

[THE MUKHTIARKARS' COURTS ACT, 1906]

[29th October, 1906.]

An Act to consolidate and amend the law relating to the powers and procedure of 'Mukhtiarkars' Courts.

WHEREAS it is expedient to consolidate and amend the law relating to the powers and procedure of 'Mukhtiarkars' Courts; it is hereby enacted as follows:—

Preamble.

1. (1) This Act may be called the 'Mukhtiarkars' Courts Act, 1906.

Short title.

(2) It shall extend to the whole 'Sind including Khairpur District.]

Local extent

2. [Repeal of Bom. Act III of 1876] Rep. by the Sind Laws (Adaptation, Revision, Repeal and Declaration) Ordinance, 1955 (Sind 5 of 1955), S. 6, Sch. II.

3. In this Act, unless there is anything repugnant in the subject or context,

Interpretation.

(a) the word "[Mukhtiarkar]" shall include any Revenue-officer exercising for the time being the powers * * * of a Mukhtiarkar, or of a Mahalkari, and any other person who may be specially authorized by the '[Board of Revenue] to exercise the powers of a '[Mukhtiarkar] under this Act; and

(b) the words "plaintiff" and "defendant" shall include—

(i) a pleader duly appointed to act on behalf of such plaintiff or defendant, and

(ii) the recognized agent of a plaintiff or defendant as defined in section 37 of the '[Code of Civil Procedure.]

1. For Statement of objects and Reasons, see B.L.G., 1905, Pt. VII p. 570; for Report of Select Committee, see *ibid.*, 1906, Pt. VII, p. 5, and for proceedings in Council, see *ibid.*, 1905, Pt. VII, p. 578; *ibid.*, 1906, Pt. VII, pp. 31 and 189.
2. Subs. by the Sind Laws (Adaptation, Revision, Repeal and Declaration) Ordinance, 1955 (Sind 5 of 1955), s. 13, for 'Mamlatdars'.
3. The original words 'Bombay Presidency, except the city of Bombay and Aden' have successively been amended by the A.O., 1937 Sind Ordinance 5 of 1955, W.P.A.O. 1964 and Sind Act 17 of 1975, to read as above.
4. Subs. by the Sind Laws (Adaptation, Revision, Repeal and Declaration) Ordinance, 1955 (Sind 5 of 1955), s. 13, for 'Mamlatdar'.
5. The words 'of a Mamlatdar', see *ibid.*, s. 6, Sch. II.
6. Subs. by W. P. Act 16 of 1957 for the words 'Provincial Government' which were previously subs. by the A. O., 1937 for 'G. in C.'.
7. See now the Code of Civil Procedure, 1908 (5 of 1908), Order-III.

Power to
appoint
Joint Mukh-
tiarkar.

4. (1) The [Board of Revenue] may, by notification in the [Official Gazette], appoint in any taluka a Joint [Mukhtiarkar] under this Act who shall be invested with co-extensive powers and a concurrent jurisdiction with the [Mukhtiarkar] except that he shall dispose of such suits only as he may receive from the [Mukhtiarkar].

Power of
Mukhtiarkar
to transfer
suits to the
Joint Mukh-
tiarkar.

(2) The [Mukhtiarkar] is hereby empowered to transfer to the Joint [Mukhtiarkar] for disposal any suit under this Act the plaint in which has been presented to the [Mukhtiarkar] under section 7, and to re-transfer to his own file any such suit, of which the Joint [Mukhtiarkar] is, owing to death, sickness or any other cause, unable to dispose.

Delegation
of powers to
Revenue
Commis-
sioner.

(3) The [Board of Revenue] may delegate [its] powers under sub-section (1) to [any officer subordinate to it].

Powers of
Mukhtiarkars
Court.

5. (1) Every [Mukhtiarkar] shall preside over a Court, which shall be called [Mukhtiarkar] Court, and which shall, subject to the provisions of section 6 and 26, have power, within such territorial limits as may from time to time be fixed by the [Provincial Government], to give immediate possession of any lands or premises used for agriculture or grazing, or trees, or crops, or fisheries, or to restore the use of water from any well, tank, canal or water-course, whether natural or artificial, used for agricultural purposes to any person who has been dispossessed or deprived thereof otherwise than by due course of law, or who has become entitled to the possession or restoration thereof by reason of the determination of any tenancy or other right of any other person, not being a person who has been a former owner or part-owner within a period of twelve years before the institution of the suit of the property or use claimed, or who is the legal representative of such former owner or part-owner:

Provided that, if in any case the [Mukhtiarkar] considers it inequitable or unduly harsh to give possession of any such property or to restore any such use to a person who has become entitled thereto merely by reason of the determination of any such tenancy or other right, or if it appears to him that such case can be more suitably dealt with by a Civil Court, he may in his discretion refuse to exercise the power aforesaid, but shall record in writing his reasons for such refusal.

1. Subs. by W. P. Act 16 of 1957, s. 3 (3) Ser. III, for 'Provincial Government' which was previously subs. by the A.O., 1937 for 'G-in-C'.
2. Subs. by A. O., 1937 for 'B. G. G.'
3. Subs. by the Sind Laws (Amendment, Revision, Repeal and Declaration) Ordinance, 1955 (Sind 5 of 1955) s. 13, for 'Mamlatdar.'
4. Subs. by W. P. Act XVI of 1957 as amended by W. P. Ordinance XXXI of 1961, for the words 'Provincial Government' which were previously substituted by A.O., 1937, for 'G-in-C'.
5. Subs. by A. O., 1937 for 'his'.
6. Subs. by Sind Ordinance III of 1972 s. 2 and 3, for 'Revenue Commissioner'.

(2) The said Court shall also, subject to the same provisions, have power within the said, limits, when any person is otherwise than by due course of law disturbed or obstructed, or when an attempt has been made so to disturb or obstruct any person, in the possession of any lands or premises used for agriculture or grazing, or trees, or crops, or fisheries, or in the use of water from any well, tank, canal or water-course, whether natural or artificial, used for agricultural purposes, or in the use of roads or customary ways thereto, to issue an injunction to the person causing, or who has attempted to cause, such disturbance or obstruction, requiring him to refrain from causing, or attempting to cause any further such disturbance or obstruction.

Power to
issue
injunction.

(3) No suit shall be entertained by a [Mukhtiarkar's] Court unless it is brought within six months from the date on which the cause of action arose.

Suits to be
filed within
six months.

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

Cause of
action.

Explanation.—The exercise by a joint owner of any right which he has over the joint property is not a dispossession, or disturbance of possession of the other joint owner or owners within the meaning of this section.

Illustration I.

A lets B his field to cultivate for a specific period one or more years. B refuses to resign possession after the expiration of that period. A can sue for possession in the [Mukhtiarkar's] Court at any time within 6 months from the date of the expiration of the said period, unless B is a person who has been a former owner or part-owner within a period of twelve years before the institution of the suit of the property, or who is the legal representative of such former owner or part-owner.

Illustration II.

B is a yearly tenant of A, who gives him a notice to vacate, Sind as he is bound to do under section 84 of the [Sind] Land Revenue Code, 1879, at least three months before the end of the then current year of tenancy. At the commencement of the next year B refuses

Sind
V of
1879.

1. Subs. by the Sind Laws (Adaptation, Revision, Repeal and Declaration) Ordinance, 1955 (Sind 5 of 1955), s. 13, for 'Mukhtiar-kars'.
2. Subs. *ibid.*, s. 3 (f) (w. e. f. 30th May 1951), for 'Bombay'. See now the Sind Land Revenue Act, 1967.

to vacate. A can sue B in the '[Mukhtiarkar's] Court at any time within six months from the commencement of that year, unless B is a person who has been a former owner or part-owner within a period of twelve years before the institution of the suit of the property, or who is the legal representative of such former owner or part-owner.

Illustration III.

A allows B the use of water from his well, or from his water-course, for a specific period, at the expiration of which B continues to take water from the well or water-course without A's consent. A may sue B in the '[Mukhtiarkar's] Court at any time within six months from the expiration of the said period to obtain an injunction to stop B from taking the water, unless B is a person who has been a former owner or part-owner within a period of twelve years before the institution of the suit of the use of the water, or who is the legal representative of such former owner or part-owner.

Illustration IV.

A and B hold lands adjacent to '[a water-course], which has hitherto been exclusively used by B. A draws water therefrom. B may sue in the '[Mukhtiarkar's] Court, at any time within six months from the date on which A commences to take the water, for an injunction to prevent A from so doing.

Power of
Collector to
transfer
suits.

6. The Collector may, after due notice to the parties, by order in writing transfer any suit from any '[Mukhtiarkar's] Court in his district to any other '[Mukhtiarkar's] Court in his district, and the '[Mukhtiarkar's] Court to which the suit is so transferred shall thereupon exercise jurisdiction in such suit; but any order issued to village-officers under section 21 shall be issued by the '[Mukhtiarkar] to whom such village-officers are subordinate.

Suits com-
menced by
plaint,
Contents of
plaint.

7. All suits under this Act shall be commenced by a plaint, which shall be presented to the '[Mukhtiarkar] in open Court by the plaintiff, and which shall contain the following particulars:—

- (a) the name, age, religion, caste, profession and place of abode of the plaintiff;
- (b) the name, age, religion, caste, profession and place of abode of the defendant;

1. Subs. by the Sind Laws (Amendment, Revision, Repeal and Declaration) Ordinance, 1955 (Sind 5 of 1955), s. 13, for "Mamlatdar's".

2. Subs. *ibid.*, s. 7, Sch. III, for 'a pipe or channel, or similar artificial water-course'.

3. Subs. *ibid.*, s. 13, for 'Mamlatdar'.

- (c) the nature and situation of the property of which possession or use is sought, or the nature of the injunction to be granted, as the case may be;
- (d) the date on which the cause of action arose;
- (e) the circumstances out of which the cause of action arose; and
- (f) a list of the plaintiff's documents, if any, and of his witnesses, if any, shewing what evidence is required from each witness, and whether such witnesses are to be summoned to attend, or whether the plaintiff will produce them on the day and at the place to be fixed under section 14.

8. Where a petition not in the form of a plaint is presented to the '[Mukhtiarkar]' and the subject matter thereof appears to fall within the scope of section 5, the '[Mukhtiarkar]' shall explain to the person presenting the petition the nature of the reliefs afforded by this Act and shall inquire whether the petitioner desires to obtain relief thereby. If the petitioner expresses a desire so to obtain relief, the '[Mukhtiarkar]' shall endorse the desire on the petition which shall thereupon be deemed to be a plaint presented under section 7.

9. Where the plaint does not contain the particulars specified in section 7 or is unnecessarily prolix, the '[Mukhtiarkar]' shall forthwith examine the plaintiff upon oath and ascertain from him such of the particulars specified in section 7 as are not clearly and correctly stated in the plaint and shall reduce the examination to writing in the form of an endorsement on or annexure to the plaint which shall thereupon be deemed to be part of the plaint. Where the plaintiff requires time to obtain any of the particulars specified in section 7, the '[Mukhtiarkar]' shall grant him such time as may under all the circumstances appear reasonable.

10. When the plaint is presented, and has, if necessary, been treated in the manner specified in section 9, the '[Mukhtiarkar]' shall require the plaintiff to subscribe and verify the plaint in his presence, in open Court in the manner following, or to the like effect :-

"I, AB., the plaintiff, do declare that what is stated in this plaint is true to the best of my information and belief."

11. (1) The '[Mukhtiarkar]' shall endorse the plaint to the effect that it was duly subscribed and verified.

1. Subn. by the Sind Laws (Adaptation, Revision, Repeal and Declaration) Ordinance, 1955 (Sind 5 of 1955), s. 13, for 'Mamlatdar'.

Procedure
where
plaintiff can
not write.

(2) Where the plaintiff cannot write, the verification may be written for him in open Court and he shall affix his mark to his name in token of the authenticity of the verification, and the '[Mukhtiarkar]' shall, in such case, record that the verification was made in his presence at the request of the plaintiff, and that his mark was so affixed.

Rejection of
plaint.

12. The '[Mukhtiarkar]' shall reject the plaint

(a) where the plaintiff declines to make a statement on oath under section 9; or

(b) where the plaintiff is willing to make or has made a statement on oath under section 9, but fails to furnish the particulars specified in section 7 within the time fixed under section 9 or altogether; or

(c) where it appears upon the face of the plaint,

(i) that the property or use claimed is not one of the kind specified in section 5, or

(ii) that the cause of action arose more than six months before the plaint was presented; or

(d) where the plaintiff declines to subscribe or verify the plaint as required by sections 10 and 11.

Return of
plaint.

13. Where it appears to the '[Mukhtiarkar]' that the subject of the plaint is not within his jurisdiction, he shall return the plaint to be presented in the proper Court.

Procedure
where plaint
admissible.

14. (1) Where a plaint is admissible, the '[Mukhtiarkar]' shall receive and file it. He shall then fix a convenient day and place for the trial of the case, and shall issue, at the expense of the plaintiff, notice in the form of Schedule A to the defendant. He shall then require the plaintiff to appear with his documents, if any, and witnesses, if any, on the day and at the place fixed.

(2) The date to be fixed for the trial of the case shall not be earlier than ten days, nor later than fifteen days, from the day on which the notice is issued, except for sufficient reason to be recorded in writing by the '[Mukhtiarkar]' with his own hand.

(3) The place to be fixed for the trial of the case may be in the '[Mukhtiarkar's]' office, or at or near the scene of dispute, or at any other spot that the '[Mukhtiarkar]' considers convenient to the parties.

1. Subs. by the Sind Laws (Adaptation, Revision, Repeal, and Declaration) Ordinance, 1955 (Sind 5 of 1955), s. 13, for 'Mamlatdar'.
2. Subs. *ibid.* for "Mamlatdar's".

15. (1) Where either party requires any witness to be summoned to appear on the day and at the place fixed, the '[Mukhtiarkar]' shall issue a summons for that purpose. Attendance of witnesses.

(2) The '[Mukhtiarkar]' may issue, after recording his reasons in writing, a warrant for the arrest of any such witness if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure.

(3) The payment of the cost incurred in thus procuring the attendance of witnesses shall be regulated in accordance with the rules that may from time to time be in force in regard to the attendance of witnesses in Subordinate Civil Courts.

16. (1) Where the plaintiff fails to attend, or to produce his documents, if any, or to adopt measures to procure the attendance of his witnesses, if any, on the day and at the place fixed, the '[Mukhtiarkar]' shall reject the plaint with costs, whether the defendant appears or not, unless the defendant admits the claim. Where plaintiff makes default, plaint to be rejected with costs.

(2) Where the plaintiff attends as required by section 14, sub-section (1), but the defendant fails to attend, and the '[Mukhtiarkar]' is satisfied from the evidence before him that the notice has been duly served on the defendant and in sufficient time to enable the defendant to appear and answer on the day fixed in the notice, he shall proceed to hear and decide the plaint *ex-parte*: Where defendant does not appear, case to be heard *ex-parte*.

Provided, *firstly*, that if either party satisfies the '[Mukhtiarkar]' at any time within thirty days from the date of the rejection of a plaint under sub-section (1), or of an *ex-parte* decision under sub-section (2), that he was prevented by some unavoidable circumstance from attending, or from producing his documents or from adopting measures to procure the attendance of his witnesses, as the case may be, it shall be lawful for the '[Mukhtiarkar]' to issue a notice in the form of Schedule B at the expense of the applicant to the opposite party and, if still satisfied after hearing the opposite party that the applicant was prevented as alleged, re-hear the case at such time and place as he may then fix: But case may be re-heard on sufficient cause being shown.

Provided, *secondly*, that nothing in the foregoing provisions shall prevent the plaintiff from withdrawing his suit on payment of the defendant's costs. or plaintiff may withdraw his suit.

17. (1) Where, in the case mentioned in sub-section (2) of section 16, the '[Mukhtiarkar]' is not satisfied from the evidence When proceedings may be adjourned.

before him that the notice has been duly served on the defendant, and in sufficient time to enable the defendant to appear and answer on the day fixed in the notice, he shall adjourn the trial of the case and issue a fresh notice under section 14, sub-section (1), to the defendant.

(2) Where any witness who has been duly summoned, or for whose arrest a warrant has been issued under sub-section (2) of section 15, fails to attend on the day and at the place fixed, the '[Mukhtiarkar]' may, if he considers there is sufficient reason, after taking the evidence of those present, adjourn the hearing of the suit from time to time till the attendance of such witness can be enforced.

(3) The '[Mukhtiarkar]' may, for any other sufficient reason to be recorded in writing, adjourn the trial of the case for such time as he thinks fit, but not ordinarily exceeding ten days.

(4) The provisions of sections 15 and 16 shall apply in respect of any day to which the trial of the case may be adjourned under this section, as if such day were the day originally fixed for the trial.

Minor may
be a party.

18. (1) A minor may sue or be sued, if he is represented by a natural or duly appointed guardian.

Power to
add parties.

(2) The '[Mukhtiarkar]' may, at any stage of the proceedings, order that the name of any person to whom possession or enjoyment of the property or use claimed, or of any part thereof, may have been transferred, or the addition of whom as a party appears necessary in order to enable the Court effectually and completely to adjudicate upon the issues, be added as a plaintiff or defendant, as the circumstances of the case may require:

Provided that no person shall be added as a plaintiff without his consent:

Provided also that in respect of any person so added, not being a transferee pending the suit, the suit shall for the purposes of section 5, sub-section (3), be deemed to have been instituted on the day when his name was so added.

Procedure in
case of
death of
party.

(3) In case of the death of any party while the suit is pending,

- (i) if application is made within one month of such death, the '[Mukhtiarkar]' shall determine summarily who is the legal representative of the deceased party and shall enter on the record the name of such representative;
- (ii) if no such application is made, the suit shall abate.

(4) Where the '[Mukhtiarkar]' orders the name of any person to be added as a defendant or enters on the record the name of any person as the legal representative of a deceased defendant, the '[Mukhtiarkar]' shall issue to such person a notice as provided in section 14; and the trial shall proceed on the date fixed in such notice.

19. (1) On the day fixed, or on any day to which the proceedings may have been adjourned, the '[Mukhtiarkar]' shall, subject to the provisions of section 16, proceed to hear all the evidence that is then and there before him, and to try the following issues, namely:—

points to be decided by Mukhtiarkar at hearing.

(a) If the plaintiff avers that he has been unlawfully dispossessed of any property or deprived of any use—

- (1) whether the plaintiff or any person on his behalf or through whom he claims was in possession or enjoyment of the property or use claimed up to any time within six months before the suit was filed;
- (2) whether the defendant is in possession at the time of the suit, and, if so, whether he obtained possession otherwise than by due course of law;

(b) if the plaintiff avers that he is entitled to possession of any property or restoration of any use by reason of the determination of any tenure or other right of the defendant in respect thereof—

- (1) whether the defendant is in possession of the property or in the enjoyment of the use by a right derived from the plaintiff or from any person through whom he claims;
- (2) whether such right has determined at any time within six months before the suit was filed;
- (3) whether the defendant is other than a person who has been a former owner or part-owner within a period of twelve years before the institution of the suit of the property or use claimed, and other than the legal representative of such former owner or part-owner;

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

- (1) whether the plaintiff or any person in his behalf is actually in possession or enjoyment of the property or use claimed;

1. Subs. by the Sind Laws (Adaptation, Revision, Repeal and Declaration) Ordinance, 1955 (Sind 5 of 1955), s. 13, for "Mamlatdar".

(2) whether the defendant is disturbing or obstructing, or has attempted to disturb or obstruct, him in such possession or enjoyment;

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

Power of Mukhtiarkar to examine other witnesses and inspect property in dispute.

(2) The [Mukhtiarkar] may, after due notice to, and in the presence of the parties, summon and examine as a witness any person who has not been summoned or produced, and may call for and cause to be proved any document which has not been applied for or produced, by either of the parties, where he considers it expedient in the interests of justice so to do, and may, if he thinks fit, make a personal inspection of the property in dispute in the presence of, or after due notice to the parties. [He shall without unnecessary delay record a memorandum after hearing the parties on the spot, if present, of any relevant facts observed at such inspection. The memorandum shall form part of the record of the case.]

Record of proceedings by Mukhtiarkar.

(3) The [Mukhtiarkar] shall with his own hand make or sign a memorandum of the substance of the evidence of each witness as the examination of the witness proceeds, and briefly record his reasons for his finding.

Orders to be passed by Mukhtiarkar upon decisions in favour of plaintiff and defendant.

(4) Where the [Mukhtiarkar's] finding upon the issues is in favour of the plaintiff, he shall make such order, not being in excess of the powers vested in him by section 5, as the circumstances of the case appear to him to require; and where his finding is in favour of the defendant, he shall dismiss the suit. In either case the costs of the suit, including the costs of execution, shall follow the decision,

Mukhtiarkar's orders to be endorsed on plaint and read out in open Court

20. Every order of the [Mukhtiarkar], whether for rejecting or returning a plaint or whether for allowing or disallowing a claim, shall be endorsed by the [Mukhtiarkar] on the plaint and shall be read out by him in open Court, either at once or on some future day of which due notice shall be given to the parties or their pleaders, and brief reasons for order shall be placed by him on record.

Mukhtiarkar's decision how executed.

21. (1) Where the [Mukhtiarkar's] decision is for awarding possession or restoring a use, he shall give effect thereto by issuing such orders to the village-officers, or to any subordinate under his control or otherwise, as he thinks fit:

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1. Subs. by the Sind Laws (Adaptation, Revision, Repeal and Declaration) Ordinance, 1955(Sind 5 of 1955), s. 13, for "Mamlatdar" and "Mamlatdars".
 2. Added by the Sind II of 1928, s. 2 and Sch. I.

- (2) whether the defendant is disturbing or obstructing, or has attempted to disturb or obstruct, him in such possession or enjoyment;
- (3) whether such disturbance or obstruction, or such attempted disturbance or obstruction, first commenced within six months before the suit was filed.

Power of Mukhtiarkar to examine other witnesses and inspect property in dispute.

(2) The [Mukhtiarkar] may, after due notice to, and in the presence of the parties, summon and examine as a witness any person who has not been summoned or produced, and may call for and cause to be proved any document which has not been applied for or produced, by either of the parties, where he considers it expedient in the interests of justice so to do, and may, if he thinks fit, make a personal inspection of the property in dispute in the presence of, or after due notice to the parties. [He shall without unnecessary delay record a memorandum after hearing the parties on the spot, if present, of any relevant facts observed at such inspection. The memorandum shall form part of the record of the case.]

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(3) The [Mukhtiarkar] shall with his own hand make or sign a memorandum of the substance of the evidence of each witness as the examination of the witness proceeds, and briefly record his reasons for his finding.

Orders to be passed by Mukhtiarkar upon decisions in favour of plaintiff and defendant.

(4) Where the [Mukhtiarkar's] finding upon the issues is in favour of the plaintiff, he shall make such order, not being in excess of the powers vested in him by section 5, as the circumstances of the case appear to him to require; and where his finding is in favour of the defendant, he shall dismiss the suit. In either case the costs of the suit, including the costs of execution, shall follow the decision,

Mukhtiarkar's orders to be endorsed on plaint and read out in open Court

20. Every order of the [Mukhtiarkar], whether for rejecting or returning a plaint or whether for allowing or disallowing a claim, shall be endorsed by the [Mukhtiarkar] on the plaint and shall be read out by him in open Court, either at once or on some future day of which due notice shall be given to the parties or their pleaders, and brief reasons for order shall be placed by him on record.

Mukhtiarkar's decision how executed.

21. (1) Where the [Mukhtiarkar's] decision is for awarding possession or restoring a use, he shall give effect thereto by issuing such orders to the village-officers, or to any subordinate under his control or otherwise, as he thinks fit:

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1. Subs. by the Sind Laws (Adaptation, Revision, Renewal and Declaration) Ordinance, 1955(Sind 5 of 1955), s. 13, for "Mamlatdar" and "Mamlaidars".
 2. Added by the Sind II of 1928, s. 2 and Sch. I.

Provided that, notwithstanding anything contained in this Act, where, at the time when a decision is recorded by the [Mukhtiarkar] for awarding possession of any land, there is a crop on such land which has been sown by, or at the expense of the defendant, and the [Mukhtiarkar] is satisfied that it has been so sown in good faith, the [Mukhtiarkar] may, and if the defendant makes an application for the purpose and furnishes sufficient security, or deposits in Court a sufficient sum, for the payment of the costs of the suit, shall pass an order staying delivery of possession of such land to the plaintiff seeking thereof, either:—

Proviso as to sowing crops.

- (a) until the plaintiff agrees to take the crop at a valuation, to be made under the orders of the [Mukhtiarkar], according to the value of the crop at such time, including any instalments of the Government assessment which the defendant may have paid for the current year; or
- (b) where the plaintiff is unwilling to take the crop at such valuation until after the expiration of sufficient time for the crop to be gathered by the defendant.

The amount of any valuation made under clause (a) of the proviso to this sub-section shall be paid to the defendant through the [Mukhtiarkar], and shall be recoverable from the plaintiff as an arrear of land-revenue.

(2) Where the [Mukhtiarkar's] decision is for granting an injunction, he shall cause the same to be prepared in the form of Schedule C, and shall deliver or tender the same then and there to the defendant, if present, or if the defendant is not present, shall send it to the village-officers, or to any subordinate under his control, to be served upon the defendant.

Mode of serving injunction.

(3) Where the [Mukhtiarkar] awards costs, such costs, together with the costs of execution, shall be recoverable from the party ordered to pay them as an arrear of land-revenue.

Recovery of costs awarded.

(4) Any person disobeying an injunction granted under sub-section (2) shall be punishable under section 188 of the [Pakistan] Penal Code.

Disobedience to an injunction how punishable.

22. Subject to the provisions of section 23, sub-section (2) and section 24 the party to whom the [Mukhtiarkar] gives possession, or restores a use, or in whose favour an injunction is granted, shall continue in possession or use until ousted by a decree or order of a competent Civil Court:

Possession to be given without prejudice to rights of parties.

1. Subs. by the Sind Laws (Adaptation, Revision, Repeal and Declaration) Ordinance, 1955 (Sind 5 of 1955), s. 13, "Mamlatdar" and "Mamlatdars".
2. Subs. *ibid*, s. 4 (w. e. f. 30th May, 1951), for "Indian".

Provided, *firstly*, that nothing in this section shall prevent the party against whom the '[Mukhtiarkar's]' decision is passed from recovering by a suit in a competent Civil Court mesue profits for the time he has been kept out of possession of any property, or out of enjoyment of any use:

Provided, *secondly*, that in any subsequent suit or other proceeding in any Civil Court between the same parties, or other persons claiming under them the '[Mukhtiarkar's]' decision respecting the possession of any property or the enjoyment of any use or respecting the title to or valuation of any crop dealt with under the proviso to sub-section (1) of section 21, shall not be held to be conclusive.

23. (1) There shall be no appeal from any order passed by a '[Mukhtiarkar]' under this Act.

(2) But the Collector may call for and examine the record of any suit under this Act, and if he considers that any proceeding, finding or order in such suit is illegal or improper, may, after due notice to the parties, pass such order thereon, not inconsistent with this Act, as he thinks fit.

(3) Where the Collector takes any proceedings under this Act he shall be deemed to be a Court under this Act.

[24. A Mukhtiarkar or a Collector functioning as a Court under this Act shall be a Court subordinate to the '[High Court]' for the purposes of section 115 of the Code of Civil Procedure, 1908.]

25. Any plaintiff subscribing and verifying any plaint under this Act which he either knows or believes to be false, or does not believe to be true, in any material point, shall be deemed to have committed an offence punishable under section 193 of the '[Pakistan] Penal Code.

26. No suit shall lie under this Act

(a) '[against the Provincial Government or against any servant of the State] in respect of any act done or purporting to be done by any such officer in his official capacity, except where acting as a manager or guardian duly constituted under any law for the time being in force; or

1. Subs. by the Sind Laws (Adaptation, Revision, Repeal and Declaration) Ordinance, 1955 (Sind 5 of 1955), s. 13, for "Mamlatdar's" and "Mamlatdar".

2. Subs. *ibid.*, s. 7, Sch. III, for the original section 24.

3. Subs. by the Sind Act 17 of 1975, s. 3, Sch. II for "Chief Court of Sind".

4. Subs. by Sind Ordinance 5 of 1955, s. 4 (w. e. f. 30th May, 1951) for "Indian".

5. Subs. by W. P. A. O., 1964 Act, 2, Sch., Pt. IV (B) for the words "against the Crown or against any servant of the Crown" which were previously subs. by the A.O., 1937, for "against Government or against any officer of Government".

v of
1908.

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tion of false
plaint.

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tain suits.

- (b) in respect of any dispossession, recovery of possession or disturbance of possession, that has been the subject of previous proceedings, to which the plaintiff or his predecessor in interest was a party, under this Act, or in a Civil Court, or under Chapter XII of the Code of Criminal Procedure, 1898.

SCHEDULE A.
FORM OF NOTICE TO BE ISSUED TO THE
DEFENDANT UNDER SECTION 14.

Seal of
the Court.

No. OF SUIT.

In the Court of the '[Mukhtiarkar] of

Plaintiff.

Defendant.

To DEFENDANT—(name, age, religion, caste, profession and place of abode).

WHEREAS (here enter the name, age, religion, caste, profession and place of abode of the plaintiff) has instituted a suit in this Court against you (here state the particulars of the plaint):

You are hereby summoned to appear in this Court at the village of _____ in person or by duly authorized agent on the _____ day of _____ at _____ o'clock _____ m., to answer the above-named plaintiff; and, as the plaint will be finally disposed of on that day, you must adopt measures to produce your documents and procure the attendance of your witnesses at the hour and place above fixed; and you are hereby required to take notice that, in default of such appearance at the before mentioned time and place, the suit will be heard and determined in the absence of yourself and your agent.

Dated this _____ day of _____ 19 .

(Signed).

'[Mukhtiarkar].

Note—If you require your witnesses to be summoned by the Court, you should make an application to that effect to the Court without delay, so as to allow of the service of the summonses a reasonable time before the within mentioned date.

1. Subs. by the Sind Laws (Adaptation, Revision, Repeal and Declaration) Ordinance, 1955 (Sind 5 of 1955), s. 13, for "Mamlatdar".

SCHEDULE B.

FORM OF NOTICE TO BE ISSUED UNDER SECTION 16

Seal of
the Court

No. OF SUIT.

In the Court of the '[Mukhtiarkar] of

Plaintiff.

Defendant.

To PLAINTIFF (or DEFENDANT, as the case may be).

WHEREAS, in the suit above specified, instituted in this Court by _____, the Court ordered on the _____ day of _____ last that _____, and the said plaintiff (or defendant, as the case may be) has, under date the _____ day of, _____ applied to this Court to re-hear the case on the grounds that *(here state the grounds)*:

This is to give you notice that the said application will be heard and determined on the _____ day of _____ at _____ o'clock _____ m., at the village of _____, and you are hereby required to take notice that in default of your appearance personally or by agent at the said time and place, the application will be heard and determined in your absence and, if granted, a time and place for re-hearing the suit will then be fixed.

Dated this _____ day of _____ 19 _____.

(Signed).

'[Mukhtiarkar].

1. Subs. by the Sind Laws (Adaptation, Revision, Repeal and Declaration) Ordinance, 1955 (Sind 5 of 1955), s. 13, for "Mamlatdar."

