3. Side references are given in the draft Bill herewith circulated showing the sections of Act XVII of 1879, as amended by subsequent legislation, which have been adopted in it, and the accompanying memorandum explains the chief changes and additions which have been made in it. I am now to ask that the Government of India may be favoured with the views of the Government of Madras as to the provisions embodied in the Bill, and to say that any suggestions, which approve themselves to His Excellency the Governor in Council in the direction either of altering or adding to them, will receive the careful consideration of the Governor-General in Council.

4. There are, however, two important points connected with the Bill which can most conveniently be referred to here. It is a question whether the provisions of section 24 of the Bill, or at least so much of them as declare land belonging to an agriculturist to be exempt from attachment or sale in execution of a decree for money for which it has not been specifically pledged, should not be made a part of the general law of India. The remarks of the Deccan Commission upon the beneficial operation of these provisions will be found in paragraph 51 of their report. The rights of certain classes of occupancy tenants are already exempted throughout a great part of India; while in several provinces land cannot be sold in execution of a decree without the sanction of the executive. To hold land liable for money debts not specifically charged upon it is practically to put a creditor who lends his money without specific security (and charges higher interest for doing so) on the same footing in respect of his remedy as one who lends on mortgage, and thereby to deprive the borrower of an immunity for which he has paid. Local Governments are being separately consulted as to the advisability of restricting voluntary alienations of land. But so long as the creditor can obtain a compulsory transfer on account of debt, any such restrictions must be absolutely inoperative. The question of the liability of agricultural land for unsecured debt is one of vital importance to both lenders and borrowers throughout India; and the Governor-General in Council, as at present advised, is of opinion that it is one that should be settled on general grounds by the legislature for the country as a whole, rather than be left to be dealt with piecemeal by notifications under an enabling Act.

The further question arises, whether the exemption from attachment and sale of land belonging to an agriculturist should not be made absolute, so as to extend to such land, even when it has been specifically pledged. The Bill already gives the Courts discretion to substitute other

Sections 10 and 14 (3, and (4).

processes for sale; and the suggested extension of the exemption would be a step further in the same direction. If the exemption is thus extended, it will be for consideration whether it should apply (1) to mortgages effected, and (2) to decrees for the sale of mortgaged land passed, before the new law comes into operation.

I am to invite an expression of opinion on all the points discussed in this paragraph.

5. The Commission, in addition to proposing a general Bill for the protection of agriculturists, made certain proposals for the amendment of the general law. Those relating to the amendment of the Contract and Evidence Acts and Act XXVIII

of 1855 have already been referred for opinion to Local Governments and Administrations, and the replies received to the reference from the Governor-General in Council on these points are now under the consideration of His Excellency in Council.

6. There remain the following proposals of the Commission, viz. :—

- (1) That Village Munsiffs should be constituted under a separate Act ;
- (2) that the period of limitation should be altered in suits on bonds or on accounts stated to six years ;
- (3) That section 337-A of the Civil Procedure Code should be amended so as to prevent it from being used to defeat the intention of section 266 of the Civil Procedure Code or of any other law similarly exempting specified property from attachment ; and
- (4) that section 525 of the Civil Procedure Code and the Registration Act should be amended so as to prevent the abuse of arbitration procedure.

7. In Madras and the North-Western Provinces and Oudh (North-Western Provinces and Oudh Village Courts Act of 1892) there are local Acts which provide for the establishment of Courts of

Madras Act I of 1889.

Village Munsiffs. The Governor-General in Council agrees with the Commission in thinking that the establishment of such Courts should be dealt with by means of a measure separate from that for the relief of agriculturists.

It appears to His Excellency in Council desirable that the local Legislatures of Bombay and Bengal should undertake the legislation necessary to legalize the establishment of Village Courts in the parts of those provinces where it may be desirable to constitute them, and that a Bill should be passed in the Legislative Council of the Governor-General making the necessary provision in the case of provinces in which there is no Legislative Council. The Governor-General in Council is also, subject to the advice which Local Governments and Administrations may have to offer on this subject, inclined to think that the North-Western Provinces and Oudh Village Courts Act provides the most suitable model upon which legislation for the establishment of Village Courts might be framed. Possibly, however, it may be considered that this Act leaves too little to be settled by rule, and section 49 is inconsistent with section 71 of the Deccan Agriculturists Relief Act and with section 22 of the Bill now circulated. It may also be thought that section 69 is not entirely suited to Village Courts. The Governor-General in Council has called for the opinion of Local Governments and Administrations other than those of Madras and the North-Western Provinces and Oudh as to the legislation which should be adopted in order to provide for the constitution of Courts to be presided over by Village Munsiffs.

8. Turning to the proposal of the Commission, that the period of limitation in suits on bonds or on accounts stated should be six years, I am to observe that the Commission of 1875 expressed themselves (paragraph 107) thus regarding the law of limitation :—

"It will be seen from the extracts quoted in the appendix that there is a general opinion that the short period of limitation (three years) now allowed for suits for unsecured debts has the effect of enabling the creditor to oppress his debtor. Only one report is to the contrary. We are not, however, of opinion that any limitation law taken by itself can have this result. In the case of the ordinary debts of a ryot, the law of limitation amounts to nothing more than a law by which the creditor is compelled to give the debtor a statement of his account. So far from this being an evil, it would seem to be the very best thing possible for the debtor. A fresh balancing of the account every year instead of every three years would, from this point of view, be better still. The only cost which the law puts upon the parties is the stamp, which is a comparative trifle,—namely, one anna for every hundred rupees on a promissory note, and two annas for every twenty-five rupees on a bond."

And again (paragraph 109):—

"We are unable, then, to avoid the conclusion that the reduction of the period of limitation has been the cause of considerable hardship to the debtor. The question follows whether it is desirable to alter the law in this respect, and to return to the old period. Our opinion is that for the following reasons it is not desirable to do so. In the first place, there is no law

in the statute book which it is so desirable to keep free from change as the limitation law. There have been two Limitation Acts in the last sixteen years, and the present Act is only five years old. Secondly, for the reasons given at the head of this section, we conceive that, if creditor and debtor stand on fair terms with each other, a short limitation is advantageous to both parties. Thirdly, we believe that the present hardship results from causes which will in time work out their own remedy. We are of opinion, however, that something may be done to relieve the present hardship by providing that bonds and other instruments written by the agency which we propose should be appointed for the purpose, should acquire the extended limitation given to 'registered' instruments by the Limitation Act. The period for unsecured debts will then be extended from three to six years. There is no doubt that in the case of the agricultural debtor there are special reasons for considering an easy term of limitation desirable, for the ryot borrows chiefly against his annual income, and this annual income is uncertain."

Section 72 of the Deccan Agriculturists Relief Act provides that in any suit for the recovery of money alleged to be due to the plaintiff on account of money lent or advanced, or the price of goods sold, or on account stated between the plaintiff and defendant, or on a written or unwritten engagement for the payment of money of a kind not specially referred to, the period of limitation shall be, when the person sued was at the time when the cause of action arose an agriculturist, twelve years if the suit is founded on a written and registered instrument, and six years in other cases.

The Government of India will now be glad to receive the opinion of the Government of Madras upon the proposal made in paragraph 62 of the Report of the Commission of 1891-92.

9. The proposal of the Commission for the amendment of section 337 (a) of the Code of Civil Procedure is contained in paragraph 50 of their report. Section 266 of the Code exempts certain property—*e.g.*, wearing apparel of the judgment-debtor and his family, tools of artisans, implements of husbandry, cattle necessary for an agriculturist to earn his livelihood as such, and materials of houses and other buildings used by agriculturists—from attachment and sale. Section 337 (a) of the Civil Procedure Code empowers the Courts to make an order disallowing an application for the arrest and imprisonment of a judgment-debtor, if it appears to the Court that he is unable "from poverty or other sufficient cause" to pay the amount of the decree. The Punjab Courts have held that the possession of such property as is exempted under section 266 prevents them from holding a debtor to be unable to pay the amount of the decree, and therefore from giving him the benefit of section 337 (a). It appears to the Government of India that this result is contrary to the intentions of the Code, and I am to ask for the opinion of the Government of Madras upon the matter.

10. The reasons for the suggested alteration of section 525 of the Civil Procedure Code are stated in paragraph 58 of the Commission's Report. That section provides that when a matter has been referred to arbitration without the intervention of the Court, any person interested in the award may apply to the Court of lowest grade having jurisdiction in the matter that the award may be filed. The Court can then give notice to the other parties to show cause why the award should not be filed ; and if it finds no ground for remitting it or setting the award aside, it must be filed as an award. The Commission found that this section was abused so as to convert agreements into awards, and thereby evade the registration laws and section 22 of the Deccan Agriculturists Relief Act. The Government of India are disposed to accept the opinion of the Commission, and I am to ask whether His Excellency in Council agrees with this view.

11. Lastly, I am to refer to a proposal which has been made that Local Governments should be empowered to remit in any district or part of a district in which conciliators have not been appointed, half the fees in cases covered by the Bill now circulated in which the parties come to an agreement at the first hearing, and to remit in any or all districts institution fees on suits brought by agriculturists for redemption of mortgaged lands.

The following special exemptions have been made under the Court Fees Act in places where the Deccan Agriculturists Relief Act is in force :—

- (1) The fees on plaints in suits by agriculturists under section 16 for an account, &c., and for redemption or mortgage where any of the plaintiffs is an agriculturist, are remitted entirely except in the Satara district, where they are reduced to one-half;
- (2) fees in insolvency proceedings are remitted;
- (3) the fees in suits referred to in Chapter II to which an agriculturist is a party are reduced to one-half;
- (4) fees in suits before Village Munsiffs are remitted; and
- (5) where conciliation is not in force, half the fees are refunded if a compromise is effected at the first hearing.

The Governor-General in Council desires to receive the opinion of His Excellency in Council as to whether any concession in the matter of Court fees should be made in the case of suits to which Chapter II of the Bill under circulation refers.

Order—No. 804, Revenue, dated 9th December 1895.

Miscellaneous.

The letter read above with copies of the Bill and memorandum will be communicated to the Honourable the

Judges of the High Court, the Advocate-General, the Board of Revenue, Mr. F. A. Nicholson, I.C.S., Mr. C. J. Weir, I.C.S., and the Inspector-General of Registration for favour of opinion.

2. Special mention should be made of the circumstances of the Khonds.

(True Extract.)

(Signed) E. GIBSON,
Secretary to Government.

To the Hon'ble the Chief Justice, with C.L.*
through the Judicial Department.

„ the Government Solicitor.
„ the Board of Revenue (Land Revenue).
„ the „ „ (Revenue Settlement, Land Records and Agriculture).
„ the „ „ (Separate Revenue).
„ F. A. Nicholson, Esq., I.C.S., Collector of Anantapur.*
„ the Inspector-General of Registration.*
„ C. J. Weir, Esq., I.C.S., Collector of Ganjam.

* With copies of the report of the Commission for perusal and return.

Resolution—No. 311, dated 19th August 1896.

The Board begs to submit its remarks on the Agriculturists' Relief Bill and on the several questions raised and suggestions made in the Government of India letter and memorandum received with the Government Order read above. The reference has been dealt with as a Full Board subject, but the papers have not been noted upon by the Fourth Member, who is at present absent from Madras. The Board in the Settlement Department has been directed by Government to obtain and submit the views of the two Deputy Commissioners, M.R.Ry. M. Adinarayana Iyah Garu and Mr. G. P. Clerk, and will take this opportunity of reporting the opinion of the Settlement Commissioner upon the Bill.

2. The Board will, in the first instance, deal with the points specially referred to in the Government of India letter—

(a) *Paragraph 4 of the Government of India letter.*—The proposal to make the provision relating to the non-liability of agricultural land for unsecured debt of general applicability would, in the opinion of the Board, seriously injure the credit of borrowers and force them to contract permanent or lasting mortgage-debts in the place of the temporary loans that can now be easily obtained under the ordinary law. The further exemption of agriculturists' land from attachment and sale for the recovery of mortgage-debts due thereon is therefore out of the question; but in any case it is premature to decide on the necessity for such exemption, while the question of restricting the voluntary alienation of land is under discussion. If voluntary alienation is forbidden, the prohibition of sale of pledged land will follow.

(b) *Paragraph 8 of the Government of India letter.*—The Board is in favour of the recommendation made by the Deccan Commission to the effect that the period of limitation prescribed in the general law for suits on bonds or on accounts stated (*vide* articles 64 and 66—8 of schedule II to Act XV of 1877) should be extended from three to six years in cases where the suits are not founded on registered instruments. The First Member of the Board dissents from this view and has recorded his opinion in a separate minute.

(c) *Paragraph 9 of the Government of India letter.*—The Board is of opinion that when the property of the debtor has been reduced to the items exempted from attachment and sale under section 266 of the Civil Procedure Code, he ought to have the benefit of section 337-A of the Code. As the latter section has been held not to give the Courts the necessary powers in this direction, the Board considers that the law should be amended accordingly.

(d) *Paragraph 10 of the Government of India letter.*—The majority of the Board are in favour of the recommendation of the Commission that section 525 of the Civil Procedure Code should be amended as indicated in paragraph 58 of its report. The First Member dissents from this view and his reasons for so doing are specified in his separate minute.

(e) *Paragraph 11 of the Government of India letter.*—The Board considers that it will probably be advisable to allow some concessions in the matter of the court fees payable in suits filed under chapter II of the proposed Agriculturists' Relief Act, and in backward tracts where the Act is most needed, such a concession will certainly be desirable. But the extent to which concessions may be called for cannot be determined until the tracts to which the Act should be extended have been decided upon.

3. The Board will now proceed to discuss the various provisions of the Bill drawn up by the Government of India. The First Member is not a party to this discussion, as he is of opinion that legislation of this nature is undesirable, at any rate, in this Presidency. The separate minute, to which allusion has already been made, is appended to these Proceedings. The majority of the Board understands that the proposed Act is required in many parts of India, and consequently it will be of advantage to have upon the statute book a measure which can be extended by notification to those localities where it is required. It is presumed that if the Act ever comes into force in this Presidency at all, it will do so only in a few backward and exceptional tracts, for the Board is of opinion that in such localities only is any legislation of this nature ever likely to be required. The provisions contained in the several sections of the Bill will accordingly be considered with regard to the circumstances prevailing in such tracts and not in the Presidency generally.

4. *Section 1, Clause (3).*—The Local Government should be given power to declare that the members of any particular caste or race living in any local area to which the Act may be extended should not have the benefit of the Act even though they are agriculturists, and that debts due to certain classes only should come within its operation. The Board would instance the case of the "Soondies" in Jeypore and the Pathans in Malkangiri in the Vizagapatam district. The "Soondies" are a caste of liquor sellers who are penetrating further and further into the hills as they become more accessible; these men lend money at extortionate rates of interest and are gradually getting the whole of the surrounding hill tribes into their power. Wherever a

Soondee settles the ryots speedily grow poor. The Pathan settlers in Malkangiri also live by usury and are even worse than the Soondies in their rapacity. It is more than probable that similar conditions prevail in other backward localities, where country inhabited by aboriginal tribes is becoming gradually accessible to the more advanced population of the neighbourhood.

5. *Section 2, Clause 1st (Agriculturist), and paragraph 3 of the memorandum.*—The definition of the term as it originally stood in the Deccan Agriculturists' Relief Act, 1879, was apparently meant to meet the case of agriculturists going to serve as sepoys and returning to the family lands while on furlough or after they have earned a pension. As amended in the present Bill, it might be held to apply to all persons in Government service and appears in this respect to be too wide. It is true that under the terms of explanation (a) an agriculturist, who does change his status as such by taking employment in Government service, would impliedly cease to be entitled to the benefits of the Act, but this point is not very clear. The Board considers that such a highly paid officer as, for instance, a Deputy Collector in the Revenue Department, who does not earn his livelihood wholly or principally by agriculture, should be excluded from the scope of the definition, and, accordingly, suggests that either the words "by the tenants" occurring in the definition of the term be omitted or that the words "without any intention of changing his status as such" occurring in the first clause of explanation (a) should be so transposed as to govern the second clause which refers to persons in Government service. Subject to the above limitation, service in Native States or foreign territories may also be included in the explanation.

6. *Section 3 of the Bill and paragraph 4 of the memorandum.*—The provisions of chapter II should, in the Board's opinion, be made applicable to suits falling under clause (b) of this section in which the plaintiff is also an agriculturist; bearing in mind that the Act will be applied to very backward tracts, it may often happen that in such suits the plaintiff will be the poorer and more ignorant of the two parties.

7. *Section 5 of the Bill and paragraphs 6 and 7 of the memorandum.*—(a) Sub-section 2 as now drafted should be retained.

(b) The discretion conferred by sub-section 3 should be left to the Civil Court, as abuse of it is provided against by requiring the Court to record its reasons in writing and as, moreover, in suits falling within clauses (a) and (e) of section 3 where the defendant is a non-agriculturist, the Court may frequently consider it unnecessary to enforce his attendance. If, however, it is ultimately decided that this sub-section should be struck out, the following amendment should be made in sub-section 1 so as to exclude from its scope such suits as fall within clauses (a) and (e) of section 3:—

For the clause "to which this chapter applies", substitute the words "of the description mentioned in section 3, clauses (b), (c) and (d)".

8. *Section 7, Sub-section 2 of the Bill and paragraph 8 of the memorandum.*—Sub-section 2 may stand as drafted by the Government of India.

9. *Section 8 of the Bill and paragraph 10 of the memorandum.*—(a) The Board presumes that bonds in which future interest for a term of years is added to the money actually advanced and interest is made chargeable on the total amount after the term of the bonds expires, fall under agreements to allow compound interest. If not, such agreements should be expressly declared to come within the scope of the section. It is a common practice in some parts of the country for money-lenders to extort higher rates of interest by this means.

(b) For the reasons assigned in paragraph 39 of the report of the Commission of 1891-92, the Board considers that the following amendment may be made in clause (d) of this section; it indicates more clearly the object desired without unduly fettering the discretion of the Court:—

For the clause "unless the Court deems such debit to be reasonable," substitute the following:—

"Such conversion shall not be accepted by the Court, if, for reasons to be recorded by it, it deems the conversion to be unreasonable. In deciding whether the conversion is unreasonable, it shall consider *inter alia* the length of the rests, the rate of interest and the nature of the security".

(c) The Board agrees with the Government of India that the words "or setting off the profits of mortgaged property without an account in lieu of interest" occurring in this section, as well as section 9 should be cut out.

(d) The Board would suggest the insertion of a provision in clause (b) of this section, on the analogy of the one contained in clause (f) in the case of *produce* delivered to the creditor, to the effect that the prices of *goods sold* by the creditor to the debtor are liable to revision by the Court.

10. *Section 10.*—It appears to the Board that section 10 has been inserted with reference to section 9, and should be cut out together with that section (*vide* paragraph 9, clause (c) above), the matter being sufficiently dealt with by sub-sections (3) and (4) of section 14 or by such a re-arrangement of the sections contemplated in paragraph 14 of the memorandum as may be determined at the final drafting.

11. *Paragraph 12 of the memorandum.*—As already stated the Board considers that section 9 may be struck out and it follows that the second proviso to the proposed sub-section becomes unnecessary. The sub-section itself and the first proviso seem sufficiently met by rule (f) in section 8 which may however be amplified if necessary.

12. *Section 11 of the Bill and paragraph 13 of the memorandum.*—The provisions of section 11 are preferable to those contained in Chapter XXXVII of the Civil Procedure Code.

13. *Section 12.*—It would perhaps be well to provide specifically that in cases in which the Court is satisfied that time was of the essence of the contract and that the contract was not inequitable, it may refuse to pass a decree for redemption before the time fixed for the payment of the principal. The Board presumes that the clause "or on the ground that the mortgage debt has been completely discharged", which occurs towards the close of this section, will be amended at the final drafting with reference to the remarks made thereon in paragraph 43 of the report of the Commission (at page 49).

14. *Section 15.*—This section would *ordinarily* cause unnecessary interference with the terms of valid contracts, but it is easy to conceive circumstances under which money-lenders might by its help be prevented from reducing a large proportion of the ryots of a village situated in backward tracts to the position of mere agricultural labourers.

15. *Section 16.*—With reference to paragraph 46 of the report of the Commission, provision should be made in this section to the effect that the Court should adjourn the case for a reasonable time after judgment is pronounced and before the decree is signed, in view to give the mortgagor time to ascertain whether he can raise the amount required for redeeming the mortgaged property or not.

16. *Section 19.*—The Board considers that the plaintiff in suits instituted under section 16 should also be given the benefit of the provision contained in this section.

17. *Chapter III of the Bill and paragraph 16 of the memorandum.*—The Board considers that all the provisions of this chapter excepting those contained in sections 23 and 24 should be made applicable to decrees in all suits against agriculturists with prospective effect.

18. *Section 21 of the Bill and paragraph 17 of the memorandum.*—This section appears to be a dangerous one, but in special circumstances it might prove valuable, as for instance when prices of cattle or other movable property are unduly low owing to a threatened famine. The Local Government might be empowered to put this section into force in cases such as those above indicated.

19. *Section 23.*—It appears to the Board that in advocating the retention of this section the Commission has been chiefly influenced by considerations of hardship connected with the arrest under section 337-A of the Civil Procedure Code of judgment-debtors, who have no other property except of the kinds expressly exempted from attachment and sale, and that it has failed to establish the necessity for the general exemption from arrest provided in the section. This general exemption is specially to be deprecated in the interests of the borrowers. To deprive the agriculturists

of one of the chief securities on which they can borrow money—their own personal liberty—would be inflicting a serious wrong. People with little or no property may be able to get on well enough in ordinary times, but need temporary help in times of adversity; and where, as in the zemindaris of the Northern districts, a large number of the agriculturists have no saleable interest in the lands occupied by them and but little other property from which their debts can be realised if their persons are exempt, the proposed exemption would make it almost impossible for them to borrow money however respectable they might be.

20. *Sub-section (1) of Section 24.*—As already observed in paragraph 2 (a) above, this provision is likely to force the ryot to contract permanent or lasting debts secured on his land in place of the temporary accommodation which he now obtains from his money-lender during the seasons when he has no money coming in; and in this view the Board is confirmed not only by a comparison of the statistics of sales and mortgages of land in the Deccan in 1883 and 1891, as given in the report of the Commission, but also by the fact that though the Deccan Agriculturists' Relief Act has been in force since 1879, the Commission has failed to furnish any very positive evidence in its report in favour of the provisions in sections 23 and 24, or to show that the startling increase in the recorded burdens on landed property between the years 1883 and 1891 was accompanied by any decrease in the rate of interest.

The figures are as follows:—

	In 1883.				In 1891.			
	To non-agriculturists.		To agriculturists.		To non-agriculturists.		To agriculturists.	
	Extent of land.	Value of land or amount of debt secured thereon.	Extent of land.	Value of land or amount of debt secured thereon.	Extent of land.	Value of land or amount of debt secured thereon.	Extent of land.	Value of land or amount of debt secured thereon.
Lands sold ...	ACS. 18,910	RS. 2,97,137	ACS. 38,608	RS. 5,93,902	ACS. 41,978	RS. 6,10,323	ACS. 64,703	RS. 9,27,123
Lands mortgaged with possession ...	36,436	5,31,864	29,881	5,77,053	99,375	12,57,151	75,708	11,01,232
Lands mortgaged without possession ...	10,018	1,52,309	5,439	81,690	70,931	5,70,785	81,281	3,94,398
Total ..	65,264	9,81,310	73,928	12,52,645	212,284	24,38,259	171,692	24,22,753

The Commission seems to the Board to have made little or no attempt to explain this enormous increase.

21. *Proviso to sub-section (1) of section 24 of the Bill and paragraph 18 of the memorandum.*—The Board prefers the proviso in the body of the Bill which exempts half the crops from attachment. Under this proviso, it is only in cases where the holdings of the agriculturists are large that there will be any surplus left with the debtor over and above what is required for his maintenance and for seed grain. In this class of cases, the exemption of half the crops will, on the one hand, afford an inducement to the agriculturist not to neglect his cultivation, while on the other hand the creditor will not be materially prejudiced, as he can in the case of such large land-holders execute his decree in other ways than by the sale of standing crops.

22. *Chapter IV of the Bill and paragraph 19 of the memorandum.*—As pointed out in paragraph 54 of the report of the Commission, the main object of the provision of a special insolvency procedure is to oust chapter XX of the Civil Procedure Code; the sections as drafted will answer this purpose. But the Board believes that these special insolvency arrangements are not really called for, as they are not likely to be resorted to in the areas, to which the proposed Act would be extended, any more than in the Deccan where they appear to have been a dead letter. If the chapter is struck out, the necessary portion of section 30 should be inserted in section 24, sub-section (2).

23. *Chapter V of the Bill and paragraph 20 of the memorandum.*—From the report of the Commission, the Board finds that the conciliation clauses have not worked well in the Deccan where they have been tried; and as they form no essential portion of the Bill, it may, no doubt, be said that they should be omitted and a revised experiment made where it is most wanted. The Board, however, believes that the provisions will work well in certain areas in the Northern Circars and is therefore disposed to retain the chapter.

24. *Section 34 of the Bill and paragraph 21 of the memorandum.*—There are no Police officers in this Presidency, who should not be debarred from appointment as conciliators. The village headman in Madras is a Magistrate and not a Police officer.

25. *Section 43 of the Bill and paragraph 22 of the memorandum.*—No such explanation as is appended to section 47 of the Deccan Agriculturists' Relief Act is required in the present Bill, so far as this Presidency is concerned.

26. *Chapter VI, sections 46 to 48.*—The portions of these sections which relate to the superintendence of the work done by conciliators should, the Board considers, be embodied in chapter V which deals with conciliation.

27. *Chapter VII of the Bill and paragraph 24 of the memorandum.*—The Board would suggest the omission of this chapter, inasmuch as, for the reasons assigned in paragraph 60 of the report of the Commission, the objections to the system of executing instruments before sub-registrars—the trouble and expense to parties in the case of small bonds and the untrustworthiness of much of the evidence—outweigh any advantages that might be secured thereby. The Board believes that sections 7 and 8 of the Bill, if properly worked, would give the necessary relief to agriculturists. Further, the Board fears that the sub-registrars having jurisdiction over the areas to which the Bill may be extended, could not get through the work of drafting instruments properly, if the provisions of the chapter were freely resorted to. It is to be noted in this connection that there are no sub-registrars in the scheduled districts in this Presidency.

28. *Chapter VIII, section 53 of the Bill and paragraph 26 of the memorandum.*—In paragraph 26 of the memorandum it is stated that the clause in italics added at the end of this section is intended as a penalty to make the section effective. But as a penalty is already provided in section 67 of the Deccan Agriculturists' Relief Act (corresponding to section 56 of the present Bill) and as it has not been shown that this was insufficient, the additional penalty provided in the clause in question appears to be unnecessary and should be omitted. If, however, the clause is retained, provision must be made for the debtor (agriculturist) acknowledging in writing the delivery to himself of the creditor's receipt for money paid, or he may otherwise be tempted to wilfully destroy the receipt granted by the creditor, and to declare that he has paid a larger amount than is actually the case.

29. *Sections 54–58 of the Bill and paragraphs 27 and 28 of the memorandum.*—The provisions contained in these sections will be very useful and should be retained.

30. *Chapter IX of the Bill and paragraph 29 of the memorandum.*—The Board is of opinion that though fees may not be awarded as costs in petty suits, pleaders must be allowed to appear except before conciliators, as in the hill tracts of Vizagapatam, for instance, ignorant ryots would not think of taking their cases into the Courts without a pleader's help.

31. *Section 61 of the Bill and paragraph 30 of the memorandum.*—The Board considers that the alternative clause providing for the recognition of mortgages notified to Revenue officers and entered in the record of rights should be retained.

32. In conclusion the Board would draw attention to the fact that the Commission has found very little positive evidence of the good done by the Act in the area to which it was supposed to be so particularly applicable. As already stated, the Board is not in favour of introducing any such measure into the Madras Presidency as a whole, and the provisions of the Bill have been discussed on the assumption that it is to be applied to special localities, where the march of civilization has not yet

placed the agriculturist beyond the need of State interference with his private dealings.

(True Copies and Extract.)

(Signed) R. C. C. CARR,
Acting Secretary.

To the Secretary to Government, Revenue Department.

APPENDIX.

FIRST MEMBER'S MINUTE.

The conditions in Madras are fortunately almost entirely dissimilar to those with which the Government of India propose to grapple. None of the artificial means of relief suggested in the papers are required here. They appear to me to contain elements of danger in themselves, which should prevent their introduction to such a tract being contemplated for a single moment. I doubt whether the idea of applying such desperate remedies to even such fiscally backward and impoverished tracts as Bombay and the Central Provinces is sound or prudent. If we in Madras found ourselves confronted with the undesirable state of things which appears to prevail in those parts of the country, I fancy that we would not be found trifling with diseased conditions by using doubtful remedies. We should rather devote ourselves to discovering what might be wrong in our own administration, and be tending to retard the material progress of the cultivating classes or to cause positive deterioration. To tamper with the civil rights of parties, by re-adjusting the ordinary law which governs the dealings of man with man, can never, in my opinion, form a permanent or efficient remedy. On the other hand, such measures, by injuring the credit of borrowers, and in other ways also, are likely to be positively hurtful and to defeat the object aimed at. For these reasons, I apprehend not good, but bad, results from exempting land from execution in satisfaction of a money decree as well as from restricting the voluntary alienation of land (paragraph 4 of India's letter). This latter measure would in Madras amount to the wholesale confiscation of property in land, which has, for nearly a century, been recognised by the British Government in pursuance of the policy of previous Governments through a course of ages in the South of India. The immediate effect would be most disastrous. The tendency of such a measure would be to assert a right in land on the part of the State, which is unknown here, and which must eventually lead to increased demands on the ryot in the shape of "rent," whereas what has hitherto been levied from him is land tax or land assessment. I am aware that the title of the ryot elsewhere is somewhat different, and that the claims of Government are tinged with the Muhammadan doctrine of State right in all the soil of a country. But this doctrine is utterly foreign to Madras, and there is no urgency whatsoever to justify its attempted assertion. I do not propose pursuing the subject further on this occasion, as it has been fully dealt with in a paper on the economic condition of the ryot with reference to a proposal for the establishment of Agricultural Banks.

I likewise am entirely opposed to extending the limitation period on bonds and accounts beyond the statutory limit of three years. The more often, I submit, that the borrower is brought face to face with the state of his affairs, and the more frequent the opportunity afforded to him of checking the charges against him, the better.

With regard to paragraph 9 of the same letter, it appears to me that when the property of the debtor has become reduced to the items alluded to, he ought to have the benefit of the provisions of section 337-A of the Civil Procedure Code.

In pursuance of the views above expressed, I am against making any alteration in section 525 of the Civil Procedure Code. The agricultural classes should be encouraged to resort to arbitration in any form. Such awards are in accordance with the customs of the country and with the genius of its original institutions.

Finally, I consider that, in respect of the proposals in paragraph 11, the Government should not make any concession in the matter of court fees. The remissions contemplated, while made at the expense of the whole tax-paying body and therefore inequitable, are calculated to foment litigation, and would tend to prevent amicable settlement of disputes.

READ—the following letter from D. W. G. COWIE, Esq., Registrar of the High Court of Judicature, Madras, to the Chief Secretary to Government, dated 11th September 1896, No. 506:—

With reference to G.O., No. 804, Revenue, dated 9th December 1895, communicating, for favour of opinion, a letter from the Government of India, Home Department (Judicial), No. 23—1591, dated Simla, 31st October 1895, together with copies of a Bill to provide for the relief of the agricultural classes and its memorandum, I am directed to forward a transcript of the minutes recorded by the Honourable Justices Subramania Aiyar, Davies and Benson, and to state that the Honourable the Chief Justice and Mr. Justice Shephard have no remarks to offer.

ENCLOSURE.

Minutes.

MR. JUSTICE SUBRAMANIA AIYAR.—I regret that I have not been able to find the time necessary to study the numerous and complicated provisions of this Bill with that care and attention which their importance demands. I must content myself with saying a word or two as to whether the circumstances of the agricultural population of this Presidency call for such a special law. My inquiries and my own experience lead me to the conclusion that that exceptional state of things which alone would justify such legislation does not exist here. The Madras ryots, according to the testimony of those entitled to speak on the point, have, as a class, notwithstanding the indebtedness of portions thereof, been during the last 30 or 40 years in a fairly prosperous condition. Moreover, much of the money due by agriculturists, who are in debt, has been found to be due to persons of the same calling as the debtors. And these ryot-creditors are, I have reason to think, generally free from the serious vices of the usurer. Nor has the power of disposing of immovable property, which has been enjoyed for generations by members of this class of the community in this part of India, been proved to have been used by them or their creditors to the detriment of the class as a whole. To curtail such power of disposition, as the present Bill would, if it becomes law, cannot but, I apprehend, damage the credit of the ryots and their future welfare very seriously. I think I may add, without impropriety, that what is required to maintain the present satisfactory state of things in this Presidency is not class legislation of the kind contemplated, but the continuance of the enlightened policy of keeping the Government demand on land within fair and moderate limits, which has prevailed here for the last 30 years or so, and which, in my opinion, has contributed in a very material degree to the comparatively well-to-do condition of our ryots. It is scarcely necessary to remark that nothing tends more to compel them to borrow money on disadvantageous terms than the recurrence of demands for over-assessed land revenue, coupled with local cesses the amount of which is made to depend upon the amount of that revenue.

MR. JUSTICE DAVIES.—The advisability or otherwise of the measures proposed for the relief of the agriculturist seems to me to be a question rather for the executive than for the judicature. At all events, I do not feel competent to express opinions on the matter.

MR. JUSTICE BENSON.—I have read the papers with much interest, but I find that it is impossible for me to adequately consider or discuss in the brief intervals I can spare from my daily judicial work the momentous and complicated issues raised by the proposed legislation. My general impression is that the Bill, if passed in its present form, will create in this Presidency, at least, quite as many evils and difficulties as it will remove. I will merely give, as an instance, the fact that the definition of "agriculturist" would probably be held to include the great landlords of Malabar, and the Bill would thus give them a variety of immunities and privileges of which they stand in no need, and to which they can lay no claim, e.g., most of the land in Malabar is held under these landlords on mortgages which are not redeemable before the expiry of 12 years. Section 12 of the Bill will enable a landlord to redeem at any time. Thus the little security of tenure which the tenant now has, and which many authorities think ought to be increased, will be at once swept away.

2. There is scarcely a section of the Bill that does not raise questions of a difficult and far-reaching character which it is impossible to deal with in the few minutes which alone are available each day. Partial or cursory discussion would, I think, be worse than useless. I must therefore leave the Bill undiscussed.

READ—the following letter from M.R.Ry. P. RAJARATNA MUDALIYAR Avargal, Diwan Bahadur, Inspector-General of Registration, to the Chief Secretary to Government, dated Madras, 28th September 1896, G. No. 6242.

Referring to G.O., No. 804, Revenue, dated 9th December 1895, and reminder, No. 1455 R., dated 23rd July 1896, I beg to state that the papers connected with the Agriculturists' Relief Bill were taken by Diwan Bahadur Srinivasa Raghavaiyengar, and have not yet been returned by him. I have been daily expecting to receive them with his note, and delayed sending a reply to the Government order.

6. Considering the Bill on its merits, apart from the question whether its application is called for in any part of this Presidency, it may be observed that its application to any large area would involve heavy additional expenditure, as the existing Judicial establishment would be quite inadequate to cope with the increase of work entailed thereby. The proposed enactment prescribes a procedure more lengthy and more tedious than that of the Civil Procedure Code, for the suits which fall under it; and such suits form the bulk of the litigation of the Presidency; nearly 90 per cent. of the suits in Civil and Revenue Courts being for money, rent or moveable property, or relating to mortgages, and the classes proposed to be protected by the draft Bill forming no less than 70 per cent. of the population of the Presidency. In the four districts of the Deccan, in which the Deccan Agriculturists' Relief Act is in force, the ordinary Courts had to be strengthened, in order to work the Act, by an additional staff costing Rs. 55,000 per annum, and the annual extra cost to the State, caused by the Act, came to nearly a lakh of rupees more.

Vide paragraph 17 of the Deccan Commission Report of 1891-92, and foot-note on the same page.

7. There are no "martial classes," properly so called, in this Presidency. The Musalman has taken to trade, when he is not effete, and the Kshatria has turned his sword into a reaping hook. He is no longer keen to fight for honour, or for the love of fighting, but holds that his caste would be imperilled by joining the army, and babbles of special allowances and "mokhasas" to be given to induce him to join. This was the view of the delegate, in one place, of the Telugu Kshatrias. It is possible that some of the provisions of the proposed enactment might produce beneficial results in exceptional localities like the Agency Tracts, where a foreign class of money-lenders is stated to take advantage of the simplicity of the hillmen to drive hard bargains. But it is questionable whether any special legislation should be undertaken for the Scheduled Districts alone, considering that the administration of Civil Justice in those tracts is governed by rules framed by the Local Government, and any reforms that may be considered necessary can be effected by executive orders. Powers have been taken to refuse to execute judgments against lands in these tracts, and Government has also the power to prohibit any particular person from living there, a power which might be used to extirpate the money-lender and the Pathan. Certainly, if any race deserves paternal protection, it is the noble race inhabiting the Agency Tracts. The Telagas press him in the lower lands, and the Reddi—not the Konda Reddi—is approaching his fastnesses in the hills, but the love of truth distinguishes him still from the dwellers in the plains. He may be rude and uncouth, but he will not lie, though looking death in the face. He is, however, threatened with education, and as the civilisation Octopus extends its arms into these wild tracts, the Koya will learn to lie like his neighbour. What is chiefly wanted in these tracts is, not new laws, but an Outram.

8. If the proposed legislation be considered necessary in other parts of India, there is no objection to the passing of an enabling Act, of the kind in question, which Local Governments may make use of, when and where they deem it fit to do so. In this view, the Acting Commissioner would offer the following remarks on the provisions of the draft Bill and the proposals contained in the memorandum and letter received therewith.

9. *Chapter I of the Bill—Local extent.*—Considering that the object of the Act is the protection of agriculturists among the backward classes of people who are too simple to be able to help themselves, the proper course would seem to be to extend to such classes the benefit of the Act, without limit of area. But, if "local extent" which implies specification of areas, should necessarily be stated in an Act, it is desirable that the Local Government should be empowered to declare that the Act shall apply to specified classes of people, wherever they may reside, as well as to specified areas.

Definition of "Agriculturist."—It is proposed to include in this term those agriculturists who are prevented from earning their livelihood by agriculture or from engaging in agriculture, by necessary absence in Government service or in the service of Native States. It is not clear why any distinction should be made in this respect between the servants of Government or Native States, and those who are in the service

of trading firms or private individuals, or those who are engaged in any other profession. As stated by M.R.Ry. Adinarayana Ayya, there are obvious reasons why an exception should be made in the case of men employed in the military service of Government, but such reasons do not exist in the case of other Government servants. Even in this Presidency, it may be doubted if the sepoy or his native officer require any special protection. They obtain leave easily, and generally have relatives who look after their lands. Chapter XXXII of the Civil Procedure Code and the Circulars of the Local High Court noted in the margin * seem to give them all the protection they require here. It is, however, probable that the case is different in the North.

* High Court's Circulars Nos. 3985 and 847, dated 18th December 1883 and 18th March 1892, respectively.

10. *Chapter II (Sections 3 to 20).*—The Government of India enquires whether the provisions of this chapter should be extended to any class of cases falling under clauses (b) and (c) of section 3 in which the plaintiff is an agriculturist. Clauses (b) and (c) of section 3 refer to suits for money, rent or moveable property instituted against an agriculturist, and the only provisions of chapter II which govern such suits are those contained in sections 4, 5, 6, 7, 8, 11 and 20, all of which are intended to afford special protection to the defendant and none to the plaintiff. In these circumstances, and considering that, of the suits in which the plaintiff is an agriculturist, those instituted against agriculturists are, as the draft Bill now stands, covered by chapter II, the Acting Commissioner is of opinion that those instituted against non-agriculturists need not be brought under that chapter, as a non-agriculturist defendant does not require any special protection as against an agriculturist plaintiff.

The compulsory attendance of defendants required by section 5 (2) is likely to work hardship in cases where the defendants are females, and the discretionary power given to Courts by clause 3 of the section is therefore necessary. Discretion should also be allowed to the Courts, as suggested by M.R.Ry. Adinarayana Ayya, to dispense with the examination of plaintiffs and defendants required by section 7 (4).

Mr. Clerk thinks that the enquiry into the history and merits of a case, required by the latter section, should be made compulsory in all cases, and not confined to those falling under clause 4, inasmuch as such enquiry will take but a short time, and the cases that may not absolutely require such enquiry will be very few. It seems to the Acting Commissioner that any provision requiring the Courts to disregard the admissions of a party, made truly and with a full knowledge of his legal rights, is inconsistent with the general spirit of the Bill, which favours arbitration, compromise and such other methods of settlement out of Court; and he would therefore propose no alteration in this respect in the provisions of section 7.

The provisions for revising usufructuary mortgages with retrospective effect were tried and declared a failure in the Deccan, and, considering the difficulty of calculating the actual profits derived from lands in years gone by, such provisions are likely to do more harm than good. They would certainly breed a large crop of perjury. Section 9 should therefore be struck out and the necessary correction made in clause 2 of section 8. The proposed sub-section to section 9 will then become unnecessary.

Section 10 provides for the discharge of a debt, where the mortgagee is in possession, by revising prospectively the net profits of the mortgaged property, when such net profits appear to exceed the interest properly chargeable on the mortgage-debt, and by continuing the mortgagee in possession for a specified period calculated with reference to such increased profits. This seems unobjectionable; but the mortgagor should not, as contemplated in the proviso to this section, be debarred from redeeming the property before the expiry of the term specified by the Court, if, in the meanwhile, he should be in a position to pay into Court the balance of the debt.

The procedure, prescribed in section 11, for arbitration in cases where only the debtor agrees to it, is better and more elastic than that given in the Civil Procedure Code, and should, in the opinion of the Acting Commissioner, be adopted even in cases where all parties agree to arbitration.

It is observed that the Government of India propose to recast the sections of Chapter II, embodying in sections 7 and 10 the provisions of section 14 (3), 14 (4), 16 and 17.

11. *Chapter III—Sections 21 to 24.*—This chapter contains special provisions regarding the execution of decrees against agriculturists. Section 21 provides that where cattle or moveable property is attached in execution of a decree, or is tendered by a debtor in execution proceedings, the creditor should be compelled to take it at an upset price fixed by the Court, if the bid at auction fall below that price, or to make good the difference between the amount of such bid and the upset price. The justice of forcing upon the creditor a thing which he does not want is not apparent. An attempt to recover a loan advanced on fair terms, or reduced to fair proportions by the operation of the provisions of the proposed enactment, is not an offence which requires to be punished in the manner proposed by the section. Courts generally sit in large towns, where good prices should be obtainable. It is from the debtor's side that any combination to reduce the price is to be feared, and he need not be protected against himself. Section 21 should therefore be struck out.

The proposal to abolish arrest and imprisonment of judgment-debtors in execution of decrees for money (section 23) does not also commend itself to the Acting Commissioner. It is likely to impair the personal credit of agriculturists and put them in a worse position than now. The main object of this proposal is stated to be to protect the person of the judgment-debtor in those cases in which he possesses no other property than that exempted from attachment and sale by section 266 of the Civil Procedure Code, but in which the Punjab Courts have held that he is still liable to arrest and imprisonment, section 337-A of the Code notwithstanding. Such cases should be provided for by an amendment of section 337-A of the Civil Procedure Code, rather than by the total prohibition of arrest and imprisonment. As a fact, the imprisonment for debt of an agriculturist by his creditor is, the Acting Commissioner believes, in this Presidency, practically unknown. Outside the largest towns, imprisonment for debt, in any case, is of the rarest. If the debtor can pay, and will not, he deserves no sympathy. If, on the other hand, he really cannot pay, the fact will be known to the creditor, and the latter is not likely to enforce the law against the debtor's person when he knows that he will have to pay *batta* for his maintenance in prison.

The exemption of immoveable property from attachment and sale, unless specifically pledged (section 24), seems unobjectionable, as it will not contravene any specific understanding between the parties when the loan was raised, and it is not unfair that such exemption will force the agriculturist to contract mortgage-debts in lieu of simple bond-debts; but such a result is, in the opinion of the Acting Commissioner, beneficial rather than otherwise, as it will make the agriculturist more chary of his credit, and will secure to him money at lower rates of interest. The proposal to extend this exemption to cases in which immoveable property has been specifically pledged, does not commend itself. Such a course will seriously injure the credit of the agriculturist, and will compel him to resort to outright sale of his land, where a short-term mortgage would have enabled him to tide over his pecuniary difficulties. It is in the nature of things that the land should change hands, and its value must depend on its being able to do so. It is only under a theocracy that jubilee restitution can take place, and in theocracies usury is prohibited. To obstruct alienations would often be to prevent a good and careful agriculturist from developing his energies. Even under English law, no man can own land, but only an interest in land, and the change of ownership is a very old story.

"Nam propriae telluris herum natura neque illum,
Neo me, nec quemquam statuit. Nos expulit ille;
Illum aut nequities, aut vafri inscitia juris,
Postremo expellet certe vivacior haeres.
Nunc ager Umbreni sub nomine, nuper Ofelli
Dictus erat, nulli proprius; sed cedit in usum
Nunc mihi, nunc alii."

Sahukars, through the mere operation of law. Though there is in this Presidency also a considerable amount of indebtedness among the agricultural population, much of the lending is done by persons who are themselves agriculturists. *Komatis* and *Chettis*, who are professional trading classes, also lend money, but most of these men also are settled agriculturists of their respective villages, their trading and lending operations being their distinguishing professions, just as in the case of village artisans, who are also holders of land, their several industries distinguish them from the other *ryots* of the village. Except perhaps in some limited localities, there does not appear to be any tendency in this Presidency to such an extensive transfer of land to an unsympathetic money-lending class as to constitute a political danger. However, the proposed legislation, which is in the nature of an enabling statute intended to be applied to particular localities, the circumstances of which may render resort to its provisions necessary, is unobjectionable (clause 3, section 1 of the Bill).

3. *Explanation (a) attached to clause (1)—Section 2 of the Bill.*—I do not think it necessary that the concession allowed by the section should be extended generally to all Government servants or servants of Native States holding landed property. The object of this Bill is to protect the interests of *bona fide* agriculturists, who as a class are generally ignorant, illiterate and not capable of taking proper care of their own affairs. Government servants generally are intelligent men, and many of them acquire landed property from savings without having been themselves agriculturists or members of agriculturist families when they started in life. It is not contemplated, I think, that a merchant or a person engaged in any other profession, who acquires or holds land, but who mainly relies on his trade or other profession for his income and living, should be treated as an agriculturist under the Bill (paragraph 28 of the report of the Commission of 1891-92). Government service is equally a profession. There are obvious reasons why an exception should be made in the case of men employed in the military service of Government, but beyond this it seems unnecessary to extend the concession generally to all Government servants. The matter is one which might be left to the discretion of the Courts to decide in each case, subject to the main rule, that the concession should be allowed only in the case of those who by entering Government service have "only temporarily ceased to earn their livelihood from agriculture."

4. In other respects the definition of the term "agriculturist," as given in the Bill, appears to be adequate.

5. *Chapter II, Section 3.*—It does not seem necessary to extend the provisions of chapter II so as to cover any cases specified in clauses (b) and (c), in which the plaintiff is an agriculturist. Generally in cases of the kind referred to, the agriculturist plaintiff will be found to be an enterprising money-lender capable of taking proper care of his interests.

6. Section 5 (2) may be retained, but the discretion to dispense with the attendance and examination of the defendant contemplated by section 5 (3) should be continued. There will be several cases in which both from the general intelligence of the defendants and the circumstances of the cases themselves, it will be found unnecessary to insist on the personal attendance and examination of the defendants.

7. For the same reason, in clause (4), section 7 of the Bill also, words should be inserted, as in section 12 of the Deccan Agriculturists' Relief Act XVII of 1879, allowing discretion to the Court to dispense with the examination of the plaintiff and defendant as witnesses.

8. It is undesirable to open the way for a fresh account being taken with retrospective effect, where, under the terms of the original mortgage, the understanding was that the profits from the lands should be set off in liquidation of interest. It will unnecessarily complicate the work of the Courts and may often prove unfair to the mortgagee. It is only when the profits have risen in value that a suit for redemption will be launched by the mortgagor, and it will be sufficient, for all practical purposes, to empower Courts, as contemplated by section 10 to extinguish the debt by revising the terms of the mortgage, *prospectively*. In this view I submit that section 9 may be omitted altogether, and also the words "or setting off the profits of mortgaged property without an account in lieu of interest" in the second sentence of section 8.

9. *Section 11.*—As drafted, does not shut out resort to the provisions regarding arbitration embodied in Chapter XXXVII of the Civil Procedure Code. When all the parties agree, clauses (1) and (2) of the section provide for a reference to arbitration being made under the Civil Procedure Code. Where, however, such universal consent is not forthcoming, an alternative course is provided for in clauses (3) to (14). It seems unnecessary to adopt both these systems in the Bill. The latter course is the more elastic of the two. Both for purposes of revision and for initial reference, the provisions in clauses (3) to (14) of section 11 confer more latitude on the Courts, and this is necessary considering the class of cases which will fall to be adjudicated upon under the Agriculturists' Relief Bill. Resort to the procedure under the Civil Procedure Code may therefore, I think, be omitted from the Bill. It is true that where arbitrator's awards are held liable to revision [clause (13), section 11], at the discretion of the Courts, there will not be much inclination manifested to resort to arbitration, but as the object of the Bill is to safe-guard an illiterate and ignorant peasantry against its own mistakes, the provisions contemplated in the above clauses seem necessary.

10. *Section 24.*—Of the two alternative provisos, the simpler one to work will be that provided in the body of clause (1), restricting sale to not more than one-half of the standing crop. This will also be fair to the decree-holder, who can then be sure of some return. To the agriculturist also, it will act as a stimulant not to neglect his cultivation. For, under the alternative proviso assuring him of his subsistence allowance, he might remain content with indifferent cultivation. There may be cases also in which so much as one-half will not be necessary for seed-grain and for subsistence of the agriculturist, his family and cattle, till the next following harvest. If this can be shown or proved by the decree-holder—and the *onus* of this should rest with him—the difference should also be held available for satisfaction of the decree. I would therefore suggest that the following sentence may be added at the end of the proviso in clause (1) of section 24: "If, however, it is proved that so much as one-half of what is left, after setting apart the quantity required for meeting the demand of Government or of the landlord for revenue or rent, is unnecessary for seed-grain and for the subsistence of the agriculturist, his family and cattle, until the harvest next following, then the surplus beyond what is required for the above purposes may also be attached and sold in execution."

11. *Chapter IV.*—I have no remarks to offer on this chapter, except that I apprehend that the provisions of sections 30 and 31 might throw on Collectors an amount of work in managing the properties of insolvent debtors, which they cannot well attend to with their present establishments.

12. *Chapter V.*—Provided suitable men, with the required leisure and willing to take up the work, can be found in the several localities, the conciliation system will be a decided advantage. But though there may be some difficulty in securing such men, it does not seem necessary, on that account, to omit the provisions under this head from the Bill.

13. I am not aware of any class of Village Officers who are also Police Officers, but whom it would still be unobjectionable to appoint as conciliators. The Talayaries in and such men can never be appointed as conciliators.

14. *Chapter IX.*—It seems sufficient to provide that costs incident to the engagement of legal practitioners will not be allowed. The proviso that no legal practitioner shall be allowed to appear in suits, the subject-matter of which is not of the value of Rs. 100 or more, goes too far, and may in some cases work against the interest of the agriculturist-debtor.

15. *Chapter X.*—The addition to section 61 in favour of recognizing liens notified to Revenue Officers and entered in the Revenue registers seems unobjectionable.

16. Proceeding to the several points raised in the letter from the Government of India, dated the 31st October 1895, No. 23—1591, Judicial, I beg to submit the following remarks.

17. *Section 24.*—There seems to be no objection to incorporating in the general law the provision embodied in this section which declares that land belonging to an agriculturist shall be exempt from attachment or sale in execution of a decree for money for which it has not been specially pledged. This will not contravene any specific understanding as between the parties when the loan was raised.

18. At the same time it is undesirable to extend such exemption to cases in which the land has been specifically pledged. In a vast majority of cases, lands are held by very poor ryots, and stringent restrictions might force on outright voluntary sales, which would be a worse evil. Moreover, with the ample safe-guards provided in the Bill and with the facilities afforded for investigations proceeding behind the bonds and account statements, there is the less reason for tying down land so absolutely.

19. There should be but one general limitation law for all classes of the community, and I see no objection to the extension of the period, in the case of suits on bonds or on account, from 3 to 6 years, as part of the general law.

20. *Sections 337 and 525* of the Civil Procedure Code—should be altered as indicated by the Government of India in its letter.

21. As regards special exemptions under the Court Fees Act, it will, it seems to me, be sufficient to reduce the court fees by one-half in the case of suits referred to in Chapter II of the Bill, and, in addition thereto, to remit the fees fully in insolvency proceedings, and to refund half the fees if a compromise is effected at the first hearing in localities where conciliation is not in force.

22. I return herewith the Bill and memorandum received with B.P., Mis. No. 1290, dated the 13th March 1896.

READ—also memorandum from Government, R. No. 106, Revenue, dated 3rd June 1896, requesting to send an early reply to G.O., dated 28th January 1896, Mis. No. 388.

RESOLUTION—dated 24th September 1896, No. 236.

With reference to G.Os., Nos. 804 and 388, Mis., Revenue, dated 9th December 1895 and 28th January 1896, respectively, the Board begs to forward herewith the opinions of Deputy Commissioners, Mr. G. P. Clerk and M.R.Ry. M. Adinarayana Ayya Garu, Rao Bahadur, on the proposed legislation for the protection of agriculturists, and to submit the following observations of the Acting Commissioner of Revenue Settlement, Land Records and Agriculture.

2. The proposed enactment is intended by the Government of India to be applied to tracts in which "a problem similar to that which led to the enactment of the Deccan Agriculturists' Relief Act has presented or may present itself." The main object of the Deccan Act was "to

Vide paragraph 7 of the Deccan Commission's Report of 1891-92. prevent the gradual transfer of proprietary interests in land from the martial and cultivating classes to the trading and

money-lending castes of Hindu society," an evil which was found to be a growing one in the Deccan, owing to the ignorance, improvidence and helplessness of the ryots, and the rapacity and sharp practice of the "Baniyas" who monopolised the money-lending business. In this Presidency, the ryots do not appear to be so ignorant and helpless as in the Deccan, nor is money-lending so much in the hands of professional sowcars, except perhaps among the hillmen of the Agency Tracts. Mr. Nicholson,

Vide Report on Land and Agricultural Banks, Volume I, pages 222-231. who has made a special study of the problem of agricultural indebtedness of this Presidency, is of opinion that "the rural creditors or lenders of this Presidency

are, for the vast bulk loans, ryots and not men of the Marwari class," and that though, in the Tam. "there are classes (of money-lenders) who are fully equal to Marwaris in keenness" "owing to competition among such classes, and

to the fact that, for ordinary purposes, the ryots are largely lenders among themselves, they have not, as a class, earned the evil reputation of the Deccan usurers, and no serious exploitation of the ryot is heard of such as is depicted in the Deccan." It is therefore unnecessary to legislate on the proposed lines for this Presidency as a whole, as suggested by Mr. Clerk: nor is it expedient, in the absence of clear and pressing necessity, to interfere, in the manner contemplated by the provisions of the draft Bill, with freedom of contract and the rights of private property.

3. It is worthy of notice that the words "Sahukar," "Baniya," "Mahajan" and "Marwari" are all entirely foreign to this Presidency. So far as the Acting Commissioner is aware, there is not a single Dravidian word which conveys the opprobrious shade of meaning generally attaching to these words, and the very word "usurer," or "wucherer" can only be expressed in these languages by a periphrasis. This is an interesting ethnological fact, and confirms the opinion entertained by the Acting Commissioner that usury, in its worst form, is not generally at home in this Presidency, and that, as a rule, the usurer, in the worst sense of the term, is here either unknown or

* It is natural that the usurer should leave an impression on the language of the country in which he works, and that his character should even be reflected in different shades of meaning. Thus "wucherer" is a much more opprobrious term than "usurer," due to influence of the lower type of German Jew, whose presence has largely led to the anti-semitic agitation in Germany and Austria.

is a foreigner.* The fact that Marwaris come down a long distance to ply their trade in Madras tends to show that there is an opening for their machinations not filled by the local practitioner. There may be Marwaris whose mode of operation is not synonymous with usury at its worst, but those whom the Acting Commissioner has had the opportunity of observing are of two classes; the large operator, who devours

the great zemindar and public officers, and his jackal who picks up the scraps. The poorer Marwari money-lender, sniffing the prey from afar, comes to this Presidency on speculation, penniless, often alone, sometimes with a wife, and content to herd in a single room or corner of a public serai, or, when fortune favours him a little, in a small room in a private house. These are the Russian or Polish Jew of this Presidency, and confine their operations to the Presidency town. These borrow—on interest—a few rupees from their richer fellow-countrymen, and lie in wait for the petty clerk, the domestic servant and other such small fry. They may, by degrees, fatten up to a condition of wealth, in which case they fly at higher game. They resemble the Chinese in their attachment to their native place, to which they return at intervals, keeping up their connection with it always. It may, however, be accepted as a general fact that the money-lender of the mofussil is of a different class, and that the really dangerous usurer—in this Presidency—is to be found only in the Presidency town. The Nattukottai Chettis of Madura are a solitary instance of a great banking community somewhat resembling the Oppenheims and Werthauers, but more merchants than usurers. The Chettis and Komatis are often money-lenders, but, though good men of business, not notoriously beasts of prey. The Komati, indeed, is, in Tamil folklore, very often a bye-word for stupidity and a butt for practical joking. The money-lender of the mofussil is generally of agricultural caste and a land-owner himself. His prosperity depends very much on the favour and repute which he enjoys amongst his clientèle, and his relations with the latter, with no doubt exceptions, are friendly enough. We do not hear in this Presidency of money-lenders whose lives are taken, or whose houses, with the bonds they contain, are burnt down, by exasperated debtors. The mofussil money-lender is associated closely with the joys and woes of his fellow villagers. He helps them in time of marriage and death, and when the seasons are unfavourable. He no doubt accumulates money, but on a small scale, and public opinion and his own interests, together with the all-pervading influence and brotherhood of Hinduism, are considerable checks to prevent the borrower from being mercilessly exploited.

4. The great danger which threatens the agriculturist in this Presidency comes from the proletariat of the literary classes. Though overflowing with lip-loyalty, this class shuns investments in the public funds or in railways. It has no trust or confidence in a Government which it hates, but whose existence is as the breath of its nostrils. The Mogul, or the French, or the English, or the Russian may come or go, but the land remains. The proletariat neither toils nor spins, and adds nothing to the wealth of

ENCLOSURE.

Minutes.

MR. JUSTICE SUBRAMANIA AIYAR.—I regret that I have not been able to find the time necessary to study the numerous and complicated provisions of this Bill with that care and attention which their importance demands. I must content myself with saying a word or two as to whether the circumstances of the agricultural population of this Presidency call for such a special law. My inquiries and my own experience lead me to the conclusion that that exceptional state of things which alone would justify such legislation does not exist here. The Madras ryots, according to the testimony of those entitled to speak on the point, have, as a class, notwithstanding the indebtedness of portions thereof, been during the last 30 or 40 years in a fairly prosperous condition. Moreover, much of the money due by agriculturists, who are in debt, has been found to be due to persons of the same calling as the debtors. And these ryot-creditors are, I have reason to think, generally free from the serious vices of the usurer. Nor has the power of disposing of immovable property, which has been enjoyed for generations by members of this class of the community in this part of India, been proved to have been used by them or their creditors to the detriment of the class as a whole. To curtail such power of disposition, as the present Bill would, if it becomes law, cannot but, I apprehend, damage the credit of the ryots and their future welfare very seriously. I think I may add, without impropriety, that what is required to maintain the present satisfactory state of things in this Presidency is not class legislation of the kind contemplated, but the continuance of the enlightened policy of keeping the Government demand on land within fair and moderate limits, which has prevailed here for the last 30 years or so, and which, in my opinion, has contributed in a very material degree to the comparatively well-to-do condition of our ryots. It is scarcely necessary to remark that nothing tends more to compel them to borrow money on disadvantageous terms than the recurrence of demands for over-assessed land revenue, coupled with local cesses the amount of which is made to depend upon the amount of that revenue.

MR. JUSTICE DAVIES.—The advisability or otherwise of the measures proposed for the relief of the agriculturist seems to me to be a question rather for the executive than for the judicature. At all events, I do not feel competent to express opinions on the matter.

MR. JUSTICE BENSON.—I have read the papers with much interest, but I find that it is impossible for me to adequately consider or discuss in the brief intervals I can spare from my daily judicial work the momentous and complicated issues raised by the proposed legislation. My general impression is that the Bill, if passed in its present form, will create in this Presidency, at least, quite as many evils and difficulties as it will remove. I will merely give, as an instance, the fact that the definition of "agriculturist" would probably be held to include the great landlords of Malabar, and the Bill would thus give them a variety of immunities and privileges of which they stand in no need, and to which they can lay no claim, e.g., most of the land in Malabar is held under these landlords on mortgages which are not redeemable before the expiry of 12 years. Section 12 of the Bill will enable a landlord to redeem at any time. Thus the little security of tenure which the tenant now has, and which many authorities think ought to be increased, will be at once swept away.

2. There is scarcely a section of the Bill that does not raise questions of a difficult and far-reaching character which it is impossible to deal with in the few minutes which alone are available each day. Partial or cursory discussion would, I think, be worse than useless. I must therefore leave the Bill undiscussed.

READ—the following letter from M.R. Ry. P. RAJARATNA MUDALIYAR Avargal, Diwan Bahadur, Inspector-General of Registration, to the Chief Secretary to Government, dated Madras, 28th September 1896, G. No. 6242.

Referring to G.O., No. 804, Revenue, dated 9th December 1895, and reminder, No. 1455 R., dated 23rd July 1896, I beg to state that the papers connected with the Agriculturists' Relief Bill were taken by Diwan Bahadur Srinivasa Raghavaiyengar, and have not yet been returned by him. I have been daily expecting to receive them with his note, and delayed sending a reply to the Government order.

2. My own opinion on the subject, which I had expressed before leaving the Board's office, is that an enactment of the kind referred to by Government of India is not required in this Presidency, where the condition of the agricultural classes has been repeatedly pronounced to be, on the whole, fairly satisfactory, or, at any rate, to be such as not to cause the least anxiety, even in the most backward districts. The investigations made by Mr. Nicholson and Diwan Bahadur Srinivasa Raghavaiyengar show that the indebtedness of the ryots has nowhere assumed any serious proportions; that the bulk of the money-lenders are themselves agriculturists who are generally more considerate than "Sahukars," or professional lenders, and that there has been a decided tendency, in recent years, towards a reduction in the rates of interest charged in several districts. In the face of these facts, it can hardly be contended that the agricultural population in this Presidency stands in need of any special legislative protection, such as has been found necessary in the Deccan districts of Bombay and some other provinces of Northern India. Whatever assistance the poorer classes of ryots may require can be easily extended to them by affording them increased facilities for obtaining loans under the Land Improvement and Agriculturists' Loans Acts, which provide for the grant of advances by the State, at very favourable rates of interest, for every purpose connected with agriculture—whether it be the purchase of a plough, of seed-grain, manure, cattle, &c., or the reclamation of land, or construction of wells, and other irrigation works. If these liberal provisions are carried out in a sympathetic spirit, and the ryot is assured of getting State aid without unnecessary delays, and without being subjected to petty annoyances and exactions at the hands of subordinate officials, he need seldom resort to the money-lender for help. The system of granting State loans could, I venture to submit, be developed to the greatest advantage, both to the ryot and to the Government, by the appointment of special officers of unquestionable integrity and wide sympathies, whose duties shall be to constantly itinerate throughout their range and see that applications for loans are promptly attended to, and that the applicants get the full benefit of the loans asked for. The enhanced rate of interest (5 per cent.) recently proposed by the local Government will more than cover the cost of any special establishment that may be employed, as well as any losses that may be incurred by Government through the default of borrowers, &c.

3. As I do not consider that a Special Agriculturists' Relief Bill is required for this Presidency, I have not deemed it necessary to discuss the different sections of the Bill. I think, however, that the modifications suggested by the Government of India in paragraphs 9 and 10 of its letter in regard to the provisions of section 337 (a) and 525 of the Civil Procedure Code would be useful and may be carried out.

READ—the following Proceedings of the Board of Revenue (Revenue Settlement, Land Records and Agriculture), dated 24th September 1896, No. 236:—

Read—again the following Proceedings of the Board of Revenue (Revenue Settlement, Land Records and Agriculture), dated 6th February 1896, Mis. No. 665:—

READ—G.O., No. 804, Revenue, dated 9th December 1895.

ABSTRACT.—Papers received from the Government of India relating to an Agriculturists' Relief Bill, communicated for favour of opinion to the Hon'ble the Judges of the High Court, the Advocate-General, the Board of Revenue, Messrs. F. A. Nicholson, I.C.S., and C. J. Weir, I.C.S., and to the Inspector-General of Registration.

Read—also the following G.O., Mis. No. 388, Revenue, dated 28th January 1896:—

Read—again G.O., No. 804, Revenue, dated 9th December 1895.

Order—Mis. No. 388, Revenue, dated 28th January 1896.

Before replying to the Government Order read above, the Board of Revenue (Settlement) is requested to invite the opinions of Deputy Commissioners Mr. G. P.

Clerk and M.R.Ry. M. Adinarayana Ayya Garu, Rao Bahadur, and to forward them to Government with its own observations on the proposed legislation.

(True Extract.)

(Signed) E. GIBSON,
Secretary to Government.

To the Board of Revenue (Revenue Settlement,
Land Records and Agriculture.)

Resolution—6th February 1896, Mis. No. 665.

The papers referred to will be forwarded to Mr. G. P. Clerk and M.R.Ry. M. Adinarayana Ayya Garu, Rao Bahadur, for early opinion.

(True Copies and Extract.)

(Signed) P. RAJARATNA MUDALIAR,
Secretary.

To G. P. Clerk, Esq., Deputy Commissioner of Revenue Settlement, No. III Party.
„ M.R.Ry. M. Adinarayana Ayya Garu, Rao Bahadur,
Deputy Commissioner, Revenue Settlement, No. V Party.

READ—again Proceedings of the Board of Revenue (R. S., L. R. and Agri.), dated 13th March 1896, Mis. No. 1290, recording, pending receipt of reply to B. P. dated 6th February 1896, Mis. No. 665, from M.R.Ry. Rao Bahadur M. Adinarayana Ayya Garu, the following letter from Mr. G. P. CLERK, Deputy Commissioner of Revenue Settlement, Party No. III, Gódvári and Kistna, to the Secretary to the Commissioner of Revenue Settlement and Director of the Department of Land Records and Agriculture, dated Cocanada, 6th March 1896, No. 115:—

As directed in the Board's Proceedings, dated the 6th February last, Mis. No. 665, I have the honour to submit the following few observations on the proposed Agriculturists' Relief Bill. I have not seen the report of the Commission referred to in the papers forwarded to me.

2. The Act will, I think, confer great benefits on agriculturists throughout the country, though this was not the view taken of it by the last Congress. The three districts in which I have more recently served are Madura, Tanjore and the Gódvári. In Madura much of the land has, I believe, passed into the hands of the Nattukkottai Chetties. In Tanjore the Brahmins long ago ousted the original holders of the land. In this district a very large number of the ryots are in debt, but the land, when sold, appears to be purchased chiefly by other agriculturists. One of the objections to the Bill taken by the Congress was that agriculturists would experience great difficulty in obtaining loans, but I do not think this will prove to be the case. The village money-lenders, practically speaking, have only this one outlet for their capital, and they will continue, therefore, to advance money on the land almost as freely as heretofore. In my opinion, too, the Act will conduce to better cultivation, for, the ryot will make every effort to repay the loan he has been able to negotiate on such favourable terms, whereas at the present time, thousands of landholders know well that they are hopelessly in debt.

3. Section 2 of the Bill.—The term "agriculturist" as defined in the Bill seems to be all that is required, and the benefit of the Act might be extended to agriculturists taking service in Native States.

4. Section 3.—It seems desirable to apply the provisions of Chapter II in cases falling under (b) and (c) where the plaintiff is also an agriculturist.

5. Sections 5 (2 and 3) and 7 (1 and 2).—As it may be advisable in nine cases out of ten to ascertain whether the debtor has full knowledge of his legal rights, and as such inquiries would not occupy the Court more than a very short time, it may be suggested that the Court be directed to inquire into the history and merits of cases, the presence of the defendant being compulsory.

6. Sections 8 (2) and 9.—I would suggest the retention of section 9 and the words "or setting off the profits of the mortgaged property without an account in lieu of interest." The Court is empowered under the Act to revise the accounts both as regards principal and interest and give retrospective effect thereto, and the usufructuary mortgages may likewise be revised with retrospective effect.

7. Sections 10 (proviso) and 31 (2).—I do not think the mortgagor should be debarred from recovering his property prior to the expiration of the period specified by the Court, should he, or his representative in interest, be in a position to pay into Court the balance of the debts.

8. Section 11.—The proposed provisions for arbitration seem desirable and sufficient.

9. Section 24.—It appears desirable that alienation of immoveable property should be prohibited in all cases, and that the Act be made applicable to all mortgages effected before the Act comes into force and to all decrees granted subsequent to a fixed date—say, the 1st January 1896. The proviso in the body of the Bill might be retained in preference to that suggested in the margin.

10. Period of Limitation.—It would seem only fair to the creditor that the period of limitation should be fixed in the manner provided for in section 72 of the Deccan Agriculturists' Relief Act, especially as the debtor is protected by sections 17 and 18 of the proposed Bill.

11. Sections 337-A and 266, Civil Procedure Code.—In consequence of the decisions of the Punjab Court, it appears advisable to amend section 337-A so as to prevent its being used to defeat the intentions of section 266.

12. Section 525, Civil Procedure Code, and the Registration Act.—The proposed amendments may be given effect to.

13. Chapter IV, Insolvency.—The provisions in this matter seem sufficient.

14. Chapter V, Conciliation.—Provision for conciliation should, I think, form part of the proposed Bill. If the Village Munsifs in this Presidency are Police Officers, it seems very desirable that they should not be prohibited thereby from being appointed as conciliators.

15. Section 53.—As this section stands, it places the creditor at a disadvantage in the event of the debtor wilfully destroying the receipt, and I would suggest that the debtor (agriculturist) should acknowledge in writing the receipt of the creditor for money paid.

16. Chapter IX.—It seems advisable to prohibit the appearance of legal practitioners except in suits of the value of Rs. 100 or more. I do not think that the debtor will thereby be placed at a disadvantage, for, the cases will be of a very simple nature in consequence of the several provisions of the Act, more especially if the creditor's books are kept in a prescribed form, language and character. This latter provision appears to be a very desirable one.

17. Exemptions under the Court Fees Act.—Concessions might be granted similar to those under the Deccan Agriculturists' Relief Act.

READ—also the following letter from M.R.Ry. Rao Bahadur M. ADINARAYANA AYYA GARU, Deputy Commissioner of Revenue Settlement, in charge of Party No. 1, Bellary and Anantapur Districts, to the Secretary to the Commissioner of Revenue Settlement and Director of the Department of Land Records and Agriculture, dated Anantapur, 26th May 1896, No. 154:—

I have the honour to submit the following remarks with reference to the proposed Bill for the relief of agriculturists communicated with the B. P. marginally noted.

B. P., dated the 6th February 1896, Mis. No. 665.

B. P., dated the 13th March 1896, Mis. No. 1290.

2. The object of the Bill is to prevent the alienation of land from the hands of hereditary agricultural classes and its absorption by professional money-lenders or

And the poet, himself a farmer, adds—

"quocirca vivite fortes,

Fortiaque adversis opponite pectora rebus"

In fact all agricultural wisdom may be summed up in the proverb "a stout heart to a stiff brae."

As regards the proviso to section 24 of the draft Bill, the Acting Commissioner would accept the suggestion made by M.R.Ry. Adinarayana Ayya, to the effect that, when one-half of the standing crop is more than sufficient to meet the necessary

expenses of the debtor, the demands of Government and of the landlord, the surplus should also be made liable to attachment and sale in execution.

12. Chapter IV—Sections 25—32.—M.R.Ry. Adinarayana Ayya apprehends that sections 30 and 31, requiring Collectors to manage the immoveable property of insolvent agriculturists, might throw on Collectors an amount of work which they cannot well attend to with their present establishments. But if the Act is applied only to exceptional tracts or classes of people, there would not be much work for the Collector to do, especially because so much of the property as is required for the support of the insolvent and the rest of his family will be left untouched, and it is only the excess, if any, and the most cases will be *nil*, that will have to be managed by the Collector. The Acting Commissioner fears that the provision of special facilities for getting themselves declared insolvent will only impair the credit of agriculturists and put them in a worse position than now.

13. Chapter V—Sections 34—45.—The success of the provisions of this chapter depends upon the facility with which suitable men, having the required leisure, and willing to work as conciliators, can be got in the localities in which the conciliation system is tried. In many cases, the village headmen will do well as conciliators, but if, as is laid down in section 43, it be made a condition precedent to the institution of any suit or execution proceedings that resort should be had to conciliation, more than one conciliator will be required for some villages. The Government of India enquires whether there are any village officers who are also police officers, and who may yet be appointed conciliators. The only village officers who are competent to perform the duties of a conciliator are the headman and the karnam, and neither of them is a police officer in this Presidency.

14. Chapter VIII—Sections 53—58.—The Acting Commissioner considers that the penalty prescribed in section 53, for non-tender of receipts by creditors, offers an inducement to debtors to perjure themselves. The remedy suggested by Mr. Clerk, viz., that the debtor should be required to acknowledge, in writing, the receipt of the creditor, will not meet the case of an agriculturist who is an illiterate and ignorant person.

The Acting Commissioner considers that the provision contained in section 57 which requires that the money-lender's books of account, in order to be admissible in evidence, should be kept in a prescribed form, may advantageously be made applicable even to suits arising outside the scope of the proposed Act.

15. Chapter IX—Sections 59—60.—It is suggested to the provisions of this chapter that they would work prejudicially to the interests of agriculturists, and it is stated that it would suffice to provide that vakils' fees should not be allowed as costs in the cases referred to in section 59. This will not, however, secure the object in view. Vakils may be trusted to recover their costs in any case, and the refusal to allow vakils' fees as costs will only go to swell those necessary expenses generally incurred by litigants, but there is no harm in prohibiting the employment of legal practitioners in the cases going only before conciliators, who ordinarily would not be men of any high education and would only be embarrassed by the arguments of vakils. In respect of suits before District Munsifs and Sub-Judges, the provisions of the Bill require the Judges to take special care of the interests of the agriculturists, and they are not therefore likely to suffer by the provisions of section 59.

16. The Acting Commissioner considers that there is no good reason for extending the period of limitation for suits on bonds or on accounts stated. The sooner the debtor is brought face to face with his liabilities, and the sooner compound interest ceases, the better. As a fact, the law does not touch the debtor so quickly. After the period of limitation come the delays of the law. In fact, what with the provisions of clauses 4 and 5 of article No. 179 of the second schedule of the Limitation Act, a decree holder, who has probably already lost a year or two in getting his decree from the Court, need be under no hurry to take out execution proceedings. He generally waits until the time arrives for putting the machinery of law in motion with a fair chance of success. The decree will not carry compound interest, and it is likely not to allow as much interest as the bond. The period of limitation may safely be left as it is.

17. The Acting Commissioner would accept the proposal to amend section 525 of the Civil Procedure Code, so as to prevent the abuse of arbitration procedure with a view to evade the Stamp and Registration laws. It is objected that the proposed amendment might hamper free resort to arbitration, but it is observed that only those awards in which the *bona fides* of the parties is questioned will be affected by the proposed change.

18. With reference to the last paragraph of the Government of India letter, the Acting Commissioner considers that the remission of Court fees should be allowed in all cases in which it is now allowed under the Deccan Agriculturists' Relief Act.

19. The Acting Commissioner much regrets the delay in disposal of this reference. The paper received in this department was originally noted to lie over for disposal by the Full Board; but, during his absence on tour, a Full Board replied to the reference in the Land Revenue Department, and the Proceedings of the latter only reached this department on the 11th September. The present file reached the Commissioner on the 14th instant, when boarding the steamer for a second tour. The subsequent delay of ten days has been due to continued interruptions on tour.

(True Copies and Extract.)

(Signed) R. V. SRINIVASIAH,
Secretary.

To the Secretary to Government, Revenue Department.

Copy to Land Revenue Department.

G. P. Clerk, Esq.

M.R.Ry. M. Adinarayana Ayya Garu, Rao Bahadur.

READ—the following letter from F. A. NICHOLSON, Esq., I.C.S., London, to the Acting Secretary to Government, Revenue Department, Madras, dated Upper Norwood, 9th October 1896 :—

I have the honour to reply to G.O., No. 1455, dated 23rd July last, requiring me to state when I can submit the opinion desired of me in G.O., No. 804, Revenue, dated 9th December 1895, relative to the Government of India Agriculturists' Relief Bill.

2. In reply, I beg to request permission to defer giving my opinion on the subject until the necessity for some such law has been thoroughly ascertained by a critical examination of the facts of the Presidency.

* See paragraph 2 of the letter of the Government of India forwarding the Bill.

There are two major questions to be answered :—

(1) Whether any such law is required; *

(2) The form which such law should take.

3. The first question is by far the most important, and I submit that we are not at present in a position to say, from *positively ascertained* data, whether such a law is necessary or expedient. If we legislate on agrarian subjects in a hurry, we may

work profound mischief; if we refuse to legislate because we are not quite sure whether legislation is or is not needed, we may be permitting the development of most dangerous agrarian difficulties. When we proceed to touch, even with the lightest finger, the tenures, the liberties, the business relations of the cultivators who form some three-fourths of our vast population, we can only do so with the greatest caution, and only when a previous, wide and special examination of the facts has taken place and compels interference; when we reject soberly proposed legislation found or thought necessary in other provinces by the highest authority, we can do so only when we have the clearest facts to establish our rejection.

Now I respectfully submit that we have not as yet made the slightest examination of the facts of the country relevant to the questions at issue as raised by the Bill, such as the indebtedness of the agriculturists, the progress or decrease of such indebtedness whether absolute or relative to the increase in land or other values, the relations between agriculturists and lenders, &c. : consequently we have data neither to accept nor to reject such law: we have nothing but individual *opinions* usually of a very general nature, and very apt to be one-sided or based on very imperfect induction. We cannot even claim public opinion one way or other, whether as expressed by the local officers of Government, by the Press, or by the ryots themselves; no one has suggested such a law for this Presidency, and yet the absence of such suggestion is no ground, or no sufficient ground, for assuming that all is peace and well-being, for the Deccan riots were wholly unexpected, and local disturbances have been claimed as agrarian.

I consider then that we can neither accept nor reject agrarian legislation, whether of the proposed or other nature, till we know our ground, and that wide enquiry must precede opinion.

4. The second question is that of the form of any required legislation. I submit that agrarian legislation cannot easily be imperial; what is suitable for the North-Western Provinces or for Bengal can hardly fit the conditions of our wholly different ryot-war province; even in Germany the necessity for different agrarian laws for states differing chiefly in locality and soil, and only partially in tenure or in customs, is explicitly asserted. Moreover, even in Bombay, the original *nidus* of the proposed law, there are strongly opposed opinions as to its action. Hence I submit that if, after enquiry, a law of the nature in question is found necessary, it should be drafted locally to suit local conditions.

5. The above paragraphs are my humble opinion, *ad interim*, on the Bill. But I further beg to draw special attention to the intimately connected but much wider subject* now before Government from the Government of India and I do so partly to support my objection to give at present a definitive opinion on the Bill, partly to suggest the need for further agrarian enquiry. I will deal with the larger subject above mentioned in a separate letter, but would, meantime, point out that as we have had no general enquiry into agrarian facts for the above large subject with its momentous issues, and that as that subject and the Objects and Reasons of the Bill are closely connected, it will be advisable, if not necessary, to defer opinion on the Bill until we are in a position to reply on the larger question also.

6. I beg to apologize for my delay in replying; I have had to finish volume II of my report on banks, which occupied me till the end of July, while the mere perusal of the Government of India papers and of other papers on the land transfer question, has occupied much of my subsequent time.

READ—the following letter from F. A. NICHOLSON, Esq., I.C.S., to the Secretary to Government, Revenue Department, dated Upper Norwood, 9th October 1896 :—

In continuation of my letter of this date on the Agriculturists' Relief Bill, I have the honour to submit the following remarks.

2. In addition to the above subject, the Government of India have forwarded for consideration the much larger subject of the indebtedness of the agricultural population,

coupled with suggestions for the limitation, either in fact or by method, or even for the removal of the power of land-holders to mortgage or alienate their land. On these momentous suggestions of the Government of India (see their Note and Memorandum), involving, as they do, a possible reversal of, or at least a serious change in, the free trade policy in land which has subsisted in this Presidency for a century under British

* G.O., No. 97, dated 3rd March 1896. rule—and is not even of British origin—the Madras Government has ordered * Collectors to send in certain statistics regarding mortgages and mortgagees, and has also required my opinion on the proposals in general.

3. I think it probable that the required statistics are not yet available for digestion, consideration and orders. I submit, however, that even these statistics will not give sufficient data for a complete answer—whether for or against—to the suggestions of the Government of India: they will not show the indebtedness of the ryots, whether such indebtedness is increasing either absolutely or relatively to the increase in agricultural values, whether the mortgagees or transferees are really ryots or merely money-lenders, whether the relations between debtors and lenders are unsatisfactory and oppressive or are beneficial, whether the transferees are worse or better land-holders than the ex-ryots, whether the relations between the new landholder and the ex-ryot are satisfactory or otherwise, &c. In fact the statistics obtained may, from the manner of their collection be inaccurate, while their interpretation will probably be open to serious error if not assisted by wide subsequent enquiry into the facts evidenced or supposed to be evidenced by the statistics. I have, in my special studies of the past five years, seen what hopelessly erroneous inferences may be drawn from statistics apparently of the clearest, and I may appeal to Mr. Rogers' inferences from Madras statistics in support of my argument. I hold, then, that the statistics as ordered by the above Government Order may be inaccurate, will be open, *per se*, to erroneous inference, and will certainly be insufficient for the decision of such important issues.

4. Accordingly I would beg the Madras Government to make a wider and deeper enquiry before answering the Government of India, whether for or against any of their suggestions. I know of no subject of greater seriousness and difficulty than that of peasant indebtedness coupled with the alienation of peasant properties and with *quasi-serfdom*, not to a Government or to a squire, but to the money-lender; assuredly I know of none in which more serious consequences would follow a mistake in policy. On the one hand it is possible, as argued by the Government of India, that persistence in the present free trade policy in mortgage and transfer, may lead to fatal national results; on the other hand, the reverse policy of restrictions and limitations to, or even denials of, the right of transfer might lead to the greatest discontent and uproar. Hence whether for the inauguration of a new or for the maintenance of the present policy, a thorough and detailed enquiry is necessary.

5. This enquiry is the more necessary (though haste is less necessary) because there has been no public outcry or movement in this Presidency on this particular phase of rural difficulty; on the contrary I am not aware of any question in the Legislative Council, of any discussions or complaints in the Press, or of any recital of such grievances in the numerous addresses presented to Governors on tour, although such questions, complaints, discussions, or petitions are freely found in matters of settlement, revenue collection and other matters of rural difficulty; I have seen no suggestions that Madras ryots in general are losing their lands unrighteously to the benefit of land-grabbing, rack-renting absentees or non-farmers, or that the transferees of land are worse cultivators or do less for agriculture than the original ryots; the restriction of transfer or the diminution of any proprietary rights has never even been hinted at whether by official or non-officials. It is, then, *prima facie* probable that the questions raised and the suggestions made by the Government of India are not applicable to any serious extent to this Presidency.

Nevertheless such absence of outcry is no sufficient answer to the Government of India's proposals; in the first place it is expressly suggested by the Government of India that the difficulties in question may arise in the early future though not at present existent or acutely felt; in the second place absence of outcry is perfectly

compatible with much silent and unknown discontent, as exemplified by the Deccan riots. And it is certain that whether indebtedness and land alienation are or are not so destructive of rural stability in the Madras Presidency as they are represented to be elsewhere, they are of very serious importance, and that indebtedness imposes an outrageous economic burden on the ryots while undermining their independence and hindering their progress; hence an enquiry into the amount and results of such indebtedness is an absolute necessity. I consider then that, both in order to furnish a satisfactory reply on the issues involved in the reference, and to obtain an accurate diagnosis of any complaints that may affect the rural body politic, a leisurely and complete enquiry should be made in the districts in such way as may seem good.

Indeed I would suggest that not only should such special enquiry be held, but that there should thereafter be a periodical stock-taking of the estate; this is deemed necessary in all agricultural countries, and the splendid decennial "*Enquete agricole*" of France is a case in point.

6. I should like to add that the subject of peasant indebtedness and consequent expropriation is, at this moment, attracting much attention amongst European Governments and economists; statesmen and others are everywhere endeavouring on the one hand to find remedies for usury and indebtedness, on the other to retain the peasant on the soil and to ensure stability and progress in his cultivation and status. Nevertheless, though the difficulties of the peasants are vast and pressing, enquiry, discussion and action are most cautious and I see no attempts at any breathless legislation; on the contrary, material is being gathered, discussion is conducted at length, and, as one economist says on particular proposals (homestead exemption, the organization of credit, and the development of agricultural associations), the remaining years of the century will have to prepare the materials for subsequent action. I may also add, as an evidence of German anxiety that in answer to a letter to the Prussian Minister of Agriculture on the subject of agricultural banks, he expressed his desire to discuss not only that but the whole land question as regards small proprietors, and I am visiting Berlin, &c., for the purpose. I shall report anything of interest in due course.

ORDER—No. 519, Revenue, dated 2nd July 1897.

Miscellaneous.

Ordered that the following letter be despatched to the Government of India.

(True Extract.)

(Signed) G. STOKES,
Ag. Secretary to Government.

Ed. Md. Pahlwan.

80 Copies.

1897.

REVENUE AND AGRICULTURAL DEPARTMENT.

The Government of Fort St. George.

Recd.

Regd.

} 1897.

Enclosures

Spare copies

Letter, No. 520, 2nd July 1897.

JULY.

Intimating to the Government of India the views of this Government on the Agri-
culturists' Relief Bill.

REVENUE DEPARTMENT.

From

THE HON'BLE MR. G. STOKES, I.C.S.,

Acting Secretary to the Government of Madras,

To

THE SECRETARY TO THE GOVERNMENT OF INDIA,

REVENUE AND AGRICULTURAL DEPARTMENT.

Ootacamund, 2nd July 1897.

SIR,

In reply to your letter of the 31st October 1895, No. 23, Judicial 1591, inviting an expression of opinion on the provisions of a Bill framed by the Government of India for the protection of agriculturists, I am directed to forward

* No. 519, dated 2nd July 1897. a copy of the Proceedings* of this Government embodying the opinion of the various officers and bodies consulted on the subject and to offer the following remarks in connection therewith.

2. Before examining the provisions of the Bill in detail, I am desired to point out that the measure proposed by the Government of India is, in the opinion of His Excellency the Governor in Council, a revolutionary one, interfering with the civil rights of parties and tampering with the ordinary law of property, and will be justifiable only when there is a desperate evil to grapple with. So far as the circumstances of this Presidency are concerned, there is a consensus of the best opinions obtainable that no such evil exists. It is an admitted fact that indebtedness is not due merely to the action of the usurer but to the necessity of the borrower. More than ninety per cent. of the ryots hold less than 25 acres in extent, and, their capital being locked up in their lands and stock, they must necessarily borrow for carrying on their vocation. Credit is therefore a necessity to them and its utility cannot but be recognized. No doubt borrowing may be abused and indebtedness may be a symptom, and even a cause, of danger, if the conditions of credit are unsound or defective and if borrowing is not a mere temporary productive mobilization of capital but the result of ignorance, imprudence or recklessness. But in the opinion of those best qualified to form an opinion, there is no reason to suppose that the agricultural classes in this Presidency are so ignorant, imprudent or helpless as to require the special interference of Government in the direction proposed; nor is money-lending monopolised by professional sowcars who drive hard bargains. The conditions in this Presidency differ widely from those in the Bombay Deccan, where the money-lending classes are reported to be foreigners, different in religion from their clients, entirely out of sympathy with them, and accustomed to retire with their profits after a sufficiently long course of business to their homes in Rajaputana. More than two-thirds of the mortgage loans in this Presidency are granted by ryot lenders, and personal credit is chiefly among the ryots themselves. This, as pointed out by Mr. Nicholson in his report on agricultural banks, is a very remarkable and

CHAPTER VIII.

25. *Section 53.*—This section would be highly mischievous in its effect for, if an agriculturist's word is to prevail, he can make away with the receipt furnished and allege that he paid a larger amount than he actually did. It is suggested that this can be met by compelling the agriculturist to give an acknowledgment of the receipt but this Government considers that such a provision would be insufficient, and that the last clause of the section should be deleted.

26. *Sections 54 to 58.*—I am to invite the attention of the Government of India to the suggestions that the provision in regard to the form of day book and ledger should also be made applicable to suits falling outside the scope of the proposed Act and that the agriculturist should be prohibited from making any entry in the pass book. These suggestions commend themselves to His Excellency in Council.

CHAPTER IX.

27. *Section 59.* appears to meet the object in view which would seem to be to prevent the money lender from employing professional assistance. Sub-section 3 of Section 59 may, however, be amended so as to allow the Court discretion to permit pleaders to appear after seeing the parties to the suit.

28. The only remaining points on which an expression of this Government's opinion are required are those referred to in paras. 8, 10 and 11 of the letter under reply. They are—

(i) The extension of the period of limitation from three to six years in the case of suits on bonds or on account stated;

(ii) The question of amending Section 525 of the Civil Procedure Code empowering the Court before it files the award to satisfy itself that there has been a real dispute and that the terms of the award are fair and proper and the Registration Act so as to make awards which creates an encumbrance on immoveable property registerable like ordinary mortgages; and

(iii) Whether any remission of the Court fees chargeable in suits to which Chapter II of the Bill applies is necessary.

29. In regard to (i) and (ii), this Government fully concurs in the views of the Commission and is of opinion that the general law on these subjects should be modified accordingly. With reference to (iii), I am to state that the question will be one for consideration after the passing of the Bill and that, as the Governor General in Council has power to modify the fees for sufficient cause shown, it is unnecessary to consider the question at present.

I have the honour to be,

Sir,

Your most obedient servant,

(Signed) G. STOKES,

Ag. Secretary to Government.

attaching and selling them. To secure this object, two alternative clauses are added, and the Government of India enquires which of them is preferable. One of them saves from attachment and sale one-half of the crops, while the other saves only so much as is required for seed grain and for the subsistence of the agriculturist, his family and his cattle until the next harvest. In the opinion of this Government, neither of the alternatives is called for. Assuming the land to have some value (for otherwise it is not worthwhile to preserve it to the agriculturist) the ryot can certainly maintain himself until next harvest and pay his rent, &c., even though the current year's crops may be sold. The interests of the ryot are sufficiently guarded by the rules as to payment in instalments and the further concessions proposed would deprive him of his credit by diminishing the value of the security he can offer.

Sub-section (2).—This section cannot be worked in most parts of this Presidency and it is essential that the Government should have power to make rules as to the classes of cases in which it shall be compulsory on the Collector to carry out the Court's orders as to assuming the management.

CHAPTER IV.

20. His Excellency the Governor in Council considers that the retention of sections 25 to 33 laying down a special procedure in cases of insolvency of agriculturists in the Relief Act is necessary. It may be urged that these provisions will not be resorted to in other provinces any more than in the Deccan and that they will impair the credit of agriculturists. The former argument is not valid while as regards the latter I am to remark that the whole principle of the insolvency laws is that on the whole it is for the good of the community that a person in embarrassed circumstances shall be able to clear himself and make a fresh start.

CHAPTER V.

21. Generally speaking, the provisions of this chapter cannot be worked in this Presidency under present circumstances. The persons who could be found in villages competent to act as conciliators are so few in number that it would in the opinion of this Government be useless to legislate on the basis of their existence.

22. *Section 34.*—With reference to the enquiry of the Government of India whether there are any village officers in this part of India who might be regarded as Police Officers, but who might nevertheless be appointed as conciliators, I am directed to point out that heads of villages in this Presidency are magistrates rather than Police officers, though they certainly in practice exercise some Police functions. They would no doubt be available to act as conciliators, but they are likely to prove no better than the other residents of the village.

23. *Section 43.*—With reference to the enquiry of the Government of India as to whether an explanation should be added to this section similar to the one in Section 47 of the Bombay Act, I am to point out that it is unnecessary to do so, as the term "Civil Court" so far as is known, is nowhere defined so as to include Court of a Tahsildar—the officer corresponding to Mamlatdar in Bombay.

CHAPTER VII.

24. With reference to this chapter I am to say that, in the opinion of this Government, it should be omitted. On the one hand Sections 7 and 8 of the Bill, if properly worked, will give ample relief to the agriculturist by enabling the Court to ascertain whether there is any defence to a suit on the ground of fraud, &c., and also by setting aside inequitable contracts. On the other hand, Sub-Registrars are not lawyers and may not use correct legal phraseology. Moreover, if agriculturists are allowed to get their documents written by them for nothing, they will, in all cases, resort to them and to no one else.

CHAPTER III.

16. *Section 21.*—This Section requires that the decree holder should either take the moveable property of an agriculturist attached or tendered in execution proceedings at the upset price fixed by the Court, or should forego the portion of the decree amount equal to the difference between the upset price and the price realized by sale. If the upset price fixed by the Court is not realized at the auction, the result must be due either to combination among the bidders or to the upset price having been fixed unduly high. In either case, there is no reason why the decree holder should suffer for no fault of his own, and the Section should, therefore, be omitted.

17. *Section 22* removes the restriction under the ordinary law that no payment by the judgment debtor made out of Court shall be recognised as payment of the decree unless the payment has been certified. The restriction is a wholesome one and tends to prevent disputes and should not be removed in the case of agriculturists to protect whom legislation is now proposed to be undertaken.

18. *Section 23.*—It is reported by the Commission that, in the Punjab, the Courts have held that, when the judgment debtor was in possession of property specially exempted under Section 266 of the Civil Procedure Code, they would not be justified (with reference to the terms of Section 337-A, Civil Procedure Code) in holding that the debtor was unable to pay the amount of the decree, the consequence being that the power of imprisoning debtors is used to compel them to give up such property. As the general law is thus insufficient, it is proposed to exempt agriculturists from arrest and imprisonment. In the opinion of this Government, the more satisfactory solution of the difficulty will be to modify the general law so as to provide "that the possession of property expressly exempt from attachment, or of property which is not liable to attachment and sale without special sanction should not of itself justify a court in holding that a debtor is able to pay the amount decreed and in sentencing him to imprisonment in default." The power of arrest and imprisonment is a valuable remedy for creditors in the case of personal debts, and there is no reason why if the debtor has property other than that exempted from attachment and sale and can therefore pay the debt, but will not, he should be shown any consideration. The section should therefore be struck out, the general law being modified as indicated above.

19. *Section 24, Sub-section (1)* provides that immoveable property belonging to an agriculturist shall not be attached or sold in execution of a decree or order passed unless it has been specifically mortgaged for the repayment of the debt to which such decree or order relates and the security still subsists. The Government of India enquires in para. 4 of their letter under reply, whether this provision should not be made a part of the general law of India and whether the exemption from attachment and sale of land belonging to an agriculturist should not be made absolute so as to extend to such land even when it has been specifically pledged and if so whether it should apply (1) to mortgages effected, and (2) decrees for the sale of mortgaged land passed before the new law comes into operation. As at present advised, His Excellency the Governor in Council is opposed to the retention of the section and *a fortiori* to its further extension in the direction suggested by the Government of India. It is a measure calculated to prohibit the alienation of land altogether and whatever may be the case elsewhere, as to which this Government has no information, no such prohibition is called for in this Presidency. In the opinion of His Excellency in Council there can be no doubt that it would be unjust to introduce it with retrospective effect.

It is provided that "standing crops" shall be deemed to be moveable property for purposes of attachment and sale, in execution of a money decree and as it is necessary that some return must be preserved to the agriculturist for his means of subsistence and for seed grain, &c., it is proposed to restrict the power of

and an actual account taken, reasonable interest being at the same time allowed to the mortgagee. This Government agrees with the arguments of the Commission in para. 38 of its report against the policy of revising usufructuary mortgages with retrospective effect and considers that the clause on the subject in section 8, and section 9, should accordingly be omitted. Provision should be made in clause (b) empowering the Courts to consider whether the price of goods has been reasonably stated.

10. *Section 10.*—The wording of this section will have to be altered with reference to the recommendation made above that section 9 should be omitted.

11. The Government of India invites the opinions of Local Governments and Administrations in regard to the insertion of a sub-section in section 9 dealing with cases in which the mortgagee is in possession of the land, and the mortgagor holds from him as his tenant. Clause (f) in section 8 would seem to provide for the cases to be dealt with by the proposed sub-section and the words in brackets therein will render the first proviso to the proposed sub-section unnecessary. It would be sufficient to insert the second proviso after omitting the word *further*, as clause (h) of section 8 and to add the following explanation to clause (f) in the same section:—

“*Explanation.*—Payments made by a mortgagor in possession of the mortgaged property as tenant of the mortgagee, whether designated rents or otherwise, are payments to the creditor within the meaning of this clause.”

12. *Section 11* embodies the provisions of the Punjab Land Revenue Code in regard to arbitration which, in the opinion of this Government, are calculated to deal with suits in which agriculturists are parties in a more satisfactory manner than the provisions of the Civil Procedure Code and may accordingly be adopted.

13. *Section 12* removes the restriction which now exists under the general law (section 60 of the Transfer of Property Act) that the mortgagor cannot file a suit for redemption until the time when the principal money becomes payable has expired. It would, in the opinion of this Government, be inequitable to do away with the restriction in cases in which time is of the essence of the contract as in the case of the Kanom tenure of Malabar. The clause “or on the ground that the mortgage debt has not been completely discharged” is ambiguous as pointed out by the Commission in para. 43 of its Report. It means no doubt that, although the mortgage debt has not been completely discharged, the mortgagor must be ready to discharge it. This should be made clear and it might also be provided that in such cases the mortgagor (Plaintiff) shall pay into Court with his plaint the amount still owing on account of both principal and interest of the mortgage debt.

14. *Section 14, Sub-sections (3) and (4).*—When a case comes up before a Court, the amount due should be ascertained once for all, and if this is done, there will be no necessity to make a distinction, as in the Bombay Act, between cases in which the period for which possession of the mortgagee should be continued has been ascertained and those in which it has not been. This distinction appears to have been overlooked in the drafting of Sub-section 3 (*vide* the words in italics). Sub-sections 3 and 4 would appear to be unnecessary, as the necessary provision has already been made in Section 10.

15. *Section 16, Sub-section (3).*—The Commission point out that, as the plaintiff can know the amount due only after judgment is pronounced, he must be given time to ascertain whether he can raise the money or not and that the Court should therefore adjourn the case for a reasonable time after judgment is pronounced and before decree is passed. A clause to this effect should be added to the Sub-section.

4 substituting for the clause “to which this chapter applies” the words “of the description mentioned in Section 3, clauses (b), (c) or (d).”

Sub-section (2) has been inserted in accordance with the recommendation of the Commission appointed to enquire into the working of the Deccan Agriculturists' Relief Act that the expense of enforcing the attendance of the defendant when he fails to comply with the summons should not be thrown on the plaintiff. In the opinion of His Excellency the Governor in Council the Sub-section as drafted is fair to both the parties to the transaction and should be retained as part of the Act.

Sub-section (3) gives the Court discretion to dispense with the attendance and examination of the defendant in any case. The Commission considers that there should, as far as possible, be no discretion in the matter. Cases may, however, occur in which the personal attendance of the defendant will be perfectly unnecessary and this Government is accordingly of opinion that some discretion should be allowed to the Court to dispense with it. Abuse of the discretion is provided against by requiring the Court to record its reasons in writing.

7. *Section 6.*—*May* in line 3 of this section should be altered into *shall*.

8. *Section 7, Sub-section (2).*—Under the Deccan Agriculturists' Relief Act, in cases in which the defendant admits the claim but doubt is thrown on the validity of the admission, the enquiry has to be conducted in the same manner as in disputed cases. The Sub-section as now drafted by the Government of India presumes that only such enquiries need be made as will enable the Court to do complete justice between the parties. This view meets with the approval of this Government.

Sub-section (4).—“Disparity in the intelligence and circumstances of the parties” may be added as a possible ground of defence after “undue influence.”

9. *Section 8* proposes to set aside with retrospective effect two classes of agreements between the parties which are valid under the general law, viz., (1) agreements to allow compound interest and (2) agreement to set off the profits of mortgaged property in lieu of interest without taking an account. In favour of the proposal to set aside the former, it is urged that the debt is unduly swollen by frequent rests and consolidation of interest with principal. His Excellency in Council agrees with the remarks of the Commission in para. 39 of its report that the total abolition of compound interest in the case of loans to agriculturists will lead either to an evasion of the law by both parties or to creditors being forced into Courts in self defence and that it is necessary to allow the Courts to accept not merely conversions of, but also agreements to convert, accumulated interest into principal where such conversions or agreements are considered to be fair. As pointed out by the Commission, the best way of meeting the difficulty is to provide that any such conversion or agreement shall not be accepted by the Court if, for reasons to be recorded in writing, the Court deems it to be unreasonable, and, that in deciding whether it is unreasonable or not, the Court should consider, *inter alia*, the length of the rests, the rate of interest and the nature of security. In this connection, I am also to point out that there is a practice in this Presidency by which future interest for a term of years is added to the money actually advanced and the interest is made chargeable on the total amount after the term expires. As this is practically a case of levying compound interest, the necessary provision will have to be made in the Bill.

As regards the second class of agreements, it is argued that, as such agreements proceed on the calculation that profits of mortgaged property would be equivalent to a reasonable interest on the loan, there can be no hardship in providing that the approximate estimate of the profits made by the parties shall be set aside,

interesting fact, and places the character of Madras indebtedness in a position wholly different from that of the Deccan. Moreover, in Madras, lending in general, though expensive, is hardly usurious in the sense of being the result of calculating greed and the interest charged is, as a general rule, not ruinous. Even in localities where there are money-lenders corresponding to the Marwari classes they have not earned the evil reputation of their confrères in the Deccan, owing partly to the competition that exists amongst their own class and partly to the fact that for ordinary purposes the ryots are largely lenders among themselves. The measure now proposed would considerably reduce the credit of the agriculturist and would defeat the object aimed at. In these circumstances His Excellency the Governor in Council is of opinion that as far as this Presidency is concerned the proposed enactment is open to very grave objections and is uncalled for. It may be said that there can be no objection to having an enabling Act on the Statute Book which can be applied if circumstances render it necessary. Though the provisions of the Act may not now be applied still their very existence and the knowledge that they might be applied at any moment would tend to disturb the public mind, to affect the value of property and probably to raise the rate of interest. For these reasons, His Excellency in Council considers that Madras should be expressly excluded from its operation. If at any future time circumstances should so change in Madras as to make such a measure desirable, it would be very easy to pass an Act extending the proposed Act to Madras.

3. Having premised the above general remarks, I am now to convey the views of this Government on a detailed examination of the sections of the Bill. The only sections of the Bill on which His Excellency in Council thinks it necessary to make any special remarks are the following:—

CHAPTER I.

4. *Section 2.*—The definition of the term "agriculturist" to which the Government of India invites special attention rightly includes persons who are in Government Service and who are thus temporarily unable to follow their agricultural pursuits. This Government considers that men in private service who are equally prevented from engaging in agriculture should also be included in the definition.

The expression "where he earns his livelihood by agriculture" occurring in rule 3 of the section is ambiguous, as it may mean, in the case of the absentee landlord, the place where that agriculture is carried on, or where the rents are actually received by him, although livelihood is ordinarily stated to be *earned* by agriculture only where the agriculture is carried on and no where else.

CHAPTER II.

5. *Section 3.*—The section enumerates the classes of suits for which a special procedure is prescribed by the Act and the Government of India enquires whether this Chapter should be made applicable to any classes of suits falling under clause (b) or (c) of this section in which the *plaintiff* is an agriculturist. This Government is of opinion that an agriculturist who is in a position to lend money to another has, by that very circumstance, proved his fitness to look after his own interests and that he may therefore be left to the remedies provided by the general law.

6. *Section 5.*—Sub-Section (1) provides that in every suit under Chapter II the summons shall order the defendant to appear in person. This assumes that the defendant will be an agriculturist in every case. But as an agriculturist may file a suit against his creditor, a money lender, falling under clauses (a) and (e) of Section 3, the defendant will be the money lender. This Government considers that personal attendance of the defendant in these cases is unnecessary. Whenever the Court considers it necessary to examine him, it can do so by summoning him under the general law. The Sub-Section should accordingly be amended by

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