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CALCUTTA, SATURDAY, FEBRUARY 1, 1879.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART III.

Advertisements and Notices by Private Individuals and Corporations.

PROMISSORY NOTES.

Lost

The upper half of the Government Promissory Note No. 048736 of the 4½ per cent. loan of 10th January 1872, for Rs. 1,000, originally standing in the name of Sumbhoo Pandurung, and last endorsed to Deputy Commissioner, Balaghat, the proprietor, by whom it was never endorsed to any other person. Payment of the above Note and the interest thereupon have been stopped at the Public Debt Office, Bank of Bengal (Bombay), and application is about to be made for the issue of duplicate in favor of the proprietor.

H. M. REPTON, *Major*,
Deputy Commissioner, Balaghat.

BALAGHAT,
The 18th January 1879.

Stolen

The Government Promissory Notes, Nos. 084705 of 4 per cent. of 1854-55, for Rs. 1,000, and 093935 of 4 per cent. of 1865, for Rs. 500, both originally standing in the names of J. H. Belchambers, W. L. Wenger, G. S. Sykes, and R. Williamson, the proprietors, by whom they were never endorsed to any other person. Payment of the above Notes and the interest thereupon have been stopped at the Public Debt Office, Bank of Bengal, and application is about to be made for the issue of duplicates in favour of the proprietors.

R. SCOTT-MONCRIEFF,
16, Strand Road.

NOTICE.

The public is warned against negotiating the following Government Securities at present known to belong to the estate of my paternal uncle, late Juggo Persad Mookerjee, of Bhuddercally, Zillah Hooghli, who did not endorse them to any body.

The payment of interest and transfer of the Securities have been stopped at the Public Debt Office, Calcutta.

Any person negotiating these Securities will do it at their risk, subjecting to future suits:—

No.	Description.	Rate of Interest.	Amount.
			Rs.
007998	of 1872 ...	4½ per cent. ..	500
038319	,, ...	,, ...	2,000
008829	,, ...	,, ...	1,000
008830	,, ...	,, ...	1,000
		TOTAL Rs. ...	4,500

TARA PRASANA MOOKERJEE,
Head Clerk, Nepal Residency,
and legal heir to the estate of
Juggo Persad Mookerjee.

NEPAL RESIDENCY,
The 1st January 1879.

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CALCUTTA, SATURDAY, FEBRUARY 8, 1879.

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PART III.

Advertisements and Notices by Private Individuals and Corporations.

PROMISSORY NOTES.

Lost

The upper half of the Government Promissory Note No. 048736 of the 4½ per cent. loan of 16th January 1872, for Rs. 1,000, originally standing in the name of Sumbhoo Pandurung, and last endorsed to Deputy Commissioner, Balaghat, the proprietor, by whom it was never endorsed to any other person. Payment of the above Note and the interest thereupon have been stopped at the Public Debt Office, Bank of Bengal (Bombay), and application is about to be made for the issue of duplicate in favor of the proprietor.

H. M. REPTON, *Major*,
Deputy Commissioner, Balaghat.

BALAGHAT,
The 18th January [illegible]9.

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PART III.

Advertisements and Notices by Private Individuals and Corporations.

BENGAL CIVIL FUND.

At a Half-yearly General Meeting of Subscribers to the Bengal Civil Fund, held at the Town Hall, Calcutta, on Wednesday, the 29th January 1879.

PRESENT :—The Hon'ble W. F. McDonell, v.c.; W. Waterfield, Esq.; the Hon'ble H. T. Prinsep; C. E. Bernard, Esq., c.s.i.; H. L. Harrison, Esq.; the Hon'ble J. O'Kinealy; R. H. Pawsey, Esq.; J. Westland, Esq.; T. W. Gribble, Esq.; W. H. Grimley, Esq.; J. G. Charles, Esq.; J. Scobell Armstrong, Esq.; Colman Macaulay, Esq.; C. E. Buckland, Esq.

R. H. Pawsey, Esq., *in the Chair.*

The following report was submitted by the Managers :—

REPORT.

1. The Managers submit their proceedings for the past half-year for the consideration and sanction of the Meeting.

2. Subject to the approval of the subscribers, they have admitted to the benefits of the Fund the following families :—

	£
Widow	300
4 Children	230
Total ...	530
Widow	300
2 Daughters	200
Total ...	500
Widow	300
Widow	300
2 Sons	60
	360
Less one-sixth under Rule 7 ...	60
Total ...	300

The widow and four children (two sons and two daughters) of the late Mr. V. T. Taylor, who died at Hazareebagh on the 9th March last.

The widow and two daughters of the late Mr. A. R. Young (annuitant of 1862), who died in England on the 23rd October last.

The widow of the late Mr. E. H. C. Monckton (annuitant of 1857), who died in England on the 24th July last.

The widow and two sons of the late Mr. E. S. Moseley, who died at Pubna on the 12th December last.

3. Mr. A. C. Tute has applied for remission of the fine of Rs. 50 incurred under article V of the rules for not reporting the birth of a son within one month of its occurrence. He explains that the cause of the delay of six weeks in reporting the birth was the severe illness of his wife, whose life was despaired of during that time. The Managers have informed Mr. Tute that they will submit his case for the decision of the Meeting.

4. Mr. J. Power, who retired on the 24th March last, has objected to pay the subscription due from the date of resignation up to 1st November 1878, the date on which the composition of £119 was paid. He asks for consideration of this matter on the following grounds :—

1*st.*—That he had not left India on the 17th April, the date of the Fund letter, and he could then have compounded had the letter been forwarded to Shajehanpore instead of to Messrs. Coutts & Co.

2*nd.*—That when he received the letter he referred to Messrs. Coutts & Co. to know what sum he ought to pay, but they could give no information.

The Managers have informed him that they had no means of knowing that he proposed to remain in India after his retirement, and that the payment of composition is a matter left open to the sub-

scriber, whereas that of subscription at half rates is imperative. It is for retiring subscribers who desire to compound to ascertain the amount of composition payable in each case. This is not a fixed sum, but has to be calculated in the Fund office from actuarial tables, and varies according to the age of the subscriber, and, if he is married and has a family, according to the ages of the different members of his family. Mr. Power, however, did not communicate in any way with the Fund office regarding his subscription. Under these circumstances the subscription, £7-11-2, is clearly due, and should be paid to the agents of the Fund.

5. Lord William Hay, who retired on an invalid annuity on the 27th September 1865, wishes to make up his balance to Rs. 12,500, and thus secure for his family the half benefits of the Fund. He says—

"I continued my subscriptions to the Fund under the impression that the deductions made up to my retirement with the accumulations of interest would entitle me to the scale of half benefits, with which scale I was satisfied. In the present year I have married and have given due notice and made the required payments on this event. But I have been informed that the amount standing to my credit with the Fund at the date of my retirement was £38 (more or less) short of the amount entitling me to the half scale of benefits. I have now to request permission to pay this amount with such back interest as the Managers may determine. I need scarcely assure the Managers that the omission to make this payment earlier has arisen from ignorance and inadvertence only; and I trust that they will not on account of an inadvertent delay in the payment of so small a sum hold me deprived of the half benefits to which the deductions made from my pay and allowances during my service would otherwise entitle me."

As Lord William Hay had been informed at the time of retirement of the sum payable, the Managers have told him that by article VIII of the rules, which permits retiring subscribers to make up their balances to the prescribed minima, that option can be exercised at the time of retirement only, and that they have no authority to carry the privilege further.

6. The facts of the case of Miss Amy Augusta Lawford, eldest daughter of the late Mr. H. B. Lawford, were submitted at the last general meeting. The Managers have recently received intimation that the decree annulling Miss Lawford's marriage with Captain Davies has been made absolute. They will therefore recommend to the subscribers Miss Lawford's admission to the benefits of the Fund, with effect from the date of her father's death, on payment of all arrears of subscription on her account then due, with interest. As the case is not distinctly provided for under the rules, two months' notice of this proposal must be given under article XVII, and this will accordingly be done.

7. Mr. H. F. Bartlett has reported that he has been divorced from his wife, and applied to subscribe at reduced rates as a widower subscriber from July last. He has intimated that the decree *nisi* has been made absolute, and the Managers have informed him that he may subscribe at widower rates from that date.

8. As requested at the last Meeting, the Managers have taken into consideration the effect on the revenue of the Fund of the despatch of the Right Hon'ble the Secretary of State, dated 17th January 1878, amending supplement A of the Civil Pension Code rules, whereby a Civil Servant resigning the service vacates any office under the Government which he may then hold, and excepting from the rule the office of Viceroy and Governor-General of India, Governor of Madras, Governor of Bombay, and Ordinary Members of the Council of the Governor-General. The Managers have thought it unnecessary to take any action on the despatch.

9. In accordance with articles XLII and XLIII of the Rules the Managers lay on the table the result of the quinquennial valuation of the assets and liabilities of the Fund for the period ending 31st March 1878. They have heard from Mr. E. F. Harrison that the actuary is actively engaged on the valuation, and will shortly submit his report.

10. The accounts of the year 1877-78 are submitted.

Proposed by *Mr. J. Scobell Armstrong*, seconded by *Mr. C. E. Buckland*, and carried—

"That the Managers' proceedings in admitting the families of the late Messrs. V. T. Taylor, A. R. Young, E. H. C. Monckton, and E. S. Moseley, to the benefits of the Fund be confirmed."

Proposed by *Mr. Westland*, second by *Mr. O'Kinealy*, and carried—

"That Mr. Tute be informed that the rule as to fine for failure to report birth being absolute, the meeting regret that the fine imposed upon him cannot be remitted."

Proposed by *Mr. H. L. Harrison*, seconded by *Mr. C. E. Buckland*, and carried—

"That the reply of the Managers to Mr. J. Power be approved."

Proposed by *Mr. C. E. Buckland*, seconded by *Mr. H. L. Harrison*, and carried—

"That the reply of the Managers to Lord William Hay be approved."

Proposed by *Mr. Grimley*, seconded by *Mr. Prinsep*, and carried—

"That the accounts of the past year 1877-78, be approved."

Proposed by *Mr. Gribble*, seconded by *Mr. Charles*, and carried—

"That the following gentlemen be elected Managers for the ensuing year:—The Hon'ble L. S. Jackson, C.I.E.; the Hon'ble C. T. Buckland; the Hon'ble W. F. McDonell, C.S.; the Hon'ble J. O'Kinealy; and W. M. Souttar, Esq."

A vote of thanks to the Chairman was proposed by *Mr. J. G. Charles*, seconded by *Mr. J. Scobell Armstrong*, and carried.

BENGAL CIVIL FUND, *The 29th January* 1879.

COLMAN MACAULAY, *Secretary.*

R. H. PAWSEY, *Chairman.*

Abstract of the Accounts of the Bengal Civil Fund for 1877-78.

	Bearing interest at 8 per cent.	Bearing interest at 5 per cent.
UNAPPROPRIATED FUNDS.	Rs. A. P.	Rs. A. P.
By balance, 1st April 1877 ...	39,44,717 9 2	37,37,435 9 0
,, interest ...	3,44,594 15 1	1,93,192 4 3
,, subscriptions during the year ...	2,64,173 3 1	2,08,030 14 6
,, payments under Rule 8 by seven annuitants in India ...	13,458 15 4	.....
,, Ditto ditto by one in England ...	2,567 10 0	.....
,, composition payments by two annuitants in India ...	2,362 10 8	1,867 8 10
,, Ditto ditto from four in England ...	1,360 2 0	3,998 2 0
,, contributions by annuitants in India ...	3,803 7 8	3,846 8 11
,, Ditto paid in England and by absentees on furlough ...	15,675 10 10	13,808 6 6
,, fine from 12 subscribers including 10 for unequal age at marriage ...	.....	6,173 5 10
,, Ditto from two in England	.....	100 0 0
,, transfer from Appropriated Funds of deduction of one-sixth from pensions under Rule 7	19,993 10 9	5,639 3 10
,, amount granted by Government for the payment of pensions of families of those subscribers who were killed in the Mutiny ...	26,315 13 11	7,422 6 9
,, transfer from Annuity Fund	1,404 0 0	396 0 0
,, donation from the Government paid in England	25,000 0 0	.....
,, transfer from Appropriated Funds at quinquennial adjustment on 31st March 1878 under Rule 42	.....	4,16,034 9 4
	46,65,427 12 6	45,97,944 15 9
DEDUCT—		
To transfer to Appropriated Funds—		
,, value of pension of Mrs. G. E. Makgill, widow of G. E. Makgill (annuitant)	5,863 7 3	2,254 14 3
,, Ditto of Mrs. J. Geoghegan and one daughter ...	30,644 10 3	11,751 9 4
,, Ditto of Mrs. A. R. S. Pollock, five daughters, and four sons	73,436 14 10	26,251 6 9
,, Ditto of Mrs. H. S. Boulderson, widow of H. S. Boulderson (annuitant)	13,087 9 11	4,229 4 6
,, Ditto of Mrs. G. P. Leycester, widow, and two daughters of G. P. Leycester (annuitant)	35,445 8 8	12,770 7 7
,, Ditto of Mrs. S. J. Becher, widow, and one daughter of S. J. Becher (annuitant)	27,321 1 0	9,693 3 2
,, Ditto of Mrs. V. H. Schalch widow, three daughters, and one son of V. H. Schalch (annuitant)... ...	47,144 5 9	17,098 3 2
,, Ditto of Mrs. D. D. M. Campbell and two daughters ...	35,575 0 4	13,818 5 7
,, Ditto of Mrs. V. T. Taylor, two daughters, and two sons	48,080 5 11	17,932 3 2
,, Ditto of Mrs. C. D. Russell, widow, four daughters, and two sons of C. D. Russell (annuitant)... ...	56,795 4 11	20,356 10 0
,, Ditto of Mrs. W. Bell, widow of W. Bell (annuitant) ...	20,624 12 2	7,254 11 6
,, interest thereon	12,095 0 0	2,710 15 0
,, transfer to Apprd. Funds on account of pensions payable by Govt. ...	26,315 13 11	7,422 6 9
,, refund of overpaid subscriptions	1,444 0 2	1,016 8 10
,, establishment, &c.	8,628 3 7	2,433 9 11
,, printing charges	1,654 8 2	466 10 3
,, transfer to Appropriated Funds at quinquennial adjustment on 31st March 1878 under Rule 42	5,46,638 10 4	.....
	9,90,795 5 2	1,57,461 1 9
Balance, 31st March 1878 ...	36,74,632 7 4	44,40,483 14 0
APPROPRIATED FUNDS.		
By balance, 1st April 1877	48,94,225 1 4	13,98,828 2 5
,, interest	3,52,005 6 0	68,366 7 2
,, transfer from Unappropriated Funds, values of pensions granted to the above eleven families within the year	3,94,019 1 0	1,43,410 15 0
,, interest thereon	12,095 0 0	2,710 15 0
,, transfer from Unappd. Funds on account of pensions payable by Govt.	26,315 13 11	7,422 6 9
,, transfer from Unappropriated Funds at quinquennial adjustment on 31st March 1878 under Rule 42	5,46,638 10 4	.....
	62,25,299 0 7	16,20,738 14 4
DEDUCT—		
To pensions paid in England under old Rules	1,65,400 0 0	.....
,, ditto ditto new Rules	4,90,314 11 4	1,60,795 4 0
,, ditto India ditto	13,585 10 6	3,831 13 2
,, marriage donation	2,340 0 0	660 0 0
,, transfer to Unappropriated Funds of the deduction of one-sixth from pensions under Rule 7	19,993 10 9	5,639 3 10
,, transfer to Appropriated Funds at quinquennial adjustment on 31st March 1878 under Rule 42	.....	4,16,034 9 4
	6,91,634 0 7	5,86,960 14 4
Balance, 31st March 1878 ...	55,33,665 0 0	10,33,778 0 0
TOTAL BALANCE, 31ST MARCH 1878 ...	92,08,297 7 4	54,74,261 14 0

INVESTMENT OF THE ABOVE BALANCE.

	Rs. A. P.
Invested Treasury Notes at 8 per cent.	82,53,784 5 0
Uninvested at 8 per cent. (since invested)	9,54,513 2 4
Ditto at 5 per cent.	54,74,261 14 0
Total ...	1,46,82,559 5 4

COMPARISON OF THE BALANCE.

	Rs. A. P.
Balance, 31st March 1878 ...	1,46,82,559 5 4
Balance, 31st March 1877 ...	1,39,75,206 5 11
Increase ...	7,07,352 15 5

CIVIL FUND OFFICE, *the 29th January* 1879. COLMAN MACAULAY, *Secretary and Accountant.*

PROMISSORY NOTES.

Stolen

The under-mentioned Government Promissory Notes, originally standing in the name of P. Appawrow Moodeliar, and the interest made payable to M. Amoorthlingum Moodeliar, guardian of P. Ramasawmy Moodeliar, son of P. Appawrow Moodeliar, deceased, by whom it was never endorsed to any other person, but the guardian M. Amoorthlingum Moodeliar, endorsed to P. Ramasawmy Moodeliar in the month of November 1878, when the minor attained majority. Payment of the above Notes and the interest thereupon have been stopped at the Public Debt Office, Bank of Bengal (and at Her Majesty's Treasury, Bangalore), and application is about to be made for the issue of duplicates in favor of the proprietor, P. Ramasawmy Moodeliar:—

No. 001565-8424 of 4 per cent. loan of 1st May 1832-33, for Sicca Rs. 2,000.

No. 001566-8423 of 4 per cent. loan of 1st May 1832-33, for Sicca Rs. 3,000.

M. AMOORTHLINGUM,

Guardian of P. Ramasawmy Moodeliar,
Son of P. Appawrow Moodeliar.

MADRAS,
The 30th January 1879.

The Gazette of India.

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CALCUTTA, SATURDAY, FEBRUARY 22, 1879.

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PART III.

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PROMISSORY NOTES.

Stolen

The under-mentioned Government Promissory Notes, originally standing in the name of P. Appawrow Moodeliar, and the interest made payable to M. Amoorthlingum Moodeliar, guardian of P. Ramasawmy Moodeliar, son of P. Appawrow Moodeliar, deceased, by whom it was never endorsed to any other person, but the guardian M. Amoorthlingum Moodeliar, endorsed to P. Ramasawmy Moodeliar in the month of November 1878, when the minor attained majority. Payment of the above Notes and the interest thereupon have been stopped at the Public Debt Office, Bank of Bengal (and at Her Majesty's Treasury, Bangalore), and application is about to be made for the issue of duplicates in favor of the proprietor, P. Ramasawmy Moodeliar:—

No. 001565-8424 of 4 per cent. loan of 1st May 1832-33, for Sicca Rs. 2,000.

No. 001566-8423 of 4 per cent. loan of 1st May 1832-33, for Sicca Rs. 3,000.

M. AMOORTHLINGUM,

Guardian of P. Ramasawmy Moodeliar,
Son of P. Appawrow Moodeliar.

MADRAS,
The 30th January 1879.

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CALCUTTA, SATURDAY, MARCH 1, 1879.

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UNCOVENANTED SERVICE FAMILY PENSION FUND.

Result of Votes on the questions submitted in Circular No. 4, dated 30th November 1878.

Subject.	For	Against.
1. That Mr. C. D. C. Lloyd be restored to his former position as a Subscriber on payment of arrears of subscription with interest	876	15
2. That Mr. W. J. B. Macrone be restored to his former position as a Subscriber on payment of arrears of subscription with interest	882	9
3. That the sons of the late Mr. Jones Bridgnell be admitted to the pension applied for, *viz.*, Rs. 32 a month ...	830	52

W. H. RYLAND,
Secretary.

UNCOVENANTED SERVICE FAMILY PENSION FUND OFFICE,
CALCUTTA;
The 22nd February 1879.

PROMISSORY NOTES.

Stolen.

The under-mentioned Government Promissory Notes, originally standing in the name of P. Appawrow Moodeliar, and the interest made payable to M. Amoorthlingum Moodeliar, guardian of P. Ramasawmy Moodeliar, son of P. Appawrow Moodeliar, deceased, by whom it was never endorsed to any other person, but the guardian M. Amoorthlingum Moodeliar, endorsed to P. Ramasawmy Moodeliar in the month of November 1878, when the minor attained majority. Payment of the above Notes and the interest thereupon have been stopped at the Public Debt Office, Bank of Bengal (and at Her Majesty's Treasury, Bangalore), and application is about to be made for the issue of duplicates in favor of the proprietor, P. Ramasawmy Moodeliar:—

No. 001565-8424 of 4 per cent. loan of 1st May 1832-33, for Sicca Rs. 2,000.

No. 001566-8423 of 4 per cent. loan of 1st May 1832-33, for Sicca Rs. 3,000.

M. AMOORTHLINGUM,
Guardian of P. Ramasawmy Moodeliar,
Son of P. Appawrow Moodeliar.

MADRAS,
The 30th January 1879.

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CALCUTTA, SATURDAY, MARCH 8, 1879.

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PART III.

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NOTICE.

The interest of Mr. Alfred Thomas Osmond and Mr. James Allan in the firm of Mackintosh, Burn & Co., ceased on the 31st December 1878, from which date the business will be carried on by Mr. Walter Marsh Osmond, Mr. Thomas Laurie Walker, and Mr. Alexander James Stevenson, who will collect the outstandings and liquidate the liabilities of the late firm.

MACKINTOSH, BURN & CO.

CALCUTTA,
The 1st March 1879.

PROMISSORY NOTE.

Lost

Government Promissory Note No. 5157 of the 4 per cent. of 1842-43, for Rs. 700, in the name of the late Russickmoney Dossee, by whom it was never endorsed to any one. Payment has been stopped at the Public Debt Office, Bank of Bengal; application will be made for issue of duplicate in favor of the proprietress (my late wife).

BHOOBUNESSUR BOSE.

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CALCUTTA, SATURDAY, MARCH 15, 1879.

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PART III.

Advertisements and Notices by Private Individuals and Corporations.

PROMISSORY NOTE.

Lost

Government Promissory Note No. 5181 of the 4 per cent. of 1842-43, for Rs. 700, in the name of the late Russickmoney Dossee, by whom it was never endorsed to any one. Payment has been stopped at the Public Debt Office, Bank of Bengal, application will be made for issue of duplicate in favor of the proprietress (my late wife).

BHOOBUNESSUR BOSE.

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PART III.

Advertisements and Notices by Private Individuals and Corporations.

HINDU FAMILY ANNUITY FUND.

The 18th March 1879.

Agreeably to Rule 57, the following Resolution, passed at the Seventh Annual General Meeting of the Subscribers, held on the 9th February 1879, is published for general information :—

"That the Budget Estimate, as amended, be passed, and that the Directors be authorized to draw Rs. 3,050 during the year 1879-80, as provided in Rule 55, from the Deposit Account with the Government of India."

ISSEN CHUNDER MOOKERJEE,
Chairman.

JUDONATH GHOSE,
Secretary.

PROMISSORY NOTE.

Lost

Government Promissory Note No. 5157 of the 4 per cent. of 1842-43, for Rs. 700, in the name of the late Russickmoney Dossee, by whom it was never endorsed to any one. Payment has been stopped at the Public Debt Office, Bank of Bengal; application will be made for issue of duplicate in favor of the proprietress (my late wife).

BHOOBUNESSUR BOSE.

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CALCUTTA, SATURDAY, MARCH 29, 1879.

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PART III.

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NOTICE.

IN THE MATTER OF THE INDIAN COMPANIES' ACT OF 1866, AND OF THE EASTERN STEAM TUG COMPANY, LIMITED.

By an Order made by the High Court of Judicature at Fort William in Bengal, in its Ordinary Original Civil Jurisdiction, in the above matter, dated the 20th day of March 1879, on the petition of H. J. Joakim, G. R. Ferries, and J. W. O'Keefe, Directors of the said Company, the Delhi and London Bank, Limited, one of the creditors of the said Company, James Mackillican, Richard Robert Saunders, Members of the Mercantile Firm of James Mackillican and Company, also creditors of the said Company, and the said James Mackillican, a Share-holder of the said Company. It was ordered that the said Eastern Steam Tug Company, Limited, be wound up by the said Court, under the provisions of the Indian Companies' Act, 1866, and that all proceedings in the suit instituted in the said Court by the New Beerbhoom Coal Company, Limited, against the said Eastern Steam Tug Company, Limited (being suit No. 127 of 1879), be stayed and that the costs of the said New Beerbhoom Coal Company, Limited, of the said suit up to the date thereof (to be taxed by the Taxing Officer of the Court) be paid out of the assets of the said Eastern Steam Tug Company, Limited, and that the cost of the said New Beerbhoom Coal Company, Limited, of appearing on the hearing of the said petition be taxed as aforesaid and be added to their claim against the said Eastern Steam Tug Company, Limited.

SANDERSON & Co.,
Attornies for the Petitioners.

UNCOVENANTED SERVICE FAMILY PENSION FUND.

NOTICE TO SUBSCRIBERS UNDER RULE 56.

The rate of abatement to be allowed in both the Widows' and the Children's branch of the Fund during the twelve months commencing from the 1st May 1879, will be—

32 per cent. on the registered or original amount of subscription on account of all policies on which five years' consecutive payments shall have been completed on or before the 30th April 1879.

By order of the Directors,
W. H. RYLAND,
Secretary.

UNCOVENANTED SERVICE FAMILY PENSION FUND OFFICE,
CALCUTTA;
The 20th March 1879.

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CALCUTTA, SATURDAY, APRIL 5, 1879.

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PART III.

Advertisements and Notices by Private Individuals and Corporations.

NOTICE

Is hereby given that James Crichton Kinmond of Leamington, in the County of Warwickshire, England, Engineer, intends to apply by petition to the Governor General of India in Council under Act XV of 1859 for a prolongation of his term of sole using and vending his invention of a Tea-leaf Rolling Machine granted to him by the filing of a specification thereof in the manner provided by the said Act on the 10th day of March 1866, and notice is hereby further given that any person intending to oppose the said application must lodge a notice to that effect at the Office of the Secretary to the Government of India, in the Home Department, on or before the 31st day of May 1879.

SANDERSON & Co.,
Solicitors, Calcutta,
Agents of the said James Crichton Kinmond.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, APRIL 19, 1879.

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PART III.

Advertisements and Notices by Private Individuals and Corporations.

PROMISSORY NOTE.

Lost, Stolen, or Destroyed

The Government Promissory Note No. 18302 of the 4 per cent. of 1842-43, for Rs. 1,000, originally standing in the name of Mussamut Heengun Begum, resident of Delhi, the proprietress, by whom it was never endorsed to any other person. Payment of the above Note and the interest thereupon have been stopped at the Public Debt Office, Bank of Bengal, and application is about to be made for the issue of duplicate in favor of the parties legally entitled.

MAHOMED JAN ALUM,
Of Pundit-ka-Koocha, Delhi.

The 17th March 1879.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, APRIL 26, 1879.

☞ Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART III.

Advertisements and Notices by Private Individuals and Corporations.

TRANSLATION OF EKRARNAMAH.

Ekrarnamah between Moharajah Dhiraj Rajendra Kissore Singh, Bahadoor, Proprietor and Member of the Committee of Guardianship and Management of the Raj Reasut Betya, under the Agreement dated the 28th July 1867, and Moharaj Coomar Narendra Kissore Singh, Bahadoor, son of the said Moharaj Dhiraj (on the one part) and Thomas Mitchell Gibbon, C.I.E., at present Proprietor and Indigo Factor of the Factories at Moorlah, &c., Tuppa Babas, Pergunnah Majhua, Zillah Champarun, and now residing at Benares (on the other part.)

Whereas under the Ekrarnamah dated the 28th July 1867, which was registered as No. 183 at pages 92 to 94 B., Vol. II, Book I, at the Office of the Registrar of City Betya, on the 29th day of the said month, a Committee was appointed for management of the Raj Reasut Betya, and the members of the Committee obtained, on the 10th April 1869, a certificate from the Judge of Zillah Sarun, and the management of the Raj Reasut Betya was made, from the beginning of August 1867 to the 15th March 1875, under the aforesaid instruments; whereas in March 1875, Moharaj Dhiraj Kashi Naresh, Bahadoor, removed the Manager under para. VI, and entrusted the authorities vested in him to Moharaj Dhiraj Bahadoor of Betya and himself retired from the management as per notifications published in the Government Gazette of Bengal, dated the 23rd March 1875, and after that we the declarants,

اقرار نامہ مابین مہاراجہ دھیراج مہاراجہ راجندر کشور سنگھہ بہادر مالک و ممبر کمیٹي ولایت و انتظام راج ریاست بتیا مطابق اقرار نامہ مورخہ ۲۸ جولائي سنہ ۱۸۶۷ ع و مہاراج کمار نرایندر کشور سنگھہ بہادر پسر مہاراج دھیراج موصوف و مسٹر طامس مچل گیبن صاحب سي٠ آئي٠ ائي٠ جو اسوقت مالک و اہل تاجر نیل کوٹھیات مونڈہا و غیرہ ٹپہ بہاس پرگنہ مچھوا ضلع چنپارن حال مقامي شہر بنارس کي ہین،

چونکہ از روے اقرار نامہ مرقومہ ۲۰ جولائي سنہ ۱۸۶۷ ع جسکي رجسٹري نمبر ۱۸۳ صفحہ ۹۲ سے ۹۴ تک کتاب اول جلد دویم محکمہ رجسٹرار شہر بتیا مین تاریخ ۲۹ ماہ مذکور کو ہوئي ہی کارروائي جہت انتظام راج ریاست بتیا ہوئي ہی اور منجانب ممبران کمیٹي بتاریخ ۱۰ دھم اپریل سنہ ۱۸۶۹ ع سارٹیفیکٹ اجلاس سے صاحب جج بہادر ضلع سارن حاصل کرکے از ابتداے شروع ماہ اگست سنہ ۱۸۶۷ ع لغایت ۱۵ ماہ مارچ سنہ ۱۸۷۵ ع بذریعہ دستاویزات صدر کے کار منیجري راج ریاست بتیا برابر جاري رہا بماہ مارچ سنہ ۱۸۷۵ ع مہاراج دھیراج کاشي نریش بہادر بموجب دفعہ ششم منیجر مقررہ کي علیحدگي کي ساتھہ اختیارات اپنے مہاراجہ دھیراج بہادر بتیا کو تفویض کرکے بموجب اشتہارات مطبوعہ کلکتہ گورنمنٹ گزٹ بنگالہ مورخہ ۲۳ مارچ سنہ ۱۸۷۵ ع خود دست بردار ہوگئے بعد ازان واقع تاریخ ۲۲ اپریل سنہ ۱۸۷۵ ع منجانب منمقران مہاراج دھیراج

Moharaj Dhiraj Bahadoor of Betya and the Moharaj Coomar Koonwar Saheb, son of the said Moharaj Dhiraj, appointed, on the 22nd April 1875, Mr. J. S. Rochfort Manager on our behalf, under an Ekrarnamah of the said 22nd April 1875, and he continued to discharge the duties of the Manager till nearly the close of the year 1878; but the affairs of the management of the Raj Reasut could not for certain reasons be efficiently and satisfactorily discharged by him, and he is absent, although the leave granted to him has expired; therefore we the declarants of our own free will and accord do appoint Mr. Thomas Mitchell Gibbon, late Manager, who discharged the duties of the Manager very satisfactorily till 1875, as Manager of Raj Reasut Betya by this Ekrarnamah, and also by a separate Ekrarnamah and General Mooktearnamah and make a valid declaration in writing to the effect that the said Mr. T. M. Gibbon shall, under this Ekrarnamah, act in accordance with the under-mentioned paragraphs and conduct and manage all the affairs of the Raj Reasut in the best manner possible, so that there may be improvement and prosperity in the affairs of the Raj Reasut. We do further declare strongly that whatever the said Mr. Gibbon shall do under this Ekrarnamah and also under the Ekrarnamah referred to above dated the 18th March 1879 and the General Mooktearnamah, dated 18th March 1879, in the discharge of the affairs of the Raj Reasut are and shall be acknowledged and admitted by us the declarants as if done by us in person, and also whatever transactions shall be effected by him for and on behalf of the Raj Reasut by executing deeds and documents shall be binding upon the Raj Reasut, and not upon the person of the said Mr. Gibbon.'

بہادر بتیا و مہاراج کمار کنور صاحب پسر مہاراج دھیراج موصوف مسترجان اسبل راج فورث صاحب بذریعہ اقرار نامہ مرقوم الصدر یعنے ۲۲ اپریل سنہ ۱۸۷۵ع مقرر ہوکے انتظام کار منیجری کا قریب لغایتہ سنہ ۱۸۷۸ع انجام کرتے رہے الا کاربار منیجری راج ریاست کا بوجہ چند بعنوان احسن صاحب موصوف سے انجام نہین ہوسکا اور بعد انقضاے رخصت بھی غیر حاضر ہین اسلئے برضا و رغبت خودہا منمقران مستر طامس مچل گیبن صاحب منیجر سابق جنہون نے لغایتہ سنہ ۱۸۷۵ ع جیسا کہ چاہئے کار منیجری انجام کیا ہی بذریعہ اقرار نامہ ہذا و نیز اقرار نامہ دیگر علیحدہ و مختار نامہ عام منیجر راج ریاست بتیا کا مقرر کرکے اقرار معتبر لکھہ دیتے ہین چاہئے کہ صاحب موصوف بذریعہ اقرار نامہ ہذا مندرجہ دفعات مفصلہ ذیل کاربند ہوکے کاربار راج ریاست کا بحسن تمام انجام و انصرام کیا کرین جسمین ترقی و افزولی کاربار راج ریاست ظہور مین آوے و یہہ ہی اقرار موثق منجانب منمقران ہی جو کچھہ صاحب موصوف بذریعہ اقرار نامہ ہذا و نیز اقرار نامہ متذکرہ بالا مرقومہ ۱۸ ماہ مارچ سنہ ۱۸۷۹ ع و مختار نامہ عام مرقومہ ۱۸ ماہ مارچ سنہ ۱۸۷۹ ع کارہاے راج ریاست انجام کرینگے وہ سب کیا ہوا صاحب موصوف کا بذات خاص منمقران منظور و قبول ہی و ہوگا و نیز صاحب موصوف جو کارروائی واسطے راج ریاست بذریعہ تحریر وثائقہاے کیا کرینگے وہ تعلق راج ریاست تصور ہوگا صاحب موصوف کی ذات خاص سے کچھہ سروکار و تعلق نہین ہوگا '

I.—Mr. Thomas Mitchell Gibbon, the Manager now appointed, will have no objection to pay, and shall exert his best to pay either in cash or by instalments from the income of the Raj Reasut the loans that may have been taken for the Raj Reasut with the approval of the members of the Committee upon execution of bonds, simple usufructuary, &c., during the incumbency of the said Mr. Thomas Mitchell Gibbon as Manager under the terms of the Agreement dated the 28th July 1867, less the amount of principal or interest paid off as per account books of the management, or any fresh loans that may have been contracted for satisfaction of the aforesaid loans, or any loans that may have been taken by me the Moharaj Dhiraj Bahadoor of Betya (on registered bonds) under my seal and signature till the 13th March 1875, or any fresh debts that may have been contracted on bonds during the incumbency of Mr. John

دفعہ اول حسب منشاء اقرارنامہ مرقومہ ۲۸ جولائی سنہ ۱۸۶۷ع حین منیجری مستر طامس مچل گیبن صاحب جسقدر زر قرض راج ریاست مین بہ تجویز ممبران کمیٹی بذریعہ تحریر تمسکات خشک خواہ پتوہ و غیرہ تھا اوسمین پس از اداے جسقدر اصل و سود از روے کتاب منیجری باقی دین ہوگا اوس ادا کی لئے زر قرض جدید لیا گیا ہوگا خواہ اندر ۱۵ مارچ سنہ ۱۸۷۵ ع بدستخط مہر پس از نشانی رجسٹری منجانب منمقر مہاراج دھیراج بہادر بیتا زر قرض لیا گیا ہوگا یا بحین دوران منیجری مستر جان اسبل راجفورث صاحب قرض جدید بذریعہ تمسک واسطے ادا قرضہ مذکور دوران مستر طامس مچل گیبن صاحب یا بادا ے مالگذاری گورنمنٹ لیا گیا ہوگا وہ

S. Rochfort, as Manager, for satisfaction of the aforesaid debts during the time of Mr. Thomas Mitchell Gibbon, or for payment of Government Revenues.

II.—The said Manager shall continue to pay into the Toshakhanna of the Hazoor out of the income of the Raj Reasut the monthly allowances fixed, Rs. 9,000, for personal expenses of me, the declarant Moharajah Dhiraj of Betya, month after month.

III.—The properties assigned over for the purpose of meeting the expenses of the Deories of Doolhan Gora and Nudhan yielding a jumma of Rs 40,000 during the late incumbency of Mr. T. M. Gibbon, as Manager under the Ekrarnamah dated 28th July 1867, shall, with the jumma Rs. 40,000 previously assessed, remain so assigned for meeting the expenses of the said Deories, and the rents of the other properties held by them as malgoozardars and not set apart for the said Deories shall be paid into the management by the said Deories according to the jumma assessed, when the terms for which the mouzahs are held by the Deories as an aid towards their expenses shall, upon their ceasing to be such aid, expire, the Manager shall effect settlement and assess jummas of and on the same.

IV.—For the expenses of the Moharaj Coomar Koonwar Saheba, and of the Deories of Buhooa Saheba and others, the mouzahs hitherto assigned over to and held in tieca by the Moharanee Saheba, since deceased, shall remain so assigned over to and held by the said Moharaj Coomar.

V.—The said Manager shall settle either by arbitration or by action at law all debts and claims against the Raj Reasut other than the debts that may have been contracted on the above-mentioned deeds and documents; provided that the said Manager shall pay the debts of the Raj as they are settled by him on the admission of the same by both parties, namely, Moharaj Dhiraj Bahadoor of Betya and the said Moharaj Coomar; provided further that if upon reference in connection with the debts so settled no reply is filed at the office of the Manager within two weeks on the part of the Moharaj Dhiraj or of the Moharaj Coomar, the Manager shall be at liberty to act in the matter in the way he may think fit and proper.

سب روپیہ قرض ہاے کے اداے مین مستر طامس مچل گیبن صاحب منیجر مقررہ حال کو کچھہ عذر نہوگا روپیہ راج ریاست سے بذریعہ نقد خواہ قسطبندی و غیرہ بکوشش تمام اداے کیا کرینگے '

دفعہ دویم خرچ خاص منمقر مہاراج دھیراج بہادر بتیا جسقدر تعین ماہانہ ہی یعنے مبلغ نہہ ہزار روپیہ وہ برابر صاحب منیجر ماہ بماہ توشہ خانہ مین حضور کی روپیہ راج ریاست سے دیا کرینگے '

دفعہ سیوم مین منیجری سابق مستر طامس مچل گیبن صاحب بذریعہ اقرار نامہ ۲۸ جولائی سنہ ۱۸۶۷ع جسقدر علاقہ بہ تعین جمع مبلغ چہل ہزار روپیہ واسطے انجام خرچ دیوڑھی دولہن و گورا و نرہن مقرر ہواتھا وہ سب علاقہ جب حسب جمع چہل ہزار روپیہ مقررہ سابق بمد خرچ دیوڑھی ہاے صدر قائم رکھکر باقی جسقدر علاقہ بطور مالگذاران غیر متعلق دیوڑھی ہاے صدر ہوگا وہ مالگذاری برابر دیوڑھی ہاے سے حسب جمع مجوزہ داخل منیجری ہوا کریگا و جب میعاد مواضعات دیوڑھی از جمع مدد خرچ علاوہ ہوگا منقضی ہوا کریگا بندوبست و تجویز جمع و غیرہ تعلق صاحب منیجر ہی '

دفعہ چہارم بہ نسبت خرچ مہاراج کمار کنور صاحب بہادر دیوڑھی بہوی صاحبہ و غیرہ مواضعات تہیکہداری تعلق دیوڑھی سری مہارانی صاحبہ بیکنتھہ باش جیسا کہ اب قائم ہی اوس طرحپر مہاراج کمار موصوف کے اختیار مین قائم رہیگا '

دفعہ پنجم جو زرقرضہ از روے وثیقہ جات متذکرہ صدر ہوگا اوسکی سیواے اور قسم کا قرض یا دعوی جسقدر اوپر راج ریاست ہوگا اوسکا تصفیہ بذریعہ ثالثی یا بہ نالش عدالت تعلق صاحب منیجر ہی اور واضح رہے کہ جیسا از روے تصفیہ صاحب منیجر دین تعلق راج قایم ہوجائیگا وہ باقرار ہردو فریق یعنے مہاراج دھیراج بہادر بتیا و مہاراج کمار موصوف اداے اوسکی تعلق صاحب منیجر موصوف ہی و نیز عندالاستفسار نسبت دین تصفیہ شدہ جواب اگر از جانب مہاراج دھیراج بہادر یا مہاراج کمار موصوف اندر دو ہفتہ داخل بہ کچہری منیجری نہین ہوگا اوسوقت اختیار صاحب منیجر ہی کہ جو بہ تجویز خود مناسب سمجھین تعمیل اوسکی کرین '

VI.—Vouchers under the signatures of us the declarants for all sums of money that may be borrowed by the Manager upon execution of bonds, and settlement of rates of interest, for payment of Government Revenue or for satisfaction of the above-mentioned debts, or for payment of establishment charges, &c., shall be annexed to the pages of the Manager's Register, and in this way the current business shall be managed. And we the declarants shall raise no objection whatever as to such interest, &c.

VII.—As regards the management establishment, the Manager shall have authority to remove and appoint officers and to distribute their salaries, &c. He shall do these things in the way he may think fit and proper, and as regards the establishment of the Raj Reasut and the expenses of the Raj Reasut not exceeding Rupees one lakh per year, sanction shall have to be obtained from me the declarant Moharaj Dhiraj Bahadoor, and anything done without my permission shall not be allowed.

VIII.—The Manager shall have authority to make collections of rents from the villages belonging to the zemindaries and of other dues to the Raj Reasut, either by action at law or in any other way in which they are likely to be collected and realized; or by allowing remission, &c., should there be occasion for it. The Manager shall grant receipts and acquittances on behalf of the Raj under his own signature. The Manager shall have authority to realize the arrears due by ticcadars, or from mouzahs held in direct possession either by summary suits or by distraint; in case of clear proof of constant default of the ticcadars, he shall annul the leases and make settlements with others at fair and proper jummas or realize the arrears by deputing a receiver. And in this matter we the declarants shall not be at liberty to take any steps.

IX.—On the expiry of the term of the lease of any mouzah or mouzahs, the Manager shall, upon publication of a proclamation with date fixed, conclude a settlement thereof in the presence of us the declarants, and in case of our absence shall himself make such settlement with the highest bidder, the jumma and the term being fixed by him the Manager, provided there is no harm in making such settlement. After the settlement has been once made, no party shall have a right to be heard on any point. But should the new ticcadars fail to deposit in time the consideration for the mouzahs settled in the shape of security or commit any other default, a settlement shall be made *de novo* by the Manager. In the matter of

دفعه ششم واسطے اداے مالگذاري گورنمنٹ یا زر قرضہ صدر خواہ خرچ ملازمان و غیرہ جسقدر روپیہ قرض پس از تنقیح سود و غیرہ صاحب منیجر بہ تحریر تمسک لیوینگے اوسکا دست آویز بدستخط منمقران باقرار رجسٹري صاحب موصوف مشتمل ہوکر کارہاے پیش شدہ انجام ہوا کریگا بہ نسبت اوس سود و غیرہ کچھہ عذر منمقران نہین کرینگے ،

دفعه هفتم به نسبت نوکران منیجري اختیار صاحب منیجر موصوف نسبت موقوفي و بحالي و تقسیم مشاہرہ وغیرہ ہی بہ تجویز خود جو مناسب ہوکیا کرین اور بہ نسبت نوکران راج ریاست و خرچ راج ریاست اندر مبلغ ایک لاکھہ چالیس ہزار روپیہ بطور سال منظور ہی منقسم مہاراج دھیراج بہادر ضرور ہوگي خلاف مرضي جایز نہوگي ،

دفعه هشتم تحصیل وصول مالگذاري دیہات زمیداري یا دیگر قسم پاونان راج ریاست ہو وہ باختیار صاحب منیجر بذریعہ ارجاع نالش یا جسطور سے ممکن الوصول ہو یا صورت معافي و غیرہ پیش آوے ہوا کرے و منجانب راج بدستخط خاص رسید و فارغخطي صاحب منیجر دیا کرین و جسقدر مالگذاري بعلاقہ ٹھیکہداري خواہ سیر مواضعات مین رہ جایگا اوسکي وصولي واسطے اختیار صاحب منیجر ہی کہ بارجاع نالش سرسری یا قرقي وصول کیا کرین درصورتیکہ نا دہندگي ٹھیکہداران غایت ثابت ہو اوس حالت مین شي ٹھیکہ فسخ کرکے ساتھہ دیگران بجمع مناسب بندوبست کیا کرین یا بہ تعناتي سزاولان وصول کیا کرین اِسمین اختیار چارہ جوئي کا اوسکي منمقران نہین ہوگا ،

دفعه نهم جو مواضعات کا میعاد منقضي ہوجاویگا اوس نسبت مین اشتہار بہ تعین تاریخ صاحب منیجر جاری کرکے بندوبست اوسکا بالمشافہ منمقران اگر منمقران موجود نہوین خود منیجر بہ تجویز جمع و میعاد زیادہ بولنے والے کے ساتھہ درصورت نہونے کسي قباحت کے کیا کرینگے بعد بندوبست کے بازگذاني تجویز کوئي طور سے منجانب احدی باقي نہین رہیگا مگر جو مواضعات بندوبست ہوجائیگا اوسکا زر ثمن بطور خیانت اگر ٹھیکہداران جدید بروقت داخل نکرینگے یا کسي طور کا تکاہلي منجانب ٹھیکہداران پیش آویگا اوس حالت مین

the settlement of these mouzahs no reference need be made to us the declarants. To this purport we give these few words in writing in the shape of an Agreement to come to use hereafter. The 18th March 1879.

Bolaky Dass Augorwallah, of Mehalla Gobindpore Khoord in the City of Benares, is the writer of this instrument.

Be it noted that the "establishment of the Raj Reasut and expenses of the Raj Reasut", mentioned in para. 7, imply the expenses of Poojah Pat (worship and service), Dussarah, &c., as well as the expenses of construction of buildings, travelling expenses, expenses of travellers, &c., as also the expenses of keeping horses, elephants, camels, peons, chobdars and mosahebs, and the expenses of entertaining Baboos and pleasure parties, &c.

The 18th March 1879.

بندوبست اوسکا از سر نو تعلق صاحب منیجر ہوگا اون مواضعات کے بندوبست مین نوبت استفسار منمقران سے ضرور نہین ہوگا بذابران این چند کلمہ بطریق اقرار نامہ کے لکھہ دیا کہ کافي الحال کام آوے فقط بتاریخ ۱۸ ماہ مارچ سنہ ۱۸۷۹ع کاتب دستاویز ہذا بقلم بلاقي داس اگروالہ ساکن محلہ گوبند پورہ خورد متعلق شہر بنارس اور واضح رہے کہ نوکران راج ریاست و خرچ راج ریاست مندرجہ دفعہ ہفتم سے غرض خرچ پوجہ پاٹ دسہرہ وغیر و خرچ عمارت و خرچ سفر و خرچ آیندگان رورندگان وغیرہ و خرچ اسپ و فیل و شتر سوار و پیادہ و چوبدار معہ مصاحبان و خرچ بابوان و ارباب نشاط وغیرہ سے متصور ہوگي فقط ٠

المرقوم صدر سنہ صدر

ما باینکہ مہاراج دھیراج مہاراجہ راجندر کشور سنگھہ بہادر مالک و ممبر کمیتي ولایت و انتظام راج ریاست بتیا مطابق اقرار نامہ مورخہ ۲۸ جولائي سنہ ۱۸۶۷ع و مہاراج کمار نرایندر کشور بہادر پسر مہاراج دھیراج موصوف حال مقامي شہر بنارس کے ہین ،

مہاراجہ راجندر کشور سنگھہ بہادر بقلم خاص

دستخط انگریزی

چون اکثر مقدمات منجانب منمقران بنام دیگران و منجانب دیگران بنام منمقران بمحکمات عدالت ہائي کورٹ کلکتہ و الہ آباد و دیواني و کمشنري فوجداري و کلکتري و حفیفہ وغیرہ اضلاع چنپارن و سارن و ترہت گورکھہپور و بنارس وغیرہ ماتحت ہائي کورٹ کلکتہ و الہ آباد و نیز بعدالت العالیہ پیروي کونسل بحضور ملکہ معظمہ قیصر ہند دایرہی و برایدہ دایر ہوگا اسلیئے مقرر کرنا مختار عام کا تاکہ کارروائي عدالت اور انتظام کارروائی راج ریاست بآساني تمام انجام ہووے ضرور ہی لہذا بخوش رضاء و رغبت خودہا مسمی مسٹر طامس مچل گیبن صاحب سی۔آئی۔ائي۔ مالک و اہل تاجر نیل کوٹھیات موندبلا وغیرہ ٹپہ بہاس پرگنہ مچھوا ضلع چنپارن کو منیجر راج حسب شرایط اقرارنامہ ہاے مرقومہ ۱۸ و ۲۲ مارچ سنہ ۱۸۷۹ ع فرد علیحدہ ہاے مختار عام و مہتمم کار جمع اموارات مقرر کرتے ہین و اکھہ دیتے ہین کہ منیجر مہتمم کار موصوف

مہاراجہ راجندر کشور سنگھہ بہادر مالک و ممبر کمیتي ولایت و انتظام راج ریاست بتیا

Signed by me, Moharajah Rajender Kishore Singh Bahadoor, In my own pen.

Signature in English.

TRANSLATION OF POWER-OF-ATTORNEY.

We, Moharaj Dhiraj Rajender Kishore Singh, Bahadoor, Proprietor and Member of the Committee for the preservation and management of the Raj Reasut Betya under the Agreement dated 28th July 1867, and Moharaj Coomar Narender Kishore, Bahadoor, son of the above-named Moharaj Dhiraj, are at present residing in the City of Benares.

Signature in English.

Whereas several suits are and will hereafter be instituted on behalf of us the declarants against others, and on behalf of others against us the declarants in the High Courts at Calcutta and Allahabad, in the Civil Courts, in the Offices of the Commissioners, in the Criminal Courts, in the Offices of the Collectors, in the Courts of Small Causes, and in other Courts and Offices in Districts Champarun, Sarun, Tirhoot, Goruckpore, Benares, and in other Districts subordinate to the High Courts at Calcutta and Allahabad, and also in the Honorable Privy Council of Her Majesty the Empress of India, and it is necessary to appoint a General Mooktar so that the Court affairs and the affairs in connection with the management of the Raj Reasut may most conveniently be managed and performed; therefore we, of our respective free will and accord, do hereby appoint Mr. Thomas Mitchell Gibbon, C. I. E., Proprietor and Manager of the Indigo Factories Moorlah, &c., Tuppa Babas, Pergunnah Majhua, Zillah Champarun, who is Manager

Witnessed by me, Chowtary Adel Prokash Shahy, In my own pen.

of the Raj, under the terms of the separate Agreements dated respectively the 18th and 22nd March 1879, General Mooktar and Superintendent of all affairs, and give in writing that the said Manager and Superintendent shall himself and by appointing Pleaders and Mooktars in the aforesaid Courts and Offices, from the District up to Sudder Court, look after and watch the cases instituted in the said Courts and Offices; shall file written statements, plaints, &c., of his own authority, and written verifications, &c., on behalf of us the declarants, either in person, or by appointing Pleaders of Court and Mooktars; shall file or take back documents; shall file "Solehnamahs" or petitions of composition, instalment bonds, confession judgment and disclaimers on behalf of us the declarants; shall make arguments that may have to be made in the cases instituted; shall file in Court documents, papers, &c., under his own signature; shall take steps to recover in cash, and decretal money and monies of all and every description due to us the declarants, by others, by executing decree, or in case of inability to pay, he the said Manager shall, of his own authority, remit and relinquish claim to as much as may be fit to be remitted or relinquished, and thus make settlement to realize what may be due to the Raj, and also the said Mr. Mitchell Gibbon shall grant receipts and acquittances under his own signature for such dues, and they are and shall be admitted in whole and in part by us the declarants; besides, if execution of decree be taken out by others against us the declarants and if it be necessary to deposit the amount thereof, he shall deposit the same, or pay such judgment-debt by some amicable settlement or other or by instalment; he shall draw from the Treasury of the several Courts and Offices all and every sum or sums of money due to us the declarants and held in deposit therein; shall, on notice to us the declarants, purchase and obtain settlement of any mehals that may be under sale or under farming settlement in execution of decree, or for arrears of Government Revenue in the Collectorate, or in the Civil Court; shall present in the Offices of the Registrar General, District Registrar and Sub-Registrar, and get registered on his own admission, or by appointing Pleaders or Mooktars, instruments of all kinds that may be executed under the seal and signature of us or of one of us the declarants, or pottahs and other instruments that may be executed under the signature of the Manager, for the management of the affairs of the Raj; shall take back registered instruments from the Registry Office, and other instruments filed in other Courts and Offices, from such Courts and Offices, and shall pay the costs to be incurred in Courts, and receive the same from the income of the Raj Reasut. All these acts and deeds of the said Manager and Superintendent are and shall be acknowledged and admitted as if done by us the declarants in person. To this purport we give these few words in writing in the shape of a general power-of-attorney, so that the same may come to be of use in future. Dated the 24th March 1879.

بعدالت هاے مذکورہ بالا از ضلع نام بصدر معرفت خاص وکیل و مختار مقرر کرکے خبرگیري مقدمات مرجوعہ عدالت هاے و غیرہ کا کیا کریں و بیان تحریری وعرضي نالش وغیرہ باختیار خاص عبارت تصدیق وغیرہ منجانب منمقران بذات خاص یا بذریعہ تقرري وکلاء عدالت و مختاران کے کیا کریں و جو دست آویز داخل کریں یا واپس لیویں و صلحنامہ و قسبنطدی و اقبال دعوی و باز دعوی منجانب منمقران داخل کریں و جوکچھہ سوال جواب بمقدمات مرجوعہ ضرور هوے انجام اوسکا کیا کریں و جو دستاویزات و کاغذات وغیرہ بدستخط خود داخل عدالت کیا کریں و روپیہ ذکری هاے یا هر اقسام یافتني منمقران بنام دیگران هوے بذریعہ اجراے سامان وصولي نقد یا بصورت نادهندگي جو مناسب قابل معاف یا بار دعوی هوے اوسقدر معاف وغیرہ باختیار خاص منیجر صاحب موصوف کرکي سامان پٹا لینے یافتني راج کا کیا کریں و نیز نسبت اون یافتني کے جو رسید یا فارغخطي صاحب موصوف بدستخط خاص دیوینگے وہ جز کل قبول منظور منمقران هی و هوگا و اجراے دیگران بنام منمقران هوے اوسکا روپیہ داخل کرتا هوے یا کسي نوع سے از روی مصالحہ و قسطبندی اداے زر ذکری کا هووے کیا کریں و جس قسم کا روپیہ بخزانہ عدالت هاے یافتني منمقران هوے باخذ رسید اپني واپس لیویں و جو محالات بعدالت کلکتري خواہ بعدالت دیواني بعلت اجراے ذکری یا باقي مالگذاری گورنمنٹ زیر نیلام یا بندوبست مستاجری هوے باطلاع منمقران خرید کریں یا بندوبست حاصل کریں و جو دستاویزات هر اقسام طرف سے منمقران مہری و دستخطي منمقران خواہ احدی یا وثایق پٹہجات وغیرہ دستخطي صاحب منیجر بنظر انتظام کار راج تحریر و تعمیل پاوے باندخال محکمات جنرل رجستراز و دستر رجستراز و سب رجستراز مراتب نشاني رجستري کا باقرار خود یا بہ تقرر وکیل و مختار تعمیل و تکمیل کیا کریں و دستاویزات رجستری شدہ کو محکمہ رجستري یا دیگر عدالت وغیرہ و دیگر دستاویزات وغیرہ مداخلہ واپس لیویں و خرچہ عدالت هاے دیگر از آمدني راج ریاست دیا کریں وہ سب ساختہ و پرداختہ منیجر مہتمم کار ممدوح داخل کردۂ ذات خاص منمقران کو قبول و منظور هی و هوگا بنابران این چند کلمہ بطریق مختارنامہ عام لکھدیا کہ ثاني الحال کام آوے تحریر فی التاریخ ۲۴ مارچ سنہ ۱۸۷۹ ع،

بقلم رامداس مختارعام مہاراجہ راجندرکشو سنگھہ

بہادر ساکن محلہ گوبند پورہ خورد متصلات بنارس کے سطر ۹ نومبر لفظ سي۰ آئي۰ إي۰ بیرون سطر و سطر ۲۱ ایکیس مین لفظ خرچہ عدالت هاے دیگر از آمدني راج ریاست دیا کریں حاشیہ پر لکھا هی دونوں جگہہ دستخط مقرکي موجود هین سطر گیارهوین مین تاریخ ۲۲ کا بند سنہ ۲۲ بالای سطر هی فقط

Estate, J. A. RICKETTS, deceased, late Deputy Magistrate and Collector, Kishnagur, Nuddea.

Letters of administration having been granted on the 21th March 1879, by the District Judge of Nuddea, to Eliza Cecilia Ricketts, widow of the deceased, the undersigned notifies that he has been appointed the Attorney of Mrs. Ricketts with power to receive all amounts due to the Estate, and adjust (so far as the assets will allow) all claims found correct, if received with particulars, before the 20th May 1879.

RICHARD PEARCE.

6, Church Road, Howrah.

PROMISSORY NOTE.

Lost, Stolen, or Destroyed

The Government Promissory Note No. 18502 of the 4 per cent. of 1842-43, for Rs. 1,000, originally standing in the name of Mussamut Heengun Begum, resident of Delhi, the proprietress, by whom it was never endorsed to any other person. Payment of the above Note and the interest thereupon have been stopped at the Public Debt Office, Bank of Bengal, and application is about to be made for the issue of duplicate in favor of the parties legally entitled.

MAHOMED JAN ALUM,
Of Pundit-ka-Kooeha, Delhi.

The 17th March 1879.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, MAY 3, 1879.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART III.

Advertisements and Notices by Private Individuals and Corporations.

Estate, J. A. RICKETTS, deceased, late Deputy Magistrate and Collector, Kishnagur, Nuddea.

Letters of administration having been granted on the 24th March 1879, by the District Judge of Nuddea, to Eliza Cecilia Ricketts, widow of the deceased, the undersigned notifies that he has been appointed the Attorney of Mrs. Ricketts with power to receive all amounts due to the Estate, and adjust (so far as the assets will allow) all claims found correct, if received with particulars, before the 20th May 1879.

RICHARD PEARCE.

6, Church Road, Howrah.

PROMISSORY NOTE.

Lost, Stolen, or Destroyed

The Government Promissory Note No. 18302 of the 4 per cent. of 1842-43, for Rs. 1,000, originally standing in the name of Mussamut Heengun Begum, resident of Delhi, the proprietress, by whom it was never endorsed to any other person. Payment of the above Note and the interest thereupon have been stopped at the Public Debt Office, Bank of Bengal, and application is about to be made for the issue of duplicate in favor of the parties legally entitled.

MAHOMED JAN ALUM,
Of Pundit-ka-Koocha, Delhi.

The 17th March 1879.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, MAY 10, 1879.

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PART III.

Advertisements and Notices by Private Individuals and Corporations.

Estate, J. A. RICKETTS, deceased, late Deputy Magistrate and Collector, Kishnagur, Nuddea,

Letters of administration having been granted on the 24th March 1879, by the District Judge of Nuddea, to Eliza Cecilia Ricketts, widow of the deceased, the undersigned notifies that he has been appointed the Attorney of Mrs. Ricketts with power to receive all amounts due to the Estate, and adjust (so far as the assets will allow) all claims found correct, if received with particulars, before the 20th May 1879.

RICHARD PEARCE.

6, Church Road, Howrah.

PROMISSORY NOTES.

Lost, Stolen, or Mislaid.

The lower halves of the Government Promissory Notes Nos. 058152, 065207, and 065211 of the 4 per cent. Loan of 1842-43, for Rs. 100 each, originally standing in the name of the Bank of Bombay, and last endorsed to H. D. Masani, the proprietor, by whom they were never endorsed to any other person. Payment of the above Notes and the interest thereupon have been stopped at the Public Debt Office, Bombay, and application is about to be made for the issue of duplicates in favor of the proprietor.

H. D. MASANI,
Tanna, Bombay.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, MAY 17, 1879.

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PART III.

Advertisements and Notices by Private Individuals and Corporations.

PROMISSORY NOTES.

Lost, Stolen, or Mislaid.

The lower halves of the Government Promissory Notes Nos. 058152, 065207, and 065211 of the 4 per cent. Loan of 1842-43, for Rs. 100 each, originally standing in the name of the Bank of Bombay, and last endorsed to H. D. Masani, the proprietor, by whom they were never endorsed to any other person. Payment of the above Notes and the interest thereupon have been stopped at the Public Debt Office, Bombay, and application is about to be made for the issue of duplicates in favor of the proprietor.

H. D. MASANI,
Tanna, Bombay.

Stolen

The upper half of the Government Promissory Note No. 049945, of the 4 per cent. of 1842-43, for Rs. 2,000, originally standing in the name of the Bank of Bengal, and last endorsed to Mahomed Wujhoollah Khan, the proprietor, by whom it was never endorsed to any other person. Payment of the above Note and the interest thereupon have been stopped at the Public Debt Office, Bank of Bengal, and application is to be made for the issue of duplicate in favor of the proprietor.

MAHOMED WUJHOOLLAH KHAN,
Sub-Judge of Mirzapoor, N.-W. P.

Stolen and Destroyed

The Government Promissory Notes :—

No. 103146 of 4 per cent. of 1865, for Rs.	500
No. 105488 of 4 per cent. of 1865, for Rs.	500
No. 051414 of 4 per cent. of 1842-43, for Rs.	1,000
TOTAL Rs. ...	2,000

purchased from Babu Kartic Chunder Boral of New China Bazar, and last endorsed to Raj Chunder Ghose, Civil Engineer, Assistant Engineer, Public Works Department, the proprietor, by whom they were never endorsed to any other person. Payment of the above Notes and the interest thereon have been stopped at the Public Debt Office, Bank of Bengal, and application is about to be made for the issue of duplicates in favor of the proprietor.

RAJ CHUNDER GHOSE, *C.E.*,
Assistant Engineer,
District Engineer, Lalitpur.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, MAY 24, 1879.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART III.

Advertisements and Notices by Private Individuals and Corporations.

BENGAL CIVIL FUND.

NOTICE.

The Half-yearly General Meeting of Subscribers will be held at the Town Hall on Wednesday, the 30th July next, at 4-30 P.M.

In accordance with the requirements of Article XVII of the Rules, the Managers will bring forward for discussion the case of Miss Lawford.

The adoption of the following Rule will be proposed :—

Article V (6).—Every married Subscriber shall be at liberty to submit for the examination of the Managers a certificate of his marriage, and a certificate of baptism or of birth of his wife. Should such certificates be accepted, the dates shall be recorded, and it shall not ordinarily be necessary thereafter to give evidence regarding the facts.

The Managers will recommend as an amendment of Art. XXV the insertion of the words "or of birth" after the word "baptism."

COLMAN MACAULAY,
Secretary.

CIVIL FUND OFFICE,
The 19th May 1879.

PROMISSORY NOTES

Lost

Four per cent. Government Promissory Note No. 056398, dated 1st May 1865, for Rs. 5,000, in favour of the Deputy Commissioner of Sitapur, on behalf of the estate of Bumnawan under Court of Wards.

J. G. ANDERSON,
Deputy Commissioner.

Lost, Stolen, or Mislaid

The lower halves of the Government Promissory Notes Nos. 058152, 065207, and 065211 of the 4 per cent. Loan of 1842-43, for Rs. 100 each, originally standing in the name of the Bank of Bombay, and last endorsed to H. D. Masani, the proprietor, by whom they were never endorsed to any other person. Payment of the above Notes and the interest thereupon have been stopped at the Public Debt Office, Bombay, and application is about to be made for the issue of duplicates in favor of the proprietor.

H. D. MASANI,
Tanna, Bombay.

Stolen

The upper half of the Government Promissory Note No. 049945, of the 4 per cent. of 1842-43, for Rs. 2,000, originally standing in the name of the Bank of Bengal, and last endorsed to Mahomed Wujhoollah Khan, the proprietor, by whom it was never endorsed to any other person. Payment of the above Note and the interest thereupon have been stopped at the Public Debt Office, Bank of Bengal, and application is to be made for the issue of duplicate in favor of the proprietor.

MAHOMED WUJHOOLLAH KHAN,
Sub-Judge of Mirzapoor, N.-W. P.

Stolen and Destroyed

The Government Promissory Notes :—

No. 103146 of 4 per cent. of 1865, for Rs.	500
No. 105488 of 4 per cent. of 1865, for Rs.	500
No. 051414 of 4 per cent. of 1842-43, for Rs.	1,000
TOTAL Rs. ...	2,000

purchased from Babu Kartic Chunder Boral of New China Bazar, and last endorsed to Raj Chunder Ghose, Civil Engineer, Assistant Engineer, Public Works Department, the proprietor, by whom they were never endorsed to any other person. Payment of the above Notes and the interest thereon have been stopped at the Public Debt Office, Bank of Bengal, and application is about to be made for the issue of duplicates in favor of the proprietor.

RAJ CHUNDER GHOSE, *C.E.*,
Assistant Engineer,
District Engineer, Lalitpur.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, MAY 31, 1879.

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PART III.

Advertisements and Notices by Private Individuals and Corporations.

PROMISSORY NOTES.

Lost

Four per cent. Government Promissory Note No. 056398, dated 1st May 1865, for Rs. 5,000, in favour of the Deputy Commissioner of Sitapur, on behalf of the estate of Bumnawan under Court of Wards.

J. G. ANDERSON,
Deputy Commissioner.

Lost

The upper half of the Government Promissory Note No. 086879 of the 4 per cent. of 1865, for Rs. 1,000, originally standing in the name of Roy Bullvudder Doss, and last endorsed to the Uncovenanted Service Bank, the proprietors, by whom it was never endorsed to any other person. Payment of the above Note and interest thereupon have been stopped at the Public Debt Office, Bank of Bengal, and application is to be made for the issue of duplicate in favor of the proprietors.

J. A. BURNES,
for *Agent.*

Stolen

The upper half of the Government Promissory Note No. 049945, of the 4 per cent. of 1842-43, for Rs. 2,000, originally standing in the name of the Bank of Bengal, and last endorsed to Mahomed Wujhoollah Khan, the proprietor, by whom it was never endorsed to any other person. Payment of the above Note and the interest thereupon have been stopped at the Public Debt Office, Bank of Bengal, and application is to be made for the issue of duplicate in favor of the proprietor.

MAHOMED WUJHOOLLAH KHAN,
Sub-Judge of Mirzapoor, N.-W. P.

Stolen and Destroyed

The Government Promissory Notes :—

No. 103146 of 4 per cent. of 1865, for Rs.	500
No. 105488 of 4 per cent. of 1865, for Rs.	500
No. 051414 of 4 per cent. of 1842-43, for Rs.	1,000
TOTAL Rs. ...	2,000

purchased from Babu Kartic Chunder Boral of New China Bazar, and last endorsed to Raj Chunder Ghose, Civil Engineer, Assistant Engineer, Public Works Department, the proprietor, by whom they were never endorsed to any other person. Payment of the above Notes and the interest thereon have been stopped at the Public Debt Office, Bank of Bengal, and application is about to be made for the issue of duplicates in favor of the proprietor.

RAJ CHUNDER GHOSE, *C.E.*,
Assistant Engineer,
District Engineer, Lalitpur.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, JUNE 7, 1879.

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PART III.

Advertisements and Notices by Private Individuals and Corporations.

PROMISSORY NOTES.

Lost

Four per cent. Government Promissory Note No. 056398, dated 1st May 1865, for Rs. 5,000, in favour of the Deputy Commissioner of Sitapur, on behalf of the estate of Bumnawan under Court of Wards.

J. G. ANDERSON,
Deputy Commissioner.

Lost

The upper half of the Government Promissory Note No. 086879 of the 4 per cent. of 1865, for Rs. 1,000, originally standing in the name of Roy Bullvudder Doss, and last endorsed to the Uncovenanted Service Bank, the proprietors, by whom it was never endorsed to any other person. Payment of the above Note and interest thereupon have been stopped at the Public Debt Office, Bank of Bengal, and application is to be made for the issue of duplicate in favor of the proprietors.

J. A. BURNES,
for *Agent.*

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, JUNE 14, 1879.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART III.

Advertisements and Notices by Private Individuals and Corporations.

PROMISSORY NOTE.

Lost

The upper half of the Government Promissory Note No. 086879 of the 4 per cent. of 1865, for Rs. 1,000, originally standing in the name of Roy Bullvudder Doss, and last endorsed to the Uncovenanted Service Bank, the proprietors, by whom it was never endorsed to any other person. Payment of the above Note and interest thereupon have been stopped at the Public Debt Office, Bank of Bengal, and application is to be made for the issue of duplicate in favor of the proprietors.

J. A. BURNES,
for *Agent.*

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, JUNE 21, 1879.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART III.

Advertisements and Notices by Private Individuals and Corporations.

PROMISSORY NOTES.

Lost

The Government Promissory Note No. 056398 of the 4 per cent. of 1st May 1865, for Rs. 5,000, originally standing in the name of the National Bank of India, Limited, and last endorsed to Deputy Commissioner, Sitapur, the proprietor, by whom it was never endorsed to any other person. Payment of the above Note and the interest thereupon have been stopped at the Public Debt Office, Bank of Bengal, and application is about to be made for the issue of duplicate in favor of the proprietor.

J. G. ANDERSON,
Deputy Commissioner, Sitapur.

SITAPUR,
DEPY. COMMR.'S OFFICE;
The 10th June 1879.

Lost

The Government Promissory Notes Nos. 053120 and 053121, of the 4½ per cent. of 16th January 1872, for Rs. 1,000 each (Rs. 2,000), last endorsed to Narayen Baba Josee, the proprietor, by whom it was never endorsed; the original sum and the interest thereupon have been stopped at the Public Debt Office, Bank of Bombay, and application is to be made for the issue of duplicates in favor of the proprietor.

NARAYEN BABA JOSEE.

Lost or Stolen

The Government Promissory Note No. 090048 of the 4 per cent. Loan of 1st May 1865, for Rs. 500, purchased from Kally Kishen Chatterjee, and last endorsed to Shoobol Chandra Sen, the proprietor, by whom it was never endorsed to any other person. Payment of the above Note and the interest thereon have been stopped at the Public Debt Office, Bank of Bengal, and application is about to be made for the issue of duplicate in favor of the proprietor.

SHOOBOL CHANDRA SEN,
Care of the Head Clerk,
Medical College, Calcutta,
Inhabitant of Chota Shorsha,
Zillah Hooghly.

The Gazette of India.

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CALCUTTA, SATURDAY, JUNE 28, 1879.

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PART III.

Advertisements and Notices by Private Individuals and Corporations.

PROMISSORY NOTES.

Lost

The Government Promissory Note No. 056398 of the 4 per cent. of 1st May 1865, for Rs. 5,000, originally standing in the name of the National Bank of India, Limited, and last endorsed to Deputy Commissioner, Sitapur, the proprietor, by whom it was never endorsed to any other person. Payment of the above Note and the interest thereupon have been stopped at the Public Debt Office, Bank of Bengal, and application is about to be made for the issue of duplicate in favor of the proprietor.

J. G. ANDERSON,
Deputy Commissioner, Sitapur.

SITAPUR,
DEPT. COMMR.'S OFFICE;
The 10th June 1879.

Lost

The Government Promissory Notes Nos. 053120 and 053121, of the 4½ per cent. of 16th January 1872, for Rs. 1,000 each (Rs. 2,000); last endorsed to Narayen Baba Josee, the proprietor, by whom they were never endorsed; the original sum and the interest thereupon have been stopped at the Public Debt Office, Bank of Bombay, and application is to be made for the issue of duplicates in favor of the proprietor.

NARAYEN BABA JOSEE.

Lost

The lower half of the Government Promissory Note No. $\frac{107375}{016448}$, of the 4 per cent. of 1st May 1865, for Rs. 700, originally standing in the name of Nagar Mal, and last endorsed to the Executive Commissariat Officer, Ambala, the proprietor, by whom it was never endorsed to any other person. Payment of the above Note and the interest thereupon have been stopped at the Public Debt Office, Bank of Bengal, and application is to be made for the issue of a duplicate in favor of the proprietor.

J. G. DEEMERICK,
Extra Assistant Commissioner,
In charge, Treasury, Ambala.

AMBALA,
The 7th June 1879.

Lost or Stolen

The Government Promissory Note No. 090048 of the 4 per cent. of 1st May 1865, for Rs. 500, originally standing in the name of Luckmee Chand Radhakishun, and last endorsed to Shoobol Chandra Sen, the proprietor, by whom it was never endorsed to any other person. Payment of the above Note and the interest thereupon have been stopped at the Public Debt Office, Bank of Bengal, and application is to be made for the issue of duplicate in favor of the proprietor.

SHOOBOL CHANDRA SEN,
Care of the Head Clerk,
Medical College, Calcutta,
Inhabitant of Chota Shorsha,
Zillah Hooghly.

The Gazette of India.

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CALCUTTA, SATURDAY, JANUARY 4, 1879.

☞ Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV.

Acts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 31st December 1878, and is hereby promulgated for general information :—

ACT No. XVIII OF 1878.

An Act to amend the Code of Civil Procedure, section 4.

Preamble.

WHEREAS it is expedient to amend the Code of Civil Procedure, section four; It is hereby enacted as follows :—

Amendment of Act X of 1877, section 4.

1. In the said section, for the words "local law" in each of the places where they occur, the words "any law heretofore or hereafter passed under the Indian Councils Act, 1861, by a Governor, or a Lieutenant-Governor, in Council" shall be substituted; and for the words "landlord and tenant," the words "landholders and their tenants or agents" shall be substituted.

D. FITZPATRICK,

Secy. to the Govt. of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, JANUARY 11, 1879.

☞ Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV.

Acts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 31st December 1878, and is hereby promulgated for general information:—

ACT No. XVIII OF 1878.

An Act to amend the Code of Civil Procedure, section 4.

Preamble.

WHEREAS it is expedient to amend the Code of Civil Procedure, section four; It is hereby enacted as follows:—

Amendment of Act X of 1877, section 4.

1. In the said section, for the words "local law" in each of the places where they occur, the words "any law heretofore or hereafter passed under the Indian Councils Act, 1861, by a Governor, or a Lieutenant-Governor, in Council" shall be substituted; and for the words "landlord and tenant," the words "landholders and their tenants or agents" shall be substituted.

D. FITZPATRICK,

Secy. to the Govt. of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, JANUARY 18, 1879.

☞ Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV.

Acts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 31st December 1878, and is hereby promulgated for general information :—

ACT No. XVIII OF 1878.

An Act to amend the Code of Civil Procedure, section 4.

WHEREAS it is expedient to amend the Code of Civil Procedure, section four; Preamble.

It is hereby enacted as follows :—

1. In the said section, for the words "local law" in each of the places where they occur, the words "any law heretofore or hereafter passed under the Indian Councils Act, 1861, by a Governor, or a Lieutenant-Governor, in Council" shall be substituted; and for the words "landlord and tenant," the words "landholders and their tenants or agents" shall be substituted. Amendment of Act X of 1877, section 4.

D. FITZPATRICK,
Secy. to the Govt. of India.

[First publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 17th January, 1879, and is hereby promulgated for general information :—

ACT No. I OF 1879.

THE STAMP ACT, 1879.

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An Act to consolidate and amend the law relating to Stamps.

CHAPTER I.
PRELIMINARY.

Short title. **1.** This Act may be called "The Indian Stamp Act, 1879:"

Local extent. It extends to the whole of British India;

Commencement. And it shall come into force on the first day of April 1879.

Repeal of enactments. **2.** On and after that day, the Acts specified in the third schedule shall be repealed to the extent specified in the third column of the same schedule. But all rules made under the General Stamp Act, 1869, and then in force shall, so far as they are consistent with this Act, be deemed to have been made hereunder. And all references made to the General Stamp Act, 1869, in enactments passed subsequently thereto, shall be deemed to be made to this Act.

Interpretation-clause. **3.** In this Act, unless there is something repugnant in the subject or context,—

"Banker." (1.) "Banker" includes a bank and any person acting as a banker:

"Bill of exchange." (2.) "Bill of exchange" includes a hundí:

"Bill of lading." (3.) "Bill of lading" means any instrument signed by the owner of a vessel or his agent, acknowledging the receipt of goods therein described, and undertaking to deliver the same at a place and to a person therein mentioned or indicated:

"Bond." (4.) "Bond" means—

(*a*) any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be;

(*b*) any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another; and

(*c*) any instrument so attested whereby a person obliges himself to deliver grain or other agricultural produce to another:

"Chargeable." (5.) "Chargeable" means, as applied to an instrument executed or first executed after this Act comes into force, chargeable under this Act, and, as applied to any other instrument, chargeable under the law in force in British India when such instrument was executed or, when several persons execute the instrument at different times, first executed:

"Cheque." (6.) "Cheque" means a bill of exchange drawn on a banker and payable on demand:

"Chief Controlling Revenue-Authority." (7.) "Chief Controlling Revenue-Authority" means, in the Presidency of Fort St. George and the territories respectively under the administration of the Lieutenant-Governors of Bengal and the North-Western Provinces, the Board of Revenue: in the Presidency of Bombay, outside Sind and the limits of the town of Bombay, a Revenue Commissioner: in Sind, the Commissioner: in the Panjáb, the Financial Commissioner; and elsewhere, the Local Government or such officer as the Local Government may, by notification in the official Gazette, appoint in this behalf by name or in virtue of his office:

"Collector." (8.) "Collector" means, within the limits of the towns of Calcutta, Madras and Bombay, the Collector of Calcutta, Madras and Bombay, respectively, and, without those limits, the Collector of a District, and includes a Deputy Commissioner and any officer whom the Local Government may, by notification in the official Gazette, appoint in this behalf by name or in virtue of his office:

"Conveyance." (9.) "Conveyance" means any instrument by which property (whether moveable or immoveable) is transferred on sale:

"Duly stamped." (10.) "Duly stamped," as applied to an instrument, means stamped, or written upon paper bearing an impressed stamp, in accordance with the law in force in British India when such instrument was executed or first executed:

"Instrument of partition." (11.) "Instrument of partition" means any instrument whereby co-owners of any property divide or agree to divide such property in severalty, and includes also a final order for effecting a partition passed by any Revenue-authority:

"Lease." (12.) "Lease" means a lease of immoveable property and includes also

(*a*) a patta,

(*b*) a kabúliyat or other undertaking in writing, not being a counterpart of a lease, to cultivate, occupy or pay or deliver rent for, immoveable property,

(*c*) any instrument by which tolls of any description are let, and

(*d*) any writing on an application for a lease intended to signify that the application is granted:

"Mortgage-deed." (13.) "Mortgage-deed" includes every instrument whereby, for the purpose of securing money advanced, or to be advanced, by way of loan, or an existing or future debt, or the performance of an engagement, one person transfers, or creates, to or in favour of another, a right over specified property:

"Paper." (14.) "Paper" includes vellum, parchment or any other material on which an instrument may be written:

"Policy of insurance." (15.) "Policy of insurance" means any instrument by which one person, in consideration of a premium, engages to indemnify another against loss, damage or liability arising from an unknown or contingent event:

It includes a life-policy:

"Power-of-attorney." (16.) "Power-of-attorney" means any instrument (not chargeable with a fee under the law relating to Court-fees for the time being in force) empowering a specified person to act in the stead of the person executing it:

"Receipt." (17.) "Receipt" means any note, memorandum, writing or advertisement whereby any money or any bill of exchange, cheque or promissory note is acknowledged to have been received, or whereby any other moveable property is acknowledged to have been received in satisfaction of a debt, or whereby any debt or demand, or any part of a debt or demand, is acknowledged to have been satisfied or discharged, or which signifies or imports any such acknowledgment, whether the same is or is not signed with the name of any person:

"Schedule." (18.) "Schedule" means a schedule to this Act annexed:

"Settlement." (19.) "Settlement" means any non-testamentary disposition in writing, of moveable or immoveable property, made—

(*a*) in consideration of marriage,

(*b*) for the purpose of distributing property of the settlor among his family or those for whom he desires to provide, or

(*c*) for any religious or charitable purpose:

It includes an agreement in writing to make such a disposition:

"Vessel." (20.) "Vessel" means anything made for the conveyance by water of human beings or property:

(21.) "Written" and "writing" include every mode in which words or figures can be expressed upon paper.

"Written," "writing."

4. The schedules and everything therein contained shall be read and construed as part of this Act.

Schedules to be read as part of Act.

CHAPTER II.

STAMP-DUTIES.

A.—Of the Liability of Instruments to duty.

5. Subject to the exemptions contained in the second schedule, the following instruments shall be chargeable with duty of the amount indicated in the first schedule as the proper duty therefor respectively, that is to say:—

Instruments chargeable with duty.

(*a*) every instrument mentioned in the first schedule, and which, not having been previously executed by any person, is executed in British India on or after the first day of April 1879;

(*b*) every bill of exchange, cheque or promissory note drawn or made out of British India on or after that day and accepted or paid, or presented for acceptance or payment, or endorsed, transferred or otherwise negotiated, in British India; and

(*c*) every instrument (other than a bill of exchange, cheque or promissory note) mentioned in the first schedule, which, not having been previously executed by any person, is executed out of British India on or after that day, relates to any property situate, or to any matter or thing done or to be done, in British India, and is received in British India.

6. Where, in the case of any sale, lease, mortgage or settlement, several instruments are employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed for the conveyance, lease, mortgage or settlement in the first schedule, and each of the other instruments shall be chargeable with a duty of one rupee instead of the duty (if any) prescribed for it in that schedule.

Several instruments used in single transactions.

The parties may determine for themselves which of the instruments so employed shall, for the purposes of this section, be deemed to be the principal instrument.

7. Any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under this Act.

Instruments relating to several distinct matters.

Subject to the provisions of the first clause of this section, an instrument so framed as to come within two or more of the descriptions in the first schedule shall, where the duties chargeable thereunder are different, be chargeable only with the highest of such duties; but nothing herein contained shall render chargeable with duty exceeding one rupee a counterpart or duplicate of any instrument chargeable with duty and in respect of which the proper duty has been paid.

Instruments coming within several descriptions in schedule I.

8. The Governor General in Council may, by order published in the *Gazette of India*,

Power to reduce or remit rates of duty.

(*a*) reduce or remit, whether prospectively or retrospectively, in the whole or any part of British India, the duties with which any instruments or any particular class of instruments, or any of the instruments belonging to such class, or any instruments when executed by or in favour of any particular class of persons, or by or in favour of any members of such class, are chargeable, and

(*b*) cancel or vary such order to the extent of the powers hereby given.

B.—Of Stamps and the Mode of using them.

9. Except as otherwise expressly provided in this Act, all duties with which any instruments are chargeable shall be paid, and such payment shall be indicated on such instruments, by means of stamps—

Duties how to be paid.

(*a*) according to the provisions herein contained, or

(*b*) when no such provision is applicable thereto—as the Governor General in Council may by rule direct.

The rules made under this section may, among other matters, regulate—

(1) in the case of each kind of instrument—the description of stamps which may be used,

(2) in the case of instruments stamped with impressed stamps—the number of stamps which may be used,

(3) in the case of hundís—the size of the paper on which they are written.

10. The following instruments may be stamped with adhesive stamps, namely:—

Use of adhesive stamps.

(*a*) instruments chargeable with the duty of one anna except parts of bills of exchange payable otherwise than on demand and drawn in sets;

(*b*) bills of exchange, cheques and promissory notes drawn or made out of British India;

(*c*) entry as an advocate, vakíl or attorney on the roll of a High Court;

(*d*) notarial acts; and

(*e*) transfers by endorsement of shares of public companies and associations.

11. Whoever affixes any adhesive stamp to any instrument chargeable with duty and which has been executed by any person, shall, when affixing such stamp, cancel the same so that it cannot be used again,

Cancellation of adhesive stamps.

and whoever executes any instrument on any paper bearing an adhesive stamp shall, at the time of execution, unless such stamp has been already cancelled in manner aforesaid, cancel the same so that it cannot be used again.

Any instrument bearing an adhesive stamp which has not been cancelled so that it cannot be used again shall, so far as such stamp is concerned, be deemed to be unstamped.

12. Every instrument written upon paper stamped with an impressed stamp shall be written in such manner, that the stamp may appear on the face of the instrument and cannot be used for or applied to any other instrument.

How instruments stamped with impressed stamps are to be written.

13. No second instrument chargeable with duty shall be written upon a piece of stamped paper upon which an instrument chargeable with duty has already been written: provided that nothing in this section shall prevent any endorsement which is duly stamped or is not chargeable with duty being made upon any instrument for the purpose of transferring any right created or evidenced thereby, or of acknowledging the receipt of any money or goods the payment or delivery of which is secured thereby.

Only one instrument to be on same stamp.

14. Every instrument written in contravention of section twelve or thirteen, shall be deemed to be unstamped.

Instrument written contrary to section 12 or 13 deemed unstamped.

15. Where the duty with which an instrument is chargeable, or its exemption from duty, depends in any manner upon the duty actually paid in respect of another instrument, the payment of such last-mentioned duty shall, if application be made in writing to the Collector for that purpose, and on production of both the instruments, be denoted upon such first-mentioned instrument in such manner as the Governor General in Council may by rule prescribe.

Denoting duty.

C.—Of the Time of stamping Instruments.

16. All instruments chargeable with duty and executed by any person in British India shall be stamped before or at the time of execution.

Instruments executed in British India.

17. Every instrument chargeable with duty executed only out of British India, and not being a bill of exchange, cheque or promissory note, may be stamped within three months after it has been first received in British India; or, where such instrument cannot, with reference to the description of stamp prescribed therefor, be duly stamped by a private person, it may be taken within the said period of three months to the Collector, and he shall stamp the same, in such manner as the Governor General in Council may by rule prescribe, with a stamp of such value as the person so taking such instrument may require and pay for.

Instruments other than bills, cheques and notes executed out of British India.

18. The first holder in British India of any bill of exchange, cheque or promissory note drawn or made out of British India shall, before he presents the same for acceptance or payment, or endorses, transfers or otherwise negotiates the same in British India, affix thereto the proper stamp and cancel the same:

Bills, cheques and notes drawn out of British India.

Provided that if, at the time any such bill, cheque or note comes into the hands of any holder thereof in British India, the proper adhesive stamp is affixed thereto and cancelled in manner prescribed by section eleven, and such holder has no reason to believe that such stamp was affixed or cancelled otherwise than by the person and at the time required by this Act, such stamp shall, so far as relates to such holder, be deemed to have been duly affixed and cancelled. But nothing contained in this proviso shall relieve any person from any penalty incurred by him for omitting to affix or cancel a stamp.

D.—Of Valuations for duty.

19. Where an instrument is chargeable with *ad valorem* duty in respect of an amount expressed in pounds sterling, pounds currency, francs or dollars, such duty shall be calculated on the value of such money in the currency of British India according to the following scale:—

Conversion of amount expressed in certain currencies.

One pound sterling or pound currency is equivalent to ten rupees:

One hundred francs are equivalent to forty rupees:

One Mexican or China dollar is equivalent to two rupees four annas.

20. Where an instrument is chargeable with *ad valorem* duty in respect of any money expressed in any other foreign or colonial currency, such duty shall be calculated on the value of such money in the currency of British India according to the current rate of exchange on the day of the date of the instrument.

Conversion of amount expressed in other foreign currencies.

21. Where an instrument is chargeable with *ad valorem* duty in respect of any stock or of any marketable security, such duty shall be calculated on the value of such stock or security according to the average price thereof on the day of the date of the instrument.

Stock and marketable securities how to be valued.

22. Where an instrument contains a statement of current rate of exchange, or average price, as the case may require, and is stamped in accordance with such statement, it shall, so far as regards the subject-matter of such statement, be presumed, until the contrary is proved, to be duly stamped.

Effect of statement of rate of exchange or average price.

23. Where interest is expressly made payable by the terms of an instrument, such instrument shall not be chargeable with duty higher than that with which it would have been chargeable had no mention of interest been made therein.

Instruments reserving interest.

24. Where any property is transferred to any person in consideration, wholly or in part, of any debt due to him, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or incumbrance upon the property or not, such debt, money or stock is to be deemed the whole or part, as the case may be, of the consideration in respect whereof the transfer is chargeable with *ad valorem* duty.

How transfer in consideration of debt, or subject to future payment, &c., to be charged.

25. Where an instrument is executed to secure the payment of an annuity, or other sum payable periodically, or where the consideration for a conveyance is an annuity or other sum payable periodically, the amount secured by such instrument, or the consideration for such conveyance (as the case may be), shall, for the purposes of this Act, be deemed to be—

Valuation in case of annuity, &c.

(*a*) where the sum is payable for a definite period so that the total amount to be paid can be previously ascertained—such total amount;

(*b*) where the sum is payable in perpetuity or for an indefinite time not terminable with any life in being at the date of such instrument or conveyance—the total amount which, according to the terms of such instrument or conveyance, will or may be payable during the period of twenty years next after the date of such instrument or conveyance; and

(*c*) where the sum is payable for an indefinite time terminable with any life in being at the date of such instrument or conveyance—the total amount which will or may be payable as aforesaid during the period of twelve years next after the date of such instrument or conveyance.

Stamp where value of subject-matter is indeterminate.

26. Where the amount or value of the subject-matter of any instrument chargeable with *ad valorem* duty cannot be, or (in the case of an instrument executed before this Act comes into force) could not have been, ascertained, at the date of its execution or first execution, nothing shall be claimable under such instrument more than the highest amount or value for which, if stated in an instrument of the same description, the stamp actually used would, at the date of such execution, have been sufficient.

Facts affecting duty to be set forth in instrument.

27. The consideration (if any) and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein.

Direction as to duty in case of certain conveyances.

28. (*a.*) Where any property has been contracted to be sold for one consideration for the whole, and is conveyed to the purchaser in separate parts by different instruments, the consideration shall be apportioned in such manner as the parties think fit, so that a distinct consideration for each separate part is set forth in the conveyance relating thereto, and such conveyance shall be chargeable with *ad valorem* duty in respect of such distinct consideration.

(b.) Where property contracted to be purchased for one consideration for the whole, by two or more persons jointly, or by any person for himself and others, or wholly for others, is conveyed in parts by separate instruments to the persons by or for whom the same was purchased, for distinct parts of the consideration, the conveyance of each separate part shall be chargeable with *ad valorem* duty in respect of the distinct part of the consideration therein specified.

(*c.*) Where a person having contracted for the purchase of any property, but not having obtained a conveyance thereof, contracts to sell the same to any other person, and the property is in consequence conveyed immediately to the sub-purchaser, the conveyance shall be chargeable with *ad valorem* duty in respect of the consideration for the sale by the original purchaser to the sub-purchaser.

(*d.*) Where a person having contracted for the purchase of any property, but not having obtained a conveyance thereof, contracts to sell the whole, or any part, thereof, to any other person or persons, and the property is in consequence conveyed by the original seller to different persons in parts, the conveyance of each part sold to a sub-purchaser shall be chargeable with *ad valorem* duty in respect only of the consideration paid by such sub-purchaser, without regard to the amount or value of the original consideration, and the conveyance of the residue (if any) of such property to the original purchaser shall be chargeable with *ad valorem* duty in respect only of the excess of the original consideration over the aggregate of the considerations paid by the sub-purchasers:

Provided that the duty on such last mentioned conveyance shall in no case be less than one rupee.

(*e.*) Where a sub-purchaser takes an actual conveyance of the interest of the person immediately selling to him, which is chargeable with *ad valorem* duty in respect of the consideration paid by him, and is duly stamped accordingly, any conveyance to be afterwards made to him of the same property by the original seller shall be chargeable with a duty equal to that which would be chargeable on a conveyance for the consideration obtained by such original seller; or where such duty would exceed five rupees, with a duty of five rupees.

E.—Duty by whom payable.

Duties by whom payable.

29. In the absence of an agreement to the contrary, the expense of providing the proper stamp shall be borne—

(*a*) in the case of any instrument described in numbers 2, 11, 13, 14, 15, 24, 28, 29, 30, 44, 53, 54, 55, 57 and 60 (*a*) and (*b*) of the first schedule—by the person drawing, making or executing such instrument:

(*b*) in the case of a policy of insurance—by the insured:

(*c*) in the case of a conveyance—by the grantee: in the case of a lease or agreement to lease—by the lessee or intended lessee:

(*d*) in the case of a counterpart of a lease—by the lessor:

(*e*) in the case of an instrument of partition—by the parties thereto in proportion to their respective shares in the property comprised therein, or when the partition is made in execution of an order passed by a Revenue-authority, in such proportion as such authority directs:

(*f*) in the case of an instrument of exchange—by the parties in equal shares: and

(*g*) in the case of a certificate of sale—by the purchaser of the property to which such certificate relates.

CHAPTER III.

ADJUDICATION AS TO STAMPS.

Adjudication as to proper stamp.

30. When any instrument, whether executed or not, and whether previously stamped or not, is brought to the Collector, at the person bringing it applies to have the opinion of that officer as to the duty (if any) with which it is chargeable, and pays a fee of such amount (not exceeding five rupees and not less than eight annas) as the Collector may in each case direct, the Collector shall determine the duty (if any) with which, in his judgment, the instrument is chargeable:

Collector may call for abstract and evidence.

and may for that purpose require to be furnished with an abstract of the instrument, and also with such affidavit or other evidence as he may deem necessary to prove that all the facts and circumstances affecting the chargeability of the instrument with duty, or the amount of the duty with which it is chargeable, are fully and truly set forth therein, and may refuse to proceed upon any such application until such abstract and evidence have been furnished accordingly:

Proviso.

Provided that no evidence furnished in pursuance of this section shall be used against any person in any civil proceeding, except in an enquiry as to the duty with which the instrument to which it relates is chargeable; and every person by whom any such evidence is furnished shall, on payment of the full duty with which the instrument to which it relates is chargeable, be relieved from any penalty he may have incurred under this Act by reason of the omission to state truly in such instrument any of the facts or circumstances aforesaid.

Certificate by Collector.

31. When an instrument brought to the Collector under section thirty is in his opinion one of a description chargeable with duty and

(*a*) the Collector determines that it is already fully stamped, or

(*b*) the duty determined by the Collector under section thirty, or such a sum as, with the duty already paid in respect of the instrument, is equal to the duty so determined, has been paid,

the Collector shall certify by endorsement on such instrument that the full duty (stating the amount) with which it is chargeable has been paid.

When such instrument is in his opinion not chargeable with duty, the Collector shall certify in manner aforesaid that such instrument is not so chargeable.

Any instrument upon which an endorsement has been made under this section shall be deemed to be duly stamped, or not chargeable with duty, as the case may be; and if chargeable with duty, shall be receivable in evidence or otherwise, and may be acted upon and registered as if it had been originally duly stamped:

Nothing in this section shall authorize the Collector to endorse—

any instrument executed or first executed in British India and brought to him after the expiration of one month from the date of its execution or first execution (as the case may be);

any instrument executed or first executed out of British India and brought to him after the expiration of three months after it has been first received in British India; or

any instrument chargeable with the duty of one anna, or any bill of exchange or promissory note, when brought to him after the drawing or execution thereof on paper not duly stamped.

Payment of fees under section 30 how made.

32. Every payment of a fee under section thirty shall be made in stamps, or cash, as the Governor General in Council may by rule direct.

CHAPTER IV.

INSTRUMENTS NOT DULY STAMPED.

Examination and impounding of instruments.

33. Every person having by law or consent of parties authority to receive evidence, and

every person in charge of a public office except an officer of Police,

before whom any instrument chargeable in his opinion with duty is produced or comes, in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.

For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in British India when such instrument was executed or first executed.

Provided that nothing herein contained shall be deemed to require any Magistrate or Judge of a criminal Court to examine or impound any instrument coming before him in the course of any proceeding other than a proceeding under chapter forty or chapter forty-one of the Code of Criminal Procedure, or chapter eighteen of the Presidency Magistrates Act:

Provided also that, in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.

The Local Government may from time to time, in cases of doubt, determine who shall be deemed to be, for the purpose of this section, persons in charge of public offices.

Instruments not duly stamped inadmissible in evidence, &c.

34. No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped:

Proviso.

Provided that—

Instruments admissible on payment of duty and penalty,

1st, any such instrument, not being an instrument chargeable with a duty of one anna only or a bill of exchange or promissory note, shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable or (in the case of an instrument insufficiently stamped) of the amount required to make up such duty, together with a penalty of five rupees, or when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;

and in certain criminal proceedings.

2nd, nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a criminal Court other than a proceeding under chapter forty or chapter forty-one of the Code of Criminal Procedure, or chapter eighteen of the Presidency Magistrates Act;

Admission of instrument not to be questioned.

3rd, when an instrument has been admitted in evidence, such admission shall not, except as provided in section fifty, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.

Instruments impounded how dealt with.

35. When the person impounding an instrument under section thirty-three has by law or consent of parties authority to receive evidence and admits such instrument in evidence upon payment of a penalty as provided by section thirty-four, he shall send to the Collector an authenticated copy of such instrument, together with a certificate in writing, stating the amount of the duty and penalty levied in respect thereof, and shall send such amount to the Collector, or to such person as he may appoint in this behalf.

In every other case, the person so impounding an instrument shall send it in original to the Collector.

36. When a copy of an instrument is sent to a Collector under the first paragraph of section thirty-five, he may, if he thinks fit, upon application made to him in this behalf, refund any portion of the penalty in excess of five rupees which has been paid in respect of such instrument, or

Collector's power to refund penalty paid under section 35, 1st para.

when such instrument has been impounded only because it has been written in contravention of section twelve, or section thirteen, he may refund the whole penalty so paid.

37. When the Collector impounds any instrument under section thirty-three, or receives any instrument sent to him under the second clause of section thirty-five, he shall adopt the following procedure :—

Collector's power to stamp instruments impounded.

(*a.*) If he is of opinion that such instrument is duly stamped, or is not chargeable with duty, he shall certify by endorsement thereon that it is duly stamped, or that it is not so chargeable (as the case may be), and shall upon application made to him in this behalf deliver such instrument to the person from whose possession it came into the hands of the officer impounding it, or as such person may direct.

(*b.*) If the Collector is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of five rupees ; or if ten times the amount of the proper duty or of the deficient portion thereof exceeds five rupees, then such penalty, not less than five rupees and not more than ten times the amount of such duty or portion, as he thinks fit :

Provided that, when such instrument has been impounded only because it has been written in contravention of section twelve or section thirteen, the Collector may, if he thinks fit, remit the whole penalty prescribed by this section.

Every certificate under clause (*a*) of this section shall, for the purposes of this Act, be conclusive evidence of the matters stated therein.

Nothing in this section applies to an instrument chargeable with a duty of one anna only, or to a bill of exchange or promissory note.

38. If any instrument chargeable with duty and which is not duly stamped is produced by any person of his own motion before the Collector within one year from the date of its execution or first execution, and such person brings to the notice of the Collector the fact that such instrument is not duly stamped, and offers to pay to the Collector the amount of the proper duty, or the amount required to make up the same, and the Collector is satisfied that the omission to duly stamp such instrument has been occasioned by accident, mistake or urgent necessity, he may, instead of proceeding under sections thirty-three and thirty-seven, receive such amount and proceed as next hereinafter prescribed.

Instruments unduly stamped by accident.

Nothing in this section applies to an instrument chargeable with a duty of one anna only or to a bill of exchange or promissory note.

39. When the duty and penalty (if any) leviable in respect of any instrument have been paid under section thirty-four, section thirty-seven or section thirty-eight, the person admitting such instrument in evidence, or the Collector (as the case may be), shall certify by endorsement thereon that the proper duty or (as the case may be) the proper duty and penalty (stating the amount of each) have been levied in respect thereof, and the name and residence of the person paying them.

Endorsement of instruments on which duty has been paid under section 34, 37 or 38.

Every instrument so endorsed shall thereupon be admissible in evidence, and may be registered and acted upon and authenticated as if it had been duly stamped, and shall be delivered on his application in this behalf to the person from whose possession it came into the hands of the officer impounding it, or as such person may direct :

Provided that no instrument which has been admitted in evidence upon payment of duty and a penalty under section thirty-four shall be so delivered before the expiration of one month from the date of such impounding, or if the Collector has certified that its further detention is necessary and has not cancelled such certificate :

Provided also that nothing in this section shall affect the Code of Civil Procedure, section 144, clause 3.

40. The payment of a penalty under this chapter in respect of an instrument shall not bar the prosecution of any person who appears to have committed an offence against the stamp-law in respect of such instrument :

Prosecution for offence against stamp-law.

But no such prosecution shall be instituted in the case of any instrument in respect of which such a penalty has been paid, unless it appears to the Collector that the offence was committed with an intention of evading payment of the proper duty.

Proviso.

41. When any duty or penalty has been paid, under section thirty-four, section thirty-seven or section thirty-eight, by any person in respect of an instrument, and by agreement, or under the provisions of section twenty-nine or any other enactment in force at the time such instrument was executed, some other person was bound to bear the expense of providing the proper stamp for such instrument, the first-mentioned person shall be entitled to recover from such other person the amount of the duty or penalty so paid ; and for the purpose of such recovery any certificate granted in respect of such instrument under section thirty-nine shall be conclusive evidence of the matters therein certified.

Persons paying duty or penalty may recover same in certain cases.

42. When any penalty is paid under section thirty-four or thirty-seven, the Chief Controlling Revenue-Authority may, upon application in writing made within one year from the date of the payment, refund such penalty wholly or in part.

Remission of penalty paid under section 34 or 37.

43. If any instrument sent to a Collector under the second paragraph of section thirty-five be lost, destroyed or damaged during transmission, the person sending the same shall not be liable for such loss, destruction or damage.

Non-liability for loss of instruments sent under section 35.

When any instrument is about to be so sent, the person from whose possession it came into the hands of the person impounding the same may require a copy thereof to be made at the expense of such first-mentioned person and authenticated by the person impounding such instrument.

Copy may be made of instrument so sent.

44. When any bill of exchange or promissory note chargeable with the duty of one anna, or any cheque, is presented for payment unstamped, the person to whom it is so presented may affix thereto the necessary adhesive stamp, and upon cancelling the same in manner hereinbefore provided may pay the sum payable upon such bill, note or cheque, and may charge the duty against the person who ought to have paid the same, or deduct it from the sum payable as aforesaid, and such bill, note or cheque shall, so far as respects the duty, be deemed good and valid.

Power of payee to stamp bills, notes and cheques received by him unstamped.

But nothing herein contained shall relieve any person from any penalty he may have incurred in relation to such bill, note or cheque.

CHAPTER V.

REFERENCE AND REVISION.

45. If any Collector acting under section thirty, section thirty-seven or section thirty-eight feels doubt as to the amount of duty with which any instrument is chargeable, he may draw up a statement of the case, and refer it, with his own opinion thereon, for the decision of the Chief Controlling Revenue-Authority, and such Authority shall consider the case and send a copy of its decision to the Collector, and he shall proceed to assess and charge the duty (if any) in conformity with such decision.

Procedure where Collector feels doubt as to duty chargeable.

46. The Chief Controlling Revenue-Authority may state any case referred to it under section forty-five or otherwise coming to its notice and refer such case with its own opinion thereon, if the case arises in the territories for the time being administered by the Governor of Fort Saint George in Council or the Governor of Bombay in Council—to the High Court of Judicature at Madras or Bombay as the case may be : if it arises in the North-Western Provinces or Oudh—to the High Court of Judicature for the North-Western Provinces : if it arises in the territories for the time being administered by the Lieutenant-Governor of the Panjáb—to the Chief Court of the Panjáb : if it arises in the Central Provinces—to the High Court of Judicature at Bombay ; and if it arises in any other part of British India—to the High Court of Judicature at Fort William.

Reference by Revenue Authority to High Court.

Every such case shall be decided by not less than three Judges of the High Court or Chief Court to which it is referred, and in case of difference the opinion of the majority shall prevail.

47. If the High Court or Chief Court is not satisfied that the statements contained in the case are sufficient to enable it to determine the questions raised thereby, the Court may refer the case back to the Revenue-Authority by which it was stated, to make such additions thereto or alterations therein as the Court may direct in that behalf.

Power of Court to call for further particulars.

48. The High Court or Chief Court, upon the hearing of any such case, shall decide the questions raised thereby and shall deliver its judgment thereon containing the grounds on which such decision is founded : and it shall send to the Revenue-Authority by which the case was stated, a copy of such judgment under the seal of the Court and the signature of the Registrar, and the Revenue-Authority shall, on receiving such copy, dispose of the case conformably to such judgment.

Procedure in disposing of reference.

49. If any Court other than a Court mentioned in section forty-six feels doubt as to the amount of duty to be paid in respect of any instrument under the first proviso to section thirty-four, the Judge may draw up a statement of the case and refer it with his own opinion thereon for the decision of the High Court or Chief Court to which, if he were the Chief Controlling Revenue-Authority, he would under section forty-six refer the same, and such Court shall deal with the case as if it had been referred under section forty-six, and send a copy of its judgment under the seal of the Court and the signature of the Registrar to the Judge making the reference, who shall, on receiving such copy, dispose of the case conformably to such judgment.

Reference by other Courts to High Court.

References made under this section, when made by a Court subordinate to a District Court, shall be made through the District Court, and when made by any subordinate Revenue Court shall be made through the Court immediately superior.

50. When any Court in the exercise of civil or revenue jurisdiction makes any order admitting any instrument in evidence as duly stamped or as not requiring a stamp, or upon payment of duty and a penalty under section thirty-four, the Court to which appeals lie from, or references are made by, such first-mentioned Court may, of its own motion or on the application of the Collector, take such order into consideration ; and if it is of opinion that such instrument should not have been admitted in evidence without the payment of duty and penalty under section thirty-four, or without the payment of a higher duty and penalty than those paid, may record a declaration to that effect, and determine the amount of duty with which such instrument is chargeable, and may require any person in whose possession or power such instrument then is to produce the same, and may impound the same when produced.

Revision of certain decisions of Courts regarding the sufficiency of stamps.

When any declaration has been recorded under this section, the Court recording the same shall send a copy thereof to the Collector and, where the instrument to which it relates has been impounded or is otherwise in the possession of such Court, shall also send him such instrument ; and thereupon the Collector may, notwithstanding anything contained in the order admitting such instrument in evidence, or in any certificate granted under section thirty-nine, or in section forty, prosecute any person for any offence against the stamp-law which the Collector considers him to have committed in respect of such instrument :

Provided that no such prosecution shall be instituted where the amount (including duty and penalty) which according to the determination of such

Court was payable in respect of the instrument under section thirty-four is paid to the Collector, unless he thinks that the offence was committed with an intention of evading payment of the proper duty:

Provided also that, except for the purposes of such prosecution, no declaration made under this section shall affect the validity of any order admitting any instrument in evidence, or of any certificate granted under section thirty-nine.

CHAPTER VI.

ALLOWANCES FOR SPOILED STAMPS AND STAMPS NO LONGER REQUIRED.

51. Subject to such rules as may be made by the Governor General in Council as to the evidence which the Collector may require, allowance shall be made by the Collector for impressed stamps spoiled in the cases hereinafter mentioned, namely:—

Allowance for spoiled stamps.

(*a*.) The stamp on any paper inadvertently and undesignedly spoiled, obliterated or by any means rendered unfit for the purpose intended, before any instrument written thereon is executed by any person:

(*b*.) The stamp used or intended to be used for any bill of exchange, cheque or promissory note, signed by or on behalf of the drawer or intended drawer, but not delivered out of his hands to the payee or intended payee, or any person on his behalf, or deposited with any person as a security for the payment of money, or in any way negotiated, issued or put in circulation, or made use of in any other manner, and which, being a bill of exchange or cheque, has not been accepted by the drawee, and provided that the paper on which any such stamp is impressed does not bear any signature intended as or for the acceptance of any bill of exchange or cheque to be afterwards written thereon:

(*c*.) The stamp used or intended to be used for any bill of exchange, cheque or promissory note signed by, or on behalf of, the drawer thereof, but which from any omission or error has been spoiled or rendered useless, although the same, being a bill of exchange or cheque, may have been presented for acceptance or accepted or endorsed, or, being a promissory note, may have been delivered to the payee, provided that another completed and duly stamped bill of exchange, cheque or promissory note is produced identical in every particular, except in the correction of such omission or error as aforesaid, with the spoiled bill, cheque or note:

(*d*.) The stamp used for any of the following instruments, that is to say:—

(1) an instrument executed by any party thereto, but afterwards found by a competent Court to be absolutely void in law from the beginning:

(2) an instrument executed by any person, but afterwards found unfit, by reason of any error or mistake therein, for the purpose originally intended:

(3) an instrument executed by any party thereto, but which, by reason of the death of any person, by whom it is necessary that it should be executed, without having executed the same, or of the refusal of any such person to execute the same, or to advance any money intended to be thereby secured, cannot be completed so as to effect the intended transaction in the form proposed:

(4) an instrument executed by any party thereto which, for want of the execution thereof by some material party, and his inability or refusal to sign the same, is in fact incomplete and insufficient for the purpose for which it was intended:

(5) an instrument executed by any party thereto which, by reason of the refusal of any person to act under the same, or by the refusal or non-acceptance of any office thereby granted, totally fails of the intended purpose:

(6) an instrument executed by any party thereto which becomes useless in consequence of the transaction intended to be thereby effected being effected by some other instrument duly stamped:

(7) an instrument executed by any party thereto which is inadvertently and undesignedly spoiled, and in lieu whereof another instrument made between the same parties and for the same purpose is executed and duly stamped:

Provided that in the case of an executed instrument—

(*a*) such instrument is given up to be cancelled:

(*b*) the application for relief is made within six months after the date of the instrument or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed, except where from unavoidable circumstances any instrument for which another instrument has been substituted cannot be given up to be cancelled within the aforesaid period, and in that case within six months after the date or execution of the substituted instrument, and except where the spoiled instrument has been sent out of British India, and in that case within six months after it has been received back in British India:

Provided also that, in the case of stamped paper not having any executed instrument written thereon, the application for relief is made within six months after the stamp has been spoiled as aforesaid.

52. When any person has inadvertently used, for an instrument chargeable with duty, a stamp of a description other than that prescribed for such instrument by the rules made under this Act, or a stamp of greater value than was necessary, or has inadvertently used any stamp for an instrument not chargeable with any duty, or when any stamp used for an instrument has been inadvertently rendered useless under section fourteen owing to such instrument having been written in contravention of the provi-

Allowance for misused stamps.

sions of section twelve, the Collector may, on application made within six months after the date of the instrument or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed, and upon the instrument, if chargeable with duty, being re-stamped with the proper duty, cancel and allow as spoiled the stamp so misused or rendered useless.

53. In any case in which allowance is made for spoiled or misused stamps, the Collector may give in lieu thereof (*a*) other stamps of the same description and value, or, (*b*) if required, and he thinks fit, stamps of any other description to the same amount in value, or (*c*) at his discretion, the same value in money, deducting one anna for each rupee or fraction of a rupee.

Allowance under sections 51 and 52 how to be made.

54. When any person is possessed of a stamp which has not been spoiled or rendered unfit or useless for the purpose intended, but for which he has no immediate use, the Collector shall repay to such person the value of such stamp in money, deducting one anna for each rupee or portion of a rupee, upon such person delivering up the same to be cancelled, and proving to the Collector's satisfaction that it was purchased by such person with a *bonâ fide* intention to use it, and that he has paid the full price thereof, and that it was so purchased within the period of six months next preceding the date on which it is so delivered.

Allowance for stamps not required for use.

CHAPTER VII.

SUPPLEMENTAL PROVISIONS.

55. The Local Government, subject to the control of the Governor General in Council, may make rules consistent herewith for regulating the supply and sale of stamps and stamped papers, the persons by whom alone such sale is to be conducted, and the duties and remuneration of such persons.

Powers to make rules relating to sale of stamps.

56. The Governor General in Council may make rules consistent herewith to carry out generally the purposes of this Act.

Power to make rules generally to carry out Act.

57. All powers to make appointments, rules and orders conferred by this Act may be exercised from time to time as occasion requires.

Certain powers exerciseable from time to time.

All rules made under this Act other than rules made under section fifty-five shall be published in the *Gazette of India*, and all rules made under section fifty-five shall be published in the local Gazette. All rules published as required by this section shall, upon such publication, have the force of law.

Publication of rules.

58. Any person receiving any money exceeding twenty rupees in amount, or any bill of exchange, cheque or promissory note for an amount exceeding twenty rupees, or receiving in satisfaction of a debt any moveable property exceeding twenty rupees in value shall, on demand by the person paying or delivering such money, bill, cheque, note or property, give a duly stamped receipt for the same.

Obligation to give receipt in certain cases.

59. Nothing herein contained shall be deemed to affect the duties chargeable under any enactment for the time being in force relating to Court-fees.

Saving as to Court-fees.

60. Every Local Government shall cause this Act to be carefully translated into the principal vernacular languages of the territories administered by it. A full alphabetical index shall be added to every such translation, and the translation and index shall be printed and sold to the public at a price not exceeding four annas per copy.

Act to be translated, indexed and sold cheaply.

CHAPTER VIII.

CRIMINAL OFFENCES AND PROCEDURE.

61. Any person drawing, making, issuing, endorsing or transferring, or signing otherwise than as a witness, or presenting for acceptance or payment, or accepting, paying or receiving payment of, or in any manner negotiating, any bill of exchange, cheque or promissory note without the same being duly stamped,

Penalty for executing, &c., instrument not duly stamped.

any person executing or signing otherwise than as a witness any other instrument chargeable with duty without the same being duly stamped, and

any person voting or attempting to vote under any proxy not duly stamped,

shall for every such offence be punished with fine which may extend to five hundred rupees:

Provided that, when any penalty has been paid in respect of any instrument under section thirty-four, section thirty-seven or section fifty, the amount of such penalty shall be allowed in reduction of the fine (if any) subsequently imposed under this section in respect of the same instrument upon the person who paid such penalty.

62. Any person required by section eleven to cancel an adhesive stamp and failing to cancel such stamp in manner prescribed by that section shall be punished with fine which may extend to one hundred rupees.

Penalty for failure to cancel adhesive stamp.

63. Any person who, with intent to defraud the Government of any duty,

(*a*) executes any instrument in which all the facts and circumstances required by section twenty-seven to be set forth in such instrument are not fully and truly set forth, or

(*b*) being employed or concerned in or about the preparation of any instrument, neglects or omits, fully and truly to set forth therein all such facts and circumstances,

shall be punished with fine which may extend to five thousand rupees.

Penalty for omission to comply with provisions of section 27.

64. Any person who, being required under section fifty-eight to give a receipt, refuses or neglects to give the same, or who, with intent to defraud the Government of any duty, upon a payment of money or delivery of property exceeding twenty rupees in amount or value, gives a receipt for an amount or value not exceeding twenty rupees, or separates or divides the money or property paid or delivered, shall be punished with fine which may extend to one hundred rupees.

Penalty for refusal to give receipt and for devices to evade duty on receipts.

65. Every person who—

(*a*) receives, or takes credit for, any premium or consideration for any contract of insurance, and does not, within one month after receiving, or taking credit for, such premium or consideration, make out and execute a duly stamped policy of such insurance; or

Penalty for not making out policy,

(*b*) makes, executes or delivers out any policy which is not duly stamped, or pays or allows in account, or agrees to pay or allow in account, any money upon, or in respect of, any such policy,

or making, &c., any policy not duly stamped.

shall be punished with fine which may extend to two hundred rupees.

66. Any person drawing or executing a bill of exchange or a policy of marine insurance purporting to be drawn or executed in a set of two or more, and not at the same time drawing or executing on paper duly stamped the whole number of bills or policies of which such bill or policy purports the set to consist, shall be punished with fine which may extend to one thousand rupees.

Penalty for not drawing full number of bills or marine policies purporting to be in sets.

67. Whoever, with intent to defraud the Government of duty, draws, makes or issues any bill of exchange or promissory note bearing a date subsequent to that on which such bill or note is actually drawn or made, and whoever, knowing that such bill or note has been so post-dated, endorses, transfers, presents for acceptance or payment, or accepts, pays or receives payment of, such bill or note, or in any manner negotiates the same,

Penalty for post-dating bills, &c.;

and whoever, with the like intent, practises or is concerned in any act, contrivance or device not specially provided for by this Act or any other law for the time being in force,

for other devices to defraud the revenue.

shall be punished with fine which may extend to one thousand rupees.

68. Any person appointed to sell stamps who disobeys any rule made under section fifty-five, and any person not so appointed who sells or offers for sale any stamp, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Penalty for breach of rule relating to sale of stamps and for unauthorized sale.

69. No prosecution in respect of any offence punishable under this Act, or the General Stamp Act, 1869, or any Act thereby repealed, shall be instituted without the sanction of the Collector or such other officer as the Local Government generally, or the Collector specially, authorizes in that behalf.

Institution and conduct of prosecutions.

The Chief Controlling Revenue-Authority, or any officer authorized by it in this behalf, may stay any such prosecution or compound any such offence.

70. No Magistrate other than a Presidency Magistrate and a Magistrate whose powers are not less than those of a Magistrate of the second class shall try any offence under this Act.

Jurisdiction of Magistrates.

71. Every such offence committed in respect of any instrument may be tried in any district or Presidency-town in which such instrument is found, as well as in any district or Presidency-town in which such offence might be tried under the law relating to criminal procedure for the time being in force.

Place of trial.

72. Nothing in this Act shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act, or the rules made under it:

Operation of other laws not barred.

Provided that no person shall be punished twice for the same offence.

SCHEDULE I.

DESCRIPTION OF INSTRUMENT.		PROPER STAMP-DUTY.
1. ACKNOWLEDGMENT of a debt exceeding twenty rupees in amount or value, written or signed by or on behalf of a debtor or in order to supply evidence of such debt in any book (other than a banker's pass-book) or on a separate piece of paper, when such book or paper is left in the creditor's possession		One anna.
2. ADMINISTRATION-BOND		The same duty as a Security-Bond (No. 14).
ADOPTION DEED ...	See *Instrument, No. 38.*	
3. AFFIDAVIT or declaration in writing on oath or affirmation made before a person authorized by law to administer an oath		One rupee.
See Exemptions, Schedule II (No 1).		
4. AGREEMENT TO LEASE		The same duty as a Lease (No. 39).
5. AGREEMENT OR MEMORANDUM OF AN AGREEMENT ...	(*a.*) If relating to the sale of any Government security, share in a Company or Association or Bill of Exchange ...	One anna.
	(*b.*) Whereby the owner or occupier of land in a village in the Bombay Presidency agrees to relinquish his rights therein to the Government, and to accept rights in other land in exchange for the right so relinquished	Four annas.
	(*c.*) If not otherwise provided for by this Act...	Eight annas.
See Exemptions, Schedule II (No. 2).		
6. APPOINTMENT, in execution of a power, whether of trustees or of property moveable or immoveable, where made by any writing not being a Will		Fifteen rupees.
7. APPRAISEMENT or valuation made otherwise than under an order of the Court in the course of a suit		The same duty as an award (No. 10).
See Exemptions, Schedule II (Nos. 3 & 4).		
APPRENTICESHIP DEED ...	See *Instrument, No. 31.*	
8. ARTICLES OF ASSOCIATION OF A COMPANY		Twenty-five rupees.

SCHEDULE I—*continued.*

DESCRIPTION OF INSTRUMENT.		PROPER STAMP-DUTY.
9. ARTICLES OF CLERKSHIP or contract whereby any person first becomes bound to serve as a clerk in order to his admission as an Attorney in any High Court		Two hundred and fifty rupees.
ASSIGNMENT ...	See *Conveyance, No. 21 and Transfer, No. 60.*	
AUTHORITY TO ADOPT ...	See *Instrument, No. 38.*	
10. AWARD, that is to say, any decision in writing by an arbitrator or umpire on a reference made otherwise than by an order of the Court in the course of a suit ... *See Exemption, Schedule II (No. 6).*	(*a.*) Where the amount or value of the property to which the award relates as set forth in such award does not exceed Rs. 1,000 ...	The same duty as a Bond (No. 13) for such amount.
	(*b.*) In any other case ...	Five rupees.
11. BILL OF EXCHANGE OR PROMISSORY NOTE, not being a cheque, bond, bank-note or currency-note ...	(*a.*) When payable on demand and the amount exceeds Rs. 20	One anna.

(*b.*) When payable otherwise than on demand, but not more than one year after date or sight. If the amount of the bill or note does not exceed	Rs.	If drawn singly.			If drawn in set of two, for each part of the set.			If drawn in set of three, for each part of the set.		
		Rs.	A.	P.	Rs.	A.	P.	Rs.	A.	P.
	200	0	2	0	0	1	0	0	1	0
If it exceeds 200 and does not exceed	400	0	4	0	0	2	0	0	2	0
„ 400	600	0	6	0	0	3	0	0	2	0
„ 600	1,000	0	10	0	0	5	0	0	4	0
„ 1,000	1,200	0	12	0	0	6	0	0	4	0
„ 1,200	1,600	1	0	0	0	8	0	0	6	0
„ 1,600	2,500	1	8	0	0	12	0	0	8	0
For every Rs. 2,500 or part thereof in excess of Rs. 2,500 up to Rs. 10,000 ...		1	8	0	0	12	0	0	8	0
For every Rs. 5,000 or part thereof in excess of Rs. 10,000 up to Rs. 30,000 ...		3	0	0	1	8	0	1	0	
And for every Rs. 10,000 or part thereof in excess of Rs. 30,000...		6	0	0	3	0	0	2	0	0

SCHEDULE I—*continued.*

DESCRIPTION OF INSTRUMENT.		PROPER STAMP-DUTY.
11. BILL OF EXCHANGE OR PROMISSORY NOTE, &c.—*contd.*	(*c*) When payable at more than one year after date or sight	The same duty as a Bond (No. 13) for the amount of such bill or note.
12. BILL OF LADING ... ... *See Exemption, Schedule II (No. 7).*		Four annas. If a Bill of Lading is drawn in parts, the proper stamp therefor must be borne by each one of the set.
13. BOND (not otherwise provided for by this Act) ... *See Administration-Bond (No. 2), Customs-Bond (No. 24), Indemnity-Bond (No. 28), Security-Bond (No. 14). See Exemptions, Schedule II (No. 8).*	When the amount or value secured does not exceed Rs. 10	Two annas.
	When such amount or value exceeds Rs. 10, but does not exceed 50	Four annas.
	When such amount or value exceeds Rs. 50, but does not exceed 100	Eight annas.
	and for every Rs. 100 or part thereof in excess of Rs. 100 up to 1,000	Eight annas.
	and for every Rs. 500 or part thereof in excess of 1,000	Two rupees eight annas.
14. BOND OR MORTGAGE-DEED executed by way of security for the due execution of an office, or to account for money received by virtue thereof ... *See Exemptions, Schedule II (Nos. 8 and 12).*	(*a.*) When the amount secured does not exceed ... 1,000	The same duty as a Bond (No. 13).
	(*b.*) In any other case ...	Five rupees.
15. BOTTOMRY-BOND, that is to say, any instrument whereby the master of a sea-going ship borrows money on the security of the ship to enable him to preserve the ship or prosecute her voyage		The same duty as a Bond (No. 13).
16. CERTIFICATE OF SALE, granted to the purchaser of any property sold by public auction by a Civil or Revenue Court, or Collector or other Revenue-officer		The same duty as a Conveyance (No. 21) for a consideration equal to the amount of the purchase-money.

SCHEDULE I—*continued.*

DESCRIPTION OF INSTRUMENT.			PROPER STAMP-DUTY.
17. CERTIFICATE OR OTHER DOCUMENT evidencing the right or title of the holder thereof, or any other person, either to any shares, scrip or stock in or of any Company or Association, or to become proprietor of shares, scrip or stock in or of any Company or Association ...	...	...	One anna.
18. CHARTER-PARTY, that is to say, any instrument (except an agreement for the hire of a tug-steamer) whereby a vessel or some specified principal part thereof is let for the specified purposes of the charterer ...	...	...	One rupee.
19. CHEQUE, for an amount exceeding twenty rupees ...	...	...	One anna.
20. COMPOSITION-DEED, that is to say, any instrument executed by a debtor whereby he conveys his property for the benefit of his creditors, or whereby payment of a composition or dividend on their debts is secured to the creditors, or whereby provision is made for the continuance of the debtor's business, under the supervision of inspectors or under letters of license, for the benefit of his creditors	...	...	Ten rupees.
21. CONVEYANCE, not being a TRANSFER mentioned in No. 60. *See Exemptions, Schedule II, (Nos. 5 and 17).*	When the amount of the consideration for such conveyance as set forth therein does not exceed	Rs. 50	Eight annas.
	When it exceeds Rs. 50 but does not exceed...	100	One rupee.
	For every Rs. 100 or part thereof in excess of Rs. 100 up to ...	1,000	One rupee.
	and for every Rs. 500 or part thereof in excess of ...	1,000	Five rupees.

SCHEDULE I—*continued.*

DESCRIPTION OF INSTRUMENT.		PROPER STAMP-DUTY.
CO-PARTNERSHIP...	See *Instrument, No. 32.*	
22. COPY OR EXTRACT, certified to be a true copy or extract, by or by order of any public officer and not chargeable under the law for the time being in force relating to Court-fees ...	(*a.*) If the original was not chargeable with duty, or if the duty with which it was chargeable does not exceed one rupee. ...	Eight annas.
	(*b.*) In any other case ...	One rupee.
See Exemptions, Schedule II (Nos. 9 and 10).		
23. COUNTERPART OR DUPLICATE of any instrument chargeable with duty, and in respect of which the proper duty has been paid ...	(*a.*) If the duty with which the original instrument is chargeable does not exceed one rupee.	The same duty as is payable on the original.
	(*b.*) In any other case ...	One rupee.
24. CUSTOMS-BOND ...	... ...	The same duty as a Security-Bond (No. 14).
25. DECLARATION OF ANY TRUST of or concerning any property, when made by any writing not being a will ...	... ...	Fifteen rupees.
26. DELIVERY-ORDER IN RESPECT OF GOODS, that is to say, any instrument entitling any person therein named, or his assigns, or the holder thereof, to the delivery of any goods lying in any dock or port, or in any warehouse in which goods are stored or deposited on rent or hire, or upon any wharf, such instrument being signed by or on behalf of the owner of such goods, upon the sale or transfer of the property therein, when such goods exceed in value twenty rupees ...	... ...	One anna.
DEPOSIT OF TITLE-DEEDS ...	See *Instrument, No. 29.*	
DISSOLUTION OF PARTNERSHIP ...	See *Instrument, No. 33.*	
DUPLICATE ...	See *Counterpart, No. 23.*	

SCHEDULE I—*continued.*

DESCRIPTION OF INSTRUMENT.		PROPER STAMP-DUTY.
27. ENTRY AS AN ADVOCATE, VAKÍL OR ATTORNEY ON THE ROLL OF ANY HIGH COURT in exercise of powers conferred on such Court by letters patent ...	In the case of an Advocate or Vakíl	Five hundred rupees.
	In the case of an Attorney ...	Two hundred and fifty rupees.
See Exemption, Schedule II (No. 11).		
EXCHANGE ...	See *Instrument, No. 35.*	
EXTRACT ...	See *Copy, No. 22.*	
FURTHER CHARGE ...	See *Instrument, No. 30.*	
GIFT ...	See *Instrument, No. 36.*	
28. INDEMNITY-BOND		The same duty as a Security-Bond (No. 14).
INSPECTORSHIP-DEED	See *Composition-deed, No. 20.*	
29. INSTRUMENT EVIDENCING AN AGREEMENT TO SECURE THE REPAYMENT OF A LOAN made upon the deposit of title-deeds or other valuable security, or upon the hypothecation of moveable property ...	(*a.*) When such loan is repayable more than three months, but not more than one year, from the date of such instrument.	The same duty as a Bill of Exchange (No. 11 (*b*)) for the amount secured.
	(*b.*) When such loan is repayable not more than three months from the date of such instrument.	Half the duty payable on a Bill of Exchange (No. 11 (*b*)) for the amount secured.
30. INSTRUMENT IMPOSING A FURTHER CHARGE ON MORTGAGED PROPERTY ...	(*a.*) When the original mortgage is one of the description referred to in No. 44, clause (*a*), of this schedule.	The same duty as a Conveyance (No. 21) for a consideration equal to the amount secured by such instrument.
	(*b.*) When such mortgage is one of the description referred to in No. 44, clause (*b*), of this schedule.	The same duty as a Bond (No. 13) for the amount secured by such instrument.
31. INSTRUMENT OF APPRENTICESHIP, including every writing relating to the service or tuition of any apprentice, clerk or servant, placed with any master to learn any profession, trade or employment, except articles of clerkship (No. 9 of this schedule)		Five rupees.
See Exemption, Schedule II (No. 12 (c)).		
32. INSTRUMENT OF CO-PARTNERSHIP		Ten rupees.
33. INSTRUMENT OF DISSOLUTION OF PARTNERSHIP		Five rupees.
34. INSTRUMENT OF DIVORCE, that is to say, any instrument by which any person effects the dissolution of his marriage		One rupee.

SCHEDULE I—*continued.*

DESCRIPTION OF INSTRUMENT.		PROPER STAMP-DUTY.
35. INSTRUMENT OF EXCHANGE of any property		The same duty as a Conveyance (No. 21) for a consideration equal to the value of the property of greater value as set forth in such instrument.
36. INSTRUMENT OF GIFT (OTHER THAN A SETTLEMENT OR WILL)		The same duty as a Conveyance (No. 21) for a consideration equal to the value of the property as set forth in such instrument.
37. INSTRUMENT OF PARTITION		The same duty as a Bond (No. 13) for the amount of the value of the property divided as set forth in such instrument.
38. INSTRUMENT (OTHER THAN A WILL) CONFERRING OR PURPORTING TO CONFER AN AUTHORITY TO ADOPT		Ten rupees.
INSURANCE ...	See *Policy, No. 49.*	
39. LEASE. See *Agreement to lease* (*No. 4*). See *Exemptions, Schedule II* (*No. 13*).	(*a*) Where by such lease the rent is fixed and no premium is paid or delivered and such lease purports to be for a term—	
	of less than one year ...	The same duty as a Bond (No. 13) for the whole amount payable or deliverable under such lease.
	of not less than one year, but not more than three years ...	The same duty as a Bond (No. 13) for the average annual rent reserved.
	exceeding three years ...	The same duty as a Conveyance (No. 21) for a consideration equal to the amount or value of the average annual rent reserved.

SCHEDULE I—*continued.*

DESCRIPTION OF INSTRUMENT.		PROPER STAMP-DUTY.
39. LEASE,—*contd.* See *Agreement to lease (No. 4).* See *Exemptions, Schedule II (No. 13).*	(*b*) Where by such lease the rent is fixed and no premium is paid or delivered and such lease does not purport to be for any definite term ...	The same duty as a Conveyance (No. 21) for a consideration equal to the amount or value of the average annual rent which would be paid or delivered for the first ten years if the lease continued so long.
	(*c*) Where the lease is granted for a fine or premium, and where no rent is reserved...	The same duty as a Conveyance (No. 21) for a consideration equal to the amount or value of such fine or premium as set forth in the lease.
	(*d*) Where the lease is granted for a fine or premium in addition to rent reserved ...	The same duty as a Conveyance (No. 21) for a consideration equal to the amount or value of such fine or premium as set forth in the lease, in addition to the duty which would have been payable on such lease if no fine or premium had been paid or delivered: Provided that, when an agreement to lease is stamped with the *ad valorem* stamp required for a lease, and a lease in pursuance of such agreement is subsequently executed, the duty on such lease shall not exceed eight annas.
40. LETTER OF ALLOTMENT OF SHARES in any Company, or proposed Company, or in respect of any loan to be raised by any Company or proposed Company		One anna.
41. LETTER OF CREDIT, that is to say, any instrument by which one person authorizes another to give credit to the person in whose favour it is drawn ...		One anna.

SCHEDULE I—*continued.*

DESCRIPTION OF INSTRUMENT.		PROPER STAMP-DUTY.
42. LETTER OF LICENSE, that is to say, any agreement between a debtor and his creditors that the latter shall, for a specified time, suspend their claims and allow the debtor to carry on business at his own discretion		Ten rupees.
43. MEMORANDUM OF ASSOCIATION OF A COMPANY		Fifteen rupees.
44. MORTGAGE-DEED not provided for by No. 14, No. 15, No. 29 or No. 55 of this schedule. See *Exemptions, Schedule II, No. 12, and No. 14* (*b*).	(*a*) When at the time of execution possession of the property or any part of the property comprised in such deed is given by the mortgagor or agreed to be given ...	The same duty as a Conveyance (No. 21) for a consideration equal to the amount secured by such deed.
	(*b*) When at the time of execution possession is not given or agreed to be given as aforesaid ...	The same duty as a Bond (No. 13) for the amount secured by such deed.
45. NOTARIAL ACT, that is to say, any instrument, endorsement, note, attestation, certificate or entry made or signed by a Notary Public in the execution of the duties of his office or by any other person lawfully acting as a Notary Public		One rupee.
46. NOTE OR MEMORANDUM sent by a Broker or Agent to his principal intimating the purchase or sale on account of such principal of any goods, stock or marketable security exceeding in value twenty rupees		One anna.

SCHEDULE I—*continued.*

DESCRIPTION OF INSTRUMENT.		PROPER STAMP-DUTY.
47. NOTE OF PROTEST BY THE MASTER OF A SHIP		Eight annas.
PARTITION ...	See *Instrument, No. 37.*	
PARTNERSHIP ...	See *Instrument, Nos. 32 and 33.*	
48. PETITION FOR LEAVE TO FILE A SPECIFICATION OF AN INVENTION, or for the extension of the term of the exclusive privilege of making or using or selling such invention in India		One hundred rupees.

		If drawn singly.	If drawn in duplicate, for each part.
		Rs. A. P.	Rs. A. P.
49. POLICY OF INSURANCE ... *See Exemption, Schedule II (No. 14 (a)).*	(*a*). In the case of Sea-insurance— When the amount insured does not exceed ... ... Rs. 1,000	0 4 0	0 2 0
	And for every further sum of Rs. 1,000 or part thereof in excess of 1,000	0 4 0	0 2 0
	(*b*). In the case of any other insurance— When the amount insured does not exceed 1,000	0 6 0	0 3 0
	And for every further sum of Rs. 1,000 or part thereof in excess of 1,000	0 6 0	0 3 0

50. POWER-OF-ATTORNEY, not being a proxy chargeable under No. 51. ...	(*a*.) When executed for the sole purpose of procuring the presentation of one or more documents for registration in relation to a single transaction	Eight annas.
	(*b*.) When authorizing one person or more to act in a single transaction other than that mentioned in (*a*) ...	One rupee.

SCHEDULE I—*continued.*

DESCRIPTION OF INSTRUMENT.		PROPER STAMP-DUTY.
50. POWER-OF-ATTORNEY, not being a proxy chargeable under No. 51—*contd.*	(*c*.) When authorizing not more than five persons to act jointly and severally in more than one transaction or generally ...	Five rupees.
	(*d*.) When authorizing more than five but not more than ten persons to act jointly and severally in more than one transaction or generally	Ten rupees.
	(*e*.) In any other case	One rupee for each person authorized.
Explanation.—For the purposes of this number more persons than one when belonging to the same firm shall be deemed to be one person.		
PROMISSORY NOTE	See *Bill of Exchange, No. 11.*	
PROTEST, that is to say, any declaration in writing made by a Notary Public, or other person lawfully acting as such, attesting the dishonour of a bill of exchange or promissory note ...	See *Notarial Act, No. 45.*	
PROTEST BY THE MASTER OF A SHIP, that is to say, any declaration of the particulars of her voyage drawn up by him with a view to the adjustment of losses or the calculation of averages, and every declaration in writing made by him against charterers or the consignees for not loading or unloading the ship, when such declaration is attested or certified by a Notary Public or other person lawfully acting as such	See *Notarial Act, No. 45.*	
51. PROXY empowering any person to vote at any one meeting of— (*a*.) Members of a Company whose stock or funds is or are divided into shares and transferable: (*b*.) Municipal Commissioners: (*c*.) Proprietors, Members or Contributors to the funds of any Institution	... ...	One anna.

SCHEDULE I—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
52. RECEIPT FOR ANY MONEY OR OTHER PROPERTY THE AMOUNT OR VALUE OF WHICH EXCEEDS TWENTY RUPEES ... ... *See Exemptions, Schedule II (No. 15).*	One anna.
53. RE-CONVEYANCE OF MORTGAGED PROPERTY ... (*a*.) If the consideration for which the property was mortgaged does not exceed Rs. 1,000	The same duty as a Conveyance (No. 21) for the amount of such consideration as set forth in the re-conveyance.
(*b*.) In any other case ...	Ten rupees.
54. RELEASE, that is to say, any instrument whereby a person renounces a claim upon another person or against any specified property ... (*a*.) If the amount or value of the claim does not exceed 1,000	The same duty as a Bond (No. 13) for such amount or value as set forth in the release.
(*b*.) In any other case. ...	Five rupees.
55. RESPONDENTIA-BOND, that is to say, any instrument securing a loan on the cargo laden or to be laden on board a ship and making repayment contingent on the arrival of the cargo at the port of destination	The same duty as a Bond (No. 13).
56. REVOCATION OF ANY TRUST of or concerning any property by any instrument other than a will	Ten rupees.
57. SETTLEMENT	The same duty as a Bond (No. 13) for a sum equal to the amount or value of the property settled as set forth in such settlement.
58. SHIPPING-ORDER for or relating to the conveyance of goods on board of any vessel	One anna.
SPECIFICATION ... See *Petition, No. 48.*	

SCHEDULE I—*concluded.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
59. SURRENDER OF LEASE ... (*a*.) When the duty with which the lease is chargeable does not exceed five rupees ... *See Exemption Schedule II (No. 16).*	The duty with which such lease is chargeable.
(*b*.) In any other case	Five rupees.
60. TRANSFER ... *See Exemptions, Schedule II (No. 17).* (*a*.) Of shares in a Company or Association	One-quarter of the duty payable on a Conveyance (No. 21).
(*b*.) Of any interest secured by a Bond, Lease, Mortgage-deed or Policy of Insurance— 1. If the duty on such Bond, Lease, Mortgage-deed or Policy does not exceed five rupees	The duty with which such Bond, Lease, Mortgage-deed or Policy of Insurance is chargeable.
2. In any other case ...	Five rupees.
(*c*.) Of any property under the Administrator General's Act, 1874, section 31 ...	Ten rupees.
(*d*.) Of any trust-property from one trustee to another trustee without consideration ...	Five rupees.
TRUST ... ... See *Declaration, No. 25. Revocation, No. 56.*	
VALUATION ... See *Appraisement, No. 7.*	
61. WARRANT FOR GOODS, that is to say, any instrument evidencing the title of any person therein named, or his assigns, or the holder thereof, to the property in any goods lying in or upon any dock, warehouse or wharf, such instrument being signed or certified by or on behalf of the person in whose custody such goods may be	Four annas.

SCHEDULE II.

INSTRUMENTS EXEMPTED FROM STAMP-DUTY.

1. Affidavit or declaration in writing when made—
   (*a*) as a condition of enlistment under the Indian Articles of War;
   (*b*) for the immediate purpose of being filed or used in any Court or before the officer of any Court; or
   (*c*) for the sole purpose of enabling any person to receive any pension or charitable allowance.
2. Agreement or memorandum of agreement—
   (*a*) for or relating to the sale of goods or merchandize exclusively, not being a note or memorandum chargeable under No. 46 of schedule I;
   (*b*) for service in British Burma under the Chief Commissioner of that Province entered into between Natives of India emigrating to British Burma and the Superintendent of State Emigration or other Government officer acting as representative of the said Chief Commissioner;
   (*c*) made by raiyats for the cultivation of the poppy for Government;
   (*d*) made in the form of tenders to the Government of India for or relating to any loan;
   (*e*) made regarding the occupancy of land denoted by a survey-number, and the payment of revenue therefor, under Bombay Act I of 1865;
   (*f*) made under the European Vagrancy Act, 1874, section 17.
3. Appraisement or valuation made for the information of one party only, and not being in any manner obligatory between parties either by agreement or operation of law.
4. Appraisement of crops for the purpose of ascertaining the amount to be given to a landlord as rent.
5. Assignment of copyright by entry made under Act No. XX of 1847, section 5.
6. Award under Bombay Act VI of 1873, section 81, or Bombay Act III of 1874, section 18.
7. Bill of lading, when the goods therein described are received at a place within the limits of any port as defined under the Indian Ports Act, 1875, and are to be delivered at another place within the limits of the same port.
8. Bond when executed by—
   (*a*) the sureties of middlemen (lambardárs or khattadárs) taking advances for the cultivation of the poppy for Government;
   (*b*) headmen nominated under rules framed in accordance with Bengal Act III of 1876, section 99, for the due performance of their duties under that Act;
   (*c*) any person for the purpose of guaranteeing that the local income derived from private subscriptions to a charitable dispensary or hospital or any other object of public utility shall not be less than a specified sum per mensem.
9. Copy of any paper which a public officer is expressly required by law to make or furnish for record in any public office or for any public purpose.
10. Copy of registration of emigrants furnished under section 27 or section 29 of the Indian Emigration Act, 1871.
11. Entry—
   (*a*) of an advocate, vakíl or attorney on the roll of any High Court, when he has previously been enrolled in a High Court established by Royal Charter;
   (*b*) on the roll of any High Court, as an attorney, of an articled clerk bound as such before this Act comes into force.
12. Instruments—
   (*a*) executed by persons taking advances under the Land Improvement Act, 1871, or by their sureties, as security for the repayment of such advances;
   (*b*) executed by officers of Government or their sureties to secure the due execution of an office or the due accounting for money received by virtue thereof;
   (*c*) of apprenticeship executed by a Magistrate under Act XIX of 1850 or by which a person is apprenticed by or at the charge of any public charity.

13. Leases and Counterparts—
   (*a*) Leases of fisheries granted under the Burma Fisheries Act, 1875;
   (*b*) Lease, executed in the case of a cultivator without the payment or delivery of any fine or premium, when a definite term is expressed and such term does not exceed one year, or when the annual rent reserved does not exceed one hundred rupees;
   (*c*) Counterpart of any lease granted to a cultivator.
14. Letter—
   (*a*) of cover or engagement to issue a policy of insurance:
   Provided that, unless such letter or engagement bear the stamp prescribed by this Act for such policy, nothing shall be claimable thereunder, nor shall it be available for any purpose except to compel the delivery of the policy therein mentioned.
   (*b*) of hypothecation accompanying a bill of exchange.
15. Receipt—
   (*a*) endorsed on or contained in any instrument duly stamped, or exempted under this schedule, No. 18, acknowledging the receipt of the consideration-money therein expressed, or the receipt of any principal-money, interest or annuity or other periodical payment thereby secured;
   (*b*) for any payment of money without consideration;
   (*c*) for any payment of rent by a cultivator on account of land assessed to Government revenue, or (in the Presidencies of Fort St. George and Bombay) of inám lands;
   (*d*) for pay by non-commissioned officers or soldiers of Her Majesty's Army, or Her Majesty's Indian Army, when serving in such capacity;
   (*e*) for pensions or allowances by persons receiving such pensions or allowances in respect of their service as such non-commissioned officers or soldiers, and not serving the Government in any other capacity;
   (*f*) given by holders of family-certificates in cases where the person from whose pay or allowances the sum comprised in the receipt has been assigned is a non-commissioned officer or soldier of either of the said Armies, and serving in such capacity;
   (*g*) given by a headman or lambardár for land-revenue or taxes collected by him;
   (*h*) given for money or securities for money deposited in the hands of any banker, to be accounted for:
   Provided the same be not expressed to be received of, or by the hands of, any other than the person to whom the same is to be accounted for;
   Provided also, that this exemption shall not extend to a receipt or acknowledgment for any sum paid or deposited for or upon a letter of allotment of a share, or in respect of a call upon any scrip or share of or in any Company or Association, or proposed or intended Company or Association.
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ACTS REPEALED.

Number and year.	Subject or short title.	Extent of repeal.
XX of 1847 ...	Copyright	In section five, the words "without being subject to any stamp or duty."
X of 1866 ...	The Indian Companies Act ...	In section eleven, the words "shall bear the same stamp as if it were a deed, and." In section sixteen, the words "they shall bear the same stamp as if they were contained in a deed."
XVIII of 1869 ...	The General Stamp Act ...	The whole.
VII of 1871 ...	The Indian Emigration Act	In sections twenty-seven and twenty-nine, the words "which shall not require a stamp."
XIX of 1873 ...	The North-Western Provinces Land-Revenue Act, 1873.	In section one hundred and eighty-three, the words "stamped or."
II of 1874 ...	The Administrator General's Act.	In section thirty-one, the words "bearing a stamp of ten rupees and."
IX of 1874 ...	The European Vagrancy Act	In section seventeen, the words "may be on unstamped paper and."
XV of 1876 ...	Bombay Municipal Debentures	In section two, the words "and no such indorsement shall be chargeable with any stamp-duty."

D. FITZPATRICK,
Secy. to the Govt. of India.

The Gazette of India.

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CALCUTTA, SATURDAY, JANUARY 25, 1879.

☞ Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV.

cts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 17th January, 1879, and is hereby promulgated for general information:—

ACT No. I OF 1879.

THE STAMP ACT, 1879.

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An Act to consolidate and amend the law relating to Stamps.

CHAPTER I.

PRELIMINARY.

Short title. **1.** This Act may be called "The Indian Stamp Act, 1879:"

Local extent. It extends to the whole of British India;

Commencement. And it shall come into force on the first day of April 1879.

Repeal of enactments. **2.** On and after that day, the Acts specified in the third schedule shall be repealed to the extent specified in the third column of the same schedule. But all rules made under the General Stamp Act, 1869, and then in force shall, so far as they are consistent with this Act, be deemed to have been made hereunder. And all references made to the General Stamp Act, 1869, in enactments passed subsequently thereto, shall be deemed to be made to this Act.

Interpretation-clause. **3.** In this Act, unless there is something repugnant in the subject or context,—

"Banker." (1.) "Banker" includes a bank and any person acting as a banker:

"Bill of exchange." (2.) "Bill of exchange" includes a hundí:

"Bill of lading." (3.) "Bill of lading" means any instrument signed by the owner of a vessel or his agent, acknowledging the receipt of goods therein described, and undertaking to deliver the same at a place and to a person therein mentioned or indicated:

"Bond." (4.) "Bond" means—

(*a*) any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be;

(*b*) any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another; and

(*c*) any instrument so attested whereby a person obliges himself to deliver grain or other agricultural produce to another:

"Chargeable." (5.) "Chargeable" means, as applied to an instrument executed or first executed after this Act comes into force, chargeable under this Act, and, as applied to any other instrument, chargeable under the law in force in British India when such instrument was executed or, where several persons executed the instrument at different times, first executed:

"Cheque." (6.) "Cheque" means a bill of exchange drawn on a banker and payable on demand:

"Chief Controlling Revenue-Authority." (7.) "Chief Controlling Revenue-Authority" means, in the Presidency of Fort St. George and the territories respectively under the administration of the Lieutenant-Governors of Bengal and the North-Western Provinces, the Board of Revenue: in the Presidency of Bombay, outside Sind and the limits of the town of Bombay, a Revenue Commissioner: in Sind, the Commissioner: in the Panjáb, the Financial Commissioner; and elsewhere, the Local Government or such officer as the Local Government may, by notification in the official Gazette, appoint in this behalf by name or in virtue of his office:

"Collector." (8.) "Collector" means, within the limits of the towns of Calcutta, Madras and Bombay, the Collector of Calcutta, Madras and Bombay, respectively, and, without those limits, the Collector of a District, and includes a Deputy Commissioner and any officer whom the Local Government may, by notification in the official Gazette, appoint in this behalf by name or in virtue of his office:

"Conveyance." (9.) "Conveyance" means any instrument by which property (whether moveable or immoveable) is transferred on sale:

"Duly stamped." (10.) "Duly stamped," as applied to an instrument, means stamped, or written upon paper bearing an impressed stamp, in accordance with the law in force in British India when such instrument was executed or first executed:

"Instrument of partition." (11.) "Instrument of partition" means any instrument whereby co-owners of any property divide or agree to divide such property in severalty, and includes also a final order for effecting a partition passed by any Revenue-authority:

"Lease." (12.) "Lease" means a lease of immoveable property and includes also

(*a*) a patta,

(*b*) a kabúliyat or other undertaking in writing, not being a counterpart of a lease, to cultivate, occupy or pay or deliver rent for, immoveable property,

(*c*) any instrument by which tolls of any description are let, and

(*d*) any writing on an application for a lease intended to signify that the application is granted:

"Mortgage-deed." (13.) "Mortgage-deed" includes every instrument whereby, for the purpose of securing money advanced, or to be advanced, by way of loan, or an existing or future debt, or the performance of an engagement, one person transfers, or creates, to or in favour of another, a right over specified property:

"Paper." (14.) "Paper" includes vellum, parchment or any other material on which an instrument may be written:

"Policy of insurance." (15.) "Policy of insurance" means any instrument by which one person, in consideration of a premium, engages to indemnify another against loss, damage or liability arising from an unknown or contingent event:

It includes a life-policy:

"Power-of-attorney." (16.) "Power-of-attorney" means any instrument (not chargeable with a fee under the law relating to Court-fees for the time being in force) empowering a specified person to act in the stead of the person executing it:

"Receipt." (17.) "Receipt" means any note, memorandum, writing or advertisement whereby any money or any bill of exchange, cheque or promissory note is acknowledged to have been received, or whereby any other moveable property is acknowledged to have been received in satisfaction of a debt, or whereby any debt or demand, or any part of a debt or demand, is acknowledged to have been satisfied or discharged, or which signifies or imports any such acknowledgment, whether the same is or is not signed with the name of any person:

"Schedule." (18.) "Schedule" means a schedule to this Act annexed:

"Settlement." (19.) "Settlement" means any non-testamentary disposition in writing, of moveable or immoveable property, made—

(*a*) in consideration of marriage,

(*b*) for the purpose of distributing property of the settlor among his family or those for whom he desires to provide, or

(*c*) for any religious or charitable purpose:

It includes an agreement in writing to make such a disposition:

"Vessel." (20.) "Vessel" means anything made for the conveyance by water of human beings or property:

(21.) "Written" and "writing" include every mode in which words or figures can be expressed upon paper.

"Written," "writing."

4. The schedules and everything therein contained shall be read and construed as part of this Act.

Schedules to be read as part of Act.

CHAPTER II.

STAMP-DUTIES.

A.—Of the Liability of Instruments to duty.

5. Subject to the exemptions contained in the second schedule, the following instruments shall be chargeable with duty of the amount indicated in the first schedule as the proper duty therefor respectively, that is to say:—

Instruments chargeable with duty.

(*a*) every instrument mentioned in the first schedule, and which, not having been previously executed by any person, is executed in British India on or after the first day of April 1879;

(*b*) every bill of exchange, cheque or promissory note drawn or made out of British India on or after that day and accepted or paid, or presented for acceptance or payment, or endorsed, transferred or otherwise negotiated, in British India; and

(*c*) every instrument (other than a bill of exchange, cheque or promissory note) mentioned in the first schedule, which, not having been previously executed by any person, is executed out of British India on or after that day, relates to any property situate, or to any matter or thing done or to be done, in British India, and is received in British India.

6. Where, in the case of any sale, lease, mortgage or settlement, several instruments are employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed for the conveyance, lease, mortgage or settlement in the first schedule, and each of the other instruments shall be chargeable with a duty of one rupee instead of the duty (if any) prescribed for it in that schedule.

Several instruments used in single transactions.

The parties may determine for themselves which of the instruments so employed shall, for the purposes of this section, be deemed to be the principal instrument.

7. Any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under this Act.

Instruments relating to several distinct matters.

Subject to the provisions of the first clause of this section, an instrument so framed as to come within two or more of the descriptions in the first schedule shall, where the duties chargeable thereunder are different, be chargeable only with the highest of such duties; but nothing herein contained shall render chargeable with duty exceeding one rupee a counterpart or duplicate of any instrument chargeable with duty and in respect of which the proper duty has been paid.

Instruments coming within several descriptions in schedule I.

8. The Governor General in Council may, by order published in the *Gazette of India*,

Power to reduce or remit rates of duty.

(*a*) reduce or remit, whether prospectively or retrospectively, in the whole or any part of British India, the duties with which any instruments or any particular class of instruments, or any of the instruments belonging to such class, or any instruments when executed by or in favour of any particular class of persons, or by or in favour of any members of such class, are chargeable, and

(*b*) cancel or vary such order to the extent of the powers hereby given.

B.—Of Stamps and the Mode of using them.

9. Except as otherwise expressly provided in this Act, all duties with which any instruments are chargeable shall be paid, and such payment shall be indicated on such instruments, by means of stamps—

Duties how to be paid.

(*a*) according to the provisions herein contained, or

(*b*) when no such provision is applicable thereto—as the Governor General in Council may by rule direct.

The rules made under this section may, among other matters, regulate—

(1) in the case of each kind of instrument—the description of stamps which may be used,

(2) in the case of instruments stamped with impressed stamps—the number of stamps which may be used,

(3) in the case of hundís—the size of the paper on which they are written.

10. The following instruments may be stamped with adhesive stamps, namely:—

Use of adhesive stamps.

(*a*) instruments chargeable with the duty of one anna except parts of bills of exchange payable otherwise than on demand and drawn in sets;

(*b*) bills of exchange, cheques and promissory notes drawn or made out of British India;

(*c*) entry as an advocate, vakíl or attorney on the roll of a High Court;

(*d*) notarial acts; and

(*e*) transfers by endorsement of shares of public companies and associations.

11. Whoever affixes any adhesive stamp to any instrument chargeable with duty and which has been executed by any person, shall, when affixing such stamp, cancel the same so that it cannot be used again,

Cancellation of adhesive stamps.

and whoever executes any instrument on any paper bearing an adhesive stamp shall, at the time of execution, unless such stamp has been already cancelled in manner aforesaid, cancel the same so that it cannot be used again.

Any instrument bearing an adhesive stamp which has not been cancelled so that it cannot be used again shall, so far as such stamp is concerned, be deemed to be unstamped.

12. Every instrument written upon paper stamped with an impressed stamp, shall be written in such manner, that the stamp may appear on the face of the instrument and cannot be used for or applied to any other instrument.

How instruments stamped with impressed stamps are to be written.

13. No second instrument chargeable with duty shall be written upon a piece of stamped paper upon which an instrument chargeable with duty has already been written: provided that nothing in this section shall prevent any endorsement which is duly stamped or is not chargeable with duty being made upon any instrument for the purpose of transferring any right created or evidenced thereby, or of acknowledging the receipt of any money or goods the payment or delivery of which is secured thereby.

Only one instrument to be on same stamp.

14. Every instrument written in contravention of section twelve or thirteen, shall be deemed to be unstamped.

Instrument written contrary to section 12 or 13 deemed unstamped.

15. Where the duty with which an instrument is chargeable, or its exemption from duty, depends in any manner upon the duty actually paid in respect of another instrument, the payment of such last-mentioned duty shall, if application be made in writing to the Collector for that purpose, and on production of both the instruments, be denoted upon such first-mentioned instrument in such manner as the Governor General in Council may by rule prescribe.

Denoting duty.

C.—Of the Time of stamping Instruments.

16. All instruments chargeable with duty and executed by any person in British India shall be stamped before or at the time of execution.

Instruments executed in British India.

17. Every instrument chargeable with duty executed only out of British India, and not being a bill of exchange, cheque or promissory note, may be stamped within three months after it has been first received in British India; or, where such instrument cannot, with reference to the description of stamp prescribed therefor, be duly stamped by a private person, it may be taken within the said period of three months to the Collector, and he shall stamp the same, in such manner as the Governor General in Council may by rule prescribe, with a stamp of such value as the person so taking such instrument may require and pay for.

Instruments other than bills, cheques and notes executed out of British India.

18. The first holder in British India of any bill of exchange, cheque or promissory note drawn or made out of British India shall, before he presents the same for acceptance or payment, or endorses, transfers or otherwise negotiates the same in British India, affix thereto the proper stamp and cancel the same:

Bills, cheques and notes drawn out of British India.

Provided that if, at the time any such bill, cheque or note comes into the hands of any holder thereof in British India, the proper adhesive stamp is affixed thereto and cancelled in manner prescribed by section eleven, and such holder has no reason to believe that such stamp was affixed or cancelled otherwise than by the person and at the time required by this Act, such stamp shall, so far as relates to such holder, be deemed to have been duly affixed and cancelled. But nothing contained in this proviso shall relieve any person from any penalty incurred by him for omitting to affix or cancel a stamp.

D.—Of Valuations for duty.

19. Where an instrument is chargeable with *ad valorem* duty in respect of an amount expressed in pounds sterling, pounds currency, francs or dollars, such duty shall be calculated on the value of such money in the currency of British India according to the following scale:—

Conversion of amount expressed in certain currencies.

One pound sterling or pound currency is equivalent to ten rupees:

One hundred francs are equivalent to forty rupees:

One Mexican or China dollar is equivalent to two rupees four annas.

20. Where an instrument is chargeable with *ad valorem* duty in respect of any money expressed in any other foreign or colonial currency, such duty shall be calculated on the value of such money in the currency of British India according to the current rate of exchange on the day of the date of the instrument.

Conversion of amount expressed in other foreign currencies.

21. Where an instrument is chargeable with *ad valorem* duty in respect of any stock or of any marketable security, such duty shall be calculated on the value of such stock or security according to the average price thereof on the day of the date of the instrument.

Stock and marketable securities how to be valued.

22. Where an instrument contains a statement of current rate of exchange, or average price, as the case may require, and is stamped in accordance with such statement, it shall, so far as regards the subject-matter of such statement, be presumed, until the contrary is proved, to be duly stamped.

Effect of statement of rate of exchange or average price.

23. Where interest is expressly made payable by the terms of an instrument, such instrument shall not be chargeable with duty higher than that with which it would have been chargeable had no mention of interest been made therein.

Instruments reserving interest.

24. Where any property is transferred to any person in consideration, wholly or in part, of any debt due to him, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or incumbrance upon the property or not, such debt, money or stock is to be deemed the whole or part, as the case may be, of the consideration in respect whereof the transfer is chargeable with *ad valorem* duty.

How transfer in consideration of debt, or subject to future payment, &c., to be charged.

25. Where an instrument is executed to secure the payment of an annuity, or other sum payable periodically, or where the consideration for a conveyance is an annuity or other sum payable periodically, the amount secured by such instrument, or the consideration for such conveyance (as the case may be), shall, for the purposes of this Act, be deemed to be—

Valuation in case of annuity, &c.

(*a*) where the sum is payable for a definite period so that the total amount to be paid can be previously ascertained—such total amount;

(*b*) where the sum is payable in perpetuity or for an indefinite time not terminable with any life in being at the date of such instrument or conveyance—the total amount which, according to the terms of such instrument or conveyance, will or may be payable during the period of twenty years next after the date of such instrument or conveyance; and

(*c*) where the sum is payable for an indefinite time terminable with any life in being at the date of such instrument or conveyance—the total amount which will or may be payable as aforesaid during the period of twelve years next after the date of such instrument or conveyance.

Stamp where value of subject-matter is indeterminate.

26. Where the amount or value of the subject-matter of any instrument chargeable with *ad valorem* duty cannot be, or (in the case of an instrument executed before this Act comes into force) could not have been, ascertained, at the date of its execution or first execution, nothing shall be claimable under such instrument more than the highest amount or value for which, if stated in an instrument of the same description, the stamp actually used would, at the date of such execution, have been sufficient.

Facts affecting duty to be set forth in instrument.

27. The consideration (if any) and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein.

Direction as to duty in case of certain conveyances.

28. (*a.*) Where any property has been contracted to be sold for one consideration for the whole, and is conveyed to the purchaser in separate parts by different instruments, the consideration shall be apportioned in such manner as the parties think fit, so that a distinct consideration for each separate part is set forth in the conveyance relating thereto, and such conveyance shall be chargeable with *ad valorem* duty in respect of such distinct consideration.

(b.) Where property contracted to be purchased for one consideration for the whole, by two or more persons jointly, or by any person for himself and others, or wholly for others, is conveyed in parts by separate instruments to the persons by or for whom the same was purchased, for distinct parts of the consideration, the conveyance of each separate part shall be chargeable with *ad valorem* duty in respect of the distinct part of the consideration therein specified.

(*c.*) Where a person having contracted for the purchase of any property, but not having obtained a conveyance thereof, contracts to sell the same to any other person, and the property is in consequence conveyed immediately to the sub-purchaser, the conveyance shall be chargeable with *ad valorem* duty in respect of the consideration for the sale by the original purchaser to the sub-purchaser.

(*d.*) Where a person having contracted for the purchase of any property, but not having obtained a conveyance thereof, contracts to sell the whole, or any part, thereof, to any other person or persons, and the property is in consequence conveyed by the original seller to different persons in parts, the conveyance of each part sold to a sub-purchaser shall be chargeable with *ad valorem* duty in respect only of the consideration paid by such sub-purchaser, without regard to the amount or value of the original consideration, and the conveyance of the residue (if any) of such property to the original purchaser shall be chargeable with *ad valorem* duty in respect only of the excess of the original consideration over the aggregate of the considerations paid by the sub-purchasers:

Provided that the duty on such last mentioned conveyance shall in no case be less than one rupee.

(*e.*) Where a sub-purchaser takes an actual conveyance of the interest of the person immediately selling to him, which is chargeable with *ad valorem* duty in respect of the consideration paid by him, and is duly stamped accordingly, any conveyance to be afterwards made to him of the same property by the original seller shall be chargeable with a duty equal to that which would be chargeable on a conveyance for the consideration obtained by such original seller; or where such duty would exceed five rupees, with a duty of five rupees.

E.—Duty by whom payable.

Duties by whom payable.

29. In the absence of an agreement to the contrary, the expense of providing the proper stamp shall be borne—

(*a*) in the case of any instrument described in numbers 2, 11, 13, 14, 15, 24, 28, 29, 30, 44, 53, 54, 55, 57 and, 60 (*a*) and (*b*) of the first schedule—by the person drawing, making or executing such instrument:

(*b*) in the case of a policy of insurance—by the insured:

(*c*) in the case of a conveyance—by the grantee: in the case of a lease or agreement to lease—by the lessee or intended lessee:

(*d*) in the case of a counterpart of a lease—by the lessor:

(*e*) in the case of an instrument of partition—by the parties thereto in proportion to their respective shares in the property comprised therein, or when the partition is made in execution of an order passed by a Revenue-authority, in such proportion as such authority directs:

(*f*) in the case of an instrument of exchange—by the parties in equal shares: and

(*g*) in the case of a certificate of sale—by the purchaser of the property to which such certificate relates.

CHAPTER III.

ADJUDICATION AS TO STAMPS.

Adjudication as to proper stamp.

30. When any instrument, whether executed or not, and whether previously stamped or not, is brought to the Collector, and the person bringing it applies to have the opinion of that officer as to the duty (if any) with which it is chargeable, and pays a fee of such amount (not exceeding five rupees and not less than eight annas) as the Collector may in each case direct, the Collector shall determine the duty (if any) with which, in his judgment, the instrument is chargeable:

Collector may call for abstract and evidence.

and may for that purpose require to be furnished with an abstract of the instrument, and also with such affidavit or other evidence as he may deem necessary to prove that all the facts and circumstances affecting the chargeability of the instrument with duty, or the amount of the duty with which it is chargeable, are fully and truly set forth therein, and may refuse to proceed upon any such application until such abstract and evidence have been furnished accordingly:

Proviso.

Provided that no evidence furnished in pursuance of this section shall be used against any person in any civil proceeding, except in an enquiry as to the duty with which the instrument to which it relates is chargeable; and every person by whom any such evidence is furnished shall, on payment of the full duty with which the instrument to which it relates is chargeable, be relieved from any penalty he may have incurred under this Act by reason of the omission to state truly in such instrument any of the facts or circumstances aforesaid.

Certificate by Collector.

31. When an instrument brought to the Collector under section thirty is in his opinion one of a description chargeable with duty and

(*a*) the Collector determines that it is already fully stamped, or

(*b*) the duty determined by the Collector under section thirty, or such a sum as, with the duty already paid in respect of the instrument, is equal to the duty so determined, has been paid,

the Collector shall certify by endorsement on such instrument that the full duty (stating the amount) with which it is chargeable has been paid.

When such instrument is in his opinion not chargeable with duty, the Collector shall certify in manner aforesaid that such instrument is not so chargeable.

Any instrument upon which an endorsement has been made under this section shall be deemed to be duly stamped, or not chargeable with duty, as the case may be; and if chargeable with duty, shall be receivable in evidence or otherwise, and may be acted upon and registered as if it had been originally duly stamped:

Nothing in this section shall authorize the Collector to endorse—

any instrument executed or first executed in British India and brought to him after the expiration of one month from the date of its execution or first execution (as the case may be);

any instrument executed or first executed out of British India and brought to him after the expiration of three months after it has been first received in British India; or

any instrument chargeable with the duty of one anna, or any bill of exchange or promissory note, when brought to him after the drawing or execution thereof on paper not duly stamped.

Payment of fees under section 30 how made.

32. Every payment of a fee under section thirty shall be made in stamps, or cash, as the Governor General in Council may by rule direct.

CHAPTER IV.

INSTRUMENTS NOT DULY STAMPED.

Examination and impounding of instruments.

33. Every person having by law or consent of parties authority to receive evidence, and

every person in charge of a public office except an officer of Police,

before whom any instrument chargeable in his opinion with duty is produced or comes, in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.

For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in British India when such instrument was executed or first executed.

Provided that nothing herein contained shall be deemed to require any Magistrate or Judge of a criminal Court to examine or impound any instrument coming before him in the course of any proceeding other than a proceeding under chapter forty or chapter forty-one of the Code of Criminal Procedure, or chapter eighteen of the Presidency Magistrates Act:

Provided also that, in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.

The Local Government may from time to time, in cases of doubt, determine who shall be deemed to be, for the purpose of this section, persons in charge of public offices.

Instruments not duly stamped inadmissible in evidence, &c.

34. No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped:

Proviso.

Provided that—

Instruments admissible on payment of duty and penalty,

1st, any such instrument, not being an instrument chargeable with a duty of one anna only or a bill of exchange or promissory note, shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable or (in the case of an instrument insufficiently stamped) of the amount required to make up such duty, together with a penalty of five rupees, or when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;

and in certain criminal proceedings.

2nd, nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a criminal Court other than a proceeding under chapter forty or chapter forty-one of the Code of Criminal Procedure, or chapter eighteen of the Presidency Magistrates Act;

Admission of instrument not to be questioned.

3rd, when an instrument has been admitted in evidence, such admission shall not, except as provided in section fifty, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.

Instruments impounded how dealt with.

35. When the person impounding an instrument under section thirty-three has by law or consent of parties authority to receive evidence and admits such instrument in evidence upon payment of a penalty as provided by section thirty-four, he shall send to the Collector an authenticated copy of such instrument, together with a certificate in writing, stating the amount of the duty and penalty levied in respect thereof, and shall send such amount to the Collector, or to such person as he may appoint in this behalf.

In every other case, the person so impounding an instrument shall send it in original to the Collector.

36. When a copy of an instrument is sent to a Collector under the first paragraph of section thirty-five, he may, if he thinks fit, upon application made to him in this behalf, refund any portion of the penalty in excess of five rupees which has been paid in respect of such instrument, or

Collector's power to refund penalty paid under section 35, 1st para.

when such instrument has been impounded only because it has been written in contravention of section twelve, or section thirteen, he may refund the whole penalty so paid.

37. When the Collector impounds any instrument under section thirty-three, or receives any instrument sent to him under the second clause of section thirty-five, he shall adopt the following procedure :—

Collector's power to stamp instruments impounded.

(*a.*) If he is of opinion that such instrument is duly stamped, or is not chargeable with duty, he shall certify by endorsement thereon that it is duly stamped, or that it is not so chargeable (as the case may be), and shall upon application made to him in this behalf deliver such instrument to the person from whose possession it came into the hands of the officer impounding it, or as such person may direct.

(*b.*) If the Collector is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of five rupees ; or if ten times the amount of the proper duty or of the deficient portion thereof exceeds five rupees, then such penalty, not less than five rupees and not more than ten times the amount of such duty or portion, as he thinks fit :

Provided that, when such instrument has been impounded only because it has been written in contravention of section twelve or section thirteen, the Collector may, if he thinks fit, remit the whole penalty prescribed by this section.

Every certificate under clause (*a*) of this section shall, for the purposes of this Act, be conclusive evidence of the matters stated therein.

Nothing in this section applies to an instrument chargeable with a duty of one anna only, or to a bill of exchange or promissory note.

38. If any instrument chargeable with duty and which is not duly stamped is produced by any person of his own motion before the Collector within one year from the date of its execution or first execution, and such person brings to the notice of the Collector the fact that such instrument is not duly stamped, and offers to pay to the Collector the amount of the proper duty, or the amount required to make up the same, and the Collector is satisfied that the omission to duly stamp such instrument has been occasioned by accident, mistake or urgent necessity, he may, instead of proceeding under sections thirty-three and thirty-seven, receive such amount and proceed as next hereinafter prescribed.

Instruments unduly stamped by accident.

Nothing in this section applies to an instrument chargeable with a duty of one anna only or to a bill of exchange or promissory note.

39. When the duty and penalty (if any) leviable in respect of any instrument have been paid under section thirty-four, section thirty-seven or section thirty-eight, the person admitting such instrument in evidence, or the Collector (as the case may be), shall certify by endorsement thereon that the proper duty or (as the case may be) the proper duty and penalty (stating the amount of each) have been levied in respect thereof, and the name and residence of the person paying them.

Endorsement of instruments on which duty has been paid under section 34, 37 or 38.

Every instrument so endorsed shall thereupon be admissible in evidence, and may be registered and acted upon and authenticated as if it had been duly stamped, and shall be delivered on his application in this behalf to the person from whose possession it came into the hands of the officer impounding it, or as such person may direct :

Provided that no instrument which has been admitted in evidence upon payment of duty and a penalty under section thirty-four shall be so delivered before the expiration of one month from the date of such impounding, or if the Collector has certified that its further detention is necessary and has not cancelled such certificate :

Provided also that nothing in this section shall affect the Code of Civil Procedure, section 144, clause 3.

40. The payment of a penalty under this chapter in respect of an instrument shall not bar the prosecution of any person who appears to have committed an offence against the stamp-law in respect of such instrument :

Prosecution for offence against stamp-law.

But no such prosecution shall be instituted in the case of any instrument in respect of which such a penalty has been paid, unless it appears to the Collector that the offence was committed with an intention of evading payment of the proper duty.

Proviso.

41. When any duty or penalty has been paid, under section thirty-four, section thirty-seven or section thirty-eight, by any person in respect of an instrument, and by agreement, or under the provisions of section twenty-nine or any other enactment in force at the time such instrument was executed, some other person was bound to bear the expense of providing the proper stamp for such instrument, the first-mentioned person shall be entitled to recover from such other person the amount of the duty or penalty so paid ; and for the purpose of such recovery any certificate granted in respect of such instrument under section thirty-nine shall be conclusive evidence of the matters therein certified.

Persons paying duty or penalty may recover same in certain cases.

42. When any penalty is paid under section thirty-four or thirty-seven, the Chief Controlling Revenue-Authority may, upon application in writing made within one year from the date of the payment, refund such penalty wholly or in part.

Remission of penalty paid under section 34 or 37.

43. If any instrument sent to a Collector under the second paragraph of section thirty-five be lost, destroyed or damaged during transmission, the person sending the same shall not be liable for such loss, destruction or damage.

Non-liability for loss of instruments sent under section 35.

When any instrument is about to be so sent, the person from whose possession it came into the hands of the person impounding the same may require a copy thereof to be made at the expense of such first-mentioned person and authenticated by the person impounding such instrument.

Copy may be made of instrument so sent.

44. When any bill of exchange or promissory note chargeable with the duty of one anna, or any cheque, is presented for payment unstamped, the person to whom it is so presented may affix thereto the necessary adhesive stamp, and upon cancelling the same in manner hereinbefore provided may pay the sum payable upon such bill, note or cheque, and may charge the duty against the person who ought to have paid the same, or deduct it from the sum payable as aforesaid, and such bill, note or cheque shall, so far as respects the duty, be deemed good and valid.

Power of payee to stamp bills, notes and cheques received by him unstamped.

But nothing herein contained shall relieve any person from any penalty he may have incurred in relation to such bill, note or cheque.

CHAPTER V.

REFERENCE AND REVISION.

45. If any Collector acting under section thirty, section thirty-seven or section thirty-eight feels doubt as to the amount of duty with which any instrument is chargeable, he may draw up a statement of the case, and refer it, with his own opinion thereon, for the decision of the Chief Controlling Revenue-Authority, and such Authority shall consider the case and send a copy of its decision to the Collector, and he shall proceed to assess and charge the duty (if any) in conformity with such decision.

Procedure where Collector feels doubt as to duty chargeable.

46. The Chief Controlling Revenue-Authority may state any case referred to it under section forty-five or otherwise coming to its notice and refer such case with its own opinion thereon, if the case arises in the territories for the time being administered by the Governor of Fort Saint George in Council or the Governor of Bombay in Council—to the High Court of Judicature at Madras or Bombay as the case may be : if it arises in the North-Western Provinces or Oudh—to the High Court of Judicature for the North-Western Provinces : if it arises in the territories for the time being administered by the Lieutenant-Governor of the Panjáb—to the Chief Court of the Panjáb : if it arises in the Central Provinces—to the High Court of Judicature at Bombay ; and if it arises in any other part of British India—to the High Court of Judicature at Fort William.

Reference by Revenue Authority to High Court.

Every such case shall be decided by not less than three Judges of the High Court or Chief Court to which it is referred, and in case of difference the opinion of the majority shall prevail.

47. If the High Court or Chief Court is not satisfied that the statements contained in the case are sufficient to enable it to determine the questions raised thereby, the Court may refer the case back to the Revenue-Authority by which it was stated, to make such additions thereto or alterations therein as the Court may direct in that behalf.

Power of Court to call for further particulars.

48. The High Court or Chief Court, upon the hearing of any such case, shall decide the questions raised thereby and shall deliver its judgment thereon containing the grounds on which such decision is founded : and it shall send to the Revenue-Authority by which the case was stated, a copy of such judgment under the seal of the Court and the signature of the Registrar, and the Revenue-Authority shall, on receiving such copy, dispose of the case conformably to such judgment.

Procedure in disposing of reference.

49. If any Court other than a Court mentioned in section forty-six feels doubt as to the amount of duty to be paid in respect of any instrument under the first proviso to section thirty-four, the Judge may draw up a statement of the case and refer it with his own opinion thereon for the decision of the High Court or Chief Court to which, if he were the Chief Controlling Revenue-Authority, he would under section forty-six refer the same, and such Court shall deal with the case as if it had been referred under section forty-six, and send a copy of its judgment under the seal of the Court and the signature of the Registrar to the Judge making the reference, who shall, on receiving such copy, dispose of the case conformably to such judgment.

Reference by other Courts to High Court.

References made under this section, when made by a Court subordinate to a District Court, shall be made through the District Court, and when made by any subordinate Revenue Court shall be made through the Court immediately superior.

50. When any Court in the exercise of civil or revenue jurisdiction makes any order admitting any instrument in evidence as duly stamped or as not requiring a stamp, or upon payment of duty and a penalty under section thirty-four, the Court to which appeals lie from, or references are made by, such first-mentioned Court may, of its own motion or on the application of the Collector, take such order into consideration ; and if it is of opinion that such instrument should not have been admitted in evidence without the payment of duty and penalty under section thirty-four, or without the payment of a higher duty and penalty than those paid, may record a declaration to that effect, and determine the amount of duty with which such instrument is chargeable, and may require any person in whose possession or power such instrument then is to produce the same, and may impound the same when produced.

Revision of certain decisions of Courts regarding the sufficiency of stamps.

When any declaration has been recorded under this section, the Court recording the same shall send a copy thereof to the Collector and, where the instrument to which it relates has been impounded or is otherwise in the possession of such Court, shall also send him such instrument ; and thereupon the Collector may, notwithstanding anything contained in the order admitting such instrument in evidence, or in any certificate granted under section thirty-nine, or in section forty, prosecute any person for any offence against the stamp-law which the Collector considers him to have committed in respect of such instrument :

Provided that no such prosecution shall be instituted where the amount (including duty and penalty) which according to the determination of such

Court was payable in respect of the instrument under section thirty-four is paid to the Collector, unless he thinks that the offence was committed with an intention of evading payment of the proper duty:

Provided also that, except for the purposes of such prosecution, no declaration made under this section shall affect the validity of any order admitting any instrument in evidence, or of any certificate granted under section thirty-nine.

CHAPTER VI.

ALLOWANCES FOR SPOILED STAMPS AND STAMPS NO LONGER REQUIRED.

Allowance for spoiled stamps.

51. Subject to such rules as may be made by the Governor General in Council as to the evidence which the Collector may require, allowance shall be made by the Collector for impressed stamps spoiled in the cases hereinafter mentioned, namely:—

(*a*.) The stamp on any paper inadvertently and undesignedly spoiled, obliterated or by any means rendered unfit for the purpose intended, before any instrument written thereon is executed by any person:

(*b*.) The stamp used or intended to be used for any bill of exchange, cheque or promissory note, signed by or on behalf of the drawer or intended drawer, but not delivered out of his hands to the payee or intended payee, or any person on his behalf, or deposited with any person as a security for the payment of money, or in any way negotiated, issued or put in circulation, or made use of in any other manner, and which, being a bill of exchange or cheque, has not been accepted by the drawee, and provided that the paper on which any such stamp is impressed does not bear any signature intended as or for the acceptance of any bill of exchange or cheque to be afterwards written thereon:

(*c*.) The stamp used or intended to be used for any bill of exchange, cheque or promissory note signed by, or on behalf of, the drawer thereof, but which from any omission or error has been spoiled or rendered useless, although the same, being a bill of exchange or cheque, may have been presented for acceptance or accepted or endorsed, or, being a promissory note, may have been delivered to the payee, provided that another completed and duly stamped bill of exchange, cheque or promissory note is produced identical in every particular, except in the correction of such omission or error as aforesaid, with the spoiled bill, cheque or note:

(*d*.) The stamp used for any of the following instruments, that is to say:—

(1) an instrument executed by any party thereto, but afterwards found by a competent Court to be absolutely void in law from the beginning:

(2) an instrument executed by any person, but afterwards found unfit, by reason of any error or mistake therein, for the purpose originally intended:

(3) an instrument executed by any party thereto, but which, by reason of the death of any person, by whom it is necessary that it should be executed, without having executed the same, or of the refusal of any such person to execute the same, or to advance any money intended to be thereby secured, cannot be completed so as to effect the intended transaction in the form proposed:

(4) an instrument executed by any party thereto which, for want of the execution thereof by some material party, and his inability or refusal to sign the same, is in fact incomplete and insufficient for the purpose for which it was intended:

(5) an instrument executed by any party thereto which, by reason of the refusal of any person to act under the same, or by the refusal or non-acceptance of any office thereby granted, totally fails of the intended purpose:

(6) an instrument executed by any party thereto which becomes useless in consequence of the transaction intended to be thereby effected being effected by some other instrument duly stamped:

(7) an instrument executed by any party thereto which is inadvertently and undesignedly spoiled, and in lieu whereof another instrument made between the same parties and for the same purpose is executed and duly stamped:

Provided that in the case of an executed instrument—

(*a*) such instrument is given up to be cancelled:

(*b*) the application for relief is made within six months after the date of the instrument or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed, except where from unavoidable circumstances any instrument for which another instrument has been substituted cannot be given up to be cancelled within the aforesaid period, and in that case within six months after the date or execution of the substituted instrument, and except where the spoiled instrument has been sent out of British India, and in that case within six months after it has been received back in British India:

Provided also that, in the case of stamped paper not having any executed instrument written thereon, the application for relief is made within six months after the stamp has been spoiled as aforesaid.

Allowance for misused stamps.

52. When any person has inadvertently used, for an instrument chargeable with duty, a stamp of a description other than that prescribed for such instrument by the rules made under this Act, or a stamp of greater value than was necessary, or has inadvertently used any stamp for an instrument not chargeable with any duty, or when any stamp used for an instrument has been inadvertently rendered useless under section fourteen owing to such instrument having been written in contravention of the provi-

sions of section twelve, the Collector may, on application made within six months after the date of the instrument or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed, and upon the instrument, if chargeable with duty, being re-stamped with the proper duty, cancel and allow as spoiled the stamp so misused or rendered useless.

Allowance under sections 51 and 52 how to be made.

53. In any case in which allowance is made for spoiled or misused stamps, the Collector may give in lieu thereof (*a*) other stamps of the same description and value, or, (*b*) if required, and he thinks fit, stamps of any other description to the same amount in value, or (*c*) at his discretion, the same value in money, deducting one anna for each rupee or fraction of a rupee.

Allowance for stamps not required for use.

54. When any person is possessed of a stamp which has not been spoiled or rendered unfit or useless for the purpose intended, but for which he has no immediate use, the Collector shall repay to such person the value of such stamp in money, deducting one anna for each rupee or portion of a rupee, upon such person delivering up the same to be cancelled, and proving to the Collector's satisfaction that it was purchased by such person with a *bonâ fide* intention to use it, and that he has paid the full price thereof, and that it was so purchased within the period of six months next preceding the date on which it is so delivered.

CHAPTER VII.

SUPPLEMENTAL PROVISIONS.

Powers to make rules relating to sale of stamps.

55. The Local Government, subject to the control of the Governor General in Council, may make rules consistent herewith for regulating the supply and sale of stamps and stamped papers, the persons by whom alone such sale is to be conducted, and the duties and remuneration of such persons.

Power to make rules generally to carry out Act.

56. The Governor General in Council may make rules consistent herewith to carry out generally the purposes of this Act.

Certain powers exercisable from time to time.

57. All powers to make appointments, rules and orders conferred by this Act may be exercised from time to time as occasion requires.

Publication of rules.

All rules made under this Act other than rules made under section fifty-five shall be published in the *Gazette of India*, and all rules made under section fifty-five shall be published in the local Gazette. All rules published as required by this section shall, upon such publication, have the force of law.

Obligation to give receipt in certain cases.

58. Any person receiving any money exceeding twenty rupees in amount, or any bill of exchange, cheque or promissory note for an amount exceeding twenty rupees, or receiving in satisfaction of a debt any moveable property exceeding twenty rupees in value shall, on demand by the person paying or delivering such money, bill, cheque, note or property, give a duly stamped receipt for the same.

Saving as to Court-fees.

59. Nothing herein contained shall be deemed to affect the duties chargeable under any enactment for the time being in force relating to Court-fees.

Act to be translated, indexed and sold cheaply.

60. Every Local Government shall cause this Act to be carefully translated into the principal vernacular languages of the territories administered by it. A full alphabetical index shall be added to every such translation, and the translation and index shall be printed and sold to the public at a price not exceeding four annas per copy.

CHAPTER VIII.

CRIMINAL OFFENCES AND PROCEDURE.

Penalty for executing, &c., instrument not duly stamped.

61. Any person drawing, making, issuing, endorsing or transferring, or signing otherwise than as a witness, or presenting for acceptance or payment, or accepting, paying or receiving payment of, or in any manner negotiating, any bill of exchange, cheque or promissory note without the same being duly stamped,

any person executing or signing otherwise than as a witness any other instrument chargeable with duty without the same being duly stamped, and

any person voting or attempting to vote under any proxy not duly stamped,

shall for every such offence be punished with fine which may extend to five hundred rupees:

Provided that, when any penalty has been paid in respect of any instrument under section thirty-four, section thirty-seven or section fifty, the amount of such penalty shall be allowed in reduction of the fine (if any) subsequently imposed under this section in respect of the same instrument upon the person who paid such penalty.

Penalty for failure to cancel adhesive stamp.

62. Any person required by section eleven to cancel an adhesive stamp and failing to cancel such stamp in manner prescribed by that section shall be punished with fine which may extend to one hundred rupees.

Penalty for omission to comply with provisions of section 27.

63. Any person who, with intent to defraud the Government of any duty,

(*a*) executes any instrument in which all the facts and circumstances required by section twenty-seven to be set forth in such instrument are not fully and truly set forth, or

(*b*) being employed or concerned in or about the preparation of any instrument, neglects or omits, fully and truly to set forth therein all such facts and circumstances,

shall be punished with fine which may extend to five thousand rupees.

64. Any person who, being required under section fifty-eight to give a receipt, refuses or neglects to give the same, or who, with intent to defraud the Government of any duty, upon a payment of money or delivery of property exceeding twenty rupees in amount or value, gives a receipt for an amount or value not exceeding twenty rupees, or separates or divides the money or property paid or delivered, shall be punished with fine which may extend to one hundred rupees.

Penalty for refusal to give receipt and for devices to evade duty on receipts.

65. Every person who—

(*a*) receives, or takes credit for, any premium or consideration for any contract of insurance, and does not, within one month after receiving, or taking credit for, such premium or consideration, make out and execute a duly stamped policy of such insurance; or

Penalty for not making out policy,

(*b*) makes, executes or delivers out any policy which is not duly stamped, or pays or allows in account, or agrees to pay or allow in account, any money upon, or in respect of, any such policy,

or making, &c., any policy not duly stamped.

shall be punished with fine which may extend to two hundred rupees.

66. Any person drawing or executing a bill of exchange or a policy of marine insurance purporting to be drawn or executed in a set of two or more, and not at the same time drawing or executing on paper duly stamped the whole number of bills or policies of which such bill or policy purports the set to consist, shall be punished with fine which may extend to one thousand rupees.

Penalty for not drawing full number of bills or marine policies purporting to be in sets.

67. Whoever, with intent to defraud the Government of duty, draws, makes or issues any bill of exchange or promissory note bearing a date subsequent to that on which such bill or note is actually drawn or made, and whoever, knowing that such bill or note has been so post-dated, endorses, transfers, presents for acceptance or payment, or accepts, pays or receives payment of, such bill or note, or in any manner negotiates the same,

Penalty for post-dating bills, &c.;

and whoever, with the like intent, practises or is concerned in any act, contrivance or device not specially provided for by this Act or any other law for the time being in force,

for other devices to defraud the revenue.

shall be punished with fine which may extend to one thousand rupees.

68. Any person appointed to sell stamps who disobeys any rule made under section fifty-five, and any person not so appointed who sells or offers for sale any stamp, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Penalty for breach of rule relating to sale of stamps and for unauthorized sale.

69. No prosecution in respect of any offence punishable under this Act, or the General Stamp Act, 1869, or any Act thereby repealed, shall be instituted without the sanction of the Collector or such other officer as the Local Government generally, or the Collector specially, authorizes in that behalf.

Institution and conduct of prosecutions.

The Chief Controlling Revenue-Authority, or any officer authorized by it in this behalf, may stay any such prosecution or compound any such offence.

70. No Magistrate other than a Presidency Magistrate and a Magistrate whose powers are not less than those of a Magistrate of the second class shall try any offence under this Act.

Jurisdiction of Magistrates.

71. Every such offence committed in respect of any instrument may be tried in any district or Presidency-town in which such instrument is found, as well as in any district or Presidency-town in which such offence might be tried under the law relating to criminal procedure for the time being in force.

Place of trial.

72. Nothing in this Act shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act, or the rules made under it:

Operation of other laws not barred.

Provided that no person shall be punished twice for the same offence.

SCHEDULE I.

DESCRIPTION OF INSTRUMENT.		PROPER STAMP-DUTY.
1. ACKNOWLEDGMENT of a debt exceeding twenty rupees in amount or value, written or signed by or on behalf of a debtor or in order to supply evidence of such debt in any book (other than a banker's pass-book) or on a separate piece of paper, when such book or paper is left in the creditor's possession		One anna.
2. ADMINISTRATION-BOND		The same duty as a Security-Bond (No. 14).
ADOPTION DEED ...	See *Instrument, No. 38.*	
3. AFFIDAVIT or declaration in writing on oath or affirmation made before a person authorized by law to administer an oath		One rupee.
See Exemptions, Schedule II (No 1).		
4. AGREEMENT TO LEASE		The same duty as a Lease (No. 39).
5. AGREEMENT OR MEMORANDUM OF AN AGREEMENT ...	(*a.*) If relating to the sale of any Government security, share in a Company or Association or Bill of Exchange ...	One anna.
	(*b.*) Whereby the owner or occupier of land in a village in the Bombay Presidency agrees to relinquish his rights therein to the Government, and to accept rights in other land in exchange for the right so relinquished	Four annas.
See Exemptions, Schedule II (No. 2).	(*c.*) If not otherwise provided for by this Act...	Eight annas.
6. APPOINTMENT, in execution of a power, whether of trustees or of property moveable or immoveable, where made by any writing not being a Will		Fifteen rupees.
7. APPRAISEMENT or valuation made otherwise than under an order of the Court in the course of a suit		The same duty as an award (No. 10).
See Exemptions, Schedule II (Nos. 3 & 4).		
APPRENTICESHIP DEED ...	See *Instrument, No. 31.*	
8. ARTICLES OF ASSOCIATION OF A COMPANY		Twenty-five rupees.

SCHEDULE I—*continued.*

DESCRIPTION OF INSTRUMENT.		PROPER STAMP-DUTY.
9. ARTICLES OF CLERKSHIP or contract whereby any person first becomes bound to serve as a clerk in order to his admission as an Attorney in any High Court	... ...	Two hundred and fifty rupees.
ASSIGNMENT ...	See *Conveyance, No. 21 and Transfer, No. 60.*	
AUTHORITY TO ADOPT ...	See *Instrument, No. 38.*	
10. AWARD, that is to say, any decision in writing by an arbitrator or umpire on a reference made otherwise than by an order of the Court in the course of a suit ... *See Exemption, Schedule II (No. 6).*	(*a.*) Where the amount or value of the property to which the award relates as set forth in such award does not exceed Rs. 1,000 ...	The same duty as a Bond (No. 13) for such amount.
	(*b.*) In any other case ...	Five rupees.
11. BILL OF EXCHANGE OR PROMISSORY NOTE, not being a cheque, bond, bank-note or currency-note ...	(*a.*) When payable on demand and the amount exceeds Rs. 20	One anna.

(*b.*) When payable otherwise than on demand, but not more than one year after date or sight.	If drawn singly.	If drawn in set of two, for each part of the set.	If drawn in set of three, for each part of the set.
	Rs. A. P.	Rs. A. P.	Rs. A. P.
If the amount of the bill or note does not exceed Rs. 200	0 2 0	0 1 0	0 1 0
If it exceeds 200 and does not exceed 400	0 4 0	0 2 0	0 2 0
„ 400 „ 600	0 6 0	0 3 0	0 2 0
„ 600 „ 1,000	0 10 0	0 5 0	0 4 0
„ 1,000 „ 1,200	0 12 0	0 6 0	0 4 0
„ 1,200 „ 1,600	1 0 0	0 8 0	0 6 0
„ 1,600 „ 2,500	1 8 0	0 12 0	0 8 0
For every Rs. 2,500 or part thereof in excess of Rs. 2,500 up to Rs. 10,000 ...	1 8 0	0 12 0	0 8 0
For every Rs. 5,000 or part thereof in excess of Rs. 10,000 up to Rs. 30,000 ...	3 0 0	1 8 0	1 0 0
And for every Rs. 10,000 or part thereof in excess of Rs. 30,000...	6 0 0	3 0 0	2 0 0

SCHEDULE I—*continued.*

DESCRIPTION OF INSTRUMENT.		PROPER STAMP-DUTY.
11. BILL OF EXCHANGE OR PROMISSORY NOTE, &c.—*contd.*	(*c*) When payable at more than one year after date or sight	The same duty as a Bond (No. 13) for the amount of such bill or note.
12. BILL OF LADING		Four annas. If a Bill of Lading is drawn in parts, the proper stamp therefor must be borne by each one of the set.
See Exemption, Schedule II (No. 7).		
13. BOND (not otherwise provided for by this Act) ... *See Administration-Bond (No. 2), Customs-Bond (No. 24), Indemnity-Bond (No. 28), Security-Bond (No. 14).* *See Exemptions, Schedule II (No. 8).*	When the amount or value secured does not exceed Rs. 10	Two annas.
	When such amount or value exceeds Rs. 10, but does not exceed 50	Four annas.
	When such amount or value exceeds Rs. 50, but does not exceed 100	Eight annas.
	and for every Rs. 100 or part thereof in excess of Rs. 100 up to 1,000	Eight annas.
	and for every Rs. 500 or part thereof in excess of 1,000	Two rupees eight annas.
14. BOND OR MORTGAGE-DEED executed by way of security for the due execution of an office, or to account for money received by virtue thereof ... *See Exemptions, Schedule II (Nos. 8 and 12).*	(*d.*) When the amount secured does not exceed ... 1,000	The same duty as a Bond (No. 13).
	(*b.*) In any other case ...	Five rupees.
15. BOTTOMRY-BOND, that is to say, any instrument whereby the master of a sea-going ship borrows money on the security of the ship to enable him to preserve the ship or prosecute her voyage		The same duty as a Bond (No. 13).
16. CERTIFICATE OF SALE, granted to the purchaser of any property sold by public auction by a Civil or Revenue Court, or Collector or other Revenue-officer		The same duty as a Conveyance (No. 21) for a consideration equal to the amount of the purchase-money.

SCHEDULE I—*continued.*

DESCRIPTION OF INSTRUMENT.			PROPER STAMP-DUTY.
17. CERTIFICATE OR OTHER DOCUMENT evidencing the right or title of the holder thereof, or any other person, either to any shares, scrip or stock in or of any Company or Association, or to become proprietor of shares, scrip or stock in or of any Company or Association ...	...	...	One anna.
18. CHARTER-PARTY, that is to say, any instrument (except an agreement for the hire of a tug-steamer) whereby a vessel or some specified principal part thereof is let for the specified purposes of the charterer ...	...	...	One rupee.
19. CHEQUE, for an amount exceeding twenty rupees ...	...	...	One anna.
20. COMPOSITION-DEED, that is to say, any instrument executed by a debtor whereby he conveys his property for the benefit of his creditors, or whereby payment of a composition or dividend on their debts is secured to the creditors, or whereby provision is made for the continuance of the debtor's business, under the supervision of inspectors or under letters of license, for the benefit of his creditors	...	...	Ten rupees.
21. CONVEYANCE, not being a TRANSFER mentioned in No. 60. *See Exemptions, Schedule II, (Nos. 5 and 17).*	When the amount of the consideration for such conveyance as set forth therein does not exceed Rs.	50	Eight annas.
	When it exceeds Rs. 50 but does not exceed...	100	One rupee.
	For every Rs. 100 or part thereof in excess of Rs. 100 up to ...	1,000	One rupee.
	and for every Rs. 500 or part thereof in excess of ...	1,000	Five rupees.

SCHEDULE I—*continued.*

DESCRIPTION OF INSTRUMENT.		PROPER STAMP-DUTY.
CO-PARTNERSHIP...	See *Instrument, No. 32.*	
22. COPY OR EXTRACT, certified to be a true copy or extract, by or by order of any public officer and not chargeable under the law for the time being in force relating to Court-fees ...	(*a.*) If the original was not chargeable with duty, or if the duty with which it was chargeable does not exceed one rupee. ...	Eight annas.
	(*b.*) In any other case ...	One rupee.
See Exemptions, Schedule II (Nos. 9 and 10).		
23. COUNTERPART OR DUPLICATE of any instrument chargeable with duty, and in respect of which the proper duty has been paid ...	(*a.*) If the duty with which the original instrument is chargeable does not exceed one rupee.	The same duty as is payable on the original.
	(*b.*) In any other case ...	One rupee.
24. CUSTOMS-BOND ...	... ...	The same duty as a Security-Bond (No. 14).
25. DECLARATION OF ANY TRUST of or concerning any property, when made by any writing not being a will ...	... ...	Fifteen rupees.
26. DELIVERY-ORDER IN RESPECT OF GOODS, that is to say, any instrument entitling any person therein named, or his assigns, or the holder thereof, to the delivery of any goods lying in any dock or port, or in any warehouse in which goods are stored or deposited on rent or hire, or upon any wharf, such instrument being signed by or on behalf of the owner of such goods, upon the sale or transfer of the property therein, when such goods exceed in value twenty rupees ...	... ...	One anna.
DEPOSIT OF TITLE-DEEDS ...	See *Instrument, No. 29.*	
DISSOLUTION OF PARTNERSHIP ...	See *Instrument, No. 33.*	
DUPLICATE ...	See *Counterpart, No. 23.*	

SCHEDULE I—*continued.*

DESCRIPTION OF INSTRUMENT.		PROPER STAMP-DUTY.
27. ENTRY AS AN ADVOCATE, VAKÍL OR ATTORNEY ON THE ROLL OF ANY HIGH COURT in exercise of powers conferred on such Court by letters patent ...	In the case of an Advocate or Vakíl	Five hundred rupees.
	In the case of an Attorney ...	Two hundred and fifty rupees.
See Exemption, Schedule II (No. 11).		
EXCHANGE ...	See *Instrument, No. 35.*	
EXTRACT ...	See *Copy, No. 22.*	
FURTHER CHARGE ...	See *Instrument, No. 30.*	
GIFT ...	See *Instrument, No. 36.*	
28. INDEMNITY-BOND		The same duty as a Security-Bond (No. 14).
INSPECTORSHIP-DEED	See *Composition-deed, No. 20.*	
29. INSTRUMENT EVIDENCING AN AGREEMENT TO SECURE THE REPAYMENT OF A LOAN made upon the deposit of title-deeds or other valuable security, or upon the hypothecation of moveable property ...	(*a.*) When such loan is repayable more than three months, but not more than one year, from the date of such instrument.	The same duty as a Bill of Exchange (No. 11 (*b*)) for the amount secured.
	(*b.*) When such loan is repayable not more than three months from the date of such instrument.	Half the duty payable on a Bill of Exchange (No. 11 (*b*)) for the amount secured.
30. INSTRUMENT IMPOSING A FURTHER CHARGE ON MORTGAGED PROPERTY ...	(*a.*) When the original mortgage is one of the description referred to in No. 44, clause (*a*), of this schedule.	The same duty as a Conveyance (No. 21) for a consideration equal to the amount secured by such instrument.
	(*b.*) When such mortgage is one of the description referred to in No. 44, clause (*b*), of this schedule.	The same duty as a Bond (No. 13) for the amount secured by such instrument.
31. INSTRUMENT OF APPRENTICESHIP, including every writing relating to the service or tuition of any apprentice, clerk or servant, placed with any master to learn any profession, trade or employment, except articles of clerkship (No. 9 of this schedule)		Five rupees.
See Exemption, Schedule II (No. 12 (c)).		
32. INSTRUMENT OF CO-PARTNERSHIP		Ten rupees.
33. INSTRUMENT OF DISSOLUTION OF PARTNERSHIP		Five rupees.
34. INSTRUMENT OF DIVORCE, that is to say, any instrument by which any person effects the dissolution of his marriage		One rupee.

SCHEDULE I—*continued.*

DESCRIPTION OF INSTRUMENT.		PROPER STAMP-DUTY.
35. INSTRUMENT OF EXCHANGE of any property		The same duty as a Conveyance (No. 21) for a consideration equal to the value of the property of greater value as set forth in such instrument.
36. INSTRUMENT OF GIFT (OTHER THAN A SETTLEMENT OR WILL)		The same duty as a Conveyance (No. 21) for a consideration equal to the value of the property as set forth in such instrument.
37. INSTRUMENT OF PARTITION		The same duty as a Bond (No. 13) for the amount of the value of the property divided as set forth in such instrument.
38. INSTRUMENT (OTHER THAN A WILL) CONFERRING OR PURPORTING TO CONFER AN AUTHORITY TO ADOPT		Ten rupees.
INSURANCE ...	See *Policy, No. 49.*	
39. LEASE. See *Agreement to lease (No. 4).* See *Exemptions, Schedule II (No. 13).*	(*a*) Where by such lease the rent is fixed and no premium is paid or delivered and such lease purports to be for a term—	
	of less than one year ...	The same duty as a Bond (No. 13) for the whole amount payable or deliverable under such lease.
	of not less than one year, but not more than three years ...	The same duty as a Bond (No. 13) for the average annual rent reserved.
	exceeding three years ...	The same duty as a Conveyance (No. 21) for a consideration equal to the amount or value of the average annual rent reserved.

SCHEDULE I—*continued.*

DESCRIPTION OF INSTRUMENT.		PROPER STAMP-DUTY.
39. LEASE,—*contd.* See *Agreement to lease (No. 4).* See *Exemptions, Schedule II (No. 13).*	(*b*) Where by such lease the rent is fixed and no premium is paid or delivered and such lease does not purport to be for any definite term ...	The same duty as a Conveyance (No. 21) for a consideration equal to the amount or value of the average annual rent which would be paid or delivered for the first ten years if the lease continued so long.
	(*c*) Where the lease is granted for a fine or premium, and where no rent is reserved...	The same duty as a Conveyance (No. 21) for a consideration equal to the amount or value of such fine or premium as set forth in the lease.
	(*d*) Where the lease is granted for a fine or premium in addition to rent reserved ...	The same duty as a Conveyance (No. 21) for a consideration equal to the amount or value of such fine or premium as set forth in the lease, in addition to the duty which would have been payable on such lease if no fine or premium had been paid or delivered: Provided that, when an agreement to lease is stamped with the *ad valorem* stamp required for a lease, and a lease in pursuance of such agreement is subsequently executed, the duty on such lease shall not exceed eight annas.
40. LETTER OF ALLOTMENT OF SHARES in any Company, or proposed Company, or in respect of any loan to be raised by any Company or proposed Company		One anna.
41. LETTER OF CREDIT, that is to say, any instrument by which one person authorizes another to give credit to the person in whose favour it is drawn ...		One anna.

SCHEDULE I—*continued.*

DESCRIPTION OF INSTRUMENT.		PROPER STAMP-DUTY.
42. LETTER OF LICENSE, that is to say, any agreement between a debtor and his creditors that the latter shall, for a specified time, suspend their claims and allow the debtor to carry on business at his own discretion		Ten rupees.
43. MEMORANDUM OF ASSOCIATION OF A COMPANY		Fifteen rupees.
44. MORTGAGE-DEED not provided for by No. 14, No. 15, No. 29 or No. 55 of this schedule. See *Exemptions, Schedule II, No. 12, and No. 14 (b).*	(*a*) When at the time of execution possession of the property or any part of the property comprised in such deed is given by the mortgagor or agreed to be given ...	The same duty as a Conveyance (No. 21) for a consideration equal to the amount secured by such deed.
	(*b*) When at the time of execution possession is not given or agreed to be given as aforesaid ...	The same duty as a Bond (No. 13) for the amount secured by such deed.
45. NOTARIAL ACT, that is to say, any instrument, endorsement, note, attestation, certificate or entry made or signed by a Notary Public in the execution of the duties of his office or by any other person lawfully acting as a Notary Public		One rupee.
46. NOTE OR MEMORANDUM sent by a Broker or Agent to his principal intimating the purchase or sale on account of such principal of any goods, stock or marketable security exceeding in value twenty rupees		One anna.

SCHEDULE I—*continued.*

DESCRIPTION OF INSTRUMENT.		PROPER STAMP-DUTY.
47. NOTE OF PROTEST BY THE MASTER OF A SHIP		Eight annas.
PARTITION ...	See *Instrument, No. 37.*	
PARTNERSHIP ...	See *Instrument, Nos. 32 and 33.*	
48. PETITION FOR LEAVE TO FILE A SPECIFICATION OF AN INVENTION, or for the extension of the term of the exclusive privilege of making or using or selling such invention in India		One hundred rupees.

		If drawn singly.	If drawn in duplicate, for each part.
		Rs. A. P.	Rs. A. P.
49. POLICY OF INSURANCE ... *See Exemption, Schedule II (No. 14 (a)).*	(a). In the case of Sea-insurance— When the amount insured does not exceed ... ... Rs. 1,000	0 4 0	0 2 0
	And for every further sum of Rs. 1,000 or part thereof in excess of 1,000	0 4 0	0 2 0
	(b). In the case of any other insurance— When the amount insured does not exceed 1,000	0 6 0	0 3 0
	And for every further sum of Rs. 1,000 or part thereof in excess of 1,000	0 6 0	0 3 0

50. POWER-OF-ATTORNEY, not being a proxy chargeable under No. 51. ...	(a.) When executed for the sole purpose of procuring the presentation of one or more documents for registration in relation to a single transaction	Eight annas.
	(b.) When authorizing one person or more to act in a single transaction other than that mentioned in (a) ...	One rupee.

SCHEDULE I—*continued.*

DESCRIPTION OF INSTRUMENT.		PROPER STAMP-DUTY.
50. POWER-OF-ATTORNEY, not being a proxy chargeable under No. 51—*contd.*	(c.) When authorizing not more than five persons to act jointly and severally in more than one transaction or generally ...	Five rupees.
	(d.) When authorizing more than five but not more than ten persons to act jointly and severally in more than one transaction or generally	Ten rupees.
	(e.) In any other case	One rupee for each person authorized.
Explanation.—For the purposes of this number more persons than one when belonging to the same firm shall be deemed to be one person.		
PROMISSORY NOTE	See *Bill of Exchange, No. 11.*	
PROTEST, that is to say, any declaration in writing made by a Notary Public, or other person lawfully acting as such, attesting the dishonour of a bill of exchange or promissory note ...	See *Notarial Act, No. 45.*	
PROTEST BY THE MASTER OF A SHIP, that is to say, any declaration of the particulars of her voyage drawn up by him with a view to the adjustment of losses or the calculation of averages, and every declaration in writing made by him against charterers or the consignees for not loading or unloading the ship, when such declaration is attested or certified by a Notary Public or other person lawfully acting as such	See *Notarial Act, No. 45.*	
51. PROXY empowering any person to vote at any one meeting of— (a.) Members of a Company whose stock or funds is or are divided into shares and transferable: (b.) Municipal Commissioners: (c) Proprietors, Members or Contributors to the funds of any Institution	... ...	One anna.

SCHEDULE I—*continued.*

DESCRIPTION OF INSTRUMENT.		PROPER STAMP-DUTY.
52. RECEIPT FOR ANY MONEY OR OTHER PROPERTY THE AMOUNT OR VALUE OF WHICH EXCEEDS TWENTY RUPEES		One anna.
See Exemptions, Schedule II (No. 15).		
53. RE-CONVEYANCE OF MORTGAGED PROPERTY ...	(*a*) If the consideration for which the property was mortgaged does not exceed Rs. 1,000	The same duty as a Conveyance (No. 21) for the amount of such consideration as set forth in the re-conveyance.
	(*b*.) In any other case ...	Ten rupees.
54. RELEASE, that is to say, any instrument whereby a person renounces a claim upon another person or against any specified property ...	(*a*.) If the amount or value of the claim does not exceed 1,000	The same duty as a Bond (No. 13) for such amount or value as set forth in the release.
	(*b*.) In any other case ...	Five rupees.
55. RESPONDENTIA-BOND, that is to say, any instrument securing a loan on the cargo laden or to be laden on board a ship and making repayment contingent on the arrival of the cargo at the port of destination		The same duty as a Bond (No. 13).
56. REVOCATION OF ANY TRUST of or concerning any property by any instrument other than a will		Ten rupees.
57. SETTLEMENT		The same duty as a Bond (No. 13) for a sum equal to the amount or value of the property settled as set forth in such settlement.
58. SHIPPING-ORDER for or relating to the conveyance of goods on board of any vessel		One anna.
SPECIFICATION ...	See *Petition, No. 48.*	

SCHEDULE I—*concluded.*

DESCRIPTION OF INSTRUMENT.		PROPER STAMP-DUTY.
59. SURRENDER OF LEASE ...	(*a*.) When the duty with which the lease is chargeable does not exceed five rupees ...	The duty with which such lease is chargeable.
See Exemption Schedule II (No. 16).	(*b*.) In any other case	Five rupees.
60. TRANSFER ..	(*a*.) Of shares in a Company or Association	One-quarter of the duty payable on a Conveyance (No. 21).
	(*b*.) Of any interest secured by a Bond, Lease, Mortgage-deed or Policy of Insurance—	
	1. If the duty on such Bond, Lease, Mortgage-deed or Policy does not exceed five rupees	The duty with which such Bond, Lease, Mortgage-deed or Policy of Insurance is chargeable.
See Exemptions, Schedule II (No. 17).	2. In any other case ...	Five rupees.
	(*c*.) Of any property under the Administrator General's Act, 1874, section 31 ...	Ten rupees.
	(*d*.) Of any trust-property from one trustee to another trustee without consideration ...	Five rupees.
TRUST	See *Declaration, No. 25.* *Revocation, No. 56.*	
VALUATION ...	See *Appraisement, No. 7.*	
61. WARRANT FOR GOODS, that is to say, any instrument evidencing the title of any person therein named, or his assigns, or the holder thereof, to the property in any goods lying in or upon any dock, warehouse or wharf, such instrument being signed or certified by or on behalf of the person in whose custody such goods may be		Four annas.

SCHEDULE II.

INSTRUMENTS EXEMPTED FROM STAMP-DUTY.

1. Affidavit or declaration in writing when made—
   (*a*) as a condition of enlistment under the Indian Articles of War;
   (*b*) for the immediate purpose of being filed or used in any Court or before the officer of any Court; or
   (*c*) for the sole purpose of enabling any person to receive any pension or charitable allowance.

2. Agreement or memorandum of agreement—
   (*a*) for or relating to the sale of goods or merchandize exclusively, not being a note or memorandum chargeable under No. 46 of schedule I;
   (*b*) for service in British Burma under the Chief Commissioner of that Province entered into between Natives of India emigrating to British Burma and the Superintendent of State Emigration or other Government officer acting as representative of the said Chief Commissioner;
   (*c*) made by raiyats for the cultivation of the poppy for Government;
   (*d*) made in the form of tenders to the Government of India for or relating to any loan;
   (*e*) made regarding the occupancy of land denoted by a survey-number, and the payment of revenue therefor, under Bombay Act I of 1865;
   (*f*) made under the European Vagrancy Act, 1874, section 17.

3. Appraisement or valuation made for the information of one party only, and not being in any manner obligatory between parties either by agreement or operation of law.

4. Appraisement of crops for the purpose of ascertaining the amount to be given to a landlord as rent.

5. Assignment of copyright by entry made under Act No. XX of 1847, section 5.

6. Award under Bombay Act VI of 1873, section 81, or Bombay Act III of 1874, section 18.

7. Bill of lading, when the goods therein described are received at a place within the limits of any port as defined under the Indian Ports Act, 1875, and are to be delivered at another place within the limits of the same port.

8. Bond when executed by—
   (*a*) the sureties of middlemen (lambardárs or khattadárs) taking advances for the cultivation of the poppy for Government;
   (*b*) headmen nominated under rules framed in accordance with Bengal Act III of 1876, section 99, for the due performance of their duties under that Act;
   (*c*) any person for the purpose of guaranteeing that the local income derived from private subscriptions to a charitable dispensary or hospital or any other object of public utility shall not be less than a specified sum per mensem.

9. Copy of any paper which a public officer is expressly required by law to make or furnish for record in any public office or for any public purpose.

10. Copy of registration of emigrants furnished under section 27 or section 29 of the Indian Emigration Act, 1871.

11. Entry—
   (*a*) of an advocate, vakíl or attorney on the roll of any High Court, when he has previously been enrolled in a High Court established by Royal Charter;
   (*b*) on the roll of any High Court, as an attorney, of an articled clerk bound as such before this Act comes into force.

12. Instruments—
   (*a*) executed by persons taking advances under the Land Improvement Act, 1871, or by their sureties, as security for the repayment of such advances;
   (*b*) executed by officers of Government or their sureties to secure the due execution of an office or the due accounting for money received by virtue thereof;
   (*c*) of apprenticeship executed by a Magistrate under Act XIX of 1850 or by which a person is apprenticed by or at the charge of any public charity.

13. Leases and Counterparts—
   (*a*) Leases of fisheries granted under the Burma Fisheries Act, 1875;
   (*b*) Lease, executed in the case of a cultivator without the payment or delivery of any fine or premium, when a definite term is expressed and such term does not exceed one year, or when the annual rent reserved does not exceed one hundred rupees;
   (*c*) Counterpart of any lease granted to a cultivator.

14. Letter—
   (*a*) of cover or engagement to issue a policy of insurance:

   Provided that, unless such letter or engagement bear the stamp prescribed by this Act for such policy, nothing shall be claimable thereunder, nor shall it be available for any purpose except to compel the delivery of the policy therein mentioned.

   (*b*) of hypothecation accompanying a bill of exchange.

15. Receipt—
   (*a*) endorsed on or contained in any instrument duly stamped, or exempted under this schedule, No. 18, acknowledging the receipt of the consideration-money therein expressed, or the receipt of any principal-money, interest or annuity or other periodical payment thereby secured;
   (*b*) for any payment of money without consideration;
   (*c*) for any payment of rent by a cultivator on account of land assessed to Government revenue, or (in the Presidencies of Fort St. George and Bombay) of inám lands;
   (*d*) for pay by non-commissioned officers or soldiers of Her Majesty's Army, or Her Majesty's Indian Army, when serving in such capacity;
   (*e*) for pensions or allowances by persons receiving such pensions or allowances in respect of their service as such non-commissioned officers or soldiers, and not serving the Government in any other capacity;
   (*f*) given by holders of family-certificates in cases where the person from whose pay or allowances the sum comprised in the receipt has been assigned is a non-commissioned officer or soldier of either of the said Armies, and serving in such capacity;
   (*g*) given by a headman or lambardár for land-revenue or taxes collected by him;
   (*h*) given for money or securities for money deposited in the hands of any banker, to be accounted for:

   Provided the same be not expressed to be received of, or by the hands of, any other than the person to whom the same is to be accounted for;

   Provided also, that this exemption shall not extend to a receipt or acknowledgment for any sum paid or deposited for or upon a letter of allotment of a share, or in respect of a call upon any scrip or share of or in any Company or Association, or proposed or intended Company or Association.

16. Surrender of lease when such lease is exempted from duty.

17. Transfers by endorsement—
   (*a*) of a bill of exchange, cheque or promissory note;
   (*b*) of a bill of lading;
   (*c*) of a policy of insurance;
   (*d*) of mortgages of rates and taxes authorized by any Act for the time being in force in British India;
   (*e*) of securities of the Government of India;
   (*f*) of a warrant for goods (No. 61 of schedule I).

General Exemption.

18. Any instrument executed by, or on behalf of, or in favour of, Government in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument.

SCHEDULE III.

ACTS REPEALED.

Number and year.	Subject or short title.	Extent of repeal.
XX of 1847 ...	Copyright	In section five, the words "without being subject to any stamp or duty."
X of 1866 ...	The Indian Companies Act ...	In section eleven, the words "shall bear the same stamp as if it were a deed, and."
		In section sixteen, the words "they shall bear the same stamp as if they were contained in a deed."
XVIII of 1869 ...	The General Stamp Act ...	The whole.
VII of 1871 ...	The Indian Emigration Act	In sections twenty-seven and twenty-nine, the words "which shall not require a stamp."
XIX of 1873 ...	The North-Western Provinces Land-Revenue Act, 1873.	In section one hundred and eighty-three, the words "stamped or."
II of 1874 ...	The Administrator General's Act.	In section thirty-one, the words "bearing a stamp of ten rupees and."
IX of 1874 ...	The European Vagrancy Act	In section seventeen, the words "may be on unstamped paper and."
XV of 1876 ...	Bombay Municipal Debentures	In section two, the words "and no such indorsement shall be chargeable with any stamp-duty."

D. FITZPATRICK,
Secy. to the Govt. of India.

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☞ Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV.

Acts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 17th January, 1879, and is hereby promulgated for general information:—

ACT NO. I OF 1879.

THE STAMP ACT, 1879.

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An Act to consolidate and amend the law relating to Stamps.

CHAPTER I.

PRELIMINARY.

Short title. **1.** This Act may be called "The Indian Stamp Act, 1879:"

Local extent. It extends to the whole of British India;

Commencement. And it shall come into force on the first day of April 1879.

Repeal of enactments. **2.** On and after that day, the Acts specified in the third schedule shall be repealed to the extent specified in the third column of the same schedule. But all rules made under the General Stamp Act, 1869, and then in force shall, so far as they are consistent with this Act, be deemed to have been made hereunder. And all references made to the General Stamp Act, 1869, in enactments passed subsequently thereto, shall be deemed to be made to this Act.

Interpretation-clause. **3.** In this Act, unless there is something repugnant in the subject or context,—

"Banker." (1.) "Banker" includes a bank and any person acting as a banker:

"Bill of exchange." (2.) "Bill of exchange" includes a hundí:

"Bill of lading." (3.) "Bill of lading" means any instrument signed by the owner of a vessel or his agent, acknowledging the receipt of goods therein described, and undertaking to deliver the same at a place and to a person therein mentioned or indicated:

"Bond." (4.) "Bond" means—

(*a*) any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be;

(*b*) any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another; and

(*c*) any instrument so attested whereby a person obliges himself to deliver grain or other agricultural produce to another:

"Chargeable." (5.) "Chargeable" means, as applied to an instrument executed or first executed after this Act comes into force, chargeable under this Act, and, as applied to any other instrument, chargeable under the law in force in British India when such instrument was executed or, where several persons executed the instrument at different times, first executed:

"Cheque." (6.) "Cheque" means a bill of exchange drawn on a banker and payable on demand:

"Chief Controlling Revenue-Authority." (7.) "Chief Controlling Revenue-Authority" means, in the Presidency of Fort St. George and the territories respectively under the administration of the Lieutenant-Governors of Bengal and the North-Western Provinces, the Board of Revenue: in the Presidency of Bombay, outside Sind and the limits of the town of Bombay, a Revenue Commissioner: in Sind, the Commissioner: in the Panjáb, the Financial Commissioner; and elsewhere, the Local Government or such officer as the Local Government may, by notification in the official Gazette, appoint in this behalf by name or in virtue of his office:

"Collector." (8.) "Collector" means, within the limits of the towns of Calcutta, Madras and Bombay, the Collector of Calcutta, Madras and Bombay, respectively, and, without those limits, the Collector of a District, and includes a Deputy Commissioner and any officer whom the Local Government may, by notification in the official Gazette, appoint in this behalf by name or in virtue of his office:

"Conveyance." (9.) "Conveyance" means any instrument by which property (whether moveable or immoveable) is transferred on sale:

"Duly stamped." (10.) "Duly stamped," as applied to an instrument, means stamped, or written upon paper bearing an impressed stamp, in accordance with the law in force in British India when such instrument was executed or first executed:

"Instrument of partition." (11.) "Instrument of partition" means any instrument whereby co-owners of any property divide or agree to divide such property in severalty, and includes also a final order for effecting a partition passed by any Revenue-authority:

"Lease." (12.) "Lease" means a lease of immoveable property and includes also

(*a*) a patta,

(*b*) a kabúliyat or other undertaking in writing, not being a counterpart of a lease, to cultivate, occupy or pay or deliver rent for, immoveable property,

(*c*) any instrument by which tolls of any description are let, and

(*d*) any writing on an application for a lease intended to signify that the application is granted:

"Mortgage-deed." (13.) "Mortgage-deed" includes every instrument whereby, for the purpose of securing money advanced, or to be advanced, by way of loan, or an existing or future debt, or the performance of an engagement, one person transfers, or creates, to or in favour of another, a right over specified property:

"Paper." (14.) "Paper" includes vellum, parchment or any other material on which an instrument may be written:

"Policy of insurance." (15.) "Policy of insurance" means any instrument by which one person, in consideration of a premium, engages to indemnify another against loss, damage or liability arising from an unknown or contingent event:

It includes a life-policy:

"Power-of-attorney." (16.) "Power-of-attorney" means any instrument (not chargeable with a fee under the law relating to Court-fees for the time being in force) empowering a specified person to act in the stead of the person executing it:

"Receipt." (17.) "Receipt" means any note, memorandum, writing or advertisement whereby any money or any bill of exchange, cheque or promissory note is acknowledged to have been received, or whereby any other moveable property is acknowledged to have been received in satisfaction of a debt, or whereby any debt or demand, or any part of a debt or demand, is acknowledged to have been satisfied or discharged, or which signifies or imports any such acknowledgment, whether the same is or is not signed with the name of any person:

"Schedule." (18.) "Schedule" means a schedule to this Act annexed:

"Settlement." (19.) "Settlement" means any non-testamentary disposition in writing, of moveable or immoveable property, made—

(*a*) in consideration of marriage,

(*b*) for the purpose of distributing property of the settlor among his family or those for whom he desires to provide, or

(*c*) for any religious or charitable purpose:

It includes an agreement in writing to make such a disposition:

"Vessel." (20.) "Vessel" means anything made for the conveyance by water of human beings or property:

(21.) "Written" and "writing" include every mode in which words or figures can be expressed upon paper.

"Written," "writing."

4. The schedules and everything therein contained shall be read and construed as part of this Act.

Schedules to be read as part of Act.

CHAPTER II.

STAMP-DUTIES.

A.—Of the Liability of Instruments to duty.

5. Subject to the exemptions contained in the second schedule, the following instruments shall be chargeable with duty of the amount indicated in the first schedule as the proper duty therefor respectively, that is to say:—

Instruments chargeable with duty.

(*a*) every instrument mentioned in the first schedule, and which, not having been previously executed by any person, is executed in British India on or after the first day of April 1879;

(*b*) every bill of exchange, cheque or promissory note drawn or made out of British India on or after that day and accepted or paid, or presented for acceptance or payment, or endorsed, transferred or otherwise negotiated, in British India; and

(*c*) every instrument (other than a bill of exchange, cheque or promissory note) mentioned in the first schedule, which, not having been previously executed by any person, is executed out of British India on or after that day, relates to any property situate, or to any matter or thing done or to be done, in British India, and is received in British India.

6. Where, in the case of any sale, lease, mortgage or settlement, several instruments are employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed for the conveyance, lease, mortgage or settlement in the first schedule, and each of the other instruments shall be chargeable with a duty of one rupee instead of the duty (if any) prescribed for it in that schedule.

Several instruments used in single transactions.

The parties may determine for themselves which of the instruments so employed shall, for the purposes of this section, be deemed to be the principal instrument.

7. Any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under this Act.

Instruments relating to several distinct matters.

Subject to the provisions of the first clause of this section, an instrument so framed as to come within two or more of the descriptions in the first schedule shall, where the duties chargeable thereunder are different, be chargeable only with the highest of such duties; but nothing herein contained shall render chargeable with duty exceeding one rupee a counterpart or duplicate of any instrument chargeable with duty and in respect of which the proper duty has been paid.

Instruments coming within several descriptions in schedule I.

8. The Governor General in Council may, by order published in the *Gazette of India*,

Power to reduce or remit rates of duty.

(*a*) reduce or remit, whether prospectively or retrospectively, in the whole or any part of British India, the duties with which any instruments or any particular class of instruments, or any of the instruments belonging to such class, or any instruments when executed by or in favour of any particular class of persons, or by or in favour of any members of such class, are chargeable, and

(*b*) cancel or vary such order to the extent of the powers hereby given.

B.—Of Stamps and the Mode of using them.

9. Except as otherwise expressly provided in this Act, all duties with which any instruments are chargeable shall be paid and such payment shall be indicated on such instruments, by means of stamps—

Duties how to be paid.

(*a*) according to the provisions herein contained, or

(*b*) when no such provision is applicable thereto—as the Governor General in Council may by rule direct.

The rules made under this section may, among other matters, regulate—

(1) in the case of each kind of instrument—the description of stamps which may be used,

(2) in the case of instruments stamped with impressed stamps—the number of stamps which may be used,

(3) in the case of hundís—the size of the paper on which they are written.

10. The following instruments may be stamped with adhesive stamps, namely:—

Use of adhesive stamps.

(*a*) instruments chargeable with the duty of one anna except parts of bills of exchange payable otherwise than on demand and drawn in sets;

(*b*) bills of exchange, cheques and promissory notes drawn or made out of British India;

(*c*) entry as an advocate, vakíl or attorney on the roll of a High Court;

(*d*) notarial acts; and

(*e*) transfers by endorsement of shares of public companies and associations.

11. Whoever affixes any adhesive stamp to any instrument chargeable with duty and which has been executed by any person, shall, when affixing such stamp, cancel the same so that it cannot be used again,

Cancellation of adhesive stamps.

and whoever executes any instrument on any paper bearing an adhesive stamp shall, at the time of execution, unless such stamp has been already cancelled in manner aforesaid, cancel the same so that it cannot be used again.

Any instrument bearing an adhesive stamp which has not been cancelled so that it cannot be used again shall, so far as such stamp is concerned, be deemed to be unstamped.

12. Every instrument written upon paper stamped with an impressed stamp, shall be written in such manner, that the stamp may appear on the face of the instrument and cannot be used for or applied to any other instrument.

How instruments stamped with impressed stamps are to be written.

13. No second instrument chargeable with duty shall be written upon a piece of stamped paper upon which an instrument chargeable with duty has already been written: provided that nothing in this section shall prevent any endorsement which is duly stamped or is not chargeable with duty being made upon any instrument for the purpose of transferring any right created or evidenced thereby, or of acknowledging the receipt of any money or goods the payment or delivery of which is secured thereby.

Only one instrument to be on same stamp.

14. Every instrument written in contravention of section twelve or thirteen, shall be deemed to be unstamped.

Instrument written contrary to section 12 or 13 deemed unstamped.

15. Where the duty with which an instrument is chargeable, or its exemption from duty, depends in any manner upon the duty actually paid in respect of another instrument, the payment of such last-mentioned duty shall, if application be made in writing to the Collector for that purpose, and on production of both the instruments, be denoted upon such first-mentioned instrument in such manner as the Governor General in Council may by rule prescribe.

Denoting duty.

C.—Of the Time of stamping Instruments.

16. All instruments chargeable with duty and executed by any person in British India shall be stamped before or at the time of execution.

Instruments executed in British India.

17. Every instrument chargeable with duty executed only out of British India, and not being a bill of exchange, cheque or promissory note, may be stamped within three months after it has been first received in British India; or, where such instrument cannot, with reference to the description of stamp prescribed therefor, be duly stamped by a private person, it may be taken within the said period of three months to the Collector, and he shall stamp the same, in such manner as the Governor General in Council may by rule prescribe, with a stamp of such value as the person so taking such instrument may require and pay for.

Instruments other than bills, cheques and notes executed out of British India.

18. The first holder in British India of any bill of exchange, cheque or promissory note drawn or made out of British India shall, before he presents the same for acceptance or payment, or endorses, transfers or otherwise negotiates the same in British India, affix thereto the proper stamp and cancel the same:

Bills, cheques and notes drawn out of British India.

Provided that if, at the time any such bill, cheque or note comes into the hands of any holder thereof in British India, the proper adhesive stamp is affixed thereto and cancelled in manner prescribed by section eleven, and such holder has no reason to believe that such stamp was affixed or cancelled otherwise than by the person and at the time required by this Act, such stamp shall, so far as relates to such holder, be deemed to have been duly affixed and cancelled. But nothing contained in this proviso shall relieve any person from any penalty incurred by him for omitting to affix or cancel a stamp.

D.—Of Valuations for duty.

19. Where an instrument is chargeable with *ad valorem* duty in respect of an amount expressed in pounds sterling, pounds currency, francs or dollars, such duty shall be calculated on the value of such money in the currency of British India according to the following scale:—

Conversion of amount expressed in certain currencies.

One pound sterling or pound currency is equivalent to ten rupees:

One hundred francs are equivalent to forty rupees:

One Mexican or China dollar is equivalent to two rupees four annas.

20. Where an instrument is chargeable with *ad valorem* duty in respect of any money expressed in any other foreign or colonial currency, such duty shall be calculated on the value of such money in the currency of British India according to the current rate of exchange on the day of the date of the instrument.

Conversion of amount expressed in other foreign currencies.

21. Where an instrument is chargeable with *ad valorem* duty in respect of any stock or of any marketable security, such duty shall be calculated on the value of such stock or security according to the average price thereof on the day of the date of the instrument.

Stock and marketable securities how to be valued.

22. Where an instrument contains a statement of current rate of exchange, or average price, as the case may require, and is stamped in accordance with such statement, it shall, so far as regards the subject-matter of such statement, be presumed, until the contrary is proved, to be duly stamped.

Effect of statement of rate of exchange or average price.

23. Where interest is expressly made payable by the terms of an instrument, such instrument shall not be chargeable with duty higher than that with which it would have been chargeable had no mention of interest been made therein.

Instruments reserving interest.

24. Where any property is transferred to any person in consideration, wholly or in part, of any debt due to him, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or incumbrance upon the property or not, such debt, money or stock is to be deemed the whole or part, as the case may be, of the consideration in respect whereof the transfer is chargeable with *ad valorem* duty.

How transfer in consideration of debt, or subject to future payment, &c., to be charged.

25. Where an instrument is executed to secure the payment of an annuity, or other sum payable periodically, or where the consideration for a conveyance is an annuity or other sum payable periodically, the amount secured by such instrument, or the consideration for such conveyance (as the case may be), shall, for the purposes of this Act, be deemed to be—

Valuation in case of annuity, &c.

(*a*) where the sum is payable for a definite period so that the total amount to be paid can be previously ascertained—such total amount;

(*b*) where the sum is payable in perpetuity or for an indefinite time not terminable with any life in being at the date of such instrument or conveyance—the total amount which, according to the terms of such instrument or conveyance, will or may be payable during the period of twenty years next after the date of such instrument or conveyance; and

(*c*) where the sum is payable for an indefinite time terminable with any life in being at the date of such instrument or conveyance—the total amount which will or may be payable as aforesaid during the period of twelve years next after the date of such instrument or conveyance.

Stamp where value of subject-matter is indeterminate.

26. Where the amount or value of the subject-matter of any instrument chargeable with *ad valorem* duty cannot be, or (in the case of an instrument executed before this Act comes into force) could not have been, ascertained, at the date of its execution or first execution, nothing shall be claimable under such instrument more than the highest amount or value for which, if stated in an instrument of the same description, the stamp actually used would, at the date of such execution, have been sufficient.

Facts affecting duty to be set forth in instrument.

27. The consideration (if any) and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein.

Direction as to duty in case of certain conveyances.

28. (*a.*) Where any property has been contracted to be sold for one consideration for the whole, and is conveyed to the purchaser in separate parts by different instruments, the consideration shall be apportioned in such manner as the parties think fit, so that a distinct consideration for each separate part is set forth in the conveyance relating thereto, and such conveyance shall be chargeable with *ad valorem* duty in respect of such distinct consideration.

(*b.*) Where property contracted to be purchased for one consideration for the whole, by two or more persons jointly, or by any person for himself and others, or wholly for others, is conveyed in parts by separate instruments to the persons by or for whom the same was purchased, for distinct parts of the consideration, the conveyance of each separate part shall be chargeable with *ad valorem* duty in respect of the distinct part of the consideration therein specified.

(*c.*) Where a person having contracted for the purchase of any property, but not having obtained a conveyance thereof, contracts to sell the same to any other person, and the property is in consequence conveyed immediately to the sub-purchaser, the conveyance shall be chargeable with *ad valorem* duty in respect of the consideration for the sale by the original purchaser to the sub-purchaser.

(*d.*) Where a person having contracted for the purchase of any property, but not having obtained a conveyance thereof, contracts to sell the whole, or any part, thereof, to any other person or persons, and the property is in consequence conveyed by the original seller to different persons in parts, the conveyance of each part sold to a sub-purchaser shall be chargeable with *ad valorem* duty in respect only of the consideration paid by such sub-purchaser, without regard to the amount or value of the original consideration, and the conveyance of the residue (if any) of such property to the original purchaser shall be chargeable with *ad valorem* duty in respect only of the excess of the original consideration over the aggregate of the considerations paid by the sub-purchasers:

Provided that the duty on such last mentioned conveyance shall in no case be less than one rupee.

(*e.*) Where a sub-purchaser takes an actual conveyance of the interest of the person immediately selling to him, which is chargeable with *ad valorem* duty in respect of the consideration paid by him, and is duly stamped accordingly, any conveyance to be afterwards made to him of the same property by the original seller shall be chargeable with a duty equal to that which would be chargeable on a conveyance for the consideration obtained by such original seller; or where such duty would exceed five rupees, with a duty of five rupees.

E.—Duty by whom payable.

Duties by whom payable.

29. In the absence of an agreement to the contrary, the expense of providing the proper stamp shall be borne—

(*a*) in the case of any instrument described in numbers 2, 11, 13, 14, 15, 24, 28, 29, 30, 44, 53, 54, 55, 57 and 60 (*a*) and (*b*) of the first schedule—by the person drawing, making or executing such instrument:

(*b*) in the case of a policy of insurance—by the insured:

(*c*) in the case of a conveyance—by the grantee: in the case of a lease or agreement to lease—by the lessee or intended lessee:

(*d*) in the case of a counterpart of a lease—by the lessor:

(*e*) in the case of an instrument of partition—by the parties thereto in proportion to their respective shares in the property comprised therein, or when the partition is made in execution of an order passed by a Revenue-authority, in such proportion as such authority directs:

(*f*) in the case of an instrument of exchange—by the parties in equal shares: and

(*g*) in the case of a certificate of sale—by the purchaser of the property to which such certificate relates.

CHAPTER III.

ADJUDICATION AS TO STAMPS.

Adjudication as to proper stamp.

30. When any instrument, whether executed or not, and whether previously stamped or not, is brought to the Collector, and the person bringing it applies to have the opinion of that officer as to the duty (if any) with which it is chargeable, and pays a fee of such amount (not exceeding five rupees and not less than eight annas) as the Collector may in each case direct, the Collector shall determine the duty (if any) with which, in his judgment, the instrument is chargeable:

Collector may call for abstract and evidence.

and may for that purpose require to be furnished with an abstract of the instrument, and also with such affidavit or other evidence as he may deem necessary to prove that all the facts and circumstances affecting the chargeability of the instrument with duty, or the amount of the duty with which it is chargeable, are fully and truly set forth therein, and may refuse to proceed upon any such application until such abstract and evidence have been furnished accordingly:

Proviso.

Provided that no evidence furnished in pursuance of this section shall be used against any person in any civil proceeding, except in an enquiry as to the duty with which the instrument to which it relates is chargeable; and every person by whom any such evidence is furnished shall, on payment of the full duty with which the instrument to which it relates is chargeable, be relieved from any penalty he may have incurred under this Act by reason of the omission to state truly in such instrument any of the facts or circumstances aforesaid.

Certificate by Collector.

31. When an instrument brought to the Collector under section thirty is in his opinion one of a description chargeable with duty and

(*a*) the Collector determines that it is already fully stamped, or

(*b*) the duty determined by the Collector under section thirty, or such a sum as, with the duty already paid in respect of the instrument, is equal to the duty so determined, has been paid,

the Collector shall certify by endorsement on such instrument that the full duty (stating the amount) with which it is chargeable has been paid.

When such instrument is in his opinion not chargeable with duty, the Collector shall certify in manner aforesaid that such instrument is not so chargeable.

Any instrument upon which an endorsement has been made under this section shall be deemed to be duly stamped, or not chargeable with duty, as the case may be; and if chargeable with duty, shall be receivable in evidence or otherwise, and may be acted upon and registered as if it had been originally duly stamped:

Nothing in this section shall authorize the Collector to endorse—

any instrument executed or first executed in British India and brought to him after the expiration of one month from the date of its execution or first execution (as the case may be);

any instrument executed or first executed out of British India and brought to him after the expiration of three months after it has been first received in British India; or

any instrument chargeable with the duty of one anna, or any bill of exchange or promissory note, when brought to him after the drawing or execution thereof on paper not duly stamped.

Payment of fees under section 30 how made.

32. Every payment of a fee under section thirty shall be made in stamps, or cash, as the Governor General in Council may by rule direct.

CHAPTER IV.

INSTRUMENTS NOT DULY STAMPED.

Examination and impounding of instruments.

33. Every person having by law or consent of parties authority to receive evidence, and

every person in charge of a public office except an officer of Police,

before whom any instrument chargeable in his opinion with duty is produced or comes, in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.

For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in British India when such instrument was executed or first executed.

Provided that nothing herein contained shall be deemed to require any Magistrate or Judge of a criminal Court to examine or impound any instrument coming before him in the course of any proceeding other than a proceeding under chapter forty or chapter forty-one of the Code of Criminal Procedure, or chapter eighteen of the Presidency Magistrates Act:

Provided also that, in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.

The Local Government may from time to time, in cases of doubt, determine who shall be deemed to be, for the purpose of this section, persons in charge of public offices.

Instruments not duly stamped inadmissible in evidence, &c.

34. No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped:

Proviso.

Provided that—

Instruments admissible on payment of duty and penalty,

1st, any such instrument, not being an instrument chargeable with a duty of one anna only or a bill of exchange or promissory note, shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable or (in the case of an instrument insufficiently stamped) of the amount required to make up such duty, together with a penalty of five rupees, or when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;

and in certain criminal proceedings.

2nd, nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a criminal Court other than a proceeding under chapter forty or chapter forty-one of the Code of Criminal Procedure, or chapter eighteen of the Presidency Magistrates Act;

Admission of instrument not to be questioned.

3rd, when an instrument has been admitted in evidence, such admission shall not, except as provided in section fifty, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.

Instruments impounded how dealt with.

35. When the person impounding an instrument under section thirty-three has by law or consent of parties authority to receive evidence and admits such instrument in evidence upon payment of a penalty as provided by section thirty-four, he shall send to the Collector an authenticated copy of such instrument, together with a certificate in writing, stating the amount of the duty and penalty levied in respect thereof, and shall send such amount to the Collector, or to such person as he may appoint in this behalf.

In every other case, the person so impounding an instrument shall send it in original to the Collector.

36. When a copy of an instrument is sent to a Collector under the first paragraph of section thirty-five, he may, if he thinks fit, upon application made to him in this behalf, refund any portion of the penalty in excess of five rupees which has been paid in respect of such instrument, or

Collector's power to refund penalty paid, under section 35, 1st para.

when such instrument has been impounded only because it has been written in contravention of section twelve, or section thirteen, he may refund the whole penalty so paid.

37. When the Collector impounds any instrument under section thirty-three, or receives any instrument sent to him under the second clause of section thirty-five, he shall adopt the following procedure :—

Collector's power to stamp instruments impounded.

(*a*.) If he is of opinion that such instrument is duly stamped, or is not chargeable with duty, he shall certify by endorsement thereon that it is duly stamped, or that it is not so chargeable (as the case may be), and shall upon application made to him in this behalf deliver such instrument to the person from whose possession it came into the hands of the officer impounding it, or as such person may direct.

(*b*.) If the Collector is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of five rupees ; or if ten times the amount of the proper duty or of the deficient portion thereof exceeds five rupees, then such penalty, not less than five rupees and not more than ten times the amount of such duty or portion, as he thinks fit :

Provided that, when such instrument has been impounded only because it has been written in contravention of section twelve or section thirteen, the Collector may, if he thinks fit, remit the whole penalty prescribed by this section.

Every certificate under clause (*a*) of this section shall, for the purposes of this Act, be conclusive evidence of the matters stated therein.

Nothing in this section applies to an instrument chargeable with a duty of one anna only, or to a bill of exchange or promissory note.

38. If any instrument chargeable with duty and which is not duly stamped is produced by any person of his own motion before the Collector within one year from the date of its execution or first execution, and such person brings to the notice of the Collector the fact that such instrument is not duly stamped, and offers to pay to the Collector the amount of the proper duty, or the amount required to make up the same, and the Collector is satisfied that the omission to duly stamp such instrument has been occasioned by accident, mistake or urgent necessity, he may, instead of proceeding under sections thirty-three and thirty-seven, receive such amount and proceed as next hereinafter prescribed.

Instruments unduly stamped by accident.

Nothing in this section applies to an instrument chargeable with a duty of one anna only or to a bill of exchange or promissory note.

39. When the duty and penalty (if any) leviable in respect of any instrument have been paid under section thirty-four, section thirty-seven or section thirty-eight, the person admitting such instrument in evidence, or the Collector (as the case may be), shall certify by endorsement thereon that the proper duty or (as the case may be) the proper duty and penalty (stating the amount of each) have been levied in respect thereof, and the name and residence of the person paying them.

Endorsement of instruments on which duty has been paid under section 34, 37 or 38.

Every instrument so endorsed shall thereupon be admissible in evidence, and may be registered and acted upon and authenticated as if it had been duly stamped, and shall be delivered on his application in this behalf to the person from whose possession it came into the hands of the officer impounding it, or as such person may direct :

Provided that no instrument which has been admitted in evidence upon payment of duty and a penalty under section thirty-four shall be so delivered before the expiration of one month from the date of such impounding, or if the Collector has certified that its further detention is necessary and has not cancelled such certificate :

Provided also that nothing in this section shall affect the Code of Civil Procedure, section 144, clause 3.

40. The payment of a penalty under this chapter in respect of an instrument shall not bar the prosecution of any person who appears to have committed an offence against the stamp-law in respect of such instrument :

Prosecution for offence against stamp-law.

But no such prosecution shall be instituted in the case of any instrument in respect of which such a penalty has been paid, unless it appears to the Collector that the offence was committed with an intention of evading payment of the proper duty.

Proviso.

41. When any duty or penalty has been paid, under section thirty-four, section thirty-seven or section thirty-eight, by any person in respect of an instrument, and by agreement, or under the provisions of section twenty-nine or any other enactment in force at the time such instrument was executed, some other person was bound to bear the expense of providing the proper stamp for such instrument, the first-mentioned person shall be entitled to recover from such other person the amount of the duty or penalty so paid ; and for the purpose of such recovery any certificate granted in respect of such instrument under section thirty-nine shall be conclusive evidence of the matters therein certified.

Persons paying duty or penalty may recover same in certain cases.

42. When any penalty is paid under section thirty-four or thirty-seven, the Chief Controlling Revenue-Authority may, upon application in writing made within one year from the date of the payment, refund such penalty wholly or in part.

Remission of penalty paid under section 34 or 37.

43. If any instrument sent to a Collector under the second paragraph of section thirty-five be lost, destroyed or damaged during transmission, the person sending the same shall not be liable for such loss, destruction or damage.

Non-liability for loss of instruments sent under section 35.

When any instrument is about to be so sent, the person from whose possession it came into the hands of the person impounding the same may require a copy thereof to be made at the expense of such first-mentioned person and authenticated by the person impounding such instrument.

Copy may be made of instrument so sent.

44. When any bill of exchange or promissory note chargeable with the duty of one anna, or any cheque, is presented for payment unstamped, the person to whom it is so presented may affix thereto the necessary adhesive stamp, and upon cancelling the same in manner hereinbefore provided may pay the sum payable upon such bill, note or cheque, and may charge the duty against the person who ought to have paid the same, or deduct it from the sum payable as aforesaid, and such bill, note or cheque shall, so far as respects the duty, be deemed good and valid.

Power of payee to stamp bills, notes and cheques received by him unstamped.

But nothing herein contained shall relieve any person from any penalty he may have incurred in relation to such bill, note or cheque.

CHAPTER V.

REFERENCE AND REVISION.

45. If any Collector acting under section thirty, section thirty-seven or section thirty-eight feels doubt as to the amount of duty with which any instrument is chargeable, he may draw up a statement of the case, and refer it, with his own opinion thereon, for the decision of the Chief Controlling Revenue-Authority, and such Authority shall consider the case and send a copy of its decision to the Collector, and he shall proceed to assess and charge the duty (if any) in conformity with such decision.

Procedure where Collector feels doubt as to duty chargeable.

46. The Chief Controlling Revenue-Authority may state any case referred to it under section forty-five or otherwise coming to its notice and refer such case with its own opinion thereon, if the case arises in the territories for the time being administered by the Governor of Fort Saint George in Council or the Governor of Bombay in Council—to the High Court of Judicature at Madras or Bombay as the case may be: if it arises in the North-Western Provinces or Oudh—to the High Court of Judicature for the North-Western Provinces: if it arises in the territories for the time being administered by the Lieutenant-Governor of the Panjáb—to the Chief Court of the Panjáb: if it arises in the Central Provinces—to the High Court of Judicature at Bombay; and if it arises in any other part of British India—to the High Court of Judicature at Fort William.

Reference by Revenue Authority to High Court.

Every such case shall be decided by not less than three Judges of the High Court or Chief Court to which it is referred, and in case of difference the opinion of the majority shall prevail.

47. If the High Court or Chief Court is not satisfied that the statements contained in the case are sufficient to enable it to determine the questions raised thereby, the Court may refer the case back to the Revenue-Authority by which it was stated, to make such additions thereto or alterations therein as the Court may direct in that behalf.

Power of Court to call for further particulars.

48. The High Court or Chief Court, upon the hearing of any such case, shall decide the questions raised thereby and shall deliver its judgment thereon containing the grounds on which such decision is founded : and it shall send to the Revenue-Authority by which the case was stated, a copy of such judgment under the seal of the Court and the signature of the Registrar, and the Revenue-Authority shall, on receiving such copy, dispose of the case conformably to such judgment.

Procedure in disposing of reference.

49. If any Court other than a Court mentioned in section forty-six feels doubt as to the amount of duty to be paid in respect of any instrument under the first proviso to section thirty-four, the Judge may draw up a statement of the case and refer it with his own opinion thereon for the decision of the High Court or Chief Court to which, if he were the Chief Controlling Revenue-Authority, he would under section forty-six refer the same, and such Court shall deal with the case as if it had been referred under section forty-six, and send a copy of its judgment under the seal of the Court and the signature of the Registrar to the Judge making the reference, who shall, on receiving such copy, dispose of the case conformably to such judgment.

Reference by other Courts to High Court.

References made under this section, when made by a Court subordinate to a District Court, shall be made through the District Court, and when made by any subordinate Revenue Court shall be made through the Court immediately superior.

50. When any Court in the exercise of civil or revenue jurisdiction makes any order admitting any instrument in evidence as duly stamped or as not requiring a stamp, or upon payment of duty and a penalty under section thirty-four, the Court to which appeals lie from, or references are made by, such first-mentioned Court may, of its own motion or on the application of the Collector, take such order into consideration ; and if it is of opinion that such instrument should not have been admitted in evidence without the payment of duty and penalty under section thirty-four, or without the payment of a higher duty and penalty than those paid, may record a declaration to that effect, and determine the amount of duty with which such instrument is chargeable, and may require any person in whose possession or power such instrument then is to produce the same, and may impound the same when produced.

Revision of certain decisions of Courts regarding the sufficiency of stamps.

When any declaration has been recorded under this section, the Court recording the same shall send a copy thereof to the Collector and, where the instrument to which it relates has been impounded or is otherwise in the possession of such Court, shall also send him such instrument ; and thereupon the Collector may, notwithstanding anything contained in the order admitting such instrument in evidence, or in any certificate granted under section thirty-nine, or in section forty, prosecute any person for any offence against the stamp-law which the Collector considers him to have committed in respect of such instrument :

Provided that no such prosecution shall be instituted where the amount (including duty and penalty) which according to the determination of such

Court was payable in respect of the instrument under section thirty-four is paid to the Collector, unless he thinks that the offence was committed with an intention of evading payment of the proper duty:

Provided also that, except for the purposes of such prosecution, no declaration made under this section shall affect the validity of any order admitting any instrument in evidence, or of any certificate granted under section thirty-nine.

CHAPTER VI.

ALLOWANCES FOR SPOILED STAMPS AND STAMPS NO LONGER REQUIRED.

Allowance for spoiled stamps.

51. Subject to such rules as may be made by the Governor General in Council as to the evidence which the Collector may require, allowance shall be made by the Collector for impressed stamps spoiled in the cases hereinafter mentioned, namely:—

(*a*.) The stamp on any paper inadvertently and undesignedly spoiled, obliterated or by any means rendered unfit for the purpose intended, before any instrument written thereon is executed by any person:

(*b*.) The stamp used or intended to be used for any bill of exchange, cheque or promissory note, signed by or on behalf of the drawer or intended drawer, but not delivered out of his hands to the payee or intended payee, or any person on his behalf, or deposited with any person as a security for the payment of money, or in any way negotiated, issued or put in circulation, or made use of in any other manner, and which, being a bill of exchange or cheque, has not been accepted by the drawee, and provided that the paper on which any such stamp is impressed does not bear any signature intended as or for the acceptance of any bill of exchange or cheque to be afterwards written thereon:

(*c*.) The stamp used or intended to be used for any bill of exchange, cheque or promissory note signed by, or on behalf of, the drawer thereof, but which from any omission or error has been spoiled or rendered useless, although the same, being a bill of exchange or cheque, may have been presented for acceptance or accepted or endorsed, or, being a promissory note, may have been delivered to the payee, provided that another completed and duly stamped bill of exchange, cheque or promissory note is produced identical in every particular, except in the correction of such omission or error as aforesaid, with the spoiled bill, cheque or note:

(*d*.) The stamp used for any of the following instruments, that is to say:—

(1) an instrument executed by any party thereto, but afterwards found by a competent Court to be absolutely void in law from the beginning:

(2) an instrument executed by any person, but afterwards found unfit, by reason of any error or mistake therein, for the purpose originally intended:

(3) an instrument executed by any party thereto, but which, by reason of the death of any person, by whom it is necessary that it should be executed, without having executed the same, or of the refusal of any such person to execute the same, or to advance any money intended to be thereby secured, cannot be completed so as to effect the intended transaction in the form proposed:

(4) an instrument executed by any party thereto which, for want of the execution thereof by some material party, and his inability or refusal to sign the same, is in fact incomplete and insufficient for the purpose for which it was intended:

(5) an instrument executed by any party thereto which, by reason of the refusal of any person to act under the same, or by the refusal or non-acceptance of any office thereby granted, totally fails of the intended purpose:

(6) an instrument executed by any party thereto which becomes useless in consequence of the transaction intended to be thereby effected being effected by some other instrument duly stamped:

(7) an instrument executed by any party thereto which is inadvertently and undesignedly spoiled, and in lieu whereof another instrument made between the same parties and for the same purpose is executed and duly stamped:

Provided that in the case of an executed instrument—

(*a*) such instrument is given up to be cancelled:

(*b*) the application for relief is made within six months after the date of the instrument or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed, except where from unavoidable circumstances any instrument for which another instrument has been substituted cannot be given up to be cancelled within the aforesaid period, and in that case within six months after the date or execution of the substituted instrument, and except where the spoiled instrument has been sent out of British India, and in that case within six months after it has been received back in British India:

Provided also that, in the case of stamped paper not having any executed instrument written thereon, the application for relief is made within six months after the stamp has been spoiled as aforesaid.

Allowance for misused stamps.

52. When any person has inadvertently used, for an instrument chargeable with duty, a stamp of a description other than that prescribed for such instrument by the rules made under this Act, or a stamp of greater value than was necessary, or has inadvertently used any stamp for an instrument not chargeable with any duty, or when any stamp used for an instrument has been inadvertently rendered useless under section fourteen owing to such instrument having been written in contravention of the provisions of section twelve, the Collector may, on application made within six months after the date of the instrument or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed, and upon the instrument, if chargeable with duty, being re-stamped with the proper duty, cancel and allow as spoiled the stamp so misused or rendered useless.

Allowance under sections 51 and 52 how to be made.

53. In any case in which allowance is made for spoiled or misused stamps, the Collector may give in lieu thereof (*a*) other stamps of the same description and value, or, (*b*) if required, and he thinks fit, stamps of any other description to the same amount in value, or (*c*) at his discretion, the same value in money, deducting one anna for each rupee or fraction of a rupee.

Allowance for stamps not required for use.

54. When any person is possessed of a stamp which has not been spoiled or rendered unfit or useless for the purpose intended, but for which he has no immediate use, the Collector shall repay to such person the value of such stamp in money, deducting one anna for each rupee or portion of a rupee, upon such person delivering up the same to be cancelled, and proving to the Collector's satisfaction that it was purchased by such person with a *bonâ fide* intention to use it, and that he has paid the full price thereof, and that it was so purchased within the period of six months next preceding the date on which it is so delivered.

CHAPTER VII.

SUPPLEMENTAL PROVISIONS.

Powers to make rules relating to sale of stamps.

55. The Local Government, subject to the control of the Governor General in Council, may make rules consistent herewith for regulating the supply and sale of stamps and stamped papers, the persons by whom alone such sale is to be conducted, and the duties and remuneration of such persons.

Power to make rules generally to carry out Act.

56. The Governor General in Council may make rules consistent herewith to carry out generally the purposes of this Act.

Certain powers exerciseable from time to time.

57. All powers to make appointments, rules and orders conferred by this Act may be exercised from time to time as occasion requires.

Publication of rules.

All rules made under this Act other than rules made under section fifty-five shall be published in the *Gazette of India*, and all rules made under section fifty-five shall be published in the local Gazette. All rules published as required by this section shall, upon such publication, have the force of law.

Obligation to give receipt in certain cases.

58. Any person receiving any money exceeding twenty rupees in amount, or any bill of exchange, cheque or promissory note for an amount exceeding twenty rupees, or receiving in satisfaction of a debt any moveable property exceeding twenty rupees in value shall, on demand by the person paying or delivering such money, bill, cheque, note or property, give a duly stamped receipt for the same.

Saving as to Court-fees.

59. Nothing herein contained shall be deemed to affect the duties chargeable under any enactment for the time being in force relating to Court-fees.

Act to be translated, indexed and sold cheaply.

60. Every Local Government shall cause this Act to be carefully translated into the principal vernacular languages of the territories administered by it. A full alphabetical index shall be added to every such translation, and the translation and index shall be printed and sold to the public at a price not exceeding four annas per copy.

CHAPTER VIII.

CRIMINAL OFFENCES AND PROCEDURE.

Penalty for executing, &c., instrument not duly stamped.

61. Any person drawing, making, issuing, endorsing or transferring, or signing otherwise than as a witness, or presenting for acceptance or payment, or accepting, paying or receiving payment of, or in any manner negotiating, any bill of exchange, cheque or promissory note without the same being duly stamped,

any person executing or signing otherwise than as a witness any other instrument chargeable with duty without the same being duly stamped, and

any person voting or attempting to vote under any proxy not duly stamped,

shall for every such offence be punished with fine which may extend to five hundred rupees:

Provided that, when any penalty has been paid in respect of any instrument under section thirty-four, section thirty-seven or section fifty, the amount of such penalty shall be allowed in reduction of the fine (if any) subsequently imposed under this section in respect of the same instrument upon the person who paid such penalty.

Penalty for failure to cancel adhesive stamp.

62. Any person required by section eleven to cancel an adhesive stamp and failing to cancel such stamp in manner prescribed by that section shall be punished with fine which may extend to one hundred rupees.

Penalty for omission to comply with provisions of section 27.

63. Any person who, with intent to defraud the Government of any duty,

(*a*) executes any instrument in which all the facts and circumstances required by section twenty-seven to be set forth in such instrument are not fully and truly set forth, or

(*b*) being employed or concerned in or about the preparation of any instrument, neglects or omits, fully and truly to set forth therein all such facts and circumstances,

shall be punished with fine which may extend to five thousand rupees.

64. Any person who, being required under section fifty-eight to give a receipt, refuses or neglects to give the same, or who, with intent to defraud the Government of any duty, upon a payment of money or delivery of property exceeding twenty rupees in amount or value, gives a receipt for an amount or value not exceeding twenty rupees, or separates or divides the money or property paid or delivered, shall be punished with fine which may extend to one hundred rupees.

Penalty for refusal to give receipt and for devices to evade duty on receipts.

65. Every person who—

(*a*) receives, or takes credit for, any premium or consideration for any contract of insurance, and does not, within one month after receiving, or taking credit for, such premium or consideration, make out and execute a duly stamped policy of such insurance; or

Penalty for not making out policy,

(*b*) makes, executes or delivers out any policy which is not duly stamped, or pays or allows in account, or agrees to pay or allow in account, any money upon, or in respect of, any such policy,

or making, &c., any policy not duly stamped.

shall be punished with fine which may extend to two hundred rupees.

66. Any person drawing or executing a bill of exchange or a policy of marine insurance purporting to be drawn or executed in a set of two or more, and not at the same time drawing or executing on paper duly stamped the whole number of bills or policies of which such bill or policy purports the set to consist, shall be punished with fine which may extend to one thousand rupees.

Penalty for not drawing full number of bills or marine policies purporting to be in sets.

67. Whoever, with intent to defraud the Government of duty, draws, makes or issues any bill of exchange or promissory note bearing a date subsequent to that on which such bill or note is actually drawn or made, and whoever, knowing that such bill or note has been so post-dated, endorses, transfers, presents for acceptance or payment, or accepts, pays or receives payment of, such bill or note, or in any manner negotiates the same,

Penalty for post-dating bills, &c.;

and whoever, with the like intent, practises or is concerned in any act, contrivance or device not specially provided for by this Act or any other law for the time being in force,

for other devices to defraud the revenue.

shall be punished with fine which may extend to one thousand rupees.

68. Any person appointed to sell stamps who disobeys any rule made under section fifty-five, and any person not so appointed who sells or offers for sale any stamp, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Penalty for breach of rule relating to sale of stamps and for unauthorized sale.

69. No prosecution in respect of any offence punishable under this Act, or the General Stamp Act, 1869, or any Act thereby repealed, shall be instituted without the sanction of the Collector or such other officer as the Local Government generally, or the Collector specially, authorizes in that behalf.

Institution and conduct of prosecutions.

The Chief Controlling Revenue-Authority, or any officer authorized by it in this behalf, may stay any such prosecution or compound any such offence.

70. No Magistrate other than a Presidency Magistrate and a Magistrate whose powers are not less than those of a Magistrate of the second class shall try any offence under this Act.

Jurisdiction of Magistrates.

71. Every such offence committed in respect of any instrument may be tried in any district or Presidency-town in which such instrument is found, as well as in any district or Presidency-town in which such offence might be tried under the law relating to criminal procedure for the time being in force.

Place of trial.

72. Nothing in this Act shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act, or the rules made under it:

Operation of other laws not barred.

Provided that no person shall be punished twice for the same offence.

SCHEDULE I.

DESCRIPTION OF INSTRUMENT.		PROPER STAMP-DUTY.
1. ACKNOWLEDGMENT of a debt exceeding twenty rupees in amount or value, written or signed by or on behalf of a debtor or in order to supply evidence of such debt in any book (other than a banker's pass-book) or on a separate piece of paper, when such book or paper is left in the creditor's possession		One anna.
2. ADMINISTRATION-BOND		The same duty as a Security Bond (No. 14).
ADOPTION DEED ...	See *Instrument, No. 38.*	
3. AFFIDAVIT or declaration in writing on oath or affirmation made before a person authorized by law to administer an oath		One rupee.
See Exemptions, Schedule II (No 1).		
4. AGREEMENT TO LEASE		The same duty as a Lease (No. 39).
5. AGREEMENT OR MEMORANDUM OF AN AGREEMENT ...	(*a.*) If relating to the sale of any Government security, share in a Company or Association or Bill of Exchange ...	One anna.
	(*b.*) Whereby the owner or occupier of land in a village in the Bombay Presidency agrees to relinquish his rights therein to the Government, and to accept rights in other land in exchange for the right so relinquished	Four annas.
See Exemptions, Schedule II (No. 2).	(*c.*) If not otherwise provided for by this Act...	Eight annas.
6. APPOINTMENT, in execution of a power, whether of trustees or of property moveable or immoveable, where made by any writing not being a Will		Fifteen rupees.
7. APPRAISEMENT or valuation made otherwise than under an order of the Court in the course of a suit		The same duty as an award (No. 10).
See Exemptions, Schedule II (Nos. 3 & 4).		
APPRENTICESHIP DEED ...	See *Instrument, No. 31.*	
8. ARTICLES OF ASSOCIATION OF A COMPANY		Twenty-five rupees.

SCHEDULE I—*continued.*

DESCRIPTION OF INSTRUMENT.		PROPER STAMP-DUTY.								
9. ARTICLES OF CLERKSHIP or contract whereby any person first becomes bound to serve as a clerk in order to his admission as an Attorney in any High Court		Two hundred and fifty rupees.								
ASSIGNMENT ...	See *Conveyance, No. 21 and Transfer, No. 60.*									
AUTHORITY TO ADOPT ...	See *Instrument, No. 38.*									
10. AWARD, that is to say, any decision in writing by an arbitrator or umpire on a reference made otherwise than by an order of the Court in the course of a suit ... *See Exemption, Schedule II (No. 6).*	(*a.*) Where the amount or value of the property to which the award relates as set forth in such award does not exceed Rs. 1,000 ...	The same duty as a Bond (No. 13) for such amount.								
	(*b.*) In any other case ...	Five rupees.								
11. BILL OF EXCHANGE OR PROMISSORY NOTE, not being a cheque, bond, bank-note or currency-note ...	(*a.*) When payable on demand and the amount exceeds Rs. 20	One anna.								
	(*b.*) When payable otherwise than on demand, but not more than one year after date or sight.		If drawn singly.			If drawn in set of two, for each part of the set.			If drawn in set of three, for each part of the set.	
			Rs.	A.	P.	Rs.	A.	P.	Rs.	A. P.
	If the amount of the bill or note does not exceed	Rs. 200	0	2	0	0	1	0	0	1 0
	If it exceeds 200 and does not exceed	400	0	4	0	0	2	0	0	2 0
	„ 400	600	0	6	0	0	3	0	0	2 0
	„ 600	1,000	0	10	0	0	5	0	0	4 0
	„ 1,000	1,200	0	12	0	0	6	0	0	4 0
	„ 1,200	1,600	1	0	0	0	8	0	0	6 0
	„ 1,600	2,500	1	8	0	0	12	0	0	8 0
	For every Rs. 2,500 or part thereof in excess of Rs. 2,500 up to Rs. 10,600 ...		1	8	0	0	12	0	0	8 0
	For every Rs. 5,000 or part thereof in excess of Rs. 10,000 up to Rs. 30,000 ...		3	0	0	1	8	0	1	0 0
	And for every Rs. 10,000 or part thereof in excess of Rs. 30,000...		6	0	0	3	0	0	2	0 0

SCHEDULE I—*continued.*

DESCRIPTION OF INSTRUMENT.		PROPER STAMP-DUTY.
11. BILL OF EXCHANGE OR PROMISSORY NOTE, &c.—*contd.*	(*c*) When payable at more than one year after date or sight	The same duty as a Bond (No. 13) for the amount of such bill or note.
12. BILL OF LADING ... ... *See Exemption, Schedule II (No. 7).*		Four annas. If a Bill of Lading is drawn in parts, the proper stamp therefor must be borne by each one of the set.
13. BOND (not otherwise provided for by this Act) ... *See Administration-Bond (No. 2), Customs-Bond (No. 24), Indemnity-Bond (No. 28), Security-Bond (No. 14).* *See Exemptions, Schedule II (No. 8).*	When the amount or value secured does not exceed Rs. 10	Two annas.
	When such amount or value exceeds Rs. 10, but does not exceed 50	Four annas.
	When such amount or value exceeds Rs. 50, but does not exceed 100	Eight annas.
	and for every Rs. 100 or part thereof in excess of Rs. 100 up to 1,000	Eight annas.
	and for every Rs. 500 or part thereof in excess of 1,000	Two rupees eight annas.
14. BOND OR MORTGAGE-DEED executed by way of security for the due execution of an office, or to account for money received by virtue thereof ... *See Exemptions, Schedule II (Nos. 8 and 12).*	(*a.*) When the amount secured does not exceed ... 1,000	The same duty as a Bond (No. 13).
	(*b.*) In any other case ...	Five rupees.
15. BOTTOMRY-BOND, that is to say, any instrument whereby the master of a sea-going ship borrows money on the security of the ship to enable him to preserve the ship or prosecute her voyage		The same duty as a Bond (No. 13).
16. CERTIFICATE OF SALE, granted to the purchaser of any property sold by public auction by a Civil or Revenue Court, or Collector or other Revenue-officer		The same duty as a Conveyance (No. 21) for a consideration equal to the amount of the purchase-money.

SCHEDULE I—*continued.*

DESCRIPTION OF INSTRUMENT.		PROPER STAMP-DUTY.
17. CERTIFICATE OR OTHER DOCUMENT evidencing the right or title of the holder thereof, or any other person, either to any shares, scrip or stock in or of any Company or Association, or to become proprietor of shares, scrip or stock in or of any Company or Association		One anna.
18. CHARTER-PARTY, that is to say, any instrument (except an agreement for the hire of a tug-steamer) whereby a vessel or some specified principal part thereof is let for the specified purposes of the charterer		One rupee.
19. CHEQUE, for an amount exceeding twenty rupees		One anna.
20. COMPOSITION-DEED, that is to say, any instrument executed by a debtor whereby he conveys his property for the benefit of his creditors, or whereby payment of a composition or dividend on their debts is secured to the creditors, or whereby provision is made for the continuance of the debtor's business, under the supervision of inspectors or under letters of license, for the benefit of his creditors		Ten rupees.
21. CONVEYANCE, not being a TRANSFER mentioned in No. 60. *See Exemptions, Schedule II, (Nos. 5 and 17).*	When the amount of the consideration for such conveyance as set forth therein does not exceed Rs. 50	Eight annas.
	When it exceeds Rs. 50 but does not exceed... 100	One rupee.
	For every Rs. 100 or part thereof in excess of Rs. 100 up to ... 1,000	One rupee.
	and for every Rs. 500 or part thereof in excess of .. 1,000	Five rupees.

SCHEDULE I—*continued.*

DESCRIPTION OF INSTRUMENT.		PROPER STAMP-DUTY.
CO-PARTNERSHIP...	See *Instrument, No. 32.*	
22. COPY OR EXTRACT, certified to be a true copy or extract, by or by order of any public officer and not chargeable under the law for the time being in force relating to Court-fees ...	(*a.*) If the original was not chargeable with duty, or if the duty with which it was chargeable does not exceed one rupee. ...	Eight annas.
	(*b.*) In any other case ...	One rupee.
See Exemptions, Schedule II (Nos. 9 and 10).		
23. COUNTERPART OR DUPLICATE of any instrument chargeable with duty, and in respect of which the proper duty has been paid ...	(*a.*) If the duty with which the original instrument is chargeable does not exceed one rupee.	The same duty as is payable on the original.
	(*b.*) In any other case ...	One rupee.
24. CUSTOMS-BOND		The same duty as a Security-Bond (No. 14).
25. DECLARATION OF ANY TRUST of or concerning any property, when made by any writing not being a will		Fifteen rupees.
26. DELIVERY-ORDER IN RESPECT OF GOODS, that is to say, any instrument entitling any person therein named, or his assigns, or the holder thereof, to the delivery of any goods lying in any dock or port, or in any warehouse in which goods are stored or deposited on rent or hire, or upon any wharf, such instrument being signed by or on behalf of the owner of such goods, upon the sale or transfer of the property therein, when such goods exceed in value twenty rupees		One anna.
DEPOSIT OF TITLE-DEEDS ...	See *Instrument, No. 29.*	
DISSOLUTION OF PARTNERSHIP ...	See *Instrument, No. 33.*	
DUPLICATE ...	See *Counterpart, No. 23.*	

SCHEDULE I—*continued.*

DESCRIPTION OF INSTRUMENT.		PROPER STAMP-DUTY.
27. ENTRY AS AN ADVOCATE, VAKÍL OR ATTORNEY ON THE ROLL OF ANY HIGH COURT in exercise of powers conferred on such Court by letters patent ...	In the case of an Advocate or Vakíl	Five hundred rupees.
	In the case of an Attorney ...	Two hundred and fifty rupees.
See Exemption, Schedule II (No. 11).		
EXCHANGE ...	See *Instrument, No. 35.*	
EXTRACT ...	See *Copy, No. 22.*	
FURTHER CHARGE ...	See *Instrument, No. 30.*	
GIFT ...	See *Instrument, No. 36.*	
28. INDEMNITY-BOND	... ...	The same duty as a Security-Bond (No. 14).
INSPECTORSHIP-DEED	See *Composition-deed, No. 20.*	
29. INSTRUMENT EVIDENCING AN AGREEMENT TO SECURE THE REPAYMENT OF A LOAN made upon the deposit of title-deeds or other valuable security, or upon the hypothecation of moveable property ...	(*a.*) When such loan is repayable more than three months, but not more than one year, from the date of such instrument.	The same duty as a Bill of Exchange (No. 11 (*b*)) for the amount secured.
	(*b.*) When such loan is repayable not more than three months from the date of such instrument.	Half the duty payable on a Bill of Exchange (No. 11 (*b*)) for the amount secured.
30. INSTRUMENT IMPOSING A FURTHER CHARGE ON MORTGAGED PROPERTY ...	(*a.*) When the original mortgage is one of the description referred to in No. 44, clause (*a*), of this schedule.	The same duty as a Conveyance (No. 21) for a consideration equal to the amount secured by such instrument.
	(*b.*) When such mortgage is one of the description referred to in No. 44, clause (*b*), of this schedule.	The same duty as a Bond (No. 13) for the amount secured by such instrument.
31. INSTRUMENT OF APPRENTICESHIP, including every writing relating to the service or tuition of any apprentice, clerk or servant, placed with any master to learn any profession, trade or employment, except articles of clerkship (No. 9 of this schedule)	... ...	Five rupees.
See Exemption, Schedule II (No. 12 (c)).		
32. INSTRUMENT OF CO-PARTNERSHIP	... ...	Ten rupees.
33. INSTRUMENT OF DISSOLUTION OF PARTNERSHIP ...	... ...	Five rupees.
34. INSTRUMENT OF DIVORCE, that is to say, any instrument by which any person effects the dissolution of his marriage ...	... ...	One rupee.

SCHEDULE I—*continued.*

DESCRIPTION OF INSTRUMENT.		PROPER STAMP-DUTY.
35. INSTRUMENT OF EXCHANGE of any property ...	... ...	The same duty as a Conveyance (No. 21) for a consideration equal to the value of the property of greater value as set forth in such instrument.
36. INSTRUMENT OF GIFT (OTHER THAN A SETTLEMENT OR WILL)	... ...	The same duty as a Conveyance (No. 21) for a consideration equal to the value of the property as set forth in such instrument.
37. INSTRUMENT OF PARTITION ...	... ...	The same duty as a Bond (No. 13) for the amount of the value of the property divided as set forth in such instrument.
38. INSTRUMENT (OTHER THAN A WILL) CONFERRING OR PURPORTING TO CONFER AN AUTHORITY TO ADOPT ...	... ...	Ten rupees.
INSURANCE ...	See *Policy, No. 49.*	
39. LEASE. See *Agreement to lease* (*No. 4*). See *Exemptions, Schedule II* (*No. 13*).	(*a*) Where by such lease the rent is fixed and no premium is paid or delivered and such lease purports to be for a term—	
	of less than one year ...	The same duty as a Bond (No. 13) for the whole amount payable or deliverable under such lease.
	of not less than one year, but not more than three years ...	The same duty as a Bond (No. 13) for the average annual rent reserved.
	exceeding three years ...	The same duty as a Conveyance (No. 21) for a consideration equal to the amount or value of the average annual rent reserved.

SCHEDULE I—*continued.*

DESCRIPTION OF INSTRUMENT.		PROPER STAMP-DUTY.
39. LEASE,—*contd.* See *Agreement to lease (No. 4).* See *Exemptions, Schedule II (No. 13).*	(*b*) Where by such lease the rent is fixed and no premium is paid or delivered and such lease does not purport to be for any definite term	The same duty as a Conveyance (No. 21) for a consideration equal to the amount or value of the average annual rent which would be paid or delivered for the first ten years if the lease continued so long.
	(*c*) Where the lease is granted for a fine or premium, and where no rent is reserved...	The same duty as a Conveyance (No. 21) for a consideration equal to the amount or value of such fine or premium as set forth in the lease.
	(*d*) Where the lease is granted for a fine or premium in addition to rent reserved ...	The same duty as a Conveyance (No. 21) for a consideration equal to the amount or value of such fine or premium as set forth in the lease, in addition to the duty which would have been payable on such lease if no fine or premium had been paid or delivered: Provided that, when an agreement to lease is stamped with the *ad valorem* stamp required for a lease, and a lease in pursuance of such agreement is subsequently executed, the duty on such lease shall not exceed eight annas.
40. LETTER OF ALLOTMENT OF SHARES in any Company, or proposed Company, or in respect of any loan to be raised by any Company or proposed Company		One anna.
41. LETTER OF CREDIT, that is to say, any instrument by which one person authorizes another to give credit to the person in whose favour it is drawn ...		One anna.

SCHEDULE I—*continued.*

DESCRIPTION OF INSTRUMENT.		PROPER STAMP-DUTY.
42. LETTER OF LICENSE, that is to say, any agreement between a debtor and his creditors that the latter shall, for a specified time, suspend their claims and allow the debtor to carry on business at his own discretion		Ten rupees.
43. MEMORANDUM OF ASSOCIATION OF A COMPANY		Fifteen rupees.
44. MORTGAGE-DEED not provided for by No. 14, No. 15, No. 29 or No. 55 of this schedule.	(*a*) When at the time of execution possession of the property or any part of the property comprised in such deed is given by the mortgagor or agreed to be given ...	The same duty as a Conveyance (No. 21) for a consideration equal to the amount secured by such deed.
See *Exemptions, Schedule II, No. 12, and No. 14 (b).*	(*b*) When at the time of execution possession is not given or agreed to be given as aforesaid ...	The same duty as a Bond (No. 13) for the amount secured by such deed.
45. NOTARIAL ACT, that is to say, any instrument, endorsement, note, attestation, certificate or entry made or signed by a Notary Public in the execution of the duties of his office or by any other person lawfully acting as a Notary Public		One rupee.
46. NOTE OR MEMORANDUM sent by a Broker or Agent to his principal intimating the purchase or sale on account of such principal of any goods, stock or marketable security exceeding in value twenty rupees		One anna.

SCHEDULE I—*continued.*

DESCRIPTION OF INSTRUMENT.		PROPER STAMP-DUTY.
47. NOTE OF PROTEST BY THE MASTER OF A SHIP		Eight annas.
PARTITION ...	See *Instrument, No. 37.*	
PARTNERSHIP ...	See *Instrument, Nos. 32 and 33.*	
48. PETITION FOR LEAVE TO FILE A SPECIFICATION OF AN INVENTION, or for the extension of the term of the exclusive privilege of making or using or selling such invention in India		One hundred rupee
		If drawn singly. / If drawn in duplicate, for each part.
49. POLICY OF INSURANCE ... *See Exemption, Schedule II (No. 14 (a)).*	(a). In the case of Sea-insurance— When the amount insured does not exceed ... ... Rs. 1,000	Rs. A. P. 0 4 0 / Rs. A. P. 0 2 0
	And for every further sum of Rs. 1,000 or part thereof in excess of 1,000	0 4 0 / 0 2 0
	(b). In the case of any other insurance— When the amount insured does not exceed 1,000	0 6 0 / 0 3 0
	And for every further sum of Rs. 1,000 or part thereof in excess of 1,000	0 6 0 / 0 3 0
50. POWER-OF-ATTORNEY, not being a proxy chargeable under No. 51. ...	(a.) When executed for the sole purpose of procuring the presentation of one or more documents for registration in relation to a single transaction	Eight annas.
	(b.) When authorizing one person or more to act in a single transaction other than that mentioned in (a) ...	One rupee.

SCHEDULE I—*continued.*

DESCRIPTION OF INSTRUMENT.		PROPER STAMP-DUTY.
50. POWER-OF-ATTORNEY, not being a proxy chargeable under No. 51—*contd.*	(c.) When authorizing not more than five persons to act jointly and severally in more than one transaction or generally ...	Five rupees.
	(d.) When authorizing more than five but not more than ten persons to act jointly and severally in more than one transaction or generally	Ten rupees.
	(e.) In any other case	One rupee for each person authorized.
Explanation.—For the purposes of this number more persons than one when belonging to the same firm shall be deemed to be one person.		
PROMISSORY NOTE	See *Bill of Exchange, No. 11.*	
PROTEST, that is to say, any declaration in writing made by a Notary Public, or other person lawfully acting as such, attesting the dishonour of a bill of exchange or promissory note ...	See *Notarial Act, No. 45.*	
PROTEST BY THE MASTER OF A SHIP, that is to say, any declaration of the particulars of her voyage drawn up by him with a view to the adjustment of losses or the calculation of averages, and every declaration in writing made by him against charterers or the consignees for not loading or unloading the ship, when such declaration is attested or certified by a Notary Public or other person lawfully acting as such	See *Notarial Act, No. 45.*	
51. PROXY empowering any person to vote at any one meeting of— (a.) Members of a Company whose stock or funds is or are divided into shares and transferable: (b.) Municipal Commissioners: (c.) Proprietors, Members or Contributors to the funds of any Institution	... ...	One anna.

SCHEDULE I—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
52. RECEIPT FOR ANY MONEY OR OTHER PROPERTY THE AMOUNT OR VALUE OF WHICH EXCEEDS TWENTY RUPEES	One anna.
See Exemptions, Schedule II (No. 15).	
53. RE-CONVEYANCE OF MORTGAGED PROPERTY ... (*a.*) If the consideration for which the property was mortgaged does not exceed Rs. ... 1,000	The same duty as a Conveyance (No. 21) for the amount of such consideration as set forth in the re-conveyance.
(*b.*) In any other case ...	Ten rupees.
54. RELEASE, that is to say, any instrument whereby a person renounces a claim upon another person or against any specified property ... (*a.*) If the amount or value of the claim does not exceed 1,000	The same duty as a Bond (No. 13) for such amount or value as set forth in the release.
(*b.*) In any other case ...	Five rupees.
55. RESPONDENTIA-BOND, that is to say, any instrument securing a loan on the cargo laden or to be laden on board a ship and making repayment contingent on the arrival of the cargo at the port of destination	The same duty as a Bond (No. 13).
56. REVOCATION OF ANY TRUST of or concerning any property by any instrument other than a will	Ten rupees.
57. SETTLEMENT	The same duty as a Bond (No. 13) for a sum equal to the amount or value of the property settled as set forth in such settlement.
58. SHIPPING-ORDER for or relating to the conveyance of goods on board of any vessel	One anna.
SPECIFICATION ... See *Petition, No. 48.*	

SCHEDULE I—*concluded.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
59. SURRENDER OF LEASE ... (*a.*) When the duty with which the lease is chargeable does not exceed five rupees ...	The duty with which such lease is chargeable.
See Exemption Schedule II (No. 16). (*b.*) In any other case	Five rupees.
60. TRANSFER .. (*a.*) Of shares in a Company or Association	One-quarter of the duty payable on a Conveyance (No. 21).
See Exemptions, Schedule II (No. 17). (*b.*) Of any interest secured by a Bond, Lease, Mortgage-deed or Policy of Insurance—	
1. If the duty on such Bond, Lease, Mortgage-deed or Policy does not exceed five rupees	The duty with which such Bond, Lease, Mortgage-deed or Policy of Insurance is chargeable.
2. In any other case ...	Five rupees.
(*c.*) Of any property under the Administrator General's Act, 1874, section 31 ...	Ten rupees.
(*d.*) Of any trust-property from one trustee to another trustee without consideration ...	Five rupees.
TRUST ... ... See *Declaration, No. 25. Revocation, No. 56.*	
VALUATION ... See *Appraisement, No. 7.*	
61. WARRANT FOR GOODS, that is to say, any instrument evidencing the title of any person therein named, or his assigns, or the holder thereof, to the property in any goods lying in or upon any dock, warehouse or wharf, such instrument being signed or certified by or on behalf of the person in whose custody such goods may be	Four annas.

SCHEDULE II.

INSTRUMENTS EXEMPTED FROM STAMP-DUTY.

1. Affidavit or declaration in writing when made—
   (*a*) as a condition of enlistment under the Indian Articles of War;
   (*b*) for the immediate purpose of being filed or used in any Court or before the officer of any Court; or
   (*c*) for the sole purpose of enabling any person to receive any pension or charitable allowance.

2. Agreement or memorandum of agreement—
   (*a*) for or relating to the sale of goods or merchandize exclusively, not being a note or memorandum chargeable under No. 46 of schedule I;
   (*b*) for service in British Burma under the Chief Commissioner of that Province entered into between Natives of India emigrating to British Burma and the Superintendent of State Emigration or other Government officer acting as representative of the said Chief Commissioner;
   (*c*) made by raiyats for the cultivation of the poppy for Government;
   (*d*) made in the form of tenders to the Government of India for or relating to any loan;
   (*e*) made regarding the occupancy of land denoted by a survey-number, and the payment of revenue therefor, under Bombay Act I of 1865;
   (*f*) made under the European Vagrancy Act, 1874, section 17.

3. Appraisement or valuation made for the information of one party only, and not being in any manner obligatory between parties either by agreement or operation of law.

4. Appraisement of crops for the purpose of ascertaining the amount to be given to a landlord as rent.

5. Assignment of copyright by entry made under Act No. XX of 1847, section 5.

6. Award under Bombay Act VI of 1873, section 81, or Bombay Act III of 1874, section 18.

7. Bill of lading, when the goods therein described are received at a place within the limits of any port as defined under the Indian Ports Act, 1875, and are to be delivered at another place within the limits of the same port.

8. Bond when executed by—
   (*a*) the sureties of middlemen (lambardárs or khattadárs) taking advances for the cultivation of the poppy for Government;
   (*b*) headmen nominated under rules framed in accordance with Bengal Act III of 1876, section 99, for the due performance of their duties under that Act;
   (*c*) any person for the purpose of guaranteeing that the local income derived from private subscriptions to a charitable dispensary or hospital or any other object of public utility shall not be less than a specified sum per mensem.

9. Copy of any paper which a public officer is expressly required by law to make or furnish for record in any public office or for any public purpose.

10. Copy of registration of emigrants furnished under section 27 or section 29 of the Indian Emigration Act, 1871.

11. Entry—
   (*a*) of an advocate, vakíl or attorney on the roll of any High Court, when he has previously been enrolled in a High Court established by Royal Charter;
   (*b*) on the roll of any High Court, as an attorney, of an articled clerk bound as such before this Act comes into force.

12. Instruments—
   (*a*) executed by persons taking advances under the Land Improvement Act, 1871, or by their sureties, as security for the repayment of such advances;
   (*b*) executed by officers of Government or their sureties to secure the due execution of an office or the due accounting for money received by virtue thereof;
   (*c*) of apprenticeship executed by a Magistrate under Act XIX of 1850 or by which a person is apprenticed by or at the charge of any public charity.

13. Leases and Counterparts—
   (*a*) Leases of fisheries granted under the Burma Fisheries Act, 1875;
   (*b*) Lease, executed in the case of a cultivator without the payment or delivery of any fine or premium, when a definite term is expressed and such term does not exceed one year, or when the annual rent reserved does not exceed one hundred rupees;
   (*c*) Counterpart of any lease granted to a cultivator.

14. Letter—
   (*a*) of cover or engagement to issue a policy of insurance:

   Provided that, unless such letter or engagement bear the stamp prescribed by this Act for such policy, nothing shall be claimable thereunder, nor shall it be available for any purpose except to compel the delivery of the policy therein mentioned.

   (*b*) of hypothecation accompanying a bill of exchange.

15. Receipt—
   (*a*) endorsed on or contained in any instrument duly stamped, or exempted under this schedule, No. 18, acknowledging the receipt of the consideration-money therein expressed, or the receipt of any principal-money, interest or annuity or other periodical payment thereby secured;
   (*b*) for any payment of money without consideration;
   (*c*) for any payment of rent by a cultivator on account of land assessed to Government revenue, or (in the Presidencies of Fort St. George and Bombay) of inám lands;
   (*d*) for pay by non-commissioned officers or soldiers of Her Majesty's Army, or Her Majesty's Indian Army, when serving in such capacity;
   (*e*) for pensions or allowances by persons receiving such pensions or allowances in respect of their service as such non-commissioned officers or soldiers, and not serving the Government in any other capacity;
   (*f*) given by holders of family-certificates in cases where the person from whose pay or allowances the sum comprised in the receipt has been assigned is a non-commissioned officer or soldier of either of the said Armies, and serving in such capacity;
   (*g*) given by a headman or lambardár for land-revenue or taxes collected by him;
   (*h*) given for money or securities for money deposited in the hands of any banker, to be accounted for:

   Provided the same be not expressed to be received of, or by the hands of, any other than the person to whom the same is to be accounted for;
   Provided also, that this exemption shall not extend to a receipt or acknowledgment for any sum paid or deposited for or upon a letter of allotment of a share, or in respect of a call upon any scrip or share of or in any Company or Association, or proposed or intended Company or Association.

16. Surrender of lease when such lease is exempted from duty.

17. Transfers by endorsement—
   (*a*) of a bill of exchange, cheque or promissory note;
   (*b*) of a bill of lading;
   (*c*) of a policy of insurance;
   (*d*) of mortgages of rates and taxes authorized by any Act for the time being in force in British India;
   (*e*) of securities of the Government of India;
   (*f*) of a warrant for goods (No. 61 of schedule I).

General Exemption.

18. Any instrument executed by, or on behalf of, or in favour of, Government in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument.

SCHEDULE III.

ACTS REPEALED.

Number and year.	Subject or short title.	Extent of repeal.
XX of 1847 ...	Copyright	In section five, the words "without being subject to any stamp or duty."
X of 1866 ...	The Indian Companies Act ...	In section eleven, the words "shall bear the same stamp as if it were a deed, and."
		In section sixteen, the words "they shall bear the same stamp as if they were contained in a deed."
XVIII of 1869 ...	The General Stamp Act ...	The whole.
VII of 1871 ...	The Indian Emigration Act	In sections twenty-seven and twenty-nine, the words "which shall not require a stamp."
XIX of 1873 ...	The North-Western Provinces Land-Revenue Act, 1873.	In section one hundred and eighty-three, the words "stamped or."
II of 1874 ...	The Administrator General's Act.	In section thirty-one, the words "bearing a stamp of ten rupees and."
IX of 1874 ...	The European Vagrancy Act	In section seventeen, the words "may be on unstamped paper and."
XV of 1876 ...	Bombay Municipal Debentures	In section two, the words "and no such indorsement shall be chargeable with any stamp-duty."

D. FITZPATRICK,
Secy. to the Govt. of India.

The Gazette of India.

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PART IV.

Acts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 19th February, 1879, and is hereby promulgated for general information :—

ACT No. II OF 1879.

An Act to make better provision for recording evidence in the Central Provinces.

Preamble.

WHEREAS, in order to provide for the recording of evidence in civil suits in the Central Provinces by the Judge in English or in his own language, it is expedient to amend the Central Provinces Laws Act, 1875; It is hereby enacted as follows :—

Short title.

1. This Act may be called "The Central Provinces Laws Act, 1879;"

Commencement.

And it shall come into force at once.

Addition to Act XX of 1875.

2. The following sections shall be deemed to have been added to the said Central Provinces Laws Act, 1875, immediately after the Code of Civil Procedure came into force, that is to say :—

Local repeal of sections 184, 185 and 189 of the Code of Civil Procedure.

"11. Sections 184, 185 and 189 of the Code of Civil Procedure are hereby repealed.

Sections substituted for sections 182, 190 and 191 of same Code.

"12. For sections 182, 190 and 191 of the same Code, the following shall be substituted (namely) :—

Note of evidence to be taken.

"'182. A note of the essential points of the evidence of each witness shall be made at the time, and in the course of oral examination by the Judge, in his own language, or in English if he is sufficiently acquainted with that language, and such note shall be filed with, and form part of, the record of the case.

Judge unable to make note to record reason of his inability.

"'190. If the Judge be prevented from making a note as above required, he shall record the reason of his inability to do so, and shall cause such note to be made in writing from his dictation in open Court, and shall sign the same, and such note shall form part of the record.

Power to use note made by Judge dying or removed before conclusion of suit.

"'191. When the Judge making a note of the evidence, or causing one to be made as above required, dies or is removed from the Court before the conclusion of the suit, his successor may, if he thinks fit, deal with such note as if he himself had made it or caused it to be made.'"

D. FITZPATRICK,
Secy. to the Govt. of India.

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PART IV.

Acts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 19th February, 1879, and is hereby promulgated for general information :—

ACT No. II OF 1879.

An Act to make better provision for recording evidence in the Central Provinces.

Preamble.

WHEREAS, in order to provide for the recording of evidence in civil suits in the Central Provinces by the Judge in English or in his own language, it is expedient to amend the Central Provinces Laws Act, 1875; It is hereby enacted as follows :—

Short title.

1. This Act may be called "The Central Provinces Laws Act, 1879;"

Commencement.

And it shall come into force at once.

Addition to Act XX of 1875.

2. The following sections shall be deemed to have been added to the said Central Provinces Laws Act, 1875, immediately after the Code of Civil Procedure came into force, that is to say :—

Local repeal of sections 184, 185 and 189 of the Code of Civil Procedure.

"11. Sections 184, 185 and 189 of the Code of Civil Procedure are hereby repealed.

Sections substituted for sections 182, 190 and 191 of same Code.

"12. For sections 182, 190 and 191 of the same Code, the following shall be substituted (namely) :—

Note of evidence to be taken.

"'182. A note of the essential points of the evidence of each witness shall be made at the time, and in the course of oral examination by the Judge, in his own language, or in English if he is sufficiently acquainted with that language, and such note shall be filed with, and form part of, the record of the case.

Judge unable to make note to record reason of his inability.

"'190. If the Judge be prevented from making a note as above required, he shall record the reason of his inability to do so, and shall cause such note to be made in writing from his dictation in open Court, and shall sign the same, and such note shall form part of the record.

Power to use note made by Judge dying or removed before conclusion of suit.

"'191. When the Judge making a note of the evidence, or causing one to be made as above required, dies or is removed from the Court before the conclusion of the suit, his successor may, if he thinks fit, deal with such note as if he himself had made it or caused it to be made.'"

D. FITZPATRICK,

Secy. to the Govt. of India.

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PART IV.

Acts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 19th February, 1879, and is hereby promulgated for general information:—

ACT No. II OF 1879.

An Act to make better provision for recording evidence in the Central Provinces.

WHEREAS, in order to provide for the recording of evidence in civil suits in the Central Provinces by the Judge in English or in his own language, it is expedient to amend the Central Provinces Laws Act, 1875; It is hereby enacted as follows:— Preamble.

1. This Act may be called "The Central Provinces Laws Act, 1879;" Short title.

And it shall come into force at once. Commencement.

2. The following sections shall be deemed to have been added to the said Central Provinces Laws Act, 1875, immediately after the Code of Civil Procedure came into force, that is to say:— Addition to Act XX of 1875.

"11. Sections 184, 185 and 189 of the Code of Civil Procedure are hereby repealed. Local repeal of sections 184, 185 and 189 of the Code of Civil Procedure.

"12. For sections 182, 190 and 191 of the same Code, the following shall be substituted (namely):— Sections substituted for sections 182, 190 and 191 of same Code.

"'182. A note of the essential points of the evidence of each witness shall be made at the time, and in the course of oral examination by the Judge, in his own language, or in English if he is sufficiently acquainted with that language, and such note shall be filed with, and form part of, the record of the case. Note of evidence to be taken.

"'190. If the Judge be prevented from making a note as above required, he shall record the reason of his inability to do so, and shall cause such note to be made in writing from his dictation in open Court, and shall sign the same, and such note shall form part of the record. Judge unable to make note to record reason of his inability.

"'191. When the Judge making a note of the evidence, or causing one to be made as above required, dies or is removed from the Court before the conclusion of the suit, his successor may, if he thinks fit, deal with such note as if he himself had made it or caused it to be made.'"

D. FITZPATRICK,

Secy. to the Govt. of India.

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PART IV.

Acts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 8th March, 1879, and is hereby promulgated for general information :—

ACT No. III OF 1879.

An Act to authorize the destruction of Useless Records.

Preamble.

WHEREAS it is expedient to provide for the destruction or other disposal of useless records, books and papers in Courts and Revenue-offices; It is hereby enacted as follows :—

Short title. Local extent. Commencement.

1. This Act may be called "The Destruction of Records Act, 1879": it extends to the whole of British India; and it shall come into force at once.

Power to High Court to make rules for disposal of records, &c.

2. The High Court may, from time to time, make rules respecting the disposal, by destruction or otherwise, of such records, books and papers belonging to or being in the custody of such High Court, or the Courts of civil and criminal jurisdiction subordinate thereto, as the High Court may consider useless or unworthy of being permanently preserved.

So far as regards his own Court, the Court of Small Causes in Rangoon and the Courts of the Magistrates within the local limits of his ordinary civil jurisdiction, the Recorder of Rangoon shall, for the purposes of this section, be deemed to be a High Court.

Similar power to Presidency High Courts with respect to documents in Insolvency Courts and Administrator General's office.

3. Each of the High Courts of Judicature at Fort William, Madras and Bombay may from time to time make rules respecting the disposal, by destruction or otherwise, of such records, books and papers belonging to or being in the custody of

(*a*) the local Court for the relief of Insolvent Debtors held under the provisions of the eleventh and twelfth of Victoria, chapter twenty-one,

(*b*) the local Administrator General,

as the High Court may consider useless or unworthy of being permanently preserved.

Similar power to Chief Controlling Revenue-Authority.

4. The Chief Controlling Revenue-Authority may from time to time make rules respecting the disposal, by destruction or otherwise, of such records, books and papers belonging to or in the custody of the Revenue Courts and offices as it may consider useless or unworthy of being permanently preserved.

Rules when to have force of law.

5. All rules made under this Act shall, after being confirmed by the Local Government and sanctioned by the Governor General in Council, be published in the local official Gazette, and shall thereupon have the force of law.

Validation of rules as to destruction of documents.

6. All rules and orders heretofore made by a Local Government, a High Court or a Chief Controlling Revenue-Authority for the

destruction or other disposal of useless records, books and papers belonging to or in the custody of any Court or Revenue-office shall be deemed to have had the force of law from the date on which they were made, and all such rules now in force shall continue to have the force of law until they are rescinded by rules made under this Act; and no suit or other proceeding shall be instituted, maintained or continued against any person for the disposal, by destruction or otherwise, of any records, books or papers in accordance with any such rules or with any order made by a Local Government, High Court or Chief Controlling Revenue-Authority.

Bar of suits.

7. In this Act "Chief Controlling Revenue-Authority" means, in the Presidency of Fort St. George and the territories respectively under the administration of the Lieutenant-Governors of Bengal and the North-Western Provinces—the Board of Revenue: in the Presidency of Bombay, outside Sind and the limits of the town of Bombay—a Revenue Commissioner: in Sind—the Commissioner: in the Panjáb—the Financial Commissioner; and elsewhere—the Local Government or such officer as the Local Government may, by notification in the official Gazette, appoint in this behalf by name or in virtue of his office.

Interpretation-clause.

8. Nothing herein contained shall be deemed to authorize the destruction of any document which, under the provisions of any law for the time being in force, is to be kept and maintained.

Saving of documents kept under provision of law.

9. The enactments specified in the schedule hereto annexed shall be repealed to the extent mentioned in the third column.

Repeal of enactments.

THE SCHEDULE.

(See section 9.)

Enactments repealed.

(*a*).—ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

Number and year.	Subject or short title.	Extent of repeal.
XX of 1875	The Central Provinces Laws Act, 1875.	In section eight, clause (*c*), the last twenty-one words.
XVIII of 1876	The Oudh Laws Act, 1876.	In section thirty-nine, clause (*e*), the last eighteen words.

(*b*).—ACTS OF THE GOVERNOR OF BOMBAY IN COUNCIL.

Number and year.	Subject or short title.	Extent of repeal.
VI of 1865	To authorize the destruction of Useless Records in certain Courts of the Bombay Presidency.	The whole.
V of 1869	To authorize the destruction of Useless Records in the Courts of the Province of Sind.	The whole.

(*c*).—REGULATION UNDER 33 VIC., C. 3.

Number and year.	Subject or short title.	Extent of repeal.
III of 1877	The Ajmer Laws Regulation, 1877.	In section forty, clause (*c*), the last twenty-one words.

D. FITZPATRICK,
Secy. to the Govt. of India.

[First Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 13th March, 1879, and is hereby promulgated for general information:—

ACT NO. IV OF 1879.

THE INDIAN RAILWAY ACT, 1879.

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SCHEDULES.

An Act to consolidate and amend the law relating to Railways in India.

WHEREAS it is expedient to consolidate and amend the law relating to Railways in India; It is hereby enacted as follows:—

Preamble.

CHAPTER I.
PRELIMINARY.

1. This Act may be called "The Indian Railway Act, 1879:"

Short title.

It extends to the whole of British India and, so far as regards subjects of Her Majesty the Empress of India, to the dominions of Princes and States in India in alliance with Her said Majesty;

Local extent.

And it shall come into force on the first day of July, 1879.

Commencement.

2. On and from that day, the Acts specified in the first schedule hereto annexed shall be repealed.

Repeal of Acts.

All rules made, notifications published and powers conferred under any of such Acts, or any enactment thereby repealed, shall (so far as they are consistent herewith) be deemed to have been respectively made, published and conferred under this Act.

Nothing in the Carriers Act, 1865, shall apply to carriers by railway.

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

Interpretation-clause.

"Railway" means a railway for the public conveyance of passengers or goods.

"Railway."

It includes—

(*a*) all land within the fences or other boundary-marks prescribed under section fifty-two;

(*b*) all lines of rail, sidings or branches worked over for the purposes of, or in connection with, a Railway;

(*c*) all stations, offices, warehouses, fixed machinery and other works constructed for the purposes of, or in connection with, a Railway;

(*d*) all vessels and rafts used for the purpose of carrying on the traffic of a Railway.

In section four, "Railway" includes a railway under construction, and in the remaining part of this section and in the following sections (namely), six, eight, sixteen, twenty-five, thirty, thirty-three, thirty-four, forty to forty-six (both inclusive), fifty-two and fifty-three, "Railway" includes a Railway under construction and a Railway not used for the public conveyance of passengers or goods:

"Railway-administration" means in the case of a Railway worked by Government or a Native State, the Manager of such Railway, and in the case of a Railway worked by a Company or private individual, such Company or individual:

"Railway-administration."

"Railway-servant" means any person employed by a Railway-Administration, to perform any function in connection with a Railway,

"Railway-servant."

and in section twenty-five, last clause, sections twenty-six, twenty-seven, thirty-eight, and forty-two includes any person employed to perform any such function by any other person in execution of a contract into which he has entered with a Railway-Administration.

4. It shall be lawful, with the previous sanction of the Governor General in Council, to use on every Railway locomotive engines or other motive power, and carriages and wagons to be drawn or propelled thereby.

Right to use locomotives.

CHAPTER II.

DUTIES OF THE RAILWAY-ADMINISTRATION.

5. No Railway or portion or extension of, or addition to, a Railway shall be opened for the public conveyance of passengers until the Railway-Administration has given to the Governor General in Council notice in writing of the intention of opening the same and until an officer appointed by the Governor General in Council to inspect such Railway, portion, extension or addition has, after inspection thereof, reported in writing to the Governor General in Council that in his opinion the opening of the same would not be attended with danger to the public using the same.

Railway when to be opened.

6. Every Railway-Administration shall, within forty-eight hours after the occurrence upon the Railway of—

Accidents to be reported.

(*a*) any accident attended with loss of human life or serious injury to person or property,

(*b*) any accident of a description usually attended with such loss or injury, and

(*c*) any accident of any other description which the Governor General in Council may, from time to time, direct to be notified,

give notice thereof to the Local Government;

and the Station-master nearest to the place at which the accident occurs, or, where there is no Station-master, the officer in charge of the section of the Railway on which the accident occurs, shall without unnecessary delay give notice in writing or by telegraph of such accident to the nearest Magistrate and to the officer in charge of the Police-station in the jurisdiction of which the accident occurs or to such other Magistrate and Police-officer as the Local Government from time to time appoints in this behalf.

7. Every Railway-Administration shall make up and deliver to the Governor General in Council a return of accidents occurring in the course of the public traffic upon the Railway, whether attended with personal injury or not, in such form and manner, and at such intervals of time, as the Governor General in Council from time to time directs.

Returns of accidents.

8. Every Railway-Administration shall make general rules for the following purposes (that is to say):

General rules for working Railway.

(*a*) for regulating the mode in which, and the speed at which, carriages and wagons used on the Railway are to be moved or propelled;

(*b*) for regulating the maximum number of passengers which each carriage and compartment may carry, and the mode in which such number shall be denoted thereon;

(*c*) for regulating the provision to be made for the accommodation and convenience of passengers;

(*d*) for declaring what shall be deemed to be, for the purposes of this Act, dangerous goods; and

(*e*) generally for regulating the travelling upon, and the use, working and management of, the Railway;

and may, from time to time, alter any such rules.

Any such rule may contain a provision that any person committing a breach of it shall be liable to a fine which may extend to fifty rupees, or, in default of payment of such fine, to simple imprisonment for a term which may extend to two months.

Penalty for breach of rules.

No such rule shall take effect unless it is consistent with this Act and until it has received the sanction of the Governor General in Council.

All rules made under this section shall be published in the *Gazette of India*, and shall be otherwise notified to the Railway-servants and the public in such manner as the Governor General in Council, from time to time, directs.

Notification of rules.

The Governor General in Council may at any time cancel any such rule.

Power to cancel rules.

9. An abstract of this Act, and a copy of the Time-tables and Tariff of charges which may, from time to time, be published for any Railway by any Railway-Administration, shall be exhibited in some conspicuous place at each station of such Railway, so that they may be easily seen and read.

Copy and translation of Act, &c., to be shown at stations.

All such documents shall be so exhibited in English and in the principal vernacular language of the district in which the station is situate, and in such other language, if any, as the Governor General in Council may direct.

CHAPTER III.

CARRIAGE OF PROPERTY.

10. Every agreement purporting to limit the obligation or responsibility imposed on a carrier by Railway by the Indian Contract Act, 1872, sections 151 and 161, in the case of loss, destruction or deterioration of, or damage to, property

Special contract limiting liability.

shall, in so far as it purports to limit such obligation or responsibility, be void unless—

(*a*) it is in writing signed by, or on behalf of, the person sending or delivering such property, and

(*b*) is otherwise in a form approved by the Governor General in Council.

11. When any property mentioned in the second schedule hereto annexed is contained in any parcel or package delivered to a carrier by Railway, the carrier shall not be liable for loss, destruction or deterioration of, or damage to, such property, unless at the time of delivery the value and nature thereof have been declared by the person sending or delivering the same, and an increased charge for the safe conveyance of the same, or an engagement to pay such charge, has been accepted by some Railway-servant specially authorized in this behalf.

No liability for loss of gold, silver, &c., unless value declared and increased charge accepted.

When any property of which the value and nature have been declared under this section has been lost, destroyed or damaged, or has deteriorated, the compensation recoverable for such loss, destruction, damage or deterioration shall not exceed the value so declared.

12. A carrier by Railway shall in no case be answerable for loss destruction or deterioration of or damage to any passenger's luggage, unless a Railway-servant has booked and given a receipt for the same.

No liability for unbooked luggage.

13. In any suit against a carrier by Railway for compensation for loss, destruction or deterioration of, or damage to, property delivered to a Railway-servant, it shall not be necessary for the plaintiff to prove in what manner such loss, destruction, deterioration or damage was caused.

Plaintiffs not required to prove negligence.

14. If any person fails to pay on demand any sum due by him to a carrier by Railway for conveyance of any property by Railway, or for the custody of any property or for demurrage or wharfage in respect of the same, the Railway-Administration may detain the whole or any part of such property or, if the same have been removed from the Railway, any other property of such person then on such Railway or thereafter coming into the possession of the Railway-Administration;

Lien for money due for carriage, &c., of property.

and may also sell by public auction, in the case of perishable property at once, and in the case of other property on the expiration of at least fifteen days' notice thereof published in one or more of the local newspapers or, where there are no such newspapers, in such manner as the Local Government may, from time to time, direct, sufficient of such property to produce the sum payable as aforesaid, and all charges and expenses of such detention, notice and sale, or, if such person fails to remove from the Railway within a reasonable time any property so detained, the whole of such property;

and may out of the proceeds of the sale, retain the sum so payable, together with all charges and expenses aforesaid, rendering the surplus, if any, of such proceeds, and so much of the property (if any) as remains unsold, to the person entitled thereto;

or such carrier may recover any such sum by suit.

15. The owner or person having the care of any property which has been carried upon any Railway, or is brought into any station or warehouse for the purpose of being carried upon a Railway, shall, on demand by any Railway-servant appointed in this behalf by the Railway-Administration, deliver to him an exact account in writing signed by such owner or person of the quantity and description of such property.

Written account of property to be given on demand.

16. No passenger shall take with him on a railway, and no person shall deliver or tender for carriage upon any Railway, any dangerous luggage or goods without giving notice of their nature to a Railway-servant, or, in the case of luggage or goods delivered or tendered for carriage, distinctly marking their nature on the outside of the package containing the same.

Dangerous goods.

Any Railway-servant may refuse to carry upon a Railway any luggage or parcel which he suspects to contain dangerous goods, and may require such luggage or parcel to be opened to ascertain the fact previously to carrying the same;

and in case any such luggage or parcel is received for the purpose of being carried upon a Railway, any Railway-servant may stop the transit thereof until he is satisfied as to the nature of its contents.

CHAPTER IV.

CARRIAGE OF PASSENGERS.

17. Every person desirous of travelling on a Railway shall, upon payment of his fare, be furnished with a ticket specifying in English and the principal vernacular language of the district in which the ticket is issued, the class of carriage for which, and the place from and place to which, the fare has been paid, and the amount of such fare;

Passengers on payment of fares to be furnished with tickets.

and every passenger shall, when required, show his ticket to any Railway-servant duly authorized to examine the same, and shall deliver up such ticket upon demand to any Railway-servant duly authorized to collect tickets.

Tickets to be shown and given up on demand.

18. At the intermediate stations, the fares shall be deemed to be accepted and the tickets furnished only upon condition that there be room in the train for which the tickets are furnished.

Fares and tickets at intermediate stations.

In case there is not room for all the passengers to whom tickets have been furnished, those who have obtained tickets for the longest distance shall have the preference; and those who have obtained tickets for the same distance shall have the preference according to the order in which they have received their tickets:

Preferential right of ticket-holders.

Provided that all officers and troops of Her Majesty on duty, and all other persons on the business of the Government who, by virtue of any contract with the Government or, in the case of a Railway worked by Government, of any direction of the Government General in Council, are entitled to be conveyed on a Railway in preference to, or in priority over, the public, shall be entitled to such

Proviso.

preference and priority without reference to the distance for which, or the order in which, they have received their tickets.

Any passenger to whom a ticket has been furnished at any station and for whom there is no room shall, on returning the ticket within a reasonable time after its issue, be entitled to have his fare at once refunded.

Fares to be prepaid.

19. Except with the permission of the Railway-Administration or of such officer as it appoints in this behalf, no person shall enter any carriage used on any Railway for the purpose of travelling therein without having first paid his fare and obtained a ticket.

Power to remove persons suffering from infectious disease.

20. Any passenger found suffering from an infectious disease in a railway-carriage or in any place on a railway may, if his remaining in such carriage or place is likely to spread the infection of such disease, be removed from such carriage or place by any railway-servant;

any passenger so removed who has paid his proper fare to or at the place at which he is so removed, shall be entitled, on returning his ticket, to have such fare refunded.

CHAPTER V.

OFFENCES AND PROCEDURE.

(A).—Offences by the Railway-Administration.

Penalty for opening railway in contravention of section 5.

21. Any Railway-Administration opening, in contravention of section five, any Railway, or any portion or extension of, or addition to, a Railway, shall forfeit to Government the sum of one thousand rupees for every day during which the same continues open in contravention of that section.

For omitting to report accident.

22. Any Railway-Administration omitting to give notice as required by section six, shall forfeit to Government the sum of one hundred rupees for every day during which such omission continues.

For not sending return of accidents or making rules under section 8, or exhibiting copy under section 9.

23. Any Railway-Administration failing to deliver any return mentioned in section seven within fourteen days after the same ought to be delivered, or to make or notify any rules as required by section eight, or to exhibit any abstract or copy mentioned in section nine in manner required by that section, shall forfeit to Government the sum of fifty rupees for every day during which such failure continues.

(B).—Offences by Railway-servants.

For omitting to give notice of accident.

24. Any Station-master or other person omitting to give notice as required by section six, shall be punished with fine which may extend to fifty rupees.

For drunkenness or breach of duty.

25. Any Railway-servant who is in a state of intoxication whilst actually employed upon a Railway in the discharge of any duty, or who negligently omits to perform his duty, or who performs the same in an improper manner,

shall be punished with fine which may extend to fifty rupees;

or if the duty in any of the cases aforesaid be such that the negligent omission or improper performance thereof would be likely to endanger the safety of any person travelling or being upon such Railway, such servant shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

For endangering the safety of persons.

26. If any Railway-servant in the discharge of his duty endangers the safety of any person—

(*a*) by disobeying any general rule sanctioned and published and notified in the manner prescribed by section eight; or

(*b*) by disobeying any rule or order not inconsistent with the general rules aforesaid, and which such servant was bound by the terms of his employment to obey, and of which he had notice; or

(*c*) by any rash or negligent act or omission,

he shall be punished with imprisonment for a term which may extend to three years, or with fine which may extend to five hundred rupees, or with both.

For receiving bribes.

27. Every Railway-servant shall be deemed a "public servant" within the meaning of sections 161, 162, 163, 164 and 165 of the Indian Penal Code.

Amendment of Penal Code, section 161.

In the definition of legal remuneration contained in the said section 161, the word "Government" shall, for the purposes of this section, be deemed to include any employer of a Railway-servant as such.

For compelling passengers to enter carriages already full.

28. Any Railway-servant who compels or attempts to compel any passenger to enter a carriage or compartment containing the maximum number of passengers denoted thereon in accordance with a rule made and notified under section eight, shall be punished with fine which may extend to one hundred rupees.

(C).—Offences by Persons generally.

For not giving account of goods or giving false account.

29. Any person required under section fifteen to give an account of the quantity and description of any property who neglects or refuses to give such account,

or who wilfully gives a false account,

shall be punished with fine which may extend to five rupees for every maund (of 3,200 tolahs) of such property; and such fine shall be in addition to any charge to which such property may be liable.

For taking dangerous goods on Railway or delivering such goods without notice.

30. Whoever, in contravention of section sixteen, takes with him any dangerous goods on a Railway, or delivers or tenders any such goods for the purpose of being carried upon a Railway, shall be punished with fine which may extend to two hundred rupees.

For travelling without ticket or not showing or delivering up ticket.

31. Any passenger travelling on a railway without a proper ticket or having such a ticket and not showing or delivering up the same when so required under section seventeen, shall be liable to pay the fare of the class in which he is found travelling, from the place whence

the train originally started, unless he can prove that he has travelled a less distance only, in which case he shall be liable to pay the fare of the class aforesaid only from the place whence he has travelled.

Every such fare shall, on application by a Railway-servant to a Magistrate, and on proof of the passenger's liability, be recoverable from such passenger as if it were a fine, and shall, when recovered, be paid to the Railway-Administration.

For evading payment of fare.

32. Any person who defrauds, or attempts to defraud, any carrier by Railway—

(*a*) by travelling, or attempting to travel, on any Railway without having previously paid his fare;

(*b*) by riding or attempting to ride in or on a carriage, or by a train, of a higher class than that for which he has paid his fare;

(*c*) by using or attempting to use a ticket on any day for which such ticket is not available;

(*d*) by continuing his journey in or upon any carriage beyond the place to which he has paid his fare, without previously paying the fare for the additional distance;

or who, in any other manner whatever, attempts to evade the payment of his fare,

For altering ticket.

or who wilfully alters or defaces his ticket so as to render the date, number or other material portion thereof illegible,

shall be punished with fine which may extend to fifty rupees, and shall also be liable to pay the fare (if any) which he ought to have paid; and such fare shall be recoverable in manner provided by section thirty-one and shall, when recovered, be paid to the Railway-Administration.

For entering carriage in motion.

33. Any passenger who gets into or upon, or attempts to get into or upon, or quits, or attempts to quit, any carriage upon any Railway, while such carriage is in motion, shall be punished with fine which may extend to twenty rupees;

For riding on the steps.

and any passenger who rides, or attempts to ride, on the steps, or any other part of a carriage, upon any Railway, except on those parts which are intended for the accommodation of passengers,

shall be punished with fine which may extend to fifty rupees.

For riding on engine, tender, &c.

34. Any person who, without the permission of the Railway-Administration, rides or attempts to ride upon any locomotive-engine or tender upon any Railway; or in or upon any vehicle not appropriated to the carriage of passengers,

shall be punished with fine which may extend to one hundred rupees.

For smoking.

35. Any person who, without the consent of his fellow-passengers, if any, in the same compartment, smokes in or upon any Railway-carriage, except in a carriage or compartment specially provided for the purpose, shall be punished with fine which may extend to twenty rupees;

and any person who persists in so smoking (except as aforesaid) after being warned by any Railway-servant to desist may, in addition to incurring the liability above-mentioned, be removed by any Railway-servant from any such carriage, and from the premises of the Railway, and where he has paid his fare and obtained a ticket, shall forfeit such fare and ticket.

For intoxication or nuisance.

36. Any person who is in a state of intoxication, or who commits any nuisance or act of indecency in any Railway-carriage, or upon any part of any Railway;

or who wilfully and without lawful excuse interferes with the comfort of any passenger, or extinguishes any lamp in any Railway-carriage,

shall be punished with fine which may extend to fifty rupees; and may be removed by any Railway-servant from any such carriage, and also from the premises of the Railway, and where he has paid his fare and obtained a ticket, shall forfeit such fare and ticket.

For entering carriage or room reserved for females.

37. If any carriage, compartment, room or place be reserved by the Railway-Administration for the exclusive use of females, any male person who without lawful excuse enters such carriage, compartment, room or place knowing the same to be reserved as aforesaid, or remains therein after having been informed of its having been so reserved, shall be punished with fine which may extend to one hundred rupees,

and may be removed therefrom, and also from the premises of the Railway, by any Railway-servant,

and, where he has paid his fare and obtained a ticket, shall forfeit such fare and ticket.

For obstructing Railway-servant in his duty.

38. Whoever wilfully obstructs or impedes any Railway-servant in the discharge of his duty, shall be punished with fine which may extend to one hundred rupees.

For entering carriage already full.

39. Any passenger wilfully entering a carriage or compartment containing the maximum number of passengers which has been denoted thereon in accordance with a rule made and notified under section eight, shall be punished with fine which may extend to one hundred rupees.

For removing signals or injuring carriage, &c.

40. Any person who without authority or reasonable excuse makes, alters, shows, hides, removes or extinguishes any signal or light upon any Railway, or upon any engine, carriage, wagon or other vehicle upon a Railway,

or who negligently damages any engine, carriage, wagon or other vehicle belonging to a Railway, or any warehouse, building, machine, fence or other thing so belonging,

or who needlessly interferes with the means of communication provided in any train between the guard and the engine-driver or passengers,

shall be punished with fine which may extend to one hundred rupees.

For trespass.

41. Any person who unlawfully enters upon a Railway shall be punished with fine which may extend to twenty rupees; and if any person so entering

For refusing to leave on request.

refuses to leave such Railway on being requested to do so by any Railway-servant, or by any other person on behalf of the Railway-Administration, he shall be punished with fine which may extend to fifty rupees, and may be

immediately removed from such Railway by such servant or other person as aforesaid.

42. The owner or person in charge of any bulls, cows, bullocks, calves, elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats and kids straying on any Railway provided with fences suitable for the exclusion of such animals, shall be punished with fine which may extend to ten rupees for each animal, in addition to any amount that may be recovered under the Cattle Trespass Act, 1871.

For cattle-trespass within Railway-fences.

Whenever any such animals are wilfully and unlawfully driven, or knowingly and unlawfully permitted to be, on any Railway provided with fences suitable for the exclusion of such animals,

For wilfully driving cattle on fenced Railway;

and whenever any such animals are wilfully driven, or knowingly permitted to be, on any Railway not so provided, otherwise than for the purpose of lawfully crossing the Railway, or for any other lawful purpose,

on unfenced Railway.

the person in charge of such animals, or if he cannot be identified, then the owner of the said animals, shall be punished with fine which may extend to fifty rupees for each animal, in addition to any amount that may be recovered under the same Act.

All fines imposed under this section may, if the convicting Magistrate so direct, be recovered in manner provided by section twenty-five of the said Cattle Trespass Act, 1871, and may be appropriated in whole or in part in compensation for loss or damage proved to his satisfaction.

Recovery of fines and payment of compensation.

The expression "public road" in sections eleven and twenty-six of the same Act shall be deemed to include a Railway. And any Railway-servant may exercise the powers of seizure provided by the said section eleven.

Amendment of Act I of 1871, ss. 11 and 26.

43. Whoever knowing or having reason to believe that any engine or train is approaching along a Railway opens any gate which the Railway-Administration has set up on either side of the Railway across any road for the use or accommodation of any person, or passes or attempts to pass, or drives or takes, or attempts to drive or take, any vehicle, animal or other thing, across the Railway;

For opening or not properly shutting gates.

and whoever at any time, in the absence of a gatekeeper, omits to shut and fasten such gate as soon as he and any vehicle, animal or other thing under his charge have passed through the same,

shall be punished with fine which may extend to fifty rupees.

44. Whenever any minor under twelve years of age unlawfully—

For minors obstructing line or throwing stones at train.

(*a*) places or throws, or attempts to place or throw, upon or across a Railway any wood, stone or other thing, or

(*b*) removes or displaces, or attempts to remove or displace, any rail, sleeper, spike, key or other thing belonging to the permanent way of a Railway, or

(*c*) throws or causes to fall, or attempts to throw or cause to fall, against, into or upon any engine, tender, carriage or other vehicle used upon a Railway, any wood, stone or other thing,

such minor shall be deemed guilty of an offence, and the convicting Magistrate may, in his discretion, direct either that the minor, if a male, shall be punished with whipping, or that the father or guardian of the minor shall, within such reasonable time as the Magistrate may fix, execute a bond binding himself, in such penalty as the Magistrate may direct, to prevent the minor from repeating such offence.

The amount of such bond, if forfeited, shall be recoverable as if it were a fine.

Any person neglecting or refusing to execute a bond when required under this section so to do shall be punished with fine which may extend to fifty rupees.

45. Whoever wilfully does any act, or wilfully omits to do what he is legally bound to do, intending by such act or omission to endanger, or knowing that he is thereby likely to endanger, the safety of any person travelling or being upon any Railway, shall be punished with transportation (or in the case of an European or American, penal servitude) for a term of not less than seven years or with imprisonment for a term which may extend to ten years.

For wilful act or omission endangering persons on Railway.

46. Whoever rashly or negligently does any act, or omits to do what he is legally bound to do, and such act or omission is likely to endanger the safety of any person travelling or being upon a Railway, shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

For rash or negligent act.

47. Every driver or conductor of an omnibus, carriage or other vehicle shall, while in or upon any station-yard or other premises forming part of a Railway, obey the reasonable directions of any Railway-servant duly authorized in this behalf; and every person offending against this section shall be punished with fine which may extend to twenty rupees.

Disobedience of omnibus, &c., drivers to Railway-servants.

(*D*).—*Arrest of Offenders.*

48. If any person commits any offence punishable under this Act and there is reason to believe that he will abscond or his name and address are unknown, and he refuses to give his name and address, or there is reason to believe that the name or address given by him is incorrect, any Railway-servant or Police-officer, or any other person whom such Railway-servant or Police-officer may call to his aid, may, without any warrant or written authority, arrest and detain such offender until he can be taken before a Magistrate or give sufficient security for his appearance before such Magistrate, or is otherwise discharged by due course of law.

Arrest for offences punishable under this Act of offender whose name is unknown, &c.

49. Every person committing any offence mentioned in sections eight, twenty-five, twenty-six, thirty-six, thirty-seven, thirty-eight, forty-four, forty-five and forty-six may be arrested without any warrant or written

Arrest for offences against certain sections.

authority by any Railway-servant or Police-officer, or by any other person whom such servant or officer may call to his aid;

and every person so arrested shall, without unnecessary delay, be taken before a Magistrate authorized to punish him or to commit him for trial.

(*E*).—*Jurisdiction.*

50. No Magistrate other than a Presidency Magistrate and a Magistrate whose powers are not less than those of a Magistrate of the second class shall try any offence under this Act.

Magistrates having jurisdiction.

Any person committing any offence against this Act or the rules made under it, shall be triable for such offence in any place in which he may be found or which the Local Government may, from time to time, notify in this behalf, as well as in any other place in which he might be tried under any law for the time being in force.

Place of trial.

Every notification under this section shall be published in the local official Gazette and a copy thereof shall also be exhibited in some conspicuous place at each of such Railway-stations as the Local Government may direct, so that it may be easily seen and read.

(*F*).—*Saving of other Criminal Laws.*

51. Nothing in this Act shall be deemed to prevent any person from being arrested, prosecuted or punished under any other law for any act or omission which constitutes an offence against this Act or the rules made under it:

Saving of prosecutions under other laws.

Provided that no person shall be punished twice for the same offence.

CHAPTER VI.

MISCELLANEOUS.

52. The Governor General in Council, or the Local Government with the previous sanction of the Governor General in Council, may, from time to time, make rules requiring—

Power of Government to make rules as to fences, gates and bars.

(*a*) that boundary-marks or fences be provided for any Railway or any part thereof, and for roads constructed in connection therewith;

(*b*) that gates or bars be erected at places where any Railway crosses a road on the level; and

(*c*) that persons be employed to open and shut such gates or bars;

and may by such rules determine what kind of fences shall, for the purposes of section forty-two, be deemed to be suitable for the exclusion of cattle,

and direct that any Railway-Administration wilfully neglecting or violating any rule made under this section, shall forfeit to Government a sum not exceeding five hundred rupees for every such neglect or violation, or, when such neglect or violation is continuous, for every day during which it continues.

53. The Governor General in Council may, from time to time by notification in the *Gazette of India*, declare what Government or other Authority shall be deemed to be, for the purposes of this Act, the Local Government in respect of the whole or any part of a Railway.

Power to declare Local Government in respect of any Railway.

54. The Governor General in Council may, by notification, extend this Act or any portion thereof to any tramway worked by steam.

Power to extend Act to steam-tramways.

THE FIRST SCHEDULE.

ACTS REPEALED.

(*See section 2.*)

Number and year.	Title.
XVIII of 1854 ...	An Act relating to Railways in India.
XXXI of 1867 ...	An Act to render penal certain offences committed by servants of Railway Companies.
XIII of 1870 ...	An Act to apply the provisions of Act No. XVIII of 1854 to Railways belonging to, or worked by, Government.
XXV of 1871 ...	An Act to amend the Railway Act.

THE SECOND SCHEDULE.

(*See section 11.*)

(*a*) Gold or silver, coined or uncoined, manufactured or unmanufactured;

(*b*) plated articles;

(*c*) cloths and tissue and lace of which gold or silver forms part;

(*d*) precious stones, jewellery, trinkets;

(*e*) watches, clocks or time-pieces of any description;

(*f*) Government securities;

(*g*) Government stamps;

(*h*) bills of exchange, hundís, promissory notes, bank-notes, orders or other securities for payment of money;

(*i*) maps, writings, title-deeds;

(*j*) paintings, engravings, lithographs, photographs, carvings, sculpture and other works of art;

(*k*) glass, china, marble;

(*l*) silks in a manufactured or unmanufactured state, and whether wrought up or not wrought up with other materials;

(*m*) shawls;

(*n*) lace;

(*o*) opium;

(*p*) ivory, ebony, sandalwood, sandalwood-oil;

(*q*) musical and scientific instruments.

D. FITZPATRICK,
Secy. to the Govt. of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, MARCH 29, 1879.

☞ Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV.

Acts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 8th March 1879, and is hereby promulgated for general information :—

ACT No. IX OF 1879.

An Act to authorize the destruction of Useless Records.

Preamble.

WHEREAS it is expedient to provide for the destruction or other disposal of useless records, books and papers in Courts and Revenue-offices; It is hereby enacted as follows :—

Short title. Local extent. Commencement.

1. This Act may be called "The Destruction of Records Act, 1879": it extends to the whole of British India; and it shall come into force at once.

Power to High Court to make rules for disposal of records, &c.

2. The High Court may, from time to time, make rules respecting the disposal, by destruction or otherwise, of such records, books and papers belonging to or being in the custody of such High Court, or the Courts of civil and criminal jurisdiction subordinate thereto, as the High Court may consider useless or unworthy of being permanently preserved.

So far as regards his own Court, the Court of Small Causes in Rangoon and the Courts of the Magistrates within the local limits of his ordinary civil jurisdiction, the Recorder of Rangoon shall, for the purposes of this section, be deemed to be a High Court.

Similar power to Presidency High Courts with respect to documents in Insolvency Courts and Administrator General's office.

3. Each of the High Courts of Judicature at Fort William, Madras and Bombay may from time to time make rules respecting the disposal, by destruction or otherwise, of such records, books and papers belonging to or being in the custody of

(*a*) the local Court for the relief of Insolvent Debtors held under the provisions of the eleventh and twelfth of Victoria, chapter twenty-one,

(*b*) the local Administrator General,

as the High Court may consider useless or unworthy of being permanently preserved.

Similar power to Chief Controlling Revenue-Authority.

4. The Chief Controlling Revenue-Authority may from time to time make rules respecting the disposal, by destruction or otherwise, of such records, books and papers belonging to or in the custody of the Revenue Courts and offices as it may consider useless or unworthy of being permanently preserved.

Rules when to have force of law.

5. All rules made under this Act shall, after being confirmed by the Local Government and sanctioned by the Governor General in Council, be published in the local official Gazette, and shall thereupon have the force of law.

Validation of rules as to destruction of documents.

6. All rules and orders heretofore made by a Local Government, a High Court or a Chief Controlling Revenue-Authority for the

destruction or other disposal of useless records, books and papers belonging to or in the custody of any Court or Revenue-office shall be deemed to have had the force of law from the date on which they were made, and all such rules now in force shall continue to have the force of law until they are rescinded by rules made under this Act; and no suit or other proceeding shall be instituted, maintained or continued against any person for the disposal, by destruction or otherwise, of any records, books or papers in accordance with any such rules or with any order made by a Local Government, High Court or Chief Controlling Revenue-Authority.

Bar of suits.

7. In this Act "Chief Controlling Revenue-Authority" means, in the Presidency of Fort St. George and the territories respectively under the administration of the Lieutenant-Governors of Bengal and the North-Western Provinces—the Board of Revenue: in the Presidency of Bombay, outside Sind and the limits of the town of Bombay—a Revenue Commissioner: in Sind—the Commissioner: in the Panjáb—the Financial Commissioner; and elsewhere—the Local Government or such officer as the Local Government may, by notification in the official Gazette, appoint in this behalf by name or in virtue of his office.

Interpretation-clause.

8. Nothing herein contained shall be deemed to authorize the destruction of any document which, under the provisions of any law for the time being in force, is to be kept and maintained.

Saving of documents kept under provision of law.

9. The enactments specified in the schedule hereto annexed shall be repealed to the extent mentioned in the third column.

Repeal of enactments.

THE SCHEDULE.

(See section 9.)

Enactments repealed.

(*a*).—ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

Number and year.	Subject or short title.	Extent of repeal.
XX of 1875	The Central Provinces Laws Act, 1875.	In section eight, clause (*c*), the last twenty-one words.
XVIII of 1876	The Oudh Laws Act, 1876.	In section thirty-nine, clause (*e*), the last eighteen words.

(*b*).—ACTS OF THE GOVERNOR OF BOMBAY IN COUNCIL.

Number and year.	Subject or short title.	Extent of repeal.
VI of 1865	To authorize the destruction of Useless Records in certain Courts of the Bombay Presidency.	The whole.
V of 1869	To authorize the destruction of Useless Records in the Courts of the Province of Sind.	The whole.

(*c*).—REGULATION UNDER 33 VIC., c. 3

Number and year.	Subject or short title.	Extent of repeal.
III of 1877	The Ajmer Laws Regulation, 1877.	In section forty, clause (*c*), the last twenty-one words.

D. FITZPATRICK,
Secy. to the Govt. of India.

[Third Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 13th March, 1879, and is hereby promulgated for general information:—

ACT No. IV OF 1879.

THE INDIAN RAILWAY ACT, 1879.

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SCHEDULES.

An Act to consolidate and amend the law relating to Railways in India.

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to Railways in India; It is hereby enacted as follows:—

CHAPTER I.
PRELIMINARY.

Short title.

1. This Act may be called "The Indian Railway Act, 1879:"

Local extent.

It extends to the whole of British India and, so far as regards subjects of Her Majesty the Empress of India, to the dominions of Princes and States in India in alliance with Her said Majesty;

Commencement.

And it shall come into force on the first day of July, 1879.

Repeal of Acts.

2. On and from that day, the Acts specified in the first schedule hereto annexed shall be repealed.

All rules made, notifications published and powers conferred under any of such Acts, or any enactment thereby repealed, shall (so far as they are consistent herewith) be deemed to have been respectively made, published and conferred under this Act.

Nothing in the Carriers Act, 1865, shall apply to carriers by railway.

Interpretation-clause.

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

"Railway."

"Railway" means a railway for the public conveyance of passengers or goods.

It includes—

(*a*) all land within the fences or other boundary-marks prescribed under section fifty-two;

(*b*) all lines of rail, sidings or branches worked over for the purposes of, or in connection with, a Railway;

(*c*) all stations, offices, warehouses, fixed machinery and other works constructed for the purposes of, or in connection with, a Railway;

(*d*) all vessels and rafts used for the purposes of carrying on the traffic of a Railway.

In section four, "Railway" includes a railway under construction, and in the remaining part of this section and in the following sections (namely), six, eight, sixteen, twenty-five, thirty, thirty-three, thirty-four, forty to forty-six (both inclusive), fifty-two and fifty-three, "Railway" includes a Railway under construction and a Railway not used for the public conveyance of passengers or goods:

"Railway-administration" means in the case of a Railway worked by Government or a Native State, the Manager of such Railway, and in the case of a Railway worked by a Company or private individual, such Company or individual: "Railway-administration."

"Railway-servant" means any person employed by a Railway-Administration, to perform any function in connection with a Railway, "Railway-servant."

and in section twenty-five, last clause, sections twenty-six, twenty-seven, thirty-eight, and forty-two includes any person employed to perform any such function by any other person in execution of a contract into which he has entered with a Railway-Administration.

4. It shall be lawful, with the previous sanction of the Governor General in Council, to use on every Railway locomotive engines or other motive power, and carriages and wagons to be drawn or propelled thereby. Right to use locomotives.

CHAPTER II.

DUTIES OF THE RAILWAY-ADMINISTRATION.

5. No Railway or portion or extension of, or addition to, a Railway shall be opened for the public conveyance of passengers until the Railway-Administration has given to the Governor General in Council notice in writing of the intention of opening the same and until an officer appointed by the Governor General in Council to inspect such Railway, portion, extension or addition has, after inspection thereof, reported in writing to the Governor General in Council that in his opinion the opening of the same would not be attended with danger to the public using the same. Railway when to be opened.

6. Every Railway-Administration shall, within forty-eight hours after the occurrence upon the Railway of— Accidents to be reported.

(*a*) any accident attended with loss of human life or serious injury to person or property,

(*b*) any accident of a description usually attended with such loss or injury, and

(*c*) any accident of any other description which the Governor General in Council may, from time to time, direct to be notified,

give notice thereof to the Local Government;

and the Station-master nearest to the place at which the accident occurs, or, where there is no Station-master, the officer in charge of the section of the Railway on which the accident occurs, shall without unnecessary delay give notice in writing or by telegraph of such accident to the nearest Magistrate and to the officer in charge of the Police-station in the jurisdiction of which the accident occurs or to such other Magistrate and Police-officer as the Local Government from time to time appoints in this behalf.

7. Every Railway-Administration shall make up and deliver to the Governor General in Council a return of accidents occurring in the course of the public traffic upon the Railway, whether attended with personal injury or not, in such form and manner, and at such intervals of time, as the Governor General in Council from time to time directs. Returns of accidents.

8. Every Railway-Administration shall make general rules for the following purposes (that is to say): General rules for working Railway.

(*a*) for regulating the mode in which, and the speed at which, carriages and wagons used on the Railway are to be moved or propelled;

(*b*) for regulating the maximum number of passengers which each carriage and compartment may carry, and the mode in which such number shall be denoted thereon;

(*c*) for regulating the provision to be made for the accommodation and convenience of passengers;

(*d*) for declaring what shall be deemed to be, for the purposes of this Act, dangerous goods; and

(*e*) generally for regulating the travelling upon, and the use, working and management of, the Railway;

and may, from time to time, alter any such rules.

Any such rule may contain a provision that any person committing a breach of it shall be liable to a fine which may extend to fifty rupees, or, in default of payment of such fine, to simple imprisonment for a term which may extend to two months. Penalty for breach of rules.

No such rule shall take effect unless it is consistent with this Act and until it has received the sanction of the Governor General in Council.

All rules made under this section shall be published in the *Gazette of India*, and shall be otherwise notified to the Railway-servants and the public in such manner as the Governor General in Council, from time to time, directs. Notification of rules.

The Governor General in Council may at any time cancel any such rule. Power to cancel rules.

9. An abstract of this Act, and a copy of the Time-tables and Tariff of charges which may, from time to time, be published for any Railway by any Railway-Administration, shall be exhibited in some conspicuous place at each station of such Railway, so that they may be easily seen and read. Copy and translation of Act, &c., to be shown at stations.

All such documents shall be so exhibited in English and in the principal vernacular language of the district in which the station is situate, and in such other language, if any, as the Governor General in Council may direct.

CHAPTER III.

CARRIAGE OF PROPERTY.

10. Every agreement purporting to limit the obligation or responsibility imposed on a carrier by Railway by the Indian Contract Act, 1872, sections 151 and 161, in the case of loss, destruction or deterioration of, or damage to, property Special contract limiting liability.

shall, in so far as it purports to limit such obligation or responsibility, be void unless—

(*a*) it is in writing signed by, or on behalf of, the person sending or delivering such property, and

(*b*) is otherwise in a form approved by the Governor General in Council.

11. When any property mentioned in the second schedule hereto annexed is contained in any parcel or package delivered to a carrier by Railway, the carrier shall not be liable for loss, destruction or deterioration of, or damage to, such property, unless at the time of delivery the value and nature thereof have been declared by the person sending or delivering the same, and an increased charge for the safe conveyance of the same, or an engagement to pay such charge, has been accepted by some Railway-servant specially authorized in this behalf. No liability for loss of gold, silver, &c., unless value declared and increased charge accepted.

When any property of which the value and nature have been declared under this section has been lost, destroyed or damaged, or has deteriorated, the compensation recoverable for such loss, destruction, damage or deterioration shall not exceed the value so declared.

12. A carrier by Railway shall in no case be answerable for loss, destruction or deterioration of, or damage to, any passenger's luggage, unless a Railway-servant has booked and given a receipt for the same. No liability for unbooked luggage.

13. In any suit against a carrier by Railway for compensation for loss, destruction or deterioration of, or damage to, property delivered to a Railway-servant, it shall not be necessary for the plaintiff to prove in what manner such loss, destruction, deterioration or damage was caused. Plaintiffs not required to prove negligence.

14. If any person fails to pay on demand any sum due by him to a carrier by Railway for conveyance of any property by Railway, or for the custody of any property or for demurrage or wharfage in respect of the same, the Railway-Administration may detain the whole or any part of such property or, if the same have been removed from the Railway, any other property of such person then on such Railway or thereafter coming into the possession of the Railway-Administration; Lien for money due for carriage, &c., of property.

and may also sell by public auction, in the case of perishable property at once, and in the case of other property on the expiration of at least fifteen days' notice thereof published in one or more of the local newspapers or, where there are no such newspapers, in such manner as the Local Government may, from time to time, direct, sufficient of such property to produce the sum payable as aforesaid, and all charges and expenses of such detention, notice and sale, or, if such person fails to remove from the Railway within a reasonable time any property so detained, the whole of such property;

and may, out of the proceeds of the sale, retain the sum so payable, together with all charges and expenses aforesaid, rendering the surplus, if any, of such proceeds, and so much of the property (if any) as remains unsold, to the person entitled thereto;

or such carrier may recover any such sum by suit.

15. The owner or person having the care of any property which has been carried upon any Railway, or is brought into any station or warehouse for the purpose of being carried upon a Railway, shall, on demand by any Railway-servant appointed in this behalf by the Railway-Administration, deliver to him an exact account in writing signed by such owner or person of the quantity and description of such property. Written account of property to be given on demand.

16. No passenger shall take with him on a Railway, and no person shall deliver or tender for carriage upon any Railway, any dangerous luggage or goods without giving notice of their nature to a Railway-servant, or, in the case of luggage or goods delivered or tendered for carriage, distinctly marking their nature on the outside of the package containing the same. Dangerous goods.

Any Railway-servant may refuse to carry upon a Railway any luggage or parcel which he suspects to contain dangerous goods, and may require such luggage or parcel to be opened to ascertain the fact previously to carrying the same;

and in case any such luggage or parcel is received for the purpose of being carried upon a Railway, any Railway-servant may stop the transit thereof until he is satisfied as to the nature of its contents.

CHAPTER IV.

CARRIAGE OF PASSENGERS.

17. Every person desirous of travelling on a Railway shall, upon payment of his fare, be furnished with a ticket specifying in English and the principal vernacular language of the district in which the ticket is issued, the class of carriage for which, and the place from and place to which, the fare has been paid, and the amount of such fare; Passengers on payment of fares to be furnished with tickets.

and every passenger shall, when required, show his ticket to any Railway-servant duly authorized to examine the same, and shall deliver up such ticket upon demand to any Railway-servant duly authorized to collect tickets. Tickets to be shown and given up on demand.

18. At the intermediate stations, the fares shall be deemed to be accepted and the tickets furnished only upon condition that there be room in the train for which the tickets are furnished. Fares and tickets at intermediate stations.

In case there is not room for all the passengers to whom tickets have been furnished, those who have obtained tickets for the longest distance shall have the preference; and those who have obtained tickets for the same distance shall have the preference according to the order in which they have received their tickets: Preferential right of ticket-holders.

Provided that all officers and troops of Her Majesty on duty, and all other persons on the business of the Government who, by virtue of any contract with the Government or, in the case of a Railway worked by Government, of any direction of the Governor General in Council, are entitled to be conveyed on a Railway in preference to, or in priority over, the public, shall be entitled to such Proviso.

preference and priority without reference to the distance for which, or the order in which, they have received their tickets.

Any passenger to whom a ticket has been furnished at any station and for whom there is no room shall, on returning the ticket within a reasonable time after its issue, be entitled to have his fare at once refunded.

Fares to be prepaid.

19. Except with the permission of the Railway-Administration or of such officer as it appoints in this behalf, no person shall enter any carriage used on any Railway for the purpose of travelling therein without having first paid his fare and obtained a ticket.

Power to remove persons suffering from infectious disease.

20. Any passenger found suffering from an infectious disease in a Railway-carriage or in any place on a Railway may, if his remaining in such carriage or place is likely to spread the infection of such disease, be removed from such carriage or place by any Railway-servant;

any passenger so removed who has paid his proper fare to or at the place at which he is so removed, shall be entitled, on returning his ticket, to have such fare refunded.

CHAPTER V.

OFFENCES AND PROCEDURE.

(A).—Offences by the Railway-Administration.

Penalty for opening railway in contravention of section 5.

21. Any Railway-Administration opening, in contravention of section five, any Railway, or any portion or extension of, or addition to, a Railway, shall forfeit to Government the sum of one thousand rupees for every day during which the same continues open in contravention of that section.

For omitting to report accident.

22. Any Railway-Administration omitting to give notice as required by section six, shall forfeit to Government the sum of one hundred rupees for every day during which such omission continues.

For not sending return of accidents or making rules under section 8, or exhibiting copy under section 9.

23. Any Railway-Administration failing to deliver any return mentioned in section seven within fourteen days after the same ought to be delivered, or to make or notify any rules as required by section eight, or to exhibit any abstract or copy mentioned in section nine in manner required by that section, shall forfeit to Government the sum of fifty rupees for every day during which such failure continues.

(B).—Offences by Railway-servants.

For omitting to give notice of accident.

24. Any Station-master or other person omitting to give notice as required by section six, shall be punished with fine which may extend to fifty rupees.

For drunkenness or breach of duty.

25. Any Railway-servant who is in a state of intoxication whilst actually employed upon a Railway in the discharge of any duty,

or who negligently omits to perform his duty,

or who performs the same in an improper manner,

shall be punished with fine which may extend to fifty rupees;

or if the duty in any of the cases aforesaid be such that the negligent, omission or improper performance thereof would be likely to endanger the safety of any person travelling or being upon such Railway, such servant shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

For endangering the safety of persons.

26. If any Railway-servant in the discharge of his duty endangers the safety of any person—

(*a*) by disobeying any general rule sanctioned and published and notified in the manner prescribed by section eight; or

(*b*) by disobeying any rule or order not inconsistent with the general rules aforesaid, and which such servant was bound by the terms of his employment to obey, and of which he had notice; or

(*c*) by any rash or negligent act or omission,

he shall be punished with imprisonment for a term which may extend to three years, or with fine which may extend to five hundred rupees, or with both.

For receiving bribes.

27. Every Railway-servant shall be deemed a "public servant" within the meaning of sections 161, 162, 163, 164 and 165 of the Indian Penal Code.

Amendment of Penal Code, section 161.

In the definition of legal remuneration contained in the said section 161, the word "Government" shall, for the purposes of this section, be deemed to include any employer of a Railway-servant as such.

For compelling passengers to enter carriages already full.

28. Any Railway-servant who compels or attempts to compel any passenger to enter a carriage or compartment containing the maximum number of passengers denoted thereon in accordance with a rule made and notified under section eight, shall be punished with fine which may extend to one hundred rupees.

(C).—Offences by Persons generally.

For not giving account of goods or giving false account.

29. Any person required under section fifteen to give an account of the quantity and description of any property who neglects or refuses to give such account,

or who wilfully gives a false account,

shall be punished with fine which may extend to five rupees for every maund (of 3,200 tolahs) of such property; and such fine shall be in addition to any charge to which such property may be liable.

For taking dangerous goods on Railway or delivering such goods without notice.

30. Whoever, in contravention of section sixteen, takes with him any dangerous goods on a Railway, or delivers or tenders any such goods for the purpose of being carried upon a Railway, shall be punished with fine which may extend to two hundred rupees.

For travelling without ticket or not showing or delivering up ticket.

31. Any passenger travelling on a Railway without a proper ticket or having such a ticket and not showing or delivering up the same when so required under section seventeen, shall be liable to pay the fare of the class in which he is found travelling, from the place whence the train originally started, unless he can prove that he has travelled a less distance only, in which case he shall be liable to pay the fare of the class aforesaid only from the place whence he has travelled.

Every such fare shall, on application by a Railway-servant to a Magistrate, and on proof of the passenger's liability, be recoverable from such passenger as if it were a fine, and shall, when recovered, be paid to the Railway-Administration.

For evading payment of fare.

32. Any person who defrauds, or attempts to defraud, any carrier by Railway—

(*a*) by travelling, or attempting to travel, on any Railway without having previously paid his fare;

(*b*) by riding or attempting to ride in or on a carriage, or by a train, of a higher class than that for which he has paid his fare;

(*c*) by using or attempting to use a ticket on any day for which such ticket is not available;

(*d*) by continuing his journey in or upon any carriage beyond the place to which he has paid his fare, without previously paying the fare for the additional distance;

or who, in any other manner whatever, attempts to evade the payment of his fare,

or who wilfully alters or defaces his ticket so as to render the date, number or other material portion thereof illegible,

For altering ticket.

shall be punished with fine which may extend to fifty rupees, and shall also be liable to pay the fare (if any) which he ought to have paid; and such fare shall be recoverable in manner provided by section thirty-one and shall, when recovered, be paid to the Railway-Administration.

For entering carriage in motion.

33. Any passenger who gets into or upon, or attempts to get into or upon, or quits, or attempts to quit, any carriage upon any Railway, while such carriage is in motion, shall be punished with fine which may extend to twenty rupees;

For riding on the steps.

and any passenger who rides, or attempts to ride, on the steps, or any other part of a carriage, upon any Railway, except on those parts which are intended for the accommodation of passengers,

shall be punished with fine which may extend to fifty rupees.

For riding on engine, tender, &c.

34. Any person who, without the permission of the Railway-Administration, rides or attempts to ride upon any locomotive-engine or tender upon any Railway; or in or upon any vehicle not appropriated to the carriage of passengers,

shall be punished with fine which may extend to one hundred rupees.

For smoking.

35. Any person who, without the consent of his fellow-passengers, if any, in the same compartment, smokes in or upon any Railway-carriage, except in a carriage or compartment specially provided for the purpose, shall be punished with fine which may extend to twenty rupees;

and any person who persists in so smoking (except as aforesaid) after being warned by any Railway-servant to desist may, in addition to incurring the liability above-mentioned, be removed by any Railway-servant from any such carriage, and from the premises of the Railway, and where he has paid his fare and obtained a ticket, shall forfeit such fare and ticket.

For intoxication or nuisance.

36. Any person who is in a state of intoxication, or who commits any nuisance or act of indecency in any Railway-carriage, or upon any part of any Railway;

or who wilfully and without lawful excuse interferes with the comfort of any passenger, or extinguishes any lamp in any Railway-carriage,

shall be punished with fine which may extend to fifty rupees; and may be removed by any Railway-servant from any such carriage, and also from the premises of the Railway, and where he has paid his fare and obtained a ticket, shall forfeit such fare and ticket.

For entering carriage or room reserved for females.

37. If any carriage, compartment, room or place be reserved by the Railway-Administration for the exclusive use of females, any male person who without lawful excuse enters such carriage, compartment, room or place knowing the same to be reserved as aforesaid, or remains therein after having been informed of its having been so reserved, shall be punished with fine which may extend to one hundred rupees,

and may be removed therefrom, and also from the premises of the Railway, by any Railway-servant,

and, where he has paid his fare and obtained a ticket, shall forfeit such fare and ticket.

For obstructing Railway-servant in his duty.

38. Whoever wilfully obstructs or impedes any Railway-servant in the discharge of his duty, shall be punished with fine which may extend to one hundred rupees.

For entering carriage already full.

39. Any passenger wilfully entering a carriage or compartment containing the maximum number of passengers which has been denoted thereon in accordance with a rule made and notified under section eight, shall be punished with fine which may extend to one hundred rupees.

For removing signals or injuring carriage, &c.

40. Any person who without authority or reasonable excuse makes, alters, shows, hides, removes or extinguishes any signal or light upon any Railway, or upon any engine, carriage, wagon or other vehicle upon a Railway,

or who negligently damages any engine, carriage, wagon or other vehicle belonging to a Railway, or any warehouse, building, machine, fence or other thing so belonging,

or who needlessly interferes with the means of communication provided in any train between the guard and the engine-driver or passengers,

shall be punished with fine which may extend to one hundred rupees.

For trespass.

41. Any person who unlawfully enters upon a Railway shall be punished with fine which may extend to twenty rupees; and if any person so entering

For refusing to leave on request.

refuses to leave such Railway on being requested to do so by any Railway-servant, or by any other person on behalf of the Railway-Administration, he shall be punished with fine which may extend to fifty rupees, and may be

immediately removed from such Railway by such servant or other person as aforesaid.

For cattle-trespass within Railway-fences.

42. The owner or person in charge of any bulls, cows, bullocks, calves, elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats and kids straying on any Railway provided with fences suitable for the exclusion of such animals, shall be punished with fine which may extend to ten rupees for each animal, in addition to any amount that may be recovered under the Cattle Trespass Act, 1871.

For wilfully driving cattle on fenced Railway;

Whenever any such animals are wilfully and unlawfully driven, or knowingly and unlawfully permitted to be, on any Railway provided with fences suitable for the exclusion of such animals,

on unfenced Railway.

and whenever any such animals are wilfully driven, or knowingly permitted to be, on any Railway not so provided, otherwise than for the purpose of lawfully crossing the Railway, or for any other lawful purpose,

the person in charge of such animals, or if he cannot be identified, then the owner of the said animals, shall be punished with fine which may extend to fifty rupees for each animal, in addition to any amount that may be recovered under the same Act.

Recovery of fines and payment of compensation.

All fines imposed under this section may, if the convicting Magistrate so direct, be recovered in manner provided by section twenty-five of the said Cattle Trespass Act, 1871, and may be appropriated in whole or in part in compensation for loss or damage proved to his satisfaction.

Amendment of Act I of 1871, ss. 11 and 26.

The expression "public road" in sections eleven and twenty-six of the same Act shall be deemed to include a Railway. And any Railway-servant may exercise the powers of seizure provided by the said section eleven.

For opening or not properly shutting gates.

43. Whoever knowing or having reason to believe that any engine or train is approaching along a Railway opens any gate which the Railway-Administration has set up on either side of the Railway across any road for the use or accommodation of any person, or passes or attempts to pass, or drives or takes, or attempts to drive or take, any vehicle, animal or other thing, across the Railway;

and whoever at any time, in the absence of a gatekeeper, omits to shut and fasten such gate as soon as he and any vehicle, animal or other thing under his charge have passed through the same,

shall be punished with fine which may extend to fifty rupees.

For minors obstructing line or throwing stones at train.

44. Whenever any minor under twelve years of age unlawfully—

(*a*) places or throws, or attempts to place or throw, upon or across a Railway any wood, stone or other thing, or

(*b*) removes or displaces, or attempts to remove or displace, any rail, sleeper, spike, key or other thing belonging to the permanent way of a Railway, or

(*c*) throws or causes to fall, or attempts to throw or cause to fall, against, into or upon any engine, tender, carriage or other vehicle used upon a Railway, any wood, stone or other thing,

such minor shall be deemed guilty of an offence, and the convicting Magistrate may, in his discretion, direct either that the minor, if a male, shall be punished with whipping, or that the father or guardian of the minor shall, within such reasonable time as the Magistrate may fix, execute a bond binding himself, in such penalty as the Magistrate may direct, to prevent the minor from repeating such offence.

The amount of such bond, if forfeited, shall be recoverable as if it were a fine.

Any person neglecting or refusing to execute a bond when required under this section so to do shall be punished with fine which may extend to fifty rupees.

For wilful act or omission endangering persons on Railway.

45. Whoever wilfully does any act, or wilfully omits to do what he is legally bound to do, intending by such act or omission to endanger, or knowing that he is thereby likely to endanger, the safety of any person travelling or being upon any Railway, shall be punished with transportation (or in the case of an European or American, penal servitude) for a term of not less than seven years or with imprisonment for a term which may extend to ten years.

For rash or negligent act.

46. Whoever rashly or negligently does any act, or omits to do what he is legally bound to do, and such act or omission is likely to endanger the safety of any person travelling or being upon a Railway, shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

Disobedience of omnibus, &c., drivers to Railway-servants.

47. Every driver or conductor of an omnibus, carriage or other vehicle shall, while in or upon any station-yard or other premises forming part of a Railway, obey the reasonable directions of any Railway-servant duly authorized in this behalf; and every person offending against this section shall be punished with fine which may extend to twenty rupees.

(*D*).—*Arrest of Offenders.*

Arrest for offences punishable under this Act of offender whose name is unknown, &c.

48. If any person commits any offence punishable under this Act and there is reason to believe that he will abscond or his name and address are unknown, and he refuses to give his name and address, or there is reason to believe that the name or address given by him is incorrect, any Railway-servant or Police-officer, or any other person whom such Railway-servant or Police-officer may call to his aid, may, without any warrant or written authority, arrest and detain such offender until he can be taken before a Magistrate or give sufficient security for his appearance before such Magistrate, or is otherwise discharged by due course of law.

Arrest for offences against certain sections.

49. Every person committing any offence mentioned in sections eight, twenty-five, twenty-six, thirty-six, thirty-seven, thirty-eight, forty-four, forty-five and forty-six may be arrested without any warrant or written authority by any Railway-servant or Police-officer, or by any other person whom such servant or officer may call to his aid;

and every person so arrested shall, without unnecessary delay, be taken before a Magistrate authorized to punish him or to commit him for trial.

(*E*).—*Jurisdiction.*

Magistrates having jurisdiction.

50. No Magistrate other than a Presidency Magistrate and a Magistrate whose powers are not less than those of a Magistrate of the second class shall try any offence under this Act.

Place of trial.

Any person committing any offence against this Act or the rules made under it, shall be triable for such offence in any place in which he may be found or which the Local Government may, from time to time, notify in this behalf, as well as in any other place in which he might be tried under any law for the time being in force.

Every notification under this section shall be published in the local official Gazette and a copy thereof shall also be exhibited in some conspicuous place at each of such Railway-stations as the Local Government may direct, so that it may be easily seen and read.

(*F*).—*Saving of other Criminal Laws.*

Saving of prosecutions under other laws.

51. Nothing in this Act shall be deemed to prevent any person from being arrested, prosecuted or punished under any other law for any act or omission which constitutes an offence against this Act or the rules made under it:

Provided that no person shall be punished twice for the same offence.

CHAPTER VI.

MISCELLANEOUS.

Power of Government to make rules as to fences, gates and bars.

52. The Governor General in Council, or the Local Government with the previous sanction of the Governor General in Council, may, from time to time, make rules requiring—

(*a*) that boundary-marks or fences be provided for any Railway or any part thereof, and for roads constructed in connection therewith;

(*b*) that gates or bars be erected at places where any Railway crosses a road on the level; and

(*c*) that persons be employed to open and shut such gates or bars;

and may by such rules determine what kind of fences shall, for the purposes of section forty-two, be deemed to be suitable for the exclusion of cattle,

and direct that any Railway-Administration wilfully neglecting or violating any rule made under this section, shall forfeit to Government a sum not exceeding five hundred rupees for every such neglect or violation, or, when such neglect or violation is continuous, for every day during which it continues.

Power to declare Local Government in respect of any Railway.

53. The Governor General in Council may, from time to time by notification in the *Gazette of India*, declare what Government or other Authority shall be deemed to be, for the purposes of this Act, the Local Government in respect of the whole or any part of a Railway.

Power to extend Act to steam-tramways.

54. The Governor General in Council may, by notification, extend this Act or any portion thereof to any tramway worked by steam.

THE FIRST SCHEDULE.

ACTS REPEALED.

(*See section 2.*)

Number and year.	Title.
XVIII of 1854 ...	An Act relating to Railways in India.
XXXI of 1867 ...	An Act to render penal certain offences committed by servants of Railway Companies.
XIII of 1870 ...	An Act to apply the provisions of Act No. XVIII of 1854 to Railways belonging to, or worked by, Government.
XXV of 1871 ...	An Act to amend the Railway Act.

THE SECOND SCHEDULE.

(*See section 11.*)

(*a*) Gold or silver, coined or uncoined, manufactured or unmanufactured;

(*b*) plated articles;

(*c*) cloths and tissue and lace of which gold or silver forms part;

(*d*) precious stones, jewellery, trinkets;

(*e*) watches, clocks or time-pieces of any description;

(*f*) Government securities;

(*g*) Government stamps;

(*h*) bills of exchange, hundís, promissory notes, bank-notes, orders or other securities for payment of money;

(*i*) maps, writings, title-deeds;

(*j*) paintings, engravings, lithographs, photographs, carvings, sculpture and other works of art;

(*k*) glass, china, marble;

(*l*) silks in a manufactured or unmanufactured state, and whether wrought up or not wrought up with other materials;

(*m*) shawls;

(*n*) lace;

(*o*) opium;

(*p*) ivory, ebony, sandalwood, sandalwood-oil;

(*q*) musical and scientific instruments.

D. FITZPATRICK,
Secy. to the Govt. of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, APRIL 5, 1879.

☞ Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV.

Acts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 22nd March, 1879, and is hereby promulgated for general information :—

ACT No. V OF 1879.

An Act to amend the Presidency Banks Act, 1876.

Preamble.

WHEREAS it is expedient to amend the Presidency Banks Act, 1876, in manner hereinafter appearing; It is hereby enacted as follows:—

Short title. Commencement.

1. This Act may be called "The Presidency Banks Act, 1879;" and it shall come into force on the first day of May, 1879.

Amendment of Act XI of 1876, section 28.

2. To the first clause of section 28 of the Presidency Banks Act, 1876, the following proviso shall be added, that is to say :

"Provided that no person shall be chosen to be President or Vice-President twice in succession."

Amendment of section 34 of same Act.

3. In the same Act, section 34, before the words "no Khazánchi," the words "without the previous sanction of the Board" shall be inserted.

Amendments of section 36.

4. In the same Act, section 36, clause (*a*), sub-clause (4), after the words "municipal body," the words "or any body of Commissioners for making improvements in any port or of trustees of any port" shall be inserted.

In the same section, the words "in the case of the Bank of Madras" shall be omitted in both the places in which they occur.

In the same section, after clause (*m*), the following clause shall be inserted, that is to say,

"(*m m*) the borrowing of money in India for the purposes of the Bank's business, and the giving of security for money so borrowed by pledging assets or otherwise."

Amendment of section 37.

5. In section 37 of the same Act, for clause (*d*), the following shall be substituted, that is to say,

"(*d*) Nor shall they (except upon the security mentioned in section thirty-six, paragraph *a*, Nos. 1 to 5 inclusive)

discount bills for any individual or partnership-firm for an amount exceeding in the whole at any one time such sum as may be prescribed by the bye-laws for the time being in force, or

lend or advance in any way to any individual or partnership firm an amount exceeding in the whole at any one time such sum as may be so prescribed."

Amendment of section 63.

6. In section 63 of the same Act, clause (*a*), for the words "lent by discount of bills or otherwise to," the words "lent to or for which bills may be discounted for" shall be substituted.

D. FITZPATRICK,
Secy. to the Govt. of India.

[First Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 22nd March, 1879, and is hereby promulgated for general information :—

ACT NO. VI OF 1879.

An Act for the preservation of wild elephants.

WHEREAS it is expedient to provide for the preservation of wild elephants; It is hereby enacted as follows :— Preamble.

1. This Act may be called "The Elephants Preservation Act, 1879:" Short title.

It extends to the territories now respectively administered by the Lieutenant-Governor of the North-Western Provinces and the Chief Commissioners of Oudh, the Central Provinces, British Burma and Coorg; Local extent.

and the Local Government may, with the previous sanction of the Governor General in Council, extend it to any other local area by notification in the local official Gazette.

So far as regards the power to make declarations and rules, it shall come into force on the passing thereof. In other respects it shall come into force on the first day of April, 1879. Commencement.

2. The words "kills or catches elephants," in section 25, clause (*i*), of the Indian Forest Act, 1878, and the words "killing or catching elephants," in section 31, clause (*j*), of the same Act, shall be repealed in every local area to which this Act extends or is extended. Repeal.

3. No person shall kill, injure or capture, or attempt to kill, injure or capture, any wild elephant unless— Killing and capture of wild elephants prohibited.

(*a*) in defence of himself or some other person;

(*b*) when such elephant is found injuring houses or cultivation, or upon, or in the immediate vicinity of, any main public road or any railway or canal; or

(*c*) as permitted by a license granted under this Act.

4. Every elephant captured, and the tusks of every elephant killed, in any of the cases mentioned in section three, clauses (*a*) and (*b*), by any person not licensed under this Act, shall be the property of Government. Rights of Government with respect to certain elephants and tusks.

5. The Collector or Deputy Commissioner of any district may, subject to such rules as may for the time being be in force under this Act, grant licenses to kill, or to capture, or to kill and capture, wild elephants in such district: License to kill and capture wild elephants.

Provided that no such license shall authorize any person to enter upon any land without the consent of the owner or occupier thereof.

6. The Local Government may from time to time, subject to the control of the Governor General in Council, Power of Local Government

declare what shall be deemed to be main public roads and canals within the meaning of this Act, and to declare what are main roads and canals,

make rules consistent with this Act for regulating and to make rules as to licenses.

(*a*) the grant and renewal of licenses under this Act,

(*b*) the fees (if any) in money, tusks or captured elephants to be charged on such grant and renewal,

(*c*) the time during which such licenses shall continue in force, and

(*d*) the conditions (if any) on which they shall be granted.

All such declarations and rules shall be published in the local official Gazette and shall thereupon have the force of law.

7. Whoever, in contravention of section three, kills, injures or captures, or attempts to kill, injure or capture, any wild elephant, shall be punished with fine which may extend to five hundred rupees for each elephant concerned; Penalty for contravening section 3.

and whoever breaks any condition contained in a license granted under this Act shall be punished with fine which may extend to five hundred rupees.

Any person convicted of a second offence under this section shall be punished with imprisonment which may extend to six months, or with fine, or with both.

When any person holding a license under this Act is convicted under this section, such license shall become void and shall be delivered up to the convicting Magistrate.

8. Any officer of Revenue or Police, or any forest-officer, who may find any person killing, injuring or capturing, or attempting to kill, injure or capture, any wild elephant, except in the cases mentioned in section three, clauses (*a*) and (*b*), may require him to produce and shew a license granted to him under this Act. License to be produced and shewn on requisition of certain officers.

Any person who, on such request, wilfully refuses or is unable to produce and shew such license as aforesaid, shall, in addition to any other punishment to which he may be liable under this Act, be punished with fine which may extend to one hundred rupees.

9. Every prosecution under this Act shall be commenced within six months from the commission of the offence in respect of which it is instituted. Limitation of prosecution.

10. The amount or value of any fee payable under any license granted under this Act may be recovered from the licensee as if it were an arrear of land-revenue. Recovery of fees.

D. FITZPATRICK,
Secy. to the Govt. of India.

The Gazette of India.

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CALCUTTA, SATURDAY, APRIL 12, 1879.

☞ Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV.

Acts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 22nd March, 1879, and is hereby promulgated for general information :—

ACT NO. V OF 1879.

An Act to amend the Presidency Banks Act, 1876.

WHEREAS it is expedient to amend the Presidency Banks Act, 1876, in manner hereinafter appearing; It is hereby enacted as follows :— Preamble.

1. This Act may be called "The Presidency Banks Act, 1879;" and it shall come into force on the first day of May, 1879. Short title. Commencement.

2. To the first clause of section 28 of the Presidency Banks Act, 1876, the following proviso shall be added, that is to say: Amendment of Act XI of 1876, section 28.

"Provided that no person shall be chosen to be President or Vice-President twice in succession."

3. In the same Act, section 34, before the words "no Khazánchi," the words "without the previous sanction of the Board" shall be inserted. Amendment of section 34 of same Act.

4. In the same Act, section 36, clause (*a*), sub-clause (4), after the words "municipal body," the words "or any body of Commissioners for making improvements in any port or of trustees of any port" shall be inserted. Amendments of section 36.

In the same section, the words "in the case of the Bank of Madras" shall be omitted in both the places in which they occur.

In the same section, after clause (*m*), the following clause shall be inserted, that is to say, "(*m m*) the borrowing of money in India for the purposes of the Bank's business, and the giving of security for money so borrowed by pledging assets or otherwise."

5. In section 37 of the same Act, for clause (*d*), the following shall be substituted, that is to say, Amendment of section 37.

"(*d*) Nor shall they (except upon the security mentioned in section thirty-six, paragraph *a*, Nos. 1 to 5 inclusive)

discount bills for any individual or partnership-firm for an amount exceeding in the whole at any one time such sum as may be prescribed by the bye-laws for the time being in force, or

lend or advance in any way to any individual or partnership-firm an amount exceeding in the whole at any one time such sum as may be so prescribed."

6. In section 63 of the same Act, clause (*a*), for the words "lent by discount of bills or otherwise to," the words "lent to or for which bills may be discounted for" shall be substituted. Amendment of section 63.

D. FITZPATRICK,
Secy. to the Govt. of India.

[Second Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 22nd March, 1879, and is hereby promulgated for general information :—

ACT No. VI OF 1879.

An Act for the preservation of wild elephants.

WHEREAS it is expedient to provide for the preservation of wild elephants; It is hereby enacted as follows :—

Preamble.

Short title.

1. This Act may be called "The Elephants Preservation Act, 1879:"

Local extent.

It extends to the territories now respectively administered by the Lieutenant-Governor of the North-Western Provinces and the Chief Commissioners of Oudh, the Central Provinces, British Burma and Coorg;

and the Local Government may, with the previous sanction of the Governor General in Council, extend it to any other local area by notification in the local official Gazette.

Commencement.

So far as regards the power to make declarations and rules, it shall come into force on the passing thereof. In other respects it shall come into force on the first day of April, 1879.

Repeal.

2. The words "kills or catches elephants," in section 25, clause (*i*), of the Indian Forest Act, 1878, and the words "killing or catching elephants," in section 31, clause (*j*), of the same Act, shall be repealed in every local area to which this Act extends or is extended.

Killing and capture of wild elephants prohibited.

3. No person shall kill, injure or capture, or attempt to kill, injure or capture, any wild elephant unless—

(*a*) in defence of himself or some other person;

(*b*) when such elephant is found injuring houses or cultivation, or upon, or in the immediate vicinity of, any main public road or any railway or canal; or

(*c*) as permitted by a license granted under this Act.

Rights of Government with respect to certain elephants and tusks.

4. Every elephant captured, and the tusks of every elephant killed, in any of the cases mentioned in section three, clauses (*a*) and (*b*), by any person not licensed under this Act, shall be the property of Government.

License to kill and capture wild elephants.

5. The Collector or Deputy Commissioner of any district may, subject to such rules as may for the time being be in force under this Act, grant licenses to kill, or to capture, or to kill and capture, wild elephants in such district:

Provided that no such license shall authorize any person to enter upon any land without the consent of the owner or occupier thereof.

Power of Local Government to declare what are main roads and canals, and to make rules as to licenses.

6. The Local Government may from time to time, subject to the control of the Governor General in Council,

declare what shall be deemed to be main public roads and canals within the meaning of this Act, and

make rules consistent with this Act for regulating

(*a*) the grant and renewal of licenses under this Act,

(*b*) the fees (if any) in money, tusks or captured elephants to be charged on such grant and renewal,

(*c*) the time during which such licenses shall continue in force, and

(*d*) the conditions (if any) on which they shall be granted.

All such declarations and rules shall be published in the local official Gazette and shall thereupon have the force of law.

Penalty for contravening section 3.

7. Whoever, in contravention of section three, kills, injures or captures, or attempts to kill, injure or capture, any wild elephant, shall be punished with fine which may extend to five hundred rupees for each elephant concerned;

and whoever breaks any condition contained in a license granted under this Act shall be punished with fine which may extend to five hundred rupees.

Any person convicted of a second offence under this section shall be punished with imprisonment which may extend to six months, or with fine, or with both.

When any person holding a license under this Act is convicted under this section, such license shall become void and shall be delivered up to the convicting Magistrate.

License to be produced and shewn on requisition of certain officers.

8. Any officer of Revenue or Police, or any forest-officer, who may find any person killing, injuring or capturing, or attempting to kill, injure or capture, any wild elephant, except in the cases mentioned in section three, clauses (*a*) and (*b*), may require him to produce and shew a license granted to him under this Act.

Any person who, on such request, wilfully refuses or is unable to produce and shew such license as aforesaid, shall, in addition to any other punishment to which he may be liable under this Act, be punished with fine which may extend to one hundred rupees.

Limitation of prosecution.

9. Every prosecution under this Act shall be commenced within six months from the commission of the offence in respect of which it is instituted.

Recovery of fees.

10. The amount or value of any fee payable under any license granted under this Act may be recovered from the licensee as if it were an arrear of land-revenue.

D. FITZPATRICK,
Secy. to the Govt. of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, APRIL 19, 1879.

☞ Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV.

Acts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 22nd March, 1879, and is hereby promulgated for general information :—

ACT No. V OF 1879.

An Act to amend the Presidency Banks Act, 1876.

Preamble.

WHEREAS it is expedient to amend the Presidency Banks Act, 1876, in manner hereinafter appearing; It is hereby enacted as follows :—

Short title. Commencement.

1. This Act may be called "The Presidency Banks Act, 1879;" and it shall come into force on the first day of May, 1879.

Amendment of Act XI of 1876, section 28.

2. To the first clause of section 28 of the Presidency Banks Act, 1876, the following proviso shall be added, that is to say :

"Provided that no person shall be chosen to be President or Vice-President twice in succession."

Amendment of section 34 of same Act.

3. In the same Act, section 34, before the words "no Khazánchi," the words "without the previous sanction of the Board" shall be inserted.

Amendments of section 36.

4. In the same Act, section 36, clause (*a*), sub-clause (4), after the words "municipal body," the words "or any body of Commissioners for making improvements in any port or of trustees of any port" shall be inserted.

In the same section, the words "in the case of the Bank of Madras" shall be omitted in both the places in which they occur.

In the same section, after clause (*m*), the following clause shall be inserted, that is to say, "(*m m*) the borrowing of money in India for the purposes of the Bank's business, and the giving of security for money so borrowed by pledging assets or otherwise."

Amendment of section 37.

5. In section 37 of the same Act, for clause (*d*), the following shall be substituted, that is to say,

"(*d*) Nor shall they (except upon the security mentioned in section thirty-six, paragraph *a*, Nos. 1 to 5 inclusive)

discount bills for any individual or partnership-firm for an amount exceeding in the whole at any one time such sum as may be prescribed by the bye-laws for the time being in force, or

lend or advance in any way to any individual or partnership-firm an amount exceeding in the whole at any one time such sum as may be so prescribed."

Amendment of section 63.

6. In section 63 of the same Act, clause (*a*), for the words "lent by discount of bills or otherwise to," the words "lent to or for which bills may be discounted for" shall be substituted.

D. FITZPATRICK,
Secy. to the Govt. of India.

[Third Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 22nd March, 1879, and is hereby promulgated for general information :—

ACT NO. VI OF 1879.

An Act for the preservation of wild elephants.

WHEREAS it is expedient to provide for the preservation of wild elephants; It is hereby enacted as follows :—

Preamble.

Short title.

1. This Act may be called "The Elephants Preservation Act, 1879:"

Local extent.

It extends to the territories now respectively administered by the Lieutenant-Governor of the North-Western Provinces and the Chief Commissioners of Oudh, the Central Provinces, British Burma and Coorg;

and the Local Government may, with the previous sanction of the Governor General in Council, extend it to any other local area by notification in the local official Gazette.

Commencement.

So far as regards the power to make declarations and rules, it shall come into force on the passing thereof. In other respects it shall come into force on the first day of April, 1879.

Repeal.

2. The words "kills or catches elephants," in section 25, clause (*i*), of the Indian Forest Act, 1878, and the words "killing or catching elephants," in section 31, clause (*j*), of the same Act, shall be repealed in every local area to which this Act extends or is extended.

Killing and capture of wild elephants prohibited.

3. No person shall kill, injure or capture, or attempt to kill, injure or capture, any wild elephant unless—

(*a*) in defence of himself or some other person;

(*b*) when such elephant is found injuring houses or cultivation, or upon, or in the immediate vicinity of, any main public road or any railway or canal; or

(*c*) as permitted by a license granted under this Act.

Rights of Government with respect to certain elephants and tusks.

4. Every elephant captured, and the tusks of every elephant killed, in any of the cases mentioned in section three, clauses (*a*) and (*b*), by any person not licensed under this Act, shall be the property of Government.

License to kill and capture wild elephants.

5. The Collector or Deputy Commissioner of any district may, subject to such rules as may for the time being be in force under this Act, grant licenses to kill, or to capture, or to kill and capture, wild elephants in such district:

Provided that no such license shall authorize any person to enter upon any land without the consent of the owner or occupier thereof.

Power of Local Government

6. The Local Government may from time to time, subject to the control of the Governor General in Council,

to declare what are main roads and canals,

declare what shall be deemed to be main public roads and canals within the meaning of this Act, and

and to make rules as to licenses.

make rules consistent with this Act for regulating

(*a*) the grant and renewal of licenses under this Act,

(*b*) the fees (if any) in money, tusks or captured elephants to be charged on such grant and renewal,

(*c*) the time during which such licenses shall continue in force, and

(*d*) the conditions (if any) on which they shall be granted.

All such declarations and rules shall be published in the local official Gazette and shall thereupon have the force of law.

Penalty for contravening section 3.

7. Whoever, in contravention of section three, kills, injures or captures, or attempts to kill, injure or capture, any wild elephant, shall be punished with fine which may extend to five hundred rupees for each elephant concerned;

and whoever breaks any condition contained in a license granted under this Act shall be punished with fine which may extend to five hundred rupees.

Any person convicted of a second offence under this section shall be punished with imprisonment which may extend to six months, or with fine, or with both.

When any person holding a license under this Act is convicted under this section, such license shall become void and shall be delivered up to the convicting Magistrate.

License to be produced and shewn on requisition of certain officers.

8. Any officer of Revenue or Police, or any forest-officer, who may find any person killing, injuring or capturing, or attempting to kill, injure or capture, any wild elephant, except in the cases mentioned in section three, clauses (*a*) and (*b*), may require him to produce and shew a license granted to him under this Act.

Any person who, on such request, wilfully refuses or is unable to produce and shew such license as aforesaid, shall, in addition to any other punishment to which he may be liable under this Act, be punished with fine which may extend to one hundred rupees.

Limitation of prosecution.

9. Every prosecution under this Act shall be commenced within six months from the commission of the offence in respect of which it is instituted.

Recovery of fees.

10. The amount or value of any fee payable under any license granted under this Act may be recovered from the licensee as if it were an arrear of land-revenue.

D. FITZPATRICK,
Secy. to the Govt. of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, MAY 10, 1879.

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PART IV.

Acts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 9th May, 1879, and is hereby promulgated for general information :—

ACT NO. VII OF 1879.

An Act to provide for the temporary appointment in the Panjáb of an Additional Financial Commissioner.

Preamble.

WHEREAS it is expedient to provide temporarily for the appointment of an Additional Financial Commissioner to assist the Financial Commissioner of the Panjáb; It is hereby enacted as follows :—

Short title.

Commencement.

1. This Act may be called "The Panjáb Additional Financial Commissioner's Act, 1879": and it shall come into force at once.

Appointment of Additional Financial Commissioner.

2. The Lieutenant-Governor of the Panjáb may, from time to time, with the previous sanction of the Governor General in Council, appoint such person as the said Lieutenant-Governor thinks fit to be an Additional Financial Commissioner.

Every person so appointed shall hold his office during the pleasure of the Governor General in Council:

Provided that no such person shall be so appointed or continue in office after the thirtieth day of September, 1879.

Business transferred by Financial Commissioner to be disposed of by Additional Financial Commissioner.

3. Every Additional Financial Commissioner, appointed under section two, shall hold his sittings at such place in the Panjáb as the said Lieutenant-Governor from time to time directs, and shall dispose of such revenue, judicial and other business, now or hereafter pending before the Financial Commissioner of the Panjáb, under any enactment for the time being in force, as the said Financial Commissioner may, from time to time, transfer to him for that purpose, and, in the disposal of such business, shall follow the same procedure and exercise the same powers as would be followed and exercised by the said Financial Commissioner in like cases.

Power to withdraw cases so transferred.

The said Financial Commissioner may at any time withdraw and himself dispose of any business transferred to the Additional Financial Commissioner under this section and not disposed of by him.

D. FITZPATRICK,
Secy. to the Govt. of India,
Legislative Department.

The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, MAY 17, 1879.

☞ Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV.

Acts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 9th May, 1879, and is hereby promulgated for general information :—

ACT No. VII OF 1879.

An Act to provide for the temporary appointment in the Panjáb of an Additional Financial Commissioner.

Preamble.

Whereas it is expedient to provide temporarily for the appointment of an Additional Financial Commissioner to assist the Financial Commissioner of the Panjáb; It is hereby enacted as follows :—

Short title. Commencement.

1. This Act may be called "The Panjáb Additional Financial Commissioner's Act, 1879": and it shall come into force at once.

Appointment of Additional Financial Commissioner.

2. The Lieutenant-Governor of the Panjáb may, from time to time, with the previous sanction of the Governor General in Council, appoint such person as the said Lieutenant-Governor thinks fit to be an Additional Financial Commissioner.

Every person so appointed shall hold his office during the pleasure of the Governor General in Council:

Provided that no such person shall be so appointed or continue in office after the thirtieth day of September, 1879.

Business transferred by Financial Commissioner to be disposed of by Additional Financial Commissioner.

3. Every Additional Financial Commissioner, appointed under section two, shall hold his sittings at such place in the Panjáb as the said Lieutenant-Governor from time to time directs, and shall dispose of such revenue, judicial and other business, now or hereafter pending before the Financial Commissioner of the Panjáb, under any enactment for the time being in force, as the said Financial Commissioner may, from time to time, transfer to him for that purpose, and, in the disposal of such business, shall follow the same procedure and exercise the same powers as would be followed and exercised by the said Financial Commissioner in like cases.

Power to withdraw cases so transferred.

The said Financial Commissioner may at any time withdraw and himself dispose of any business transferred to the Additional Financial Commissioner under this section and not disposed of by him.

D. FITZPATRICK,

Secy. to the Govt. of India,
Legislative Department.

The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, MAY 24, 1879.

☞ Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV.

Acts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 9th May, 1879, and is hereby promulgated for general information:—

ACT No. VII OF 1879.

An Act to provide for the temporary appointment in the Panjáb of an Additional Financial Commissioner.

Preamble.

Whereas it is expedient to provide temporarily for the appointment of an Additional Financial Commissioner to assist the Financial Commissioner of the Panjáb; It is hereby enacted as follows:—

Short title. Commencement.

1. This Act may be called "The Panjáb Additional Financial Commissioner's Act, 1879": and it shall come into force at once.

Appointment of Additional Financial Commissioner.

2. The Lieutenant-Governor of the Panjáb may, from time to time, with the previous sanction of the Governor General in Council, appoint such person as the said Lieutenant-Governor thinks fit to be an Additional Financial Commissioner.

Every person so appointed shall hold his office during the pleasure of the Governor General in Council:

Provided that no such person shall be so appointed or continue in office after the thirtieth day of September, 1879.

Business transferred by Financial Commissioner to be disposed of by Additional Financial Commissioner.

3. Every Additional Financial Commissioner, appointed under section two, shall hold his sittings at such place in the Panjáb as the said Lieutenant-Governor from time to time directs, and shall dispose of such revenue, judicial and other business, now or hereafter pending before the Financial Commissioner of the Panjáb, under any enactment for the time being in force, as the said Financial Commissioner may, from time to time, transfer to him for that purpose, and, in the disposal of such business, shall follow the same procedure and exercise the same powers as would be followed and exercised by the said Financial Commissioner in like cases.

Power to withdraw cases so transferred.

The said Financial Commissioner may at any time withdraw and himself dispose of any business transferred to the Additional Financial Commissioner under this section and not disposed of by him.

D. FITZPATRICK,

Secy. to the Govt. of India,
Legislative Department.

[First publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 23rd May, 1879, and is hereby promulgated for general information:—

ACT No. VIII OF 1879.

An Act to amend the North-Western Provinces Land-Revenue Act, 1873, and the North-Western Provinces Local Rates Act, 1878.

Preamble.

Whereas it is expedient to amend the North-Western Provinces Land-Revenue Act, 1873; It is hereby enacted as follows:—

Short title. Commencement.

1. This Act may be called "The North-Western Provinces Land-Revenue Act, 1879"; and shall come into force at once.

Local extent.

This section and sections twenty-eight and twenty-nine extend to the whole of the territories for the time being under the administration of the Lieutenant-Governor of the North-Western Provinces.

The whole of this Act extends to those portions of the said territories to which the whole of the said North-Western Provinces Land-Revenue Act, 1873, extends; and every provision of this Act amending any part of the said North-Western Provinces Land-Revenue Act, 1873, extends to all other portions of the said territories to which such part may have been, whether before or after the passing of this Act, extended.

Addition to section 3, clause 1, of Act XIX of 1873.

2. To section 3, clause (1), of the said North-Western Provinces Land-Revenue Act, 1873, the following shall be added:—

"and (*e*) for such purposes as the Local Government may from time to time determine, any grant of land made heretofore or hereafter under the waste-land rules for the time being in force."

Amendment of same Act, section 23.

3. In section 23 of the same Act, for the word "villages" the word "mahâls" shall be substituted.

New section substituted for section 29 of same Act.

4. For section 29 of the same Act the following shall be substituted:—

Patwáris' fund.

"29. A rate may be imposed by order of the Board on the annual value or on the cultivated area of all mahâls, or partly on one and partly on the other, for the purpose of defraying the salaries of patwáris and any charges incurred for the proper supervision, maintenance and correction of patwáris' records.

"The proceeds of such rate shall be credited to a provincial fund, and shall be applied to the said purpose in such manner as the Board, subject to the orders of the Local Government, may from time to time direct.

"The Local Government may from time to time, by rules published in the local official Gazette, declare the circumstances under which a landlord shall be entitled to recover from tenants holding rent-free, or at fixed or beneficial rates, the whole or any specified part of the rate imposed under this section.

"*Explanation.*—Charges incurred in the preparation of village-maps shall be deemed to be charges within the meaning of this section."

New proviso substituted for proviso to section 30 of same Act.

5. For the proviso to section 30 of the same Act the following shall be substituted:—

"Such rate shall not exceed three per cent. on the annual value of the rated mahâl; and the amount to be imposed on each mahâl shall be fixed, in temporarily settled districts for the term of settlement, and in permanently settled districts for thirty years, or such shorter period as the Local Government may from time to time direct:

"Provided that the rate or sum hitherto paid (whatever its amount may be) by the proprietors of any mahâl on account of the patwáris' salaries or expenses shall, if the Local Government so directs, be deemed to be the rate imposed under this Act."

Amendment of section 44 of same Act.

6. In section 44 of the same Act, for the word "elected" the word "selected" shall be substituted; and to the same section the words "Such representatives shall be called lambardárs" shall be added.

Amendment of section 65 of same Act.

7. In section 65 of the same Act, for clauses (*d*) and (*e*) the following shall be substituted:—

"(*d*) as to any other matters which he may be directed to record under rules framed under section two hundred and fifty-seven.

"The Settlement-officer may, subject to rules to be made from time to time by the Board, with the previous sanction of the Local Government, fix and shall record—

(*e*) the amounts of instalments of rent and the respective dates for their payment;

(*f*) the dates for the payment of any amounts payable by inferior to superior proprietors under section fifty-four, clause 1; and

(*g*) the dates on which profits shall be divisible by lambardárs."

Amendment of section 66 of same Act.

8. In section 66 of the same Act, for the second clause the following shall be substituted:—

List of cesses to be made.

"A list of all other cesses levied in accordance with village-custom, and generally or specially sanctioned by the Local Government, shall be made by the Settlement-officer. And, save as provided by any other enactment for the time being in force, no cesses not comprised in such list shall be enforced in any Civil or Revenue Court, and no such list shall be altered or added to during the currency of a settlement."

And to the same section, the following shall be added:—

Power of Governor General in Council to declare what shall be deemed to be a cess.

"While any local area is under settlement, the Governor General in Council may, from time to time, in case of doubt, declare what shall be deemed to be a cess within the meaning of this section."

Addition to section 74 of same Act.

9. To section 74 of the same Act the following shall be added:—

"Provided that the Local Government may empower any Settlement-officer, when any such application made before him is opposed, to refuse, for reasons to be recorded by him in writing, to grant the same."

Amendment of section 95 of same Act.

10. In section 95 of the same Act, for the words "no such changes" the words "no such change or other thing affecting proprietary rights or interests" shall be substituted.

Addition to section 141 of same Act.

11. To section 141 of the same Act the following shall be added:—

"*Explanation.*—'Owners' in this and the following sections of this chapter include also a lessee, mortgagee or other person in possession of the land referred to."

Addition to section 146 of same Act.

12. To section 146 of the same Act the following shall be added:—

"*Explanation.*—'Proprietor' in this chapter includes also a farmer and a mortgagee in possession."

Amendment of section 156 of same Act.

13. In section 156 of the same Act, for the word "proprietor" the words "defaulter or his legal representative" shall be substituted.

New section substituted for section 157 of same Act.

14. For section 157 of the same Act, the following shall be substituted:—

Transfer of defaulter's share to cosharers.

"**157.** When the arrear is due in respect of a share or patti of a mahâl, the Collector of the district may, with the previous sanction of the Commissioner of the Division, in cases where the annual revenue payable in respect of such share or patti does not exceed fifty rupees, and in other cases with the previous sanction of the Board, transfer such share or patti, for a term not exceeding fifteen years from the first day of July next after the date of the sanction, to any or all of the other cosharers, on condition of their paying such arrear and on such terms as the Commissioner or Board (as the case may be) in each case may think fit.

"The Commissioner shall without unnecessary delay report to the Board every transfer sanctioned by him under this section, and the Board may thereupon set aside such transfer or alter the terms of the same, or pass such other order as it thinks fit.

"A transfer under this section shall not affect the joint and several liability of the cosharers of the mahâl in which it is enforced."

Addition to section 165 of same Act.

15. To section 165 of the same Act the following shall be added:—

"for the remainder of the term of the settlement of the district, or for any period within such term as the Board may fix."

Addition to section 172 of same Act.

16. To section 172 of the same Act the following shall be added:—

"No officer having any duty to perform in connection with any such sale, and no person employed by or subordinate to such officer, shall, either directly or indirectly, bid for, acquire or attempt to acquire, except on behalf of the Government or the Court of Wards, the property sold or any interest therein."

Addition to section 189 of same Act.

17. To section 189 of the same Act the following shall be added:—

"No protest under this section shall be of any effect unless it is made at the time of payment in writing and signed by the person making the same, or by an agent duly authorized in his behalf."

Amendment of section 193 of same Act.

18. In section 193 of the same Act, for the word "lands" the word "property" shall be substituted.

Amendment of section 194 of same Act.

19. In section 194 of the same Act, for the word "lands" the word "property," and for clause (*e*) the following, shall be substituted:—

"(*e*) persons declared by the Local Government incapable, owing to physical defects and infirmities, to manage their own estates."

New proviso substituted for proviso in section 195 of same Act.

20. In section 195 of the same Act, for the proviso, the following shall be substituted:—

"Provided that, if the person or property of any disqualified proprietor mentioned in section one hundred and ninety-four, clause (*d*), clause (*e*) or clause (*d*), has been placed under the charge of the Collector, or under the superintendence of the Court of Wards, by any Civil Court, it shall not be released without the concurrence of such Court:

"Provided also that the property of a proprietor who has been held disqualified under the same section, clause (*a*), clause (*e*), clause (*f*) or clause (*g*), shall not be released from the superintendence of the Court of Wards without the previous sanction of the Local Government."

Amendment of section 200 of same Act.

21. In section 200 of the same Act, after the word "may" the following shall be inserted:—

"from time to time determine what sums shall be allowed in respect of the expenses of any person whose property is under its superintendence, and."

Amendment of section 203 of same Act.

22. In section 203 of the same Act, before the words "any part," the words "the whole or" shall be inserted.

New section substituted for section 205 of same Act.

23. For section 205 of the same Act the following shall be substituted:—

Suits by and against disqualified proprietors in Civil Courts.

"205. All disqualified proprietors whose property is in charge of the Court of Wards, and for whom guardians have been appointed, shall sue and be sued in Civil Courts by and in the name of their guardians:

"Provided that no such suit shall be instituted, defended, compromised or otherwise dealt with by any such guardian without the previous sanction of the Court of Wards.

"Disqualified proprietors, whose property is in charge of the Court of Wards, and for whom guardians have not been appointed, shall sue and be sued in Civil Courts by and in the name of the Collector of the district in which the suit is brought."

24. After section 205 of the same Act the following sections shall be inserted :—

New sections to follow section 205 of same Act.

"205A. A Manager appointed by the Court of Wards may, subject to the control of the Collector, institute, defend, compromise or otherwise deal with suits, applications or other proceedings in Revenue Courts relating to the property entrusted to him.

Suits and proceedings in Revenue Courts.

"205B. Persons whose property is under the superintendence of the Court of Wards shall not be competent to create, without the sanction of the Court, any charge upon, or interest in, such property or any part thereof.

Disability of disqualified proprietors.

"And no such property shall be liable to be taken in execution of a decree made in respect of any contract entered into by any such person while his property is under such superintendence."

25. In section 212 of the same Act, after the word "suit" the words "or other proceeding" shall be inserted.

Amendment of section 212 of same Act.

26. In section 235, clause (20), of the same Act, for the word "rent" where it first occurs, the word "limits" shall be substituted.

Amendment of section 235 of same Act.

27. In section 257 of the same Act, after clause (*e*), the following clause shall be inserted :—

Addition to section 257 of same Act.

"(*ee*) regulating the appointment, dismissal and duties of lambardárs."

And whereas it is also expedient to amend the North-Western Provinces Local Rates Act, 1878; It is hereby further enacted as follows :—

28. In section 3 of the said North-Western Provinces Local Rates Act, for the definition of "tenant" the following shall be substituted :—

Definition of "tenant" in section 3 of Act III of 1878.

"'Tenant' used in reference to any land, means a tenant holding directly from the landlord of such land and also includes an under-proprietor of such land, and a person bound to pay or deliver anything to such landlord in respect of the use and occupation of such land."

29. In section 16 of the same Act, shall be substituted—

Amendment of section 16 of same Act.

(*a*) for the words and figures "twenty-three of Act No. X of 1859, and in section one of Act No. XIV of 1863," the words and figures "ninety-three of the North-Western Provinces Rent Act, 1873;" and

(*b*) for the words and figures "Act No. X of 1859 and Act No. XIV of 1863," the words and figures "the North-Western Provinces Rent Act, 1873."

D. FITZPATRICK,
Secy. to the Govt. of India,
Legislative Department.

[First publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 23rd May, 1879, and is hereby promulgated for general information :—

ACT No. IX OF 1879.

An Act to amend the law relating to Coast-lights in the eastern part of the Bay of Bengal.

Whereas it is expedient to increase the Coast-light dues paid under the provisions of Act No. XIII of 1867 (*An Act to provide for the establishment and maintenance of Coast-lights in the eastern part of the Bay of Bengal*), and to render chargeable with Coast-light dues certain vessels which are not now so chargeable; It is hereby enacted as follows :—

Preamble.

Preliminary.

1. This Act may be called "The Burma Coast-lights Act, 1879":

Short title.

It shall come into force on the first day of July, 1879;

Commencement.

and it shall extend to the territories respectively administered by the Governors of Fort St. George and Bombay in Council, the Lieutenant-Governor of Bengal and the Chief Commissioners of British Burma and the Andaman and Nicobar Islands.

Local extent.

But nothing herein contained shall apply to any vessel belonging to or in the service of Her Majesty or the Government of India, or to any vessel of war belonging to any Foreign Prince or State.

2. Act No. XIII of 1867 (*to provide for the establishment and maintenance of Coast-lights in the eastern part of the Bay of Bengal*) is hereby repealed:

Repeal.

But any appointment made under the said Act shall be deemed to have been made under this Act.

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

Interpretation-clause.

"Customs-Collector" means a Customs-Collector appointed under the Sea Customs Act, 1878, and includes any person appointed by the Local Government by name or in virtue of his office to discharge the functions of a Customs-Collector under this Act at any port:

"Customs-Collector."

"Vessel" includes anything made for the conveyance by water of human beings or of property:

"Vessel."

"Master," when used in relation to any vessel, means any person (except a Pilot or Harbour Master) having for the time being the charge or control of such vessel:

"Master."

"Voyage" means the whole distance between a vessel's place of departure and her final place of arrival; but the return of a vessel from any place shall, notwithstanding the terms of any charter-party, be deemed a distinct voyage.

"Voyage."

Coast-light Dues.

Coast-light dues payable in respect of vessels of fifty tons.

4. For the purpose of establishing and maintaining coast-lights in the eastern part of the Bay of Bengal, a toll, hereinafter called "coast-light dues," shall be paid in respect of every vessel of the burden of fifty tons and upwards making any voyage mentioned in the schedule hereto annexed, at the rate of one anna and six pie per ton of burden:

Provided that such vessel sails from or enters during the course of, or at the termination of, any such voyage a port in British India, or takes in, or discharges, cargo off the coast of British India.

Dues when payable.

5. The said coast-light dues shall become due and payable—

(*a*) in the case of a vessel clearing out of a port in British India upon any such voyage—previous to the grant of any port-clearance;

(*b*) in the case of a vessel entering a port in British India in the course, or at the termination, of any such voyage—immediately upon her entering such port:

Provided that the said dues shall not be levied more than once on any vessel in the course of the same voyage.

Power to vary rates of dues.

6. The Governor General in Council may from time to time, by notification in the *Gazette of India*, reduce or raise the rate of coast-light dues in respect of all vessels or any particular class of vessels:

Proviso.

Provided that such rate shall not in any case exceed the rate fixed by section four.

Collection of dues.

7. The Customs-Collector shall collect the coast-light dues,

Voucher to be given.

and shall grant to the person paying the same a voucher in writing under his hand, setting forth the name of his office, the port at which the coast-light dues are paid, the amount so paid, the name, tonnage and other proper description of the vessel in respect of which such payment is made, and the voyage on which she is or has been bound.

Master to report arrival.

8. Within twenty-four hours after the arrival within a port of any vessel chargeable with coast-light dues, the master of such vessel shall give notice of such arrival to the Customs-Collector.

Tonnage of vessel chargeable with coast-light dues how ascertained.

9. In order to ascertain the tonnage of any vessel chargeable with coast-light dues, the following rules shall be observed:—

If registered.

(*a*) If such vessel be a British registered vessel or a vessel registered under Act No. X of 1841 or Act No. XI of 1850, or under any other law for the time being in force for the registration of vessels in India, the Customs-Collector may require the owner or master of such vessel, or any other person having possession of her register, to produce such register for inspection. If any such owner, master or other person neglects or refuses to produce such register, or otherwise to satisfy the Customs-Collector as to what is the true tonnage of the vessel in respect of which such coast-light dues are payable, he shall be punished with fine which may extend to one hundred rupees, and the Customs-Collector may cause such vessel to be measured and the tonnage thereof to be ascertained; and in such case the owner or master of such vessel shall also be liable to pay the expenses of such measurement.

If not registered.

(*b*) If such vessel be not a British registered vessel or a vessel registered under Act No. X of 1841 or Act No. XI of 1850, or under any other law for the time being in force for the registration of vessels in India, and the owner or master thereof fails to satisfy the Customs-Collector as to what is her true tonnage according to the mode of measurement prescribed by the law in force for the time being for regulating the measurement of British registered vessels, the Customs-Collector shall cause such vessel to be measured and the tonnage thereof, according to the mode aforesaid, to be ascertained; and in such case the owner or master of such vessel shall be liable to pay the expenses of such measurement.

On refusal to pay dues or expenses, the Collector may distrain and sell.

10. If the master of any vessel refuses or neglects to pay to the Customs-Collector on demand by him the amount of any dues or expenses payable in respect of such vessel under this Act, the Customs-Collector may distrain or arrest such vessel, and the tackle, apparel and furniture belonging thereto, or any part thereof, and detain the same until the amount of such dues or expenses is paid;

and in case any part of such dues or expenses, or of the costs of the distress or arrest, or of the keeping of the same, remains unpaid for the space of five days next after any such distress or arrest so made, the Customs-Collector may cause the vessel or other thing so distrained or arrested to be sold, and with the proceeds of such sale may satisfy such dues, expenses and costs (including the costs of sale) remaining unpaid, and shall render the surplus (if any) to the master of such vessel upon demand.

No port-clearance to be granted until dues, &c., are paid.

11. The officer of Government whose duty it is to grant a port-clearance for any vessel shall not grant such port-clearance until her master or some other person has paid, or secured to the satisfaction of such officer, the amount of all dues, expenses and costs with which such vessel is chargeable under this Act, and of any fine to which any person is liable for anything done by him in contravention of this Act.

Master to specify on demand voyage on which vessel is bound.

12. The master of any vessel departing from or entering any port in British India upon, or in the course of, or at the termination of, any voyage, shall, upon the demand of the Customs-Collector, specify upon what voyage she is or has been bound.

Penalty for evading payment of dues, &c.

13. If the master of any vessel evades, or attempts to evade, the payment of any coast-light dues, expenses or costs payable in respect of such vessel under this Act, he shall be punished with fine which may extend to two hundred rupees.

Determination of Disputes under Act.

14. If any dispute arises as to whether any vessel is chargeable with any coast-light dues, expenses or costs under this Act, or as to the amount of such dues, expenses or costs, such dispute shall, upon application made in that behalf by either of the disputing parties, be heard and determined in the towns of Calcutta, Madras and Bombay by a Presidency Magistrate, and elsewhere by any Magistrate exercising at the place where the dispute arises powers under the Code of Criminal Procedure not less than those of a Magistrate of the second class. All decisions under this section shall be final.

Magistrate to decide disputes.

Prosecutions under other Laws.

15. Nothing herein contained shall prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act: provided that no person shall be punished twice for the same act or omission.

Saving of prosecutions under other laws.

Statement of Receipts and Expenditure.

16. The Governor General in Council shall, on or before the first day of October in each year, publish in the *Gazette of India* a statement showing the amount received on account of coast-light dues during the year ending on the thirty-first day of March last preceding, and the amount expended during the same period on the establishment and maintenance of coast-lights in the eastern part of the Bay of Bengal.

Statement of receipts and expenditure to be published.

And whereas it is also expedient to amend the Indian Ports Act, 1875, in manner hereinafter appearing; It is hereby further enacted as follows:—

17. For section 77 of the same Act the following shall be substituted:—

Amendment of Indian Ports Act, 1875.

"77. The port-due leviable under this Act in either of the ports of Maulmain and Bassein shall, to the extent of one anna and six pie per ton, be applicable in the first place to defray the expenses of maintaining the existing port-lights of British Burma."

Application of Maulmain and Bassein port-dues.

SCHEDULE.

(*See section* 4.)

1. A voyage to or from Chittagong or any place west of the longitude of Chittagong—	(*a*) from or to any port in British Burma; or (*b*) from or to any port in the Andaman and Nicobar Islands or any place east of the longitude of Mergui, by a course passing between the northern extremity of the Andaman Islands and the coast of British Burma.
2. A voyage to or from any port in British Burma—	from or to any other port in British Burma
3. A voyage to or from Rangoon and any port in British Burma west of the longitude of Rangoon—	from or to any place east of the longitude of Mergui.
4. A voyage to or from any port in British Burma other than Tavoy and Mergui—	from or to any port in the Andaman and Nicobar Islands.

Except voyages to or from Maulmain, from or to Tavoy or Mergui, or to or from Tavoy, from or to Mergui.

D. FITZPATRICK,
Secy. to the Govt. of India,
Legislative Department.

[First publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 23rd May, 1879, and is hereby promulgated for general information:—

ACT No. X OF 1879.

An Act to provide for the recovery of certain advances made to Landholders.

Whereas it is expedient to provide for the recovery of certain advances made in the territories respectively administered by the Lieutenant-Governors of the North-Western Provinces and the Panjáb and the Chief Commissioners of Oudh, the Central Provinces, Assam and Ajmer, for certain purposes other than those specified in the Land Improvement Act, 1871; It is hereby enacted as follows:—

Preamble.

1. This Act may be called "The Northern India Takkávi Act, 1879," and shall come into force on the first day of July, 1879.

Short title. Commencement.

2. On and from that day, the fifty-second section added to the Panjáb Laws Act, 1872, by Act No. XII of 1878 (*An Act for the further amendment of the Panjáb Laws Act*, 1872) shall, except as to advances made before that day, be repealed.

Act IV of 1872, section 52, repealed.

3. The Local Government may, from time to time, with the previous sanction of the Governor General in Council, prescribe rules as to advances to be made to owners and occupiers of arable land, for the relief of distress, the purchase of seed or cattle, or any other purpose not specified in the Land Improvement Act, 1871, but connected with agricultural objects.

Recovery of certain takkávi advances.

All such rules shall be published in the local official Gazette.

Every advance made in accordance with such rules, shall, when it becomes due, be recoverable from the person to whom it was made, or from any person who has become surety for the repayment thereof, as if it was an arrear of land-revenue due by the person to whom the advance was made or by his surety.

D. FITZPATRICK,
Secy. to the Govt. of India,
Legislative Department.

The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, MAY 31, 1879.

☞ Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV.

Acts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 23rd May, 1879, and is hereby promulgated for general information:—

ACT No. VIII OF 1879.

An Act to amend the North-Western Provinces Land-Revenue Act, 1873, and the North-Western Provinces Local Rates Act, 1878.

Whereas it is expedient to amend the North-Western Provinces Land-Revenue Act, 1873; It is hereby enacted as follows:—

Preamble.

1. This Act may be called "The North-Western Provinces Land-Revenue Act, 1879"; and shall come into force at once.

Short title. Commencement.

This section and sections twenty-eight and twenty-nine extend to the whole of the territories for the time being under the administration of the Lieutenant-Governor of the North-Western Provinces.

Local extent.

The whole of this Act extends to those portions of the said territories to which the whole of the said North-Western Provinces Land-Revenue Act, 1873, extends; and every provision of this Act amending any part of the said North-Western Provinces Land-Revenue Act, 1873, extends to all other portions of the said territories to which such part may have been, whether before or after the passing of this Act, extended.

2. To section 3, clause (1), of the said North-Western Provinces Land-Revenue Act, 1873, the following shall be added:—

Addition to section 3, clause 1, of Act XIX of 1873.

"and (*e*), for such purposes as the Local Government may from time to time determine, any grant of land made heretofore or hereafter under the waste-land rules for the time being in force."

3. In section 23 of the same Act, for the word "villages" the word "mahál" shall be substituted.

Amendment of same Act, section 23.

4. For section 29 of the same Act the following shall be substituted:—

New section substituted for section 29 of same Act.

"29. A rate may be imposed by order of the Board on the annual value or on the cultivated area of all mahál, or partly on one and partly on the other, for the purpose of defraying the salaries of patwáris and any charges incurred for the proper supervision, maintenance and correction of patwáris' records.

Patwáris' fund.

"The proceeds of such rate shall be credited to a provincial fund, and shall be applied to the said purpose in such manner as the Board, subject to the orders of the Local Government, may from time to time direct.

"The Local Government may from time to time, by rules published in the local official Gazette, declare the circumstances under which a landlord shall be entitled to recover from tenants holding rent-free, or at fixed or beneficial rates, the whole or any specified part of the rate imposed under this section.

"*Explanation.*—Charges incurred in the preparation of village-maps shall be deemed to be charges within the meaning of this section."

New proviso substituted for proviso to section 30 of same Act.

5. For the proviso to section 30 of the same Act the following shall be substituted :—

"Such rate shall not exceed three per cent. on the annual value of the rated mahál; and the amount to be imposed on each mahál shall be fixed, in temporarily settled districts for the term of settlement, and in permanently settled districts for thirty years, or such shorter period as the Local Government may from time to time direct:

"Provided that the rate or sum hitherto paid (whatever its amount may be) by the proprietors of any mahál on account of the patwáris' salaries or expenses shall, if the Local Government so directs, be deemed to be the rate imposed under this Act."

Amendment of section 44 of same Act.

6. In section 44 of the same Act, for the word "elected" the word "selected" shall be substituted; and to the same section the words "Such representatives shall be called lambardárs" shall be added.

Amendment of section 65 of same Act.

7. In section 65 of the same Act, for clauses (*d*) and (*e*) the following shall be substituted :—

"(*d*) as to any other matters which he may be directed to record under rules framed under section two hundred and fifty-seven.

"The Settlement-officer may, subject to rules to be made from time to time by the Board, with the previous sanction of the Local Government, fix and shall record—

(*e*) the amounts of instalments of rent and the respective dates for their payment;

(*f*) the dates for the payment of any amounts payable by inferior to superior proprietors under section fifty-four, clause 1; and

(*g*) the dates on which profits shall be divisible by lambardárs."

Amendment of section 66 of same Act.

8. In section 66 of the same Act, for the second clause the following shall be substituted :—

List of cesses to be made.

"A list of all other cesses levied in accordance with village-custom, and generally or specially sanctioned by the Local Government, shall be made by the Settlement-officer. And, save as provided by any other enactment for the time being in force, no cesses not comprised in such list shall be enforced in any Civil or Revenue Court, and no such list shall be altered or added to during the currency of a settlement."

And to the same section, the following shall be added :—

Power of Governor General in Council to declare what shall be deemed to be a cess.

"While any local area is under settlement, the Governor General in Council may, from time to time, in case of doubt, declare what shall be deemed to be a cess within the meaning of this section."

Addition to section 74 of same Act.

9. To section 74 of the same Act the following shall be added :—

"Provided that the Local Government may empower any Settlement-officer, when any such application made before him is opposed, to refuse, for reasons to be recorded by him in writing, to grant the same."

Amendment of section 95 of same Act.

10. In section 95 of the same Act, for the words "no such changes" the words "no such change or other thing affecting proprietary rights or interests" shall be substituted.

Addition to section 141 of same Act.

11. To section 141 of the same Act the following shall be added :—

"*Explanation.*—'Owners' in this and the following sections of this chapter include also a lessee, mortgagee or other person in possession of the land referred to."

Addition to section 146 of same Act.

12. To section 146 of the same Act the following shall be added :—

"*Explanation.*—'Proprietor' in this chapter includes also a farmer and a mortgagee in possession."

Amendment of section 156 of same Act.

13. In section 156 of the same Act, for the word "proprietor" the words "defaulter or his legal representative" shall be substituted.

New section substituted for section 157 of same Act.

14. For section 157 of the same Act, the following shall be substituted :—

Transfer of defaulter's share to cosharers.

"157. When the arrear is due in respect of a share or pattí of a mahál, the Collector of the district may, with the previous sanction of the Commissioner of the Division, in cases where the annual revenue payable in respect of such share or pattí does not exceed fifty rupees, and in other cases with the previous sanction of the Board, transfer such share or pattí, for a term not exceeding fifteen years from the first day of July next after the date of the sanction, to any or all of the other cosharers, on condition of their paying such arrear and on such terms as the Commissioner or Board (as the case may be) in each case may think fit.

"The Commissioner shall without unnecessary delay report to the Board every transfer sanctioned by him under this section, and the Board may thereupon set aside such transfer or alter the terms of the same, or pass such other order as it thinks fit.

"A transfer under this section shall not affect the joint and several liability of the cosharers of the mahál in which it is enforced."

Addition to section 155 of same Act.

15. To section 165 of the same Act the following shall be added :—

"for the remainder of the term of the settlement of the district, or for any period within such term as the Board may fix."

Addition to section 172 of same Act.

16. To section 172 of the same Act the following shall be added :—

"No officer having any duty to perform in connection with any such sale, and no person employed by or subordinate to such officer, shall, either directly or indirectly, bid for, acquire or attempt to acquire, except on behalf of the Government or the Court of Wards, the property sold or any interest therein."

Addition to section 189 of same Act.

17. To section 189 of the same Act the following shall be added :—

"No protest under this section shall be of any effect unless it is made at the time of payment in writing and signed by the person making the same, or by an agent duly authorized in his behalf."

Amendment of section 193 of same Act.

18. In section 193 of the same Act, for the word "lands" the word "property" shall be substituted.

Amendment of section 194 of same Act.

19. In section 194 of the same Act, for the word "lands" the word "property," and for clause (*c*) the following, shall be substituted :—

"(*c*) persons declared by the Local Government incapable, owing to physical defects and infirmities, to manage their own estates."

New proviso substituted for proviso in section 195 of same Act.

20. In section 195 of the same Act, for the proviso, the following shall be substituted :—

"Provided that, if the person or property of any disqualified proprietor mentioned in section one hundred and ninety-four, clause (*b*), clause (*c*) or clause (*d*), has been placed under the charge of the Collector, or under the superintendence of the Court of Wards, by any Civil Court, it shall not be released without the concurrence of such Court:

"Provided also that the property of a proprietor who has been held disqualified under the same section, clause (*a*), clause (*c*), clause (*f*) or clause (*g*), shall not be released from the superintendence of the Court of Wards without the previous sanction of the Local Government."

Amendment of section 200 of same Act.

21. In section 200 of the same Act, after the word "may" the following shall be inserted :—

"from time to time determine what sums shall be allowed in respect of the expenses of any person whose property is under its superintendence, and."

Amendment of section 203 of same Act.

22. In section 203 of the same Act, before the words "any part," the words "the whole or" shall be inserted.

New section substituted for section 205 of same Act.

23. For section 205 of the same Act the following shall be substituted :—

Suits by and against disqualified proprietors in Civil Courts.

"**205.** All disqualified proprietors whose property is in charge of the Court of Wards, and for whom guardians have been appointed, shall sue and be sued in Civil Courts by and in the name of their guardians:

"Provided that no such suit shall be instituted, defended, compromised or otherwise dealt with by any such guardian without the previous sanction of the Court of Wards.

"Disqualified proprietors, whose property is in charge of the Court of Wards, and for whom guardians have not been appointed, shall sue and be sued in Civil Courts by and in the name of the Collector of the district in which the suit is brought."

New sections to follow section 205 of same Act.

24. After section 205 of the same Act the following sections shall be inserted :—

Suits and proceedings in Revenue Courts.

"205A. A Manager appointed by the Court of Wards may, subject to the control of the Collector, institute, defend, compromise or otherwise deal with suits, applications or other proceedings in Revenue Courts relating to the property entrusted to him.

Disability of disqualified proprietors.

"205B. Persons whose property is under the superintendence of the Court of Wards shall not be competent to create, without the sanction of the Court, any charge upon, or interest in, such property or any part thereof.

"And no such property shall be liable to be taken in execution of a decree made in respect of any contract entered into by any such person while his property is under such superintendence."

Amendment of section 212 of same Act.

25. In section 212 of the same Act, after the word "suit" the words "or other proceeding" shall be inserted.

Amendment of section 235 of same Act.

26. In section 235, clause (20), of the same Act, for the word "rent" where it first occurs, the word "limits" shall be substituted.

Addition to section 257 of same Act.

27. In section 257 of the same Act, after clause (*e*), the following clause shall be inserted :—

"(*ee*) regulating the appointment, dismissal and duties of lambardárs."

And whereas it is also expedient to amend the North-Western Provinces Local Rates Act, 1878; It is hereby further enacted as follows :—

Definition of "tenant" in section 3 of Act III of 1878.

28. In section 3 of the said North-Western Provinces Local Rates Act, for the definition of "tenant" the following shall be substituted :—

"'Tenant' used in reference to any land, means a tenant holding directly from the landlord of such land and also includes an under-proprietor of such land, and a person bound to pay or deliver anything to such landlord in respect of the use and occupation of such land."

Amendment of section 16 of same Act.

29. In section 16 of the same Act, shall be substituted—

(*a*) for the words and figures "twenty-three of Act No. X of 1859, and in section one of Act No. XIV of 1863," the words and figures "ninety-three of the North-Western Provinces Rent Act, 1873;" and

(*b*) for the words and figures "Act No. X of 1859 and Act No. XIV of 1863," the words and figures "the North-Western Provinces Rent Act, 1873."

D. FITZPATRICK,

Secy. to the Govt. of India,

Legislative Department.

[Second publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 23rd May, 1879, and is hereby promulgated for general information :—

ACT No. IX OF 1879.

An Act to amend the law relating to Coast-lights in the eastern part of the Bay of Bengal.

Whereas it is expedient to increase the Coast-light dues paid under the provisions of Act No. XIII of 1867 (*An Act to provide for the establishment and maintenance of Coast-lights in the eastern part of the Bay of Bengal*), and to render chargeable with Coast-light dues certain vessels which are not now so chargeable; It is hereby enacted as follows :— Preamble.

Preliminary.

1. This Act may be called "The Burma Coast-lights Act, 1879": Short title.

It shall come into force on the first day of July, 1879; Commencement.

and it shall extend to the territories respectively administered by the Governors of Fort St. George and Bombay in Council, the Lieutenant-Governor of Bengal and the Chief Commissioners of British Burma and the Andaman and Nicobar Islands. Local extent.

But nothing herein contained shall apply to any vessel belonging to or in the service of Her Majesty or the Government of India, or to any vessel of war belonging to any Foreign Prince or State.

2. Act No. XIII of 1867 (*to provide for the establishment and maintenance of Coast-lights in the eastern part of the Bay of Bengal*) is hereby repealed: Repeal.

But any appointment made under the said Act shall be deemed to have been made under this Act.

3. In this Act, unless there is something repugnant in the subject or context,— Interpretation-clause.

"Customs-Collector" means a Customs-Collector appointed under the Sea Customs Act, 1878, and includes any person appointed by the Local Government by name or in virtue of his office to discharge the functions of a Customs-Collector under this Act at any port: "Customs-Collector."

"Vessel" includes anything made for the conveyance by water of human beings or of property: "Vessel."

"Master," when used in relation to any vessel, means any person (except a Pilot or Harbour Master) having for the time being the charge or control of such vessel: "Master."

"Voyage" means the whole distance between a vessel's place of departure and her final place of arrival; but the return of a vessel from any place shall, notwithstanding the terms of any charter-party, be deemed a distinct voyage. "Voyage."

Coast-light Dues.

4. For the purpose of establishing and maintaining coast-lights in the eastern part of the Bay of Bengal, a toll, hereinafter called "coast-light dues," shall be paid in respect of every vessel of the burden of fifty tons and upwards making any voyage mentioned in the schedule hereto annexed, at the rate of one anna and six pie per ton of burden: Coast-light dues payable in respect of vessels of fifty tons.

Provided that such vessel sails from or enters during the course of, or at the termination of, any such voyage a port in British India, or takes in, or discharges, cargo off the coast of British India.

5. The said coast-light dues shall become due and payable— Dues when payable.

(*a*) in the case of a vessel clearing out of a port in British India upon any such voyage—previous to the grant of any port-clearance;

(*b*) in the case of a vessel entering a port in British India in the course, or at the termination, of any such voyage—immediately upon her entering such port:

Provided that the said dues shall not be levied more than once on any vessel in the course of the same voyage.

6. The Governor General in Council may from time to time, by notification in the *Gazette of India*, reduce or raise the rate of coast-light dues in respect of all vessels or any particular class of vessels: Power to vary rates of dues.

Provided that such rate shall not in any case exceed the rate fixed by section four. Proviso.

7. The Customs-Collector shall collect the coast-light dues, Collection of dues.

and shall grant to the person paying the same a voucher in writing under his hand, setting forth the name of his office, the port at which the coast-light dues are paid, the amount so paid, the name, tonnage and other proper description of the vessel in respect of which such payment is made, and the voyage on which she is or has been bound. Voucher to be given.

8. Within twenty-four hours after the arrival within a port of any vessel chargeable with coast-light dues, the master of such vessel shall give notice of such arrival to the Customs-Collector. Master to report arrival.

9. In order to ascertain the tonnage of any vessel chargeable with coast-light dues, the following rules shall be observed :— Tonnage of vessel chargeable with coast-light dues how ascertained.

(*a*) If such vessel be a British registered vessel or a vessel registered under Act No. X of 1841 or Act No. XI of 1850, or under any other law for the time being in force for the registration of vessels in India, the Customs-Collector may require the owner or master of such vessel, or any other person having possession of her register, to produce such register for inspection. If any such owner, master or other person neglects or refuses to produce such register, or otherwise to satisfy the Customs-Collector as to what is the true tonnage of the If registered.

vessel in respect of which such coast-light dues are payable, he shall be punished with fine which may extend to one hundred rupees, and the Customs-Collector may cause such vessel to be measured and the tonnage thereof to be ascertained; and in such case the owner or master of such vessel shall also be liable to pay the expenses of such measurement.

If not registered.

(*b*) If such vessel be not a British registered vessel or a vessel registered under Act No. X of 1841 or Act No. XI of 1850, or under any other law for the time being in force for the registration of vessels in India, and the owner or master thereof fails to satisfy the Customs-Collector as to what is her true tonnage according to the mode of measurement prescribed by the law in force for the time being for regulating the measurement of British registered vessels, the Customs-Collector shall cause such vessel to be measured and the tonnage thereof, according to the mode aforesaid, to be ascertained; and in such case the owner or master of such vessel shall be liable to pay the expenses of such measurement.

On refusal to pay dues or expenses, the Collector may distrain and sell.

10. If the master of any vessel refuses or neglects to pay to the Customs-Collector on demand by him the amount of any dues or expenses payable in respect of such vessel under this Act, the Customs-Collector may distrain or arrest such vessel, and the tackle, apparel and furniture belonging thereto, or any part thereof, and detain the same until the amount of such dues or expenses is paid;

and in case any part of such dues or expenses, or of the costs of the distress or arrest, or of the keeping of the same, remains unpaid for the space of five days next after any such distress or arrest so made, the Customs-Collector may cause the vessel or other thing so distrained or arrested to be sold and with the proceeds of such sale may satisfy such dues, expenses and costs (including the costs of sale) remaining unpaid, and shall render the surplus (if any) to the master of such vessel upon demand.

No port-clearance to be granted until dues, &c., are paid.

11. The officer of Government whose duty it is to grant a port-clearance for any vessel shall not grant such port-clearance until her master or some other person has paid, or secured to the satisfaction of such officer, the amount of all dues, expenses and costs with which such vessel is chargeable under this Act, and of any fine to which any person is liable for anything done by him in contravention of this Act.

Master to specify on demand voyage on which vessel is bound.

12. The master of any vessel departing from or entering any port in British India upon, or in the course of, or at the termination of, any voyage, shall, upon the demand of the Customs-Collector, specify upon what voyage she is or has been bound.

Penalty for evading payment of dues, &c.

13. If the master of any vessel evades, or attempts to evade, the payment of any coast-light dues, expenses or costs payable in respect of such vessel under this Act, he shall be punished with fine which may extend to two hundred rupees.

Determination of Disputes under Act.

Magistrate to decide disputes.

14. If any dispute arises as to whether any vessel is chargeable with any coast-light dues, expenses or costs under this Act, or as to the amount of such dues, expenses or costs, such dispute shall, upon application made in that behalf by either of the disputing parties, be heard and determined in the towns of Calcutta, Madras and Bombay by a Presidency Magistrate, and elsewhere by any Magistrate exercising at the place where the dispute arises powers under the Code of Criminal Procedure not less than those of a Magistrate of the second class. All decisions under this section shall be final.

Prosecutions under other Laws.

Saving of prosecutions under other laws.

15. Nothing herein contained shall prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act: provided that no person shall be punished twice for the same act or omission.

Statement of Receipts and Expenditure.

Statement of receipts and expenditure to be published.

16. The Governor General in Council shall, on or before the first day of October in each year, publish in the *Gazette of India* a statement showing the amount received on account of coast-light dues during the year ending on the thirty-first day of March last preceding, and the amount expended during the same period on the establishment and maintenance of coast-lights in the eastern part of the Bay of Bengal.

And whereas it is also expedient to amend the Indian Ports Act, 1875, in manner hereinafter appearing; It is hereby further enacted as follows:—

Amendment of Indian Ports Act, 1875.

17. For section 77 of the same Act the following shall be substituted:—

Application of Maulmain and Bassein port-dues.

"77. The port-due leviable under this Act in either of the ports of Maulmain and Bassein shall, to the extent of one anna and six pie per ton, be applicable in the first place to defray the expenses of maintaining the existing port-lights of British Burma."

SCHEDULE.

(*See section* 4.)

1. A voyage to or from Chittagong or any place west of the longitude of Chittagong—	(*a*) from or to any port in British Burma; or (*b*) from or to any port in the Andaman and Nicobar Islands or any place east of the longitude of Mergui, by a course passing between the northern extremity of the Andaman Islands and the coast of British Burma.
2. A voyage to or from any port in British Burma—	from or to any other port in British Burma.

Except voyages to or from Maulmain, from or to Tavoy or Mergui, or to or from Tavoy, from or to Mergui.

3. A voyage to or from Rangoon and any port in British Burma west of the longitude of Rangoon—	from or to any place east of the longitude of Mergui.
4. A voyage to or from any port in British Burma other than Tavoy and Mergui—	from or to any port in the Andaman and Nicobar Islands.

D. FITZPATRICK,
Secy. to the Govt. of India,
Legislative Department.

[Second publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 23rd May, 1879, and is hereby promulgated for general information :—

ACT No. X OF 1879.

An Act to provide for the recovery of certain advances made to Landholders.

Preamble. Whereas it is expedient to provide for the recovery of certain advances made in the territories respectively administered by the Lieutenant-Governors of the North-Western Provinces and the Panjáb and the Chief Commissioners of Oudh, the Central Provinces, Assam and Ajmer, for certain purposes other than those specified in the Land Improvement Act, 1871; It is hereby enacted as follows :—

Short title. Commencement. 1. This Act may be called "The Northern India Takkávi Act, 1879," and shall come into force on the first day of July, 1879.

Act IV of 1872, section 52, repealed. 2. On and from that day, the fifty-second section added to the Panjáb Laws Act, 1872, by Act No. XII of 1878 (*An Act for the further amendment of the Panjáb Laws Act*, 1872) shall, except as to advances made before that day, be repealed.

Recovery of certain takkávi advances. 3. The Local Government may, from time to time, with the previous sanction of the Governor General in Council, prescribe rules as to advances to be made to owners and occupiers of arable land, for the relief of distress, the purchase of seed or cattle, or any other purpose not specified in the Land Improvement Act, 1871, but connected with agricultural objects.

All such rules shall be published in the local official Gazette.

Every advance made in accordance with such rules, shall, when it becomes due, be recoverable from the person to whom it was made, or from any person who has become surety for the repayment thereof, as if it was an arrear of land-revenue due by the person to whom the advance was made or by his surety.

D. FITZPATRICK,
Secy. to the Govt. of India,
Legislative Department.

The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, JUNE 7, 1879.

☞ Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV.

Acts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 23rd May, 1879, and is hereby promulgated for general information :—

ACT No. VIII OF 1879.

An Act to amend the North-Western Provinces Land-Revenue Act, 1873, and the North-Western Provinces Local Rates Act, 1878.

Preamble. Whereas it is expedient to amend the North-Western Provinces Land-Revenue Act, 1873; It is hereby enacted as follows :—

Short title. Commencement. 1. This Act may be called "The North-Western Provinces Land-Revenue Act, 1879"; and shall come into force at once.

Local extent. This section and sections twenty-eight and twenty-nine extend to the whole of the territories for the time being under the administration of the Lieutenant-Governor of the North-Western Provinces.

The whole of this Act extends to those portions of the said territories to which the whole of the said North-Western Provinces Land-Revenue Act, 1873, extends; and every provision of this Act amending any part of the said North-Western Provinces Land-Revenue Act, 1873, extends to all other portions of the said territories to which such part may have been, whether before or after the passing of this Act, extended.

Addition to section 3, clause 1, of Act XIX of 1873. 2. To section 3, clause (1), of the said North-Western Provinces Land-Revenue Act, 1873, the following shall be added :—

"and (c), for such purposes as the Local Government may from time to time determine, any grant of land made heretofore or hereafter under the waste-land rules for the time being in force."

Amendment of same Act, section 23. 3. In section 23 of the same Act, for the word "villages" the word "mahál" shall be substituted.

New section substituted for section 29 of same Act. 4. For section 29 of the same Act the following shall be substituted :—

Patwáris' fund. "29. A rate may be imposed by order of the Board on the annual value or on the cultivated area of all mahál, or partly on one and partly on the other, for the purpose of defraying the salaries of patwáris and any charges incurred for the proper supervision, maintenance and correction of patwáris' records.

"The proceeds of such rate shall be credited to a provincial fund, and shall be applied to the said purpose in such manner as the Board, subject to the orders of the Local Government, may from time to time direct.

"The Local Government may from time to time, by rules published in the local official Gazette, declare the circumstances under which a landlord shall be entitled to recover from tenants holding rent-free, or at fixed or beneficial rates, the whole or any specified part of the rate imposed under this section.

"*Explanation.*—Charges incurred in the preparation of village-maps shall be deemed to be charges within the meaning of this section."

New proviso substituted for proviso to section 30 of same Act.

5. For the proviso to section 30 of the same Act the following shall be substituted :—

"Such rate shall not exceed three per cent. on the annual value of the rated mahál; and the amount to be imposed on each mahál shall be fixed, in temporarily settled districts for the term of settlement, and in permanently settled districts for thirty years, or such shorter period as the Local Government may from time to time direct :

"Provided that the rate or sum hitherto paid (whatever its amount may be) by the proprietors of any mahál on account of the patwáris' salaries or expenses shall, if the Local Government so directs, be deemed to be the rate imposed under this Act."

Amendment of section 44 of same Act.

6. In section 44 of the same Act, for the word "elected" the word "selected" shall be substituted; and to the same section the words "Such representatives shall be called lambardárs" shall be added.

Amendment of section 65 of same Act.

7. In section 65 of the same Act, for clauses (*d*) and (*e*) the following shall be substituted :—

"(*d*) as to any other matters which he may be directed to record under rules framed under section two hundred and fifty-seven.

"The Settlement-officer may, subject to rules to be made from time to time by the Board, with the previous sanction of the Local Government, fix and shall record—

(*e*) the amounts of instalments of rent and the respective dates for their payment;

(*f*) the dates for the payment of any amounts payable by inferior to superior proprietors under section fifty-four, clause 1; and

(*g*) the dates on which profits shall be divisible by lambardárs."

Amendment of section 66 of same Act.

8. In section 66 of the same Act, for the second clause the following shall be substituted :—

List of cesses to be made.

"A list of all other cesses levied in accordance with village-custom, and generally or specially sanctioned by the Local Government, shall be made by the Settlement-officer. And, save as provided by any other enactment for the time being in force, no cesses not comprised in such list shall be enforced in any Civil or Revenue Court, and no such list shall be altered or added to during the currency of a settlement."

And to the same section, the following shall be added :—

Power of Governor General in Council to declare what shall be deemed to be a cess.

"While any local area is under settlement, the Governor General in Council may, from time to time, in case of doubt, declare what shall be deemed to be a cess within the meaning of this section."

Addition to section 74 of same Act.

9. To section 74 of the same Act the following shall be added :—

"Provided that the Local Government may empower any Settlement-officer, when any such application made before him is opposed, to refuse, for reasons to be recorded by him in writing, to grant the same."

Amendment of section 95 of same Act.

10. In section 95 of the same Act, for the words "no such changes" the words "no such change or other thing affecting proprietary rights or interests" shall be substituted.

Addition to section 141 of same Act.

11. To section 141 of the same Act the following shall be added :—

"*Explanation.*—'Owners' in this and the following sections of this chapter include also a lessee, mortgagee or other person in possession of the land referred to."

Addition to section 146 of same Act.

12. To section 146 of the same Act the following shall be added :—

"*Explanation.*—'Proprietor' in this chapter includes also a farmer and a mortgagee in possession."

Amendment of section 156 of same Act.

13. In section 156 of the same Act, for the word "proprietor" the words "defaulter or his legal representative" shall be substituted.

New section substituted for section 157 of same Act.

14. For section 157 of the same Act, the following shall be substituted :—

Transfer of defaulter's share to cosharers.

"157. When the arrear is due in respect of a share or pattí of a mahál, the Collector of the district may, with the previous sanction of the Commissioner of the Division, in cases where the annual revenue payable in respect of such share or pattí does not exceed fifty rupees, and in other cases with the previous sanction of the Board, transfer such share or pattí, for a term not exceeding fifteen years from the first day of July next after the date of the sanction, to any or all of the other cosharers, on condition of their paying such arrear and on such terms as the Commissioner or Board (as the case may be) in each case may think fit.

"The Commissioner shall without unnecessary delay report to the Board every transfer sanctioned by him under this section, and the Board may thereupon set aside such transfer or alter the terms of the same, or pass such other order as it thinks fit.

"A transfer under this section shall not affect the joint and several liability of the cosharers of the mahál in which it is enforced."

Addition to section 165 of same Act.

15. To section 165 of the same Act the following shall be added :—

"for the remainder of the term of the settlement of the district, or for any period within such term as the Board may fix."

Addition to section 172 of same Act.

16. To section 172 of the same Act the following shall be added :—

"No officer having any duty to perform in connection with any such sale, and no person employed by or subordinate to such officer, shall, either directly or indirectly, bid for, acquire or attempt to acquire, except on behalf of the Government or the Court of Wards, the property sold or any interest therein."

Addition to section 189 of same Act.

17. To section 189 of the same Act the following shall be added :—

"No protest under this section shall be of any effect unless it is made at the time of payment in writing and signed by the person making the same, or by an agent duly authorized in his behalf."

Amendment of section 193 of same Act.

18. In section 193 of the same Act, for the word "lands" the word "property" shall be substituted.

Amendment of section 194 of same Act.

19. In section 194 of the same Act, for the word "lands" the word "property," and for clause (*e*) the following, shall be substituted :—

"(*e*) persons declared by the Local Government incapable, owing to physical defects and infirmities, to manage their own estates."

New proviso substituted for proviso in section 195 of same Act.

20. In section 195 of the same Act, for the proviso, the following shall be substituted :—

"Provided that, if the person or property of any disqualified proprietor mentioned in section one hundred and ninety-four, clause (*b*), clause (*c*) or clause (*d*), has been placed under the charge of the Collector, or under the superintendence of the Court of Wards, by any Civil Court, it shall not be released without the concurrence of such Court :

"Provided also that the property of a proprietor who has been held disqualified under the same section, clause (*a*), clause (*e*), clause (*f*) or clause (*g*), shall not be released from the superintendence of the Court of Wards without the previous sanction of the Local Government."

Amendment of section 200 of same Act.

21. In section 200 of the same Act, after the word "may" the following shall be inserted :—

"from time to time determine what sums shall be allowed in respect of the expenses of any person whose property is under its superintendence, and."

Amendment of section 203 of same Act.

22. In section 203 of the same Act, before the words "any part," the words "the whole or" shall be inserted.

New section substituted for section 205 of same Act.

23. For section 205 of the same Act the following shall be substituted :—

"205. All disqualified proprietors whose property is in charge of the Court of Wards, and for whom guardians have been appointed, shall sue and be sued in Civil Courts by and in the name of their guardians :

Suits by and against disqualified proprietors in Civil Courts.

"Provided that no such suit shall be instituted, defended, compromised or otherwise dealt with by any such guardian without the previous sanction of the Court of Wards.

"Disqualified proprietors, whose property is in charge of the Court of Wards, and for whom guardians have not been appointed, shall sue and be sued in Civil Courts by and in the name of the Collector of the district in which the suit is brought."

New sections to follow section 205 of same Act.

24. After section 205 of the same Act the following sections shall be inserted :—

Suits and proceedings in Revenue Courts.

"205A. A Manager appointed by the Court of Wards may, subject to the control of the Collector, institute, defend, compromise or otherwise deal with suits, applications or other proceedings in Revenue Courts relating to the property entrusted to him.

Disability of disqualified proprietors.

"205B. Persons whose property is under the superintendence of the Court of Wards shall not be competent to create, without the sanction of the Court, any charge upon, or interest in, such property or any part thereof.

"And no such property shall be liable to be taken in execution of a decree made in respect of any contract entered into by any such person while his property is under such superintendence."

Amendment of section 212 of same Act.

25. In section 212 of the same Act, after the word "suit" the words "or other proceeding" shall be inserted.

Amendment of section 235 of same Act.

26. In section 235, clause (20), of the same Act, for the word "rent" where it first occurs, the word "limits" shall be substituted.

Addition to section 257 of same Act.

27. In section 257 of the same Act, after clause (*e*), the following clause shall be inserted :—

"(*ee*) regulating the appointment, dismissal and duties of lambardárs."

And whereas it is also expedient to amend the North-Western Provinces Local Rates Act, 1878; It is hereby further enacted as follows :—

Definition of "tenant" in section 3 of Act III of 1878.

28. In section 3 of the said North-Western Provinces Local Rates Act, for the definition of "tenant" the following shall be substituted :—

"'Tenant' used in reference to any land, means a tenant holding directly from the landlord of such land and also includes an under-proprietor of such land, and a person bound to pay or deliver anything to such landlord in respect of the use and occupation of such land."

Amendment of section 16 of same Act.

29. In section 16 of the same Act, shall be substituted—

(*a*) for the words and figures "twenty-three of Act No. X of 1859, and in section one of Act No. XIV of 1863," the words and figures "ninety-three of the North-Western Provinces Rent Act, 1873;" and

(*b*) for the words and figures "Act No. X of 1859 and Act No. XIV of 1863," the words and figures "the North-Western Provinces Rent Act, 1873."

D. FITZPATRICK,

Secy. to the Govt. of India,
Legislative Department.

[Third publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 23rd May, 1879, and is hereby promulgated for general information :—

ACT No. IX OF 1879.

An Act to amend the law relating to Coast-lights in the eastern part of the Bay of Bengal.

Preamble.

Whereas it is expedient to increase the Coast-light dues paid under the provisions of Act No. XIII of 1867 (*An Act to provide for the establishment and maintenance of Coast-lights in the eastern part of the Bay of Bengal*), and to render chargeable with Coast-light dues certain vessels which are not now so chargeable; It is hereby enacted as follows :—

Preliminary.

Short title.

1. This Act may be called "The Burma Coast-lights Act, 1879":

Commencement.

It shall come into force on the first day of July, 1879;

Local extent.

and it shall extend to the territories respectively administered by the Governors of Fort St. George and Bombay in Council, the Lieutenant-Governor of Bengal and the Chief Commissioners of British Burma and the Andaman and Nicobar Islands.

But nothing herein contained shall apply to any vessel belonging to or in the service of Her Majesty or the Government of India, or to any vessel of war belonging to any Foreign Prince or State.

Repeal.

2. Act No. XIII of 1867 (*to provide for the establishment and maintenance of Coast-lights in the eastern part of the Bay of Bengal*) is hereby repealed:

But any appointment made under the said Act shall be deemed to have been made under this Act.

Interpretation-clause.

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

"Customs-Collector."

"Customs-Collector" means a Customs-Collector or appointed under the Sea Customs Act, 1878, and includes any person appointed by the Local Government by name or in virtue of his office to discharge the functions of a Customs-Collector under this Act at any port:

"Vessel."

"Vessel" includes anything made for the conveyance by water of human beings or of property:

"Master."

"Master," when used in relation to any vessel, means any person (except a Pilot or Harbour Master) having for the time being the charge or control of such vessel:

"Voyage."

"Voyage" means the whole distance between a vessel's place of departure and her final place of arrival; but the return of a vessel from any place shall, notwithstanding the terms of any charter-party, be deemed a distinct voyage.

Coast-light Dues.

Coast-light dues payable in respect of vessels of fifty tons.

4. For the purpose of establishing and maintaining coast-lights in the eastern part of the Bay of Bengal, a toll, hereinafter called "coast-light dues," shall be paid in respect of every vessel of the burden of fifty tons and upwards making any voyage mentioned in the schedule hereto annexed, at the rate of one anna and six pie per ton of burden:

Provided that such vessel sails from or enters during the course of, or at the termination of, any such voyage a port in British India, or takes in, or discharges, cargo off the coast of British India.

Dues when payable.

5. The said coast-light dues shall become due and payable—

(*a*) in the case of a vessel clearing out of a port in British India upon any such voyage—previous to the grant of any port-clearance;

(*b*) in the case of a vessel entering a port in British India in the course, or at the termination, of any such voyage—immediately upon her entering such port:

Provided that the said dues shall not be levied more than once on any vessel in the course of the same voyage.

Power to vary rates of dues.

6. The Governor General in Council may from time to time, by notification in the *Gazette of India*, reduce or raise the rate of coast-light dues in respect of all vessels or any particular class of vessels:

Proviso.

Provided that such rate shall not in any case exceed the rate fixed by section four.

Collection of dues.

7. The Customs-Collector shall collect the coast-light dues,

Voucher to be given.

and shall grant to the person paying the same a voucher in writing under his hand, setting forth the name of his office, the port at which the coast-light dues are paid, the amount so paid, the name, tonnage and other proper description of the vessel in respect of which such payment is made, and the voyage on which she is or has been bound.

Master to report arrival.

8. Within twenty-four hours after the arrival within a port of any vessel chargeable with coast-light dues, the master of such vessel shall give notice of such arrival to the Customs-Collector.

Tonnage of vessel chargeable with coast-light dues how ascertained.

9. In order to ascertain the tonnage of any vessel chargeable with coast-light dues, the following rules shall be observed :—

If registered.

(*a*) If such vessel be a British registered vessel or a vessel registered under Act No. X of 1841 or Act No. XI of 1850, or under any other law for the time being in force for the registration of vessels in India, the Customs-Collector may require the owner or master of such vessel, or any other person having possession of her register, to produce such register for inspection. If any such owner, master or other person neglects or refuses to produce such register, or otherwise to satisfy the Customs-Collector as to what is the true tonnage of the

vessel in respect of which such coast-light dues are payable, he shall be punished with fine which may extend to one hundred rupees, and the Customs-Collector may cause such vessel to be measured and the tonnage thereof to be ascertained; and in such case the owner or master of such vessel shall also be liable to pay the expenses of such measurement.

(*b*) If such vessel be not a British registered vessel or a vessel registered under Act No. X of 1841 or Act No. XI of 1850, or under any other law for the time being in force for the registration of vessels in India, and the owner or master thereof fails to satisfy the Customs-Collector as to what is her true tonnage according to the mode of measurement prescribed by the law in force for the time being for regulating the measurement of British registered vessels, the Customs-Collector shall cause such vessel to be measured and the tonnage thereof, according to the mode aforesaid, to be ascertained; and in such case the owner or master of such vessel shall be liable to pay the expenses of such measurement.

If not registered.

10. If the master of any vessel refuses or neglects to pay to the Customs-Collector on demand by him the amount of any dues or expenses payable in respect of such vessel under this Act, the Customs-Collector may distrain or arrest such vessel, and the tackle, apparel and furniture belonging thereto, or any part thereof, and detain the same until the amount of such dues or expenses is paid;

On refusal to pay dues or expenses, the Collector may distrain and sell.

and in case any part of such dues or expenses, or of the costs of the distress or arrest, or of the keeping of the same, remains unpaid for the space of five days next after any such distress or arrest so made, the Customs-Collector may cause the vessel or other thing so distrained or arrested to be sold, and with the proceeds of such sale may satisfy such dues, expenses and costs (including the costs of sale) remaining unpaid, and shall render the surplus (if any) to the master of such vessel upon demand.

11. The officer of Government whose duty it is to grant a port-clearance for any vessel shall not grant such port-clearance until her master or some other person has paid, or secured to the satisfaction of such officer, the amount of all dues, expenses and costs with which such vessel is chargeable under this Act, and of any fine to which any person is liable for anything done by him in contravention of this Act.

No port-clearance to be granted until dues, &c., are paid.

12. The master of any vessel departing from or entering any port in British India upon, or in the course of, or at the termination of, any voyage, shall, upon the demand of the Customs-Collector, specify upon what voyage she is or has been bound.

Master to specify on demand voyage on which vessel is bound.

13. If the master of any vessel evades, or attempts to evade, the payment of any coast-light dues, expenses or costs payable in respect of such vessel under this Act, he shall be punished with fine which may extend to two hundred rupees.

Penalty for evading payment of dues, &c.

Determination of Disputes under Act.

14. If any dispute arises as to whether any vessel is chargeable with any coast-light dues, expenses or costs under this Act, or as to the amount of such dues, expenses or costs, such dispute shall, upon application made in that behalf by either of the disputing parties, be heard and determined in the towns of Calcutta, Madras and Bombay by a Presidency Magistrate, and elsewhere by any Magistrate exercising at the place where the dispute arises powers under the Code of Criminal Procedure not less than those of a Magistrate of the second class. All decisions under this section shall be final.

Magistrate to decide disputes.

Prosecutions under other Laws.

15. Nothing herein contained shall prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act: provided that no person shall be punished twice for the same act or omission.

Saving of prosecutions under other laws.

Statement of Receipts and Expenditure.

16. The Governor General in Council shall, on or before the first day of October in each year, publish in the *Gazette of India* a statement showing the amount received on account of coast-light dues during the year ending on the thirty-first day of March last preceding, and the amount expended during the same period on the establishment and maintenance of coast-lights in the eastern part of the Bay of Bengal.

Statement of receipts and expenditure to be published.

And whereas it is also expedient to amend the Indian Ports Act, 1875, in manner hereinafter appearing; It is hereby further enacted as follows :—

17. For section 77 of the same Act the following shall be substituted :—

Amendment of Indian Ports Act, 1875.

"77. The port-due leviable under this Act in either of the ports of Maulmain and Bassein shall, to the extent of one anna and six pie per ton, be applicable in the first place to defray the expenses of maintaining the existing port-lights of British Burma."

Application of Maulmain and Bassein port-dues.

SCHEDULE.

(*See section* 4.)

1. A voyage to or from Chittagong or any place west of the longitude of Chittagong—	(*a*) from or to any port in British Burma; or (*b*) from or to any port in the Andaman and Nicobar Islands or any place east of the longitude of Mergui, by a course passing between the northern extremity of the Andaman Islands and the coast of British Burma.
2. A voyage to or from any port in British Burma—	from or to any other port in British Burma.

Except voyages to or from Maulmain, from or to Tavoy or Mergui, or to or from Tavoy, from or to Mergui.

3. A voyage to or from Rangoon and any port in British Burma west of the longitude of Rangoon—	from or to any place east of the longitude of Mergui.
4. A voyage to or from any port in British Burma other than Tavoy and Mergui—	from or to any port in the Andaman and Nicobar Islands.

D. FITZPATRICK,
Secy. to the Govt. of India,
Legislative Department.

[Third publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 23rd May, 1879, and is hereby promulgated for general information:—

ACT No. X OF 1879.

***An Act** to provide for the recovery of certain advances made to Landholders.*

Whereas it is expedient to provide for the recovery of certain advances made in the territories respectively administered by the Lieutenant-Governors of the North-Western Provinces and the Panjáb and the Chief Commissioners of Oudh, he Central Provinces, Assam and Ajmer, for ertain purposes other than those specified in the Land Improvement Act, 1871; It is hereby enacted as follows:— Preamble.

1. This Act may be called "The Northern India Takkávi Act, 1879," and shall come into force on the first day of July, 1879. Short title. Commencement.

2. On and from that day, the fifty-second section added to the Panjáb Laws Act, 1872, by Act No. XII of 1878 (*An Act for the further amendment of the Panjáb Laws Act*, 1872) shall, except as to advances made before that day, be repealed. Act IV of 1872, section 52, repealed.

3. The Local Government may, from time to time, with the previous sanction of the Governor General in Council, prescribe rules as to advances to be made to owners and occupiers of arable land, for the relief of distress, the purchase of seed or cattle, or any other purpose not specified in the Land Improvement Act, 1871, but connected with agricultural objects. Recovery of certain takkávi advances.

All such rules shall be published in the local official Gazette.

Every advance made in accordance with such rules, shall, when it becomes due, be recoverable from the person to whom it was made, or from any person who has become surety for the repayment thereof, as if it was an arrear of land-revenue due by the person to whom the advance was made or by his surety.

D. FITZPATRICK,
Secy. to the Govt. of India,
Legislative Department.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, JANUARY 4, 1879.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third Publication.]

The following preliminary Report of a Select Committee, together with the Bill as settled by them, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 18th December, 1878:—

WE, the undersigned Members of the Select Committee to which the Bill to prevent the indiscriminate destruction of wild elephants in British Burma was referred, have the honour to report that we have considered the Bill and the papers noted in the margin.

Circular letter to Local Governments, No. 1037-41, dated 18th July, 1878.
From Officiating Secretary to Government, Panjáb, No. 414C, dated 31st July, 1878.
„ Secretary to Government, North-Western Provinces and Oudh, No. 285A, dated 27th July, 1878.
„ Officiating Chief Commissioner, Ajmer and Mairwára, No. 495, dated 31st July, 1878.
„ Secretary to Chief Commissioner, Coorg, No. 326-1L, dated 3rd August, 1878.
„ Officiating Junior Secretary to Chief Commissioner, British Burma, No. 1212-361, dated 8th August, 1878.
„ Officiating Secretary to Chief Commissioner, Central Provinces, No. 3282-142, dated 13th August, 1878.
Office memorandum from Department of Revenue, Agriculture and Commerce, No. 981F, dated 27th September, 1878.

2. We have extended the permission to kill and capture elephants in the cases mentioned in section 2, clause (*b*) of the Bill as introduced, to the case of elephants found in the immediate vicinity of canals.

3. We have enlarged the local extent of the Act so as to include not only the territories of British Burma, but also those of the North-Western Provinces and Oudh, the Central Provinces and Coorg, and any other local area to which it may be extended by the Local Government.

4. We have made its provisions applicable to the capture as well as to the killing of wild elephants.

5. We have, adopting the suggestion referred to by the Member in charge of the Bill when introducing it, provided, in section 4 of the Bill as now amended, that any elephant captured and the tusks of any elephant killed under section 3, clauses (*a*) and (*b*), without license, shall be the property of the Government.

6. We have made it clear that fees to be taken for licenses to kill and capture elephants may be taken in kind, that is to say, in tusks or in elephants as well as in money.

7. We have recast the principal penalty-section (now section 7), and have enhanced the maximum penalty (which, bearing in mind the value of an elephant, seemed to us inadequate) to five hundred rupees for each elephant concerned, and, in the case of a second conviction, from three months to six months' imprisonment,—the term fixed in the Indian Forest Act for the offence of killing an elephant in a reserved or protected forest. We have made the amount or value of any fee payable for a license recoverable as if it were an arrear of land-revenue.

8. In view of the extended scope and local operation of the Act herein proposed, we have made a suitable alteration in the title of the Bill.

9. For the same reason, we recommend that the Bill, as amended, be republished.

10. The Bill has been published in English in the *Gazette of India* and in the *British Burma Gazette*. The report from British Burma as to its publication in that Province does not state that it has been published in the vernacular.

CALCUTTA,
The 18th December 1878.

T. H. THORNTON.
WHITLEY STOKES.
A. R. THOMPSON.
B. W. COLVIN.

No. II.

A Bill for the preservation of wild elephants.

WHEREAS it is expedient to provide for the preservation of wild elephants; It is hereby enacted as follows:—

Preamble.

Short title.

1. This Act may be called "The Elephants Preservation Act, 1879:"

Local extent.

It extends to the territories now respectively administered by the Lieutenant-Governor of the North-Western Provinces and the Chief Commissioners of Oudh, the Central Provinces, British Burma and Coorg;

and the Local Government may extend it to any other local area by notification in the official Gazette.

Commencement.

So far as regards the power to make declarations and rules, it shall come into force on the passing thereof. In other respects it shall come into force on the first day of March, 1879.

Repeal.

2. The words "kills or catches elephants," in section 25, clause (*i*), of the Indian Forest Act, 1878, and the words "killing or catching elephants," in section 31, clause (*j*) of the same Act, shall be repealed in every local area to which this Act extends or is extended.

Killing and capture of wild elephants prohibited.

3. No person shall kill, injure or capture, or attempt to kill, injure or capture, any wild elephant unless—

(*a*) in defence of himself or some other person;

(*b*) when such elephant is found injuring houses or cultivation, or upon, or in the immediate vicinity of, any main public road or any railway or canal; or

(*c*) as permitted by a license granted under this Act.

Rights of Government with respect to certain elephants and tusks.

4. Every elephant captured, and the tusks of every elephant killed, in any of the cases mentioned in section three, clauses (*a*) and (*b*), by any person not licensed under this Act, shall be the property of Government.

License to kill and capture wild elephants.

5. The Collector or Deputy Commissioner of any District may, subject to such rules as may for the time being be in force under this Act, grant licenses to kill, or to capture, or to kill and capture, wild elephants in such district:

Provided that no such license shall authorize any person to enter upon any land without the consent of the owner or occupier thereof.

Power of Local Government.

6. The Local Government may from time to time, subject to the control of the Governor General in Council,

to declare what are main roads and canals,

declare what shall be deemed to be main public roads and canals within the meaning of this Act, and

and to make rules as to licenses.

make rules consistent with this Act for regulating

(*a*) the grant and renewal of licenses under this Act,

(*b*) the fees (if any) in money, tusks or captured elephants to be charged on such grant and renewal,

(*c*) the time during which such licenses shall continue in force, and

(*d*) the conditions (if any) on which they shall be granted.

All such declarations and rules shall be published in the local official Gazette and shall thereupon have the force of law.

Penalty for contravening section 3.

7. Whoever, in contravention of section three, kills, injures or captures, or attempts to kill, injure or capture, any wild elephant, shall be punished with fine which may extend to five hundred rupees for each elephant concerned;

and whoever breaks any condition contained in a license granted under this Act shall be punished with fine which may extend to five hundred rupees.

Any person convicted of a second offence under this section shall be punished with imprisonment which may extend to six months, or with fine, or with both.

When any person holding a license under this Act is convicted under this section, such license shall become void and shall be delivered up to the convicting Magistrate.

License to be produced and shewn on requisition of certain officers.

8. Any officer of Revenue or Police, or any forest-officer, who may find any person killing, injuring or capturing, or attempting to kill, injure or capture, any wild elephant, except in the cases mentioned in section three, clauses (*a*) and (*b*), may require him to produce and shew a license granted to him under this Act.

Any person who, on such request, wilfully refuses or is unable to produce and shew such license as aforesaid, shall, in addition to any other punishment to which he may be liable under this Act, be punished with fine which may extend to one hundred rupees.

Limitation of prosecution.

9. Every prosecution under this Act shall be commenced within six months from the commission of the offence in respect of which it is instituted.

Recovery of fees.

10. The amount or value of any fee payable under any license granted under this Act may be recovered from the licensee as if it were an arrear of land-revenue.

D. FITZPATRICK,
Secy. to the Govt. of India.

[First publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 31st December 1878, and was referred to a Select Committee:—

No. 11 OF 1878.

THE RANGOON PORT COMMISSIONERS BILL, 1878.

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A Bill to Appoint Commissioners for the Port of Rangoon.

Whereas it is expedient to provide for the management of the affairs of the port of Rangoon, and for that purpose to appoint Commissioners: It is hereby enacted as follows:—

Preamble.

CHAPTER I.

PRELIMINARY.

1. This Act may be called "The Rangoon Port Commissioners Act, 1879."

Short title.

2. It shall come into force on such date as the Local Government may notify in the *British Burma Gazette*, and it shall extend—

Extent.

(*a*) to the Port of Rangoon as for the time being defined by the Local Government under the provisions of this or any other Act;

(*b*) to the approaches as for the time being defined as aforesaid to the said port;

(*c*) to such parts of the river and other places or things outside the said port and the approaches to the said port as in this Act provided.

But nothing in this Act contained shall affect—

(*a*) any power or authority vested in the Chief Revenue Authority, or the Collector of Customs, under any law for the time being in force; or

(*b*) the powers conferred on the Chief Commissioner of British Burma under the British Burma Municipal Act, 1874, section 28.

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

Interpretation.

"Port" means the port of Rangoon.

"The River" means any flowing water within a radius of eight statute miles from Soolay Pagoda wharf navigable by vessels, and includes the bank up to high-water mark.

"High-water mark" means a line drawn through the highest points reached by ordinary spring-tides at any season of the year, or through any lower points which may be declared or described by the Local Government under section 4.

"Low-water mark" means the lowest point reached by ebb-spring tides at any season of the year.

"Vessel" includes anything made for the conveyance by water of human beings or of property.

"Land" includes the bed of the river below high-water mark, and also things attached to the earth, or permanently fastened to anything attached to the earth.

"Commissioner" means the Commissioner appointed under this Act.

4. With the previous sanction of the Governor General in Council, the Local Government may from time to time alter the limits within which this Act shall be in force, and declare or describe by notification in the *British Burma Gazette*, or by means of maps, posts, or otherwise, the extent of such limits or any portion thereof.

Power to alter limits.

CHAPTER II.

OF THE APPOINTMENT AND REMOVAL OF COMMISSIONERS.

5. The Local Government may from time to time, by notification in the *British Burma Gazette*, appoint persons either by name or by virtue of their office, to be Commissioners for the port of Rangoon.

Appointment of Commissioners.

Provided that—

(*a*) the number of such Commissioners holding office at one and the same time shall not be more than twelve or less than nine;

(*b*) the number of such Commissioners who are persons holding salaried offices under Government shall be—

(i) not less than four or more than six, when the total number of Commissioners is eleven or twelve.

(ii) not less than three or more than five, when the total number of Commissioners is nine or ten.

6. Commissioners appointed under section 5 shall hold office for two years, and may thereafter be re-appointed; but the Local Government may at any time accept the resignation of any such Commissioner.

Tenure of office.

7. Notwithstanding anything in sections 5 and 6, the Local Government may—

Removal of Commissioners.

(*a*) with the previous sanction of the Governor General in Council by written order direct that any Commissioner shall cease from a specified date to be a Commissioner;

(*b*) by written order direct that any Commissioner therein named who, without the written consent of the Local Government, absents himself from six consecutive meetings of the Commissioners, shall cease to be a Commissioner:

And the Commissioner so named shall cease to be a Commissioner accordingly.

8. The Local Government may from time to time appoint one of the Commissioners to be Chairman and another of the Commissioners to be Vice-Chairman, cancel such appointment, and fix the remuneration, if any, which the Chairman and Vice-Chairman shall respectively receive.

Chairman and Vice-Chairman.

9. Every appointment, cancellation of appointment, and removal from office made, and resignation accepted, under sections 5, 6, 7 and 8, shall be notified in the *British Burma Gazette*.

Appointments, &c., to be notified.

CHAPTER III.

POWERS AND DUTIES OF COMMISSIONERS.

10. Subject to the powers respectively conferred on, and reserved to, the Governor General in Council and the Local Government by this Act or by any general or local law, the execution and administration of the powers and trusts created and declared by this Act shall be vested in the Commissioners.

Administration vests in Commissioners.

11. With the previous sanction of the Local Government, the Commissioners may acquire and hold movable or immovable property within or without the limits of the port, and with the same sanction may lease, mortgage, sell or exchange such property.

Power to hold property.

12. The property specified in schedule (A) hereto annexed, shall be vested in the Commissioners, provided that—

Transfer of Government property to Commissioners.

(*a*) no buildings or other permanent structures shall be erected thereon, except with the sanction of, and on plans to be previously approved of by, the Local Government;

(*b*) any portion of such property required by Government for a public purpose may be resumed by Government without claim to compensation on the part of the Commissioners except for buildings or other permanent structures erected thereon with the sanction of the Local Government subsequently to the passing of this Act.

(*c*) nothing in this section shall apply to, or affect the rights or interests of, private persons or of the Municipality of Rangoon in any such property or the land occupied as a Government timber depôt or the land occupied or to be occupied by Government for the defences of the port or for the Strand Bank Railway.

(*d*) out of the rents and income derived from the property aforesaid, the Local Government may assign annually to the municipality of Rangoon such sum, not exceeding the average of the sums so assigned during the five years last preceding the passing of this Act, as the Local Government thinks fit.

(*e*) if any question should arise between the Government and the Commissioners as to the boundaries of any portion of such land, the Local Government may define and demarcate such boundaries, and the decision of the Local Government in respect to such boundaries shall be final.

13. When any land is required for the purposes of this Act, the Local Government may proceed to acquire it under the provisions of the Land Acquisition Act, 1870, and on payment by the Commissioners of the compensation awarded under that Act, the land shall vest in the Commissioners.

Acquisition of land.

14. All port dues collected under the Indian Ports Act, 1875, and all mooring rates, license-fees, fines, penalties, expenses, proceeds of sales, salvage, harbour-master's fees, fees for hauling and services rendered to vessels and other moneys realised under the said Act, shall, unless where the said Act otherwise provides, be paid to the Commissioners.

Port dues and other revenues.

15. All property vested in, or acquired or held by, and all moneys raised by, or paid, or payable to, the Commissioners shall be held and applied by them in trust for the purposes of this Act.

Property to be in trust.

16. With the previous sanction of the Governor-General in Council, and under such rules and conditions as the Governor-General in Council may from time to time prescribe, the Commissioners may from time to time borrow money to cover the estimated cost of works duly sanctioned for the improvement of the port.

Power to borrow money.

A separate account shall be kept of all such money borrowed and of the expenditure thereof on such works, and also of the receipts and profits, if any, from such works; and the interest of the money borrowed shall be a first charge on any property vested in, and on any moneys paid by, or paid, or payable to, the Commissioners.

17. The works to be constructed and carried out by the Commissioners may include the following:—

Works to be constructed.

(*a*) wharfs, quays, stages, jetties, and piers, with all necessary and convenient drains, arches, landing-places, stairs, fences, and approaches;

(*b*) tramways, warehouses, sheds, engines, and other appliances for conveying, receiving, and storing goods and merchandise landed or to be shipped;

(*c*) laying down moorings, and the erection of cranes, scales, and all other necessary appliances for loading and unloading vessels;

(*d*) reclaiming, enclosing, and raising any part of the river bank or the river bed within the limits of the port;

(*e*) the construction and application of dredges and other machines for cleaning, deepening, and improving the river bed within the limits of the port;

(*f*) procuring and employing steam vessels in towing vessels into, out of, in or upon the river, or in the port;

(*g*) the construction of such works without the limits of the port as shall be necessary for the protection of works executed under this Act;

(*h*) all such other works and appliances as may, in the opinion of the Commissioners, be necessary for carrying out the provisions of this Act.

18. With the previous sanction of the Local Government, the Commissioners may from time to time make rules consistent with this Act and with the Indian Ports Act, 1875, for any of the following purposes, (that is to say):—

Power to make Port Rules.

(*a*) for regulating the time at which, and the manner in which, vessels shall enter into or go out of the port;

(*b*) for regulating the berths, stations, and anchorages to be occupied by vessels in the port;

(*c*) for striking the yards and topmasts and for rigging in the booms and yards of vessels in the port, and for swinging and taking in davits, boats, and other things projecting from such vessels;

(*d*) for the removal or proper hanging or placing of anchors, spars, and other things in, or attached to, vessels in the port;

(*e*) for regulating vessels whilst taking in or discharging ballast or cargo, or any particular kind of cargo, in the port, and the stations to be occupied by such vessels whilst so engaged;

(*f*) for regulating, declaring, and defining the wharfs, quays, jetties, stages, and piers on which goods shall be landed from vessels and shipped on board vessels;

(*g*) for keeping free passages of such width as may be deemed necessary within the port and along or near to the piers, jetties, landing-places, wharfs, quays, docks, moorings, and other works in, or adjoining to, the same, and for marking out the spaces so to be kept free;

(*h*) for the safe and convenient use of the piers, jetties, landing-places, wharfs, quays, docks, warehouses, sheds, and other works in, and adjoining to, the same;

(*i*) for the removal of wrecks and keeping clean the river, the river bank, and the works of the Commissioners, and for preventing filth or rubbish being thrown therein or thereon;

(*j*) for regulating the anchoring, fastening, mooring, and unmooring of vessels in the port;

(*k*) for regulating the mooring and warping of all vessels within the port and the use of warps therein;

(*l*) for regulating the use of the mooring-buoys, chain, and other moorings in the port;

(*m*) for fixing from time to time the rates to be paid for the use of such moorings, or of any boat, hawser, or other thing;

(*n*) for licensing and regulating cargo, ferry, and other boats plying for hire in the port;

(*o*) for regulating the use of fires and lights within the port;

(*p*) for enforcing and regulating the use of signal lights by vessels at night in the port;

(*q*) for regulating the number of the crew which must be on board any vessel afloat within the port;

(*r*) for fixing the limits within which vessels shall be prohibited from having on board any quantity of gunpowder or other explosive substance in excess of such quantity as the Local Government prescribes in this behalf;

(*s*) for regulating the reception and removal of goods within and from the premises of the Commissioners, and for declaring the procedure to be followed in taking charge of goods which shall have been damaged before landing, or shall be alleged to be so damaged;

(*t*) for the mode of payment of tolls, charges, dues, and rates levied under this Act;

(*u*) for providing water for ships and for licensing and regulating water boats;

(*v*) for otherwise carrying out the purposes of this Act.

Such rules when sanctioned by the Local Government shall be published in the *British Burma Gazette*, and shall thereupon have the force of law.

19. Subject to the provisions of the Indian Ports Act, 1875, the Commissioners shall, within the limits of the port, regulate the conservancy of the port, direct and control the Conservator and his establishment, and enforce all rules for the safety of shipping and the preservation of the port; and the Conservator and his establishment shall, within the limits of the port, act under the Commissioners and obey their lawful orders.

Commissioners to control conservancy.

20. Within the limits of the port, Pilots in charge of vessels shall obey all lawful orders issued to them by the Commissioners in respect to such vessels.

Control of Pilots within the port.

21. The Commissioners shall make a sufficient number of landing-places from and upon which the public shall be permitted to embark and land free of charge.

Free public landing-places.

22. The Commissioners may occupy, or remove, or modify any bathing-place or landing-place, and prohibit the public from resorting to or using the same, provided that in case of such prohibition the Commissioners shall provide for the use of the public such other bathing-places or landing-places as the Local Government may direct.

Removal of bathing and landing-places.

23. For the expeditious and convenient shipment and landing and storing of goods in and from sea-going vessels, the Commissioners shall provide and maintain sufficient wharfs, quays, stages, jetties, piers, warehouses, and sheds, and sufficient servants and appliances, and shall by their servants land and ship all goods from and upon any such vessel coming to such wharf, quay, stage, jetty, or pier, except where there is a lawful excuse for refusing to land or ship such goods, or such vessel is by reason of the breach or non-observance of any law or regulation not entitled to have her cargo shipped or discharged: provided that—

Appliances for shipping, &c., for sea-going vessels.

(*a*) the Commissioners shall not be bound to land, ship, or move any single article or package exceeding ten tons of twenty hundredweight in weight, except at such special charge as may be agreed on in respect of such article or package;

(*b*) the Commissioners may by special agreement with the masters of vessels or the owners of goods permit goods to be landed and shipped by others than their own servants.

24. When any wharf, quay, stage, jetty, or pier has been made and completed with sufficient warehouses, sheds and appliances for landing and shipping, or for landing or for shipping goods from and upon sea-going vessels, the Commissioners may, with the sanction of the Local Government, and by a notification published in three consecutive numbers of the *British Burma Gazette*, declare that such wharf, quay, stage, jetty, or pier is ready for receiving, landing and shipping, or landing, or shipping goods from and upon sea-going vessels.

Sea-going vessels compelled to use wharfs, &c.

From and after such publication, the Commissioners may require the Conservator of the port, or other person exercising the rights, powers and authorities of the Conservator of the port, from time to time, when there shall be room at such wharf, quay, stage, jetty, or pier, to order to come alongside of such wharf, quay, stage, jetty, or pier, for the purpose of being laden or unladen, any sea-going vessel which has not commenced to discharge cargo, or which being about to take in cargo has not commenced to take in cargo.

25. When a sufficient number of wharfs, quays, stages, jetties, piers, warehouses, sheds and appliances have been provided as aforesaid, the Commissioners may with the sanction of the Local Government, by an order published in three consecutive numbers of the *British Burma Gazette*, direct that no goods shall be landed or shipped from or upon any sea-going vessels within the port, save at such wharfs, quays, stages, jetties, and piers, and may, in like manner, alter, vary or revoke any such order.

If accommodation sufficient, all sea-going vessels compelled to use wharfs, &c.

26. When any wharf, quay, stage, jetty, or pier for receiving, landing, or shipping goods from vessels, not being sea-going vessels, has been made and completed with sufficient warehouses, sheds and appliances in that behalf, the Commissioners may, with the sanction of the Local Government, and by an order published in three consecutive numbers of the *British Burma Gazette*, declare that such wharf, quay, stage, jetty, or pier is ready for receiving, landing, and shipping goods from vessels, not being sea-going vessels, and that within certain prescribed limits to be therein specified in such order, it shall not be lawful to land or ship any goods out of or into any vessel, not being a sea-going vessel, of any class specified in such order, except at such wharf, quay, stage, jetty or pier, and may in like manner alter, vary or revoke any such order. From and after such publication, it shall not be lawful for any vessel of such class to land or ship any goods at any place within the limits so specified, except at such wharf, quay, stage, jetty or pier, nor for any such vessel while within such limits to anchor, fasten, or lay within fifty yards of low-water mark without the consent of the Commissioners.

Inland vessels compelled to use wharfs, &c.

If after such publication any such vessel, while within such limits, so anchors, fastens or lays, the Commissioners may cause the same to be removed out of the said limits.

27. The Commissioners may by notice in writing order the master, owner or agent of any vessel to remove such vessel from any wharf, quay, stage, jetty, or pier, belonging to the Commissioners; and unless such vessel shall be removed therefrom within thirty-six hours after service of such notice on the officer in charge of such vessel, or the master, owner, or agent thereof, the Commissioners may charge in respect of such vessel such sum not exceeding fifty rupees for each day of twenty-four hours or portion of such day after the expiry of such thirty-six hours during which such vessel remains at such wharf, quay, stage, jetty or pier as the Commissioners think fit.

Power to order removal of vessels from wharfs, &c.

28. Notwithstanding anything contained in sections 24, 25 and 26, the Local Government may, by notification in the *British Burma Gazette*, from time to time permit certain specified vessels or classes of vessels to discharge or ship cargo, or certain specified goods or cargoes or classes of goods or cargoes to be landed or shipped, elsewhere and at such part of the port and for such time and on such conditions as the Local Government may think fit, and otherwise grant exemption from the provisions of the sections aforesaid. The Local Government may also by like notification cancel or modify any such notice.

Power to exempt from obligation to use wharfs, &c.

29. Whenever any goods are landed by the Commissioners from any vessel, the Commissioners shall if so required give to the person in charge of such vessel a receipt in the form or to the effect set forth in schedule (B) hereto annexed, and may in any such receipt include all goods landed from such vessel during one day; and no person to whom such receipt is so given, nor the master nor owner of the vessel from which the goods in respect of which such receipt is given may have been landed, shall be liable for any loss or damage to such goods which may occur after they have been so landed.

Discharge of liability on goods landed.

30. When the Local Government appoints, under the provisions of any Act for the regulation of duties of customs, any wharf, quay, stage, jetty, pier, warehouse or shed provided under this Act for the use of sea-going vessels to be a wharf for the landing, or a warehouse for the storing, of goods within the meaning of such Act, the Commissioners shall set apart, maintain and secure on such wharf, quay, stage, jetty, pier, warehouse or shed such portion thereof, or place therein, or adjoining thereto, for the use of the officers of customs, as the Local Government approves of or appoints in that behalf.

Wharfs, &c., to be appointed under Customs Acts.

31. Notwithstanding that any wharf, quay, stage, jetty, pier, warehouse or shed, or portion thereof, has, under the provisions of the last section, been set apart for the use of the officers of customs, all dues, rates, tolls, charges and rents payable in respect thereof, or for the use thereof, or for the stowage of goods therein, shall be paid and be payable to the Commissioners or to such persons as they may appoint to receive the same.

Dues at customs wharfs, &c.

32. It shall not be lawful for any person, save the Commissioners, to make, erect or fix below high-water mark within the port, any wharf, dock, quay, stage, jetty, pier, erection or mooring.

Private wharfs, &c., prohibited.

Any matter or thing so made, erected or fixed may be removed by the Commissioners, and the person who has so made, erected or fixed any such matter or thing shall be punished with fine which may extend to one thousand rupees, and with a further fine which may extend to one hundred rupees for every day during which such matter or thing has been permitted to remain so made, erected or fixed, after notice to remove the same has been given to him, and shall also be liable to pay all expenses which may have been

incurred by the Commissioners in removing such matter or thing.

Wharfs, &c., beyond port limits.

33. In case any wharf, dock, quay, jetty, stage, pier, erection or mooring is, without the consent in writing of the Local Government, made, erected or fixed below high-water mark without the limits for the time being of the port, and thereafter the limits of the port are extended so as to include the place in which such wharf, dock, quay, jetty, pier, erection or mooring has been made, erected or fixed, the Commissioners may remove, fill up or destroy such wharf, dock, quay, jetty, pier, erection or mooring without making any compensation therefor.

34. The Commissioners shall frame—

Scale of tolls and charges to be framed.

(*a*) a scale of tolls, dues, rates and charges for the landing and shipment of goods from and into sea-going vessels and vessels not being sea-going vessels respectively, at the wharfs, quays, stages, jetties and piers, and for the use thereof by such vessels, and for the storing and keeping of any goods stored in any premises belonging to the Commissioners, and for the removal of goods, and for the use of any mooring;

(*b*) a scale of tolls for the use of the said wharfs, quays, moorings, stages, jetties and piers by any such vessels, in case the Commissioners permit the goods to be landed or shipped by others than their own servants; and

(*c*) a scale of charges for any services to be performed by the Commissioners or their servants in respect of any vessels or goods, or for the use of any works or appliances to be provided by the Commissioners.

Such scales shall be submitted to the Local Government, and, after approval or modification by the Local Government, shall be published by the Commissioners in the *British Burma Gazette*.

Subject to the like approval or modification and publication, the Commissioners may, in like manner, from time to time alter the said scales.

Every such scale shall be printed in the English and Burmese languages and characters, and shall be hung up, and kept hung up, in some conspicuous place at the several wharfs, quays, stages, jetties, piers, warehouses and sheds.

Commissioners' lien for tolls and charges.

35. For the amount of all tolls, charges, dues and rates levied under this Act in respect of any goods, the Commissioners shall have a lien on such goods, and shall be entitled to seize and detain the same until such tolls, charges, dues and rates are fully paid.

Tolls, charges, dues and rates in respect of goods to be landed shall become payable immediately on the landing of the goods, and, in respect of goods to be removed from the premises of the Commissioners, or to be shipped for export, shall be payable before the goods are removed or shipped.

The lien for such tolls, charges, dues and rates shall have priority over all other liens and claims, except for general average, for the ship-owner's lien for freight upon the said goods where such lien exists and has been preserved in the manner hereinafter provided, for primage, and for money payable to Her Majesty or the Secretary of State for India in Council under any law for the time being in force.

Ship-owners' lien for freight.

36. If the master or owner of any vessel, or his agent, at or before the time of landing from such vessel any goods at any wharf, quay, stage, jetty or pier, gives to the Commissioners notice in writing that such goods are to remain subject to a lien for freight or other charges payable to the ship-owner to an amount to be mentioned in such notice, such goods shall continue liable to the same lien, if any, for such charges as they were subject to before the landing thereof.

Such goods shall be retained either in the warehouses and sheds of the Commissioners, or, with the consent of the Chief Officer of Customs, in the public warehouses, at the risk and expense of the owners of the said goods, until the lien is discharged as hereinafter mentioned.

Discharge of ship-owners' lien for freight.

37. Upon the production to any officer appointed by the Commissioners in that behalf of a document purporting to be a receipt for, or a release from, the amount so mentioned, executed by the person by or on whose behalf such notice as aforesaid has been given, the Commissioners may permit such goods to be removed without regard to such lien as aforesaid, provided they shall have used reasonable care in respect to the authenticity of such document.

Goods may be removed to warehouses.

38. Whenever goods have, without any default on the part of the Commissioners, been left for two clear days on or in any wharf or shed belonging to the Commissioners, the Commissioners may cause such goods to be removed, either to any warehouse belonging to them, or, with the consent of the Chief Officer of Customs, to the public warehouses; and the removal to, and detention in, any such warehouse shall be at the risk and expense of the owners of the said goods.

Whenever any goods are so removed, the Commissioners shall give notice to the consignee or owner of such goods of such removal, if his address be known, by letter sent by post to such address or left thereat; and shall also publish in the *British Burma Gazette* and in two local newspapers notice of such removal, and shall specify therein the numbers, marks, and descriptions of such goods so far as the same appear, and the consignee or owner of such goods, in addition to the expenses of the removal of the same, shall be liable, in case the goods are removed to any warehouse of the Commissioners, to a charge for warehousing for the time during which the goods shall remain in the said warehouse.

If the said goods are removed to the public warehouses, the said consignee or owner shall be liable to the charges for warehousing goods in such public warehouses, and the said goods shall remain subject to all liens to which they would have been liable if they had remained in the possession of the Commissioners, and shall be subject to the power of sale hereinafter given.

Recovery of tolls and charges by sale of goods.

39. If the tolls, charges, dues, and rates payable to the Commissioners in respect of any goods under this Act are not paid, or if the lien of the ship-owner for freight where such notice as aforesaid has been given is not discharged, the Commissioners may, and in the latter event, if required by or on behalf of the person claiming such lien for freight, shall, at the expiration of four months from the time when the goods were placed in their custody, sell by public auction the said goods, or so much as may be necessary to satisfy the amounts hereinafter directed to be paid out of the produce of such sale.

Before making such sale, ten days' notice of the same shall be given by publication thereof in the *British Burma Gazette* and in two local newspapers.

If the address of the owner of the goods has been stated on the manifest of the cargo, or in any of the documents which have come into the hands of the Commissioners, or is otherwise known, notice shall also be given to the owner of the goods by letter delivered at such address or sent by the post; but the title of a *bonâ fide* purchaser of such goods shall not be invalidated by reason of the omission to send such notice, nor shall any such purchaser be bound to enquire whether such notice has been sent:

Provided that if such goods are of so perishable a nature as, in the opinion of the officer appointed by the Commissioners in that behalf, to render early or immediate sale necessary or advisable, the Commissioners may, within such period not less than twenty-four hours after the landing of the goods as they think fit, sell by public auction the said goods or such portion of them as aforesaid, in which event such notice shall be given to the owner of the goods as the urgency of the case admits of.

Application of sale proceeds.

40. The proceeds of every such sale shall be applied as follows:—

(*a*). In payment of the expenses of the sale.

(*b*). In payment according to their respective priorities of the liens and claims excepted in section 35 from the priority of the lien of the Commissioners.

(*c*). In payment of the tolls, charges, and expenses of landing, removing, storing, or warehousing the same, and of all other charges due to the Commissioners in respect thereto.

(*d*). The surplus, if any, shall be paid to the importer, owner, or consignee of the goods, or to his agent, on his applying for the same, provided such application be made within one year from the sale, or reason be shown to the satisfaction of the Commissioners why such application was not so made; and in case such application shall not be so made, nor reason shown, such surplus shall be held by the Commissioners upon trust for the purposes of this Act.

Recovery of tolls and charges by distraint of vessel.

41. If the master of any vessel in respect of which any tolls, dues, rates, penalties, or charges are payable under this Act, or any rules or orders made in pursuance thereof, refuse or neglect to pay the same or any part thereof on demand, the Commissioners may apply to the Collector of Customs of the port, and such Collector shall distrain or arrest such vessel, and the tackle, apparel and furniture belonging thereto, or any part thereof, and detain the same until the amount so due to the Commissioners is paid;

and in case any part of the said tolls, dues, rates, penalties or charges, or of the costs of the distress or arrestment, or of the keeping of the same, remains unpaid for the space of five days next after any such distress or arrestment has been so made, the Collector of Customs may cause the vessel or other thing so distrained or arrested to be sold, and, with the proceeds of such sale, shall satisfy such tolls, dues, rates, penalties or charges, and costs, including the costs of sale, remaining unpaid, rendering the surplus (if any) to the master of such vessel on demand.

Port clearance not to be granted till tolls, &c., are paid.

42. If the Commissioners give to the officer of Government, whose duty it is to grant the port-clearance of any vessel, a notice stating that an amount therein specified is due in respect of tolls, dues, rates, charges, or penalties chargeable under this Act, or any rules or orders made in pursuance thereof, against such vessel, or the owner or master of such vessel, in respect thereof, or against or in respect of any goods on board such vessel, such officer shall not grant such port clearance until the amount so chargeable has been paid.

Compensation for damage to property of Commissioners.

43. In case any damage or mischief is done to any wharfs, quays, jetties, piers or works constructed or acquired by the Commissioners under this Act, by any vessel, through the negligence of any person having the guidance or command thereof, or of any of the mariners or persons employed therein, any Magistrate of the town of Rangoon may, on the application of the Commissioners, and on declaration by them that payment for such damage or mischief has been refused or has not been made on demand, issue a summons to the master of, or agent for, such vessel, requiring him to attend on a day and at an hour named in the summons to answer touching such damage or mischief.

If at the time appointed in the summons, and whether the person summoned appears or not, it is proved that the alleged damage was done through such negligence as aforesaid, and that the pecuniary amount of the same does not exceed two hundred rupees, the Magistrate may issue his warrant of distress, under which a sufficient portion of the boats, masts, spars, ropes, cables, anchors or stores of the vessel may be seized and sold to cover the expenses of and attending the execution of the distress, and the pecuniary amount of damage as aforesaid, and such amount shall be paid to the Commissioners out of the proceeds of the distress: provided that if at the time of the damage or mischief the vessel was under the orders of a duly authorized officer belonging to the Pilot Service or the Harbour-Master's or Master-Attendant's Department, the case shall not be cognizable by the Magistrate under this section.

River Police.

44. The Commissioners shall provide such sums as the Local Government may from time to time require for the establishment and maintenance of police, to be called "River Police," for the protection of the port, the approaches to the port, and the river. Such sums shall be a first charge on any property vested in and on any moneys raised by, or paid, or payable to the Commissioners under this Act.

The River Police shall be enrolled under Act No. V of 1861 (*for the Regulation of Police*).

CHAPTER IV.

OF THE GENERAL CONTROL OF GOVERNMENT.

Commissioners' acts subject to approval.

45. All acts and proceedings of the Commissioners shall be subject to the approval of the Local Government and the Local Government may cancel, suspend, or modify any

such acts or proceedings, and may grant exemption from the payment of any tolls, charges, dues, or rates leviable under this Act.

Control over works and expenditure.

46. The Local Government may from time to time make rules consistent with this Act as to the cost and class of works which the Commissioners may execute, and the objects to which the receipts of the Commissioners shall be applied.

Local Government may order survey.

47. The Local Government may at any time order a local survey and examination of any works of the Commissioners under this Act, or the site thereof, and the cost of such survey or examination shall be borne and paid by the Commissioners.

Local Government may carry out neglected works.

48. If the Commissioners allow any work acquired or constructed by them under this Act to fall into disrepair, or do not complete any work commenced by them, or duly estimated for and sanctioned, and do not, after notice given by the Local Government in writing, proceed effectually to repair or complete such work, the Local Government may cause such work to be restored, completed, or constructed, and the cost thereof shall be borne and paid by the Commissioners.

Governor-General may revoke powers of Commissioners.

49. If at any time the Governor-General in Council is satisfied that the purposes intended to be accomplished under this Act have not been, and are not likely to be, properly accomplished by the Commissioners, the Governor-General in Council may, by notification in the *Gazette of India*, to be republished in the *British Burma Gazette*, give notice that, unless within six months the Commissioners shall take measures to the satisfaction of the Governor-General in Council for properly accomplishing the said purposes, the powers by this Act conferred on the Commissioners will, at the end of such period, be withdrawn and revoked.

On the expiration of the period aforesaid, the Governor-General in Council may declare such powers to be withdrawn or revoked, and may direct the Local Government to assume such powers; and thereupon such powers shall be withdrawn and revoked accordingly, and all the powers, rights and authorities vested by this Act in the Commissioners shall thereupon vest in the Local Government.

Local Government may delegate powers to survey steamers.

50. The Local Government may, from time to time, delegate to the Commissioners all or any of the powers conferred on the Chief Commissioner of British Burma within the port under the Burmese Steamer Survey Act, 1871, and may at any time resume the same.

Commissioners may license Surveyors.

51. The Commissioners may issue licenses to properly qualified persons to survey ships within the port, and may cancel and revoke such licenses.

When there is in Rangoon a Surveyor licensed by the Commissioners, it shall not be lawful for any servant of Government to undertake the survey of private vessels.

Nothing in this section shall affect the powers vested in the Chief Commissioner of British Burma under the Burmese Steamer Survey Act, 1871, except only and in so far as such powers have been delegated to the Commissioners under section 50.

CHAPTER V.

OF SUITS BY AND AGAINST THE COMMISSIONERS.

Chairman to sue.

52. The Commissioner shall sue and be sued in the name of their Chairman or of their Vice-Chairman.

Commissioners not personally liable.

53. No Commissioner shall be personally liable for any contract made or expense incurred by or on behalf of the Commissioners; but the funds from time to time in the hands of the Commissioners shall be liable for, and chargeable with, all contracts made in manner hereinafter provided.

Commissioners liable for breach of trust.

54. Every Commissioner shall be liable for any misapplication of money entrusted to the Commissioners to which he has been a party, or which happens through, or is facilitated by, the neglect of his duty, and he shall be liable to be sued for the same in such court as the Local Government directs as for money due to Government.

Limitation of suits.

55. No suits shall be brought against the Commissioners, or any of their officers, or any person acting under their direction, for anything done under this Act, until the expiration of one month next after notice in writing has been delivered or left at the office of the Commissioners, or at the place of abode of such person, stating the cause of suit and the name and place of abode of the intending plaintiff.

Unless such notice be proved, the court shall find for the defendant.

Every such suit shall be commenced within six months next after the accrual of the right to sue, and not afterwards.

If any person to whom any such notice of suit is given shall, before suit is brought, tender sufficient amends to the plaintiff, such plaintiff shall not recover.

Indemnity to Commissioners for acts of Harbour-Master, &c.

56. The Commissioners shall not be answerable for any act or default of any Master-Attendant, Harbour-Master, or other Conservator of the port, or of any Pilot, or of any deputy or assistant of any of the officers above-mentioned, or of any person acting under the authority or direction of any such officer or assistant, done within the limits of the port; nor for any damage sustained by any vessel in consequence of any defect in any of the moorings, hawsers, or other things within the said limits which may be used by such vessel.

Provided that nothing in this section shall protect the Commissioners from a suit in respect of any act done by or under their express order or sanction.

CHAPTER VI.

OF MEETINGS, ESTABLISHMENT, CONTRACTS, AND THE GENERAL CONDUCT OF BUSINESS.

A Commissioner may be Secretary.

57. The Commissioners may, if they think fit, elect any one of their number to be Secretary to the Commissioners.

Seal and place of business.

58. The Commissioners shall have a common seal inscribed "Port Commissioners, Rangoon," and an office where the Commissioners shall meet for the transaction of business.

Monthly meetings and remuneration for attendance.

59. The Commissioners shall meet for the transaction of business at least once in every month; and for attendance at every such meeting, the Commissioners shall, subject to such conditions as the Local Government may from time to time prescribe, receive such fees as the Local Government may from time to time direct: provided that such fees shall not be given for attendance at such meetings oftener than once a month.

Chairman and Vice-Chairman to attend.

60. The Chairman and Vice-Chairman shall, unless prevented by sickness or other reasonable cause, attend all meetings of the Commissioners.

Ordinary and special meetings.

61. The Chairman, or, in the event of his illness or absence from Rangoon, the Vice-Chairman, may whenever he thinks fit, and shall upon a requisition made in writing by not less than three Commissioners, convene a meeting of the Commissioners. Meetings so convened are special meetings: all other meetings are ordinary meetings.

Notice of meetings.

62. At least three days' notice shall be given of every meeting of the Commissioners, and the notice shall state the nature of the business to be transacted.

Conduct of business at meetings.

63. At all meetings of the Commissioners, the business shall be conducted in accordance with the following rules:—

(*a*) The Chairman, or, in his absence, the Vice-Chairman, shall be President; if both be absent, the Commissioners may elect one of their number to be President;

(*b*) The President may, with the consent of the meeting, adjourn the meeting from time to time;

(*c*) At special meetings, no business shall be transacted other than the special business for the consideration of which the meeting was specially called; at ordinary meetings, any business may be transacted of which due notice has been given.

(*d*) The quorum necessary for the transaction of business shall be such number, not less than five, as the Commissioners may from time to time prescribe;

(*e*) All questions which may come before the Commissioners at any meeting shall be decided by a majority of votes. Each Commissioner shall have one vote; and in case of equality of votes, the President shall have a second or casting vote;

(*f*) Minutes of the proceedings at all meetings of the Commissioners shall be drawn up after each meeting and shall be signed by the President and at least one other member who was present at such meeting. A copy of all such minutes shall, as soon as conveniently may be, be transmitted to the Secretary to the Local Government.

Mode of giving effect to resolutions.

64. The Commissioners may appoint one or more of their number to carry out their resolutions, and to enforce any of the rules made under the provisions of this Act, or they may appoint a special officer for such purpose.

Proceedings not invalidated by defect of form.

65. No proceedings of the Commissioners at any special or ordinary meeting shall be deemed invalid solely by reason of defect of notice or defect of form.

Schedule of establishment.

66. The Commissioners shall from time to time prepare and submit to the Local Government a schedule setting forth the number of officers and servants necessary for carrying out the purposes of this Act, and of the salaries, fees, and allowances which it is proposed to assign to such officers and servants. The Local Government may sanction such schedule, or modify and sanction the same. Every such schedule so sanctioned shall remain in force till some other such schedule has been so prepared and sanctioned.

It shall not be lawful for the Commissioners to employ any officer or servant for any office or employment not sanctioned in such schedule, nor to pay or allow to any officer or servants any salaries, allowances or fees greater than, or beyond those, sanctioned therein.

Nothing in this section applies to artisans, porters or labourers.

Commissioners may make bye-laws.

67. The Commissioners may from time to time make bye-laws consistent with this Act for regulating the time and place of their meetings, the conduct of their business, the division of the duties among themselves, the guidance of persons employed by them, the appointment, payment, leave, suspension, and removal of their officers and servants mentioned in the schedule last aforesaid, and for other similar matters.

The making of contracts.

68. The Chairman or Vice-Chairman, together with two other Commissioners, one of whom shall be an *ex-officio* Commissioner, may for and on behalf of the Commissioners enter jointly into any contract or agreement whereof the value or amount shall not exceed two hundred rupees, in such manner and form as, according to the law for the time being administered in Rangoon, would bind them if such contract or agreement were on their own behalf; but every other contract or agreement by or on behalf of the Commissioners shall be in writing, and signed by the Chairman or Vice-Chairman and by two other Commissioners, of whom one shall be an *ex-officio* Commissioner, and shall be sealed with the common seal of the Commissioners; and no contract or agreement, not executed as in this section is provided, shall be binding on the Commissioners: provided that—

(*a*) No contract under or by virtue of which a sum greater than ten thousand rupees may in any event be payable by the Commissioners, shall be valid without the assent in writing of the Local Government.

(*b*) No new work the estimated cost of which exceeds five hundred rupees shall be commenced by the Commissioners, nor shall any contract be entered into by the Commissioners in respect of any such work, until a plan and estimate thereof has been approved by the Commissioners at a meeting.

(*c*) In case the estimated cost of such new work shall exceed five thousand rupees, it shall not be commenced, nor shall any contract be entered into in respect of it, until such plan and estimate have been submitted to the Local Government, and

sanctioned by the Local Government in an order published in the *British Burma Gazette*.

(*d*) And in case the estimated cost of any such work exceeds fifty thousand rupees, the Local Government shall not sanction the same until such plan and estimate have been submitted to the Governor-General in Council and approved by him.

Money to be kept in bank.

69. All moneys raised by, and paid to, the Commissioners under this Act, shall be kept in the Bank of Bengal in Rangoon, and no disbursement of such funds, or any part thereof, shall be made:—

(*a*) except under the signature of the Chairman or Vice-Chairman; and

(*b*) in excess of such sum as may in that behalf be from month to month appropriated by the Commissioners at a meeting.

Submission of reports, accounts, and estimates.

70. The Commissioners shall annually, or oftener if directed by the Local Government so to do, submit in such form as the Local Government may from time to time direct—

(*a*) statements of their receipts and disbursements under this Act;

(*b*) reports of all works executed, and proceedings taken by them under this Act;

(*c*) an estimate of their probable receipts for the financial year next following, with proposals for the expenditure of the same.

Audit of accounts, and sanction and publication of estimates.

71. The accounts of the Commissioners shall be examined and audited in such manner as the Local Government may from time to time direct; and subject to the provisions of this Act, the estimate of probable receipts, and the proposals for expenditure as aforesaid, may on submission be sanctioned by the Local Government, or may be modified or altered and sanctioned; and an abstract of such estimates and proposals shall, when sanctioned, be published in the *British Burma Gazette*.

CHAPTER VII.

PENALTIES.

Commissioners not to be interested in contract, &c.

72. Any Commissioner, or servant of the Commissioners, who directly or indirectly lends money to the Commissioners, or becomes interested in any contract made by, or on behalf of, the Commissioners, or participates, or agrees to participate, in any profits of any work done by order or on behalf of the Commissioners, shall forfeit his office or employment, as the case may be, and shall be incapable afterwards of being a Commissioner or holding employment under the Commissioners, and shall further be liable to a fine not exceeding five hundred rupees.

But may be shareholder in a company so interested.

73. No Commissioner, or servant of the Commissioners, shall be deemed to be liable to a penalty under the preceding section solely by reason of his being a shareholder in any duly incorporated or registered company which may lend money to, or make contracts with, or do work for or on behalf of the Commissioners.

Infringement of sections 24, 25, and 26.

74. Whoever infringes any order issued under sections 24, 25 and 26 shall be liable to a fine not exceeding one hundred rupees; and if the infringement be continuing, to a further fine not exceeding one hundred rupees for every day such order is infringed.

Infringement of rules.

75. Whoever infringes any rule framed by the Commissioners under section 18 shall be liable to a fine not exceeding fifty rupees; and if the infringement be continuing, to a further fine not exceeding ten rupees for every day after notice of such infringement has been given by the Commissioners to the person continuing such infringement.

Punishment in default of fine.

76. Whenever an offender is sentenced to a fine under this Act, the convicting Court may direct that, in default of payment of the fine, the offender shall suffer simple imprisonment for a term which shall not exceed the following scale:—

(*a*) Two months in the case of continuing infringement of section 32.

(*b*) One month in the case of continuing infringement of sections 24, 25, and 26.

(*c*) Fourteen days if the fine does not exceed fifty rupees.

(*d*) One month if the fine does not exceed one hundred rupees.

(*e*) Two months if the fine does exceed one hundred rupees.

Sections 68 and 69 of the Indian Penal Code apply to imprisonment in default of payment of fine under this Act.

Prosecutions.

77. Prosecutions under this Act may be instituted by the Commissioners, or any person authorised by them in this behalf.

CHATER VIII.

MISCELLANEOUS.

Commissioners are public servants.

78. The Commissioners and the servants of the Commissioners, other than artisans, porters and labourers, shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Saving of previous port regulations.

79. All acts done and proceedings taken by the Strand Bank Committee, before this Act comes into force, and all orders, rules and regulations relating to the port, and to wharfs, quays, stages, jetties, piers, landing-places, tolls, charges, rates and dues within the port made and issued before this Act comes into force, shall be deemed to have been respectively done, taken, made and issued under the provisions of this Act.

Receiving of dues as revenue.

80. All fees and sums due on account of property for the time being vested in the Commissioners, and all arrears of tolls, charges, rates, and dues imposed under this Act, may be recovered as if they were arrears of land revenue.

SCHEDULE A.

(*Referred to in Section 12.*)

1. All the land belonging to Government between the river on the south and the Strand Road on the north, from East Street on the east to the canal on the west, except—

(*a*) the land occupied by the Municipality of Rangoon;

(*b*) the land occupied by the military authorities to an extent of 100 feet on each side of Godwin's Wharf.

2. All other land belonging to Government within the limits of the present port of Rangoon, lying within a line drawn at fifty yards from high-water mark, except—

(*a*) the land occupied by the Rangoon Jail Saw-Mill;

(*b*) the land occupied as Government timber depôts at Ahlone and Monkey Point;

(*c*) the land occupied by the military authorities for the defences at Monkey Point;

(*d*) the land assigned for railway purposes;

(*e*) the land occupied on the east side of East Street by the Department of Public Works;

(*f*) the Dalla Dockyard and the lands attached thereto.

SCHEDULE B.

(*Referred to in sec. 29.*)

RECEIPT FOR GOODS.

By the Port Commissioners, Rangoon.

Landed during the day of from the , by the Port Commissioners, Rangoon, the noted in the margin, contents and state of the contents unknown.

NOTE.—*If there be any apparent injury, this is to be stated.*

For the Port Commissioners, Rangoon.

RANGOON, }
The day of . } A. B.

STATEMENT OF OBJECTS AND REASONS.

THE trade of the port of Rangoon has increased with extraordinary rapidity within the last fifteen years.

Its total value, which in 1861-62 was two and a half millions sterling, had risen in 1866-67 to four millions, and in 1871-72 to five and a half millions. In 1876-77 it amounted to eight and a half millions.

In the same period the shipping had increased from 867 vessels aggregating 295,000 tons, to 1,687 vessels aggregating nearly one million tons.

2. Much has already been done towards the improvement of the port. The approaches have been lighted and buoyed. Several wharves and boat-jetties have been constructed, and a steam-dredger and flats have been purchased for the improvement of the bed of the harbour; but the progress made in this respect has hardly kept pace with the rapid development of the trade. There is still a deficiency of wharf-accommodation. There are as yet no moorings in the river (fixed or floating), no floating-jetties, no cranes capable of lifting more than five tons weight. The system of river-police, too, is defective.

3. Moreover, the need of a properly constituted body, such as exists at Calcutta and Bombay, legally invested with all powers requisite to improve the port and conduct its administration, is much felt. Till the year 1874, the affairs of the port were to some extent at least supervised by the town magistracy; from that year to 1876 by the Municipal Commissioners: and they are at present under the control of the Conservator and a committee which has no legal status whatever. The Chief Commissioner considers this state of things objectionable; not only as it is likely to give rise to legal difficulties, but also because it leaves the management of the port entirely in official hands. It is "not right," in his opinion, "that in so large and important a harbour the mercantile community, whose commercial enterprise is the very life and soul of the place, should have no voice in the management of the affairs of the port," and that while their industry is taxed, they should have nothing to say to the expenditure of the money.

4. To meet the wants thus felt, the present Bill has been framed by the Chief Commissioner, and it is introduced as nearly as possible in the form in which it has been received from him.

5. It provides (in section 5) for the appointment by the Local Government of a body of Commissioners, not more than twelve or less than nine in number, of whom a certain proportion must be non-officials. Subject to the control of the Government (see in particular chapter IV and section 68), these Commissioners will conduct the entire administration of the port.

6. They are (section 17) to construct wharves, jetties, tramways, warehouses and other conveniences for the landing, storing and shipping of goods, to lay down moorings, to improve the port by reclaiming the banks and deepening the river-bed, and to provide tug-steamers. They are, with the previous sanction of the Government (section 18), to make the port-rules which the Local Government is empowered to make under the seventh section of the Indian Ports Act, and additional rules in regard to certain other matters. They are (section 19) to have the control of the Conservator appointed under the Indian Ports Act, and (section 20) of pilots while within port limits.

7. Their functions in regard to the landing and shipping of goods being of special importance, are provided for in considerable detail in sections 23 to 34 which are based on sections 56 to 65 of the Calcutta Port Commissioners' Act. By these sections, when the Commissioners have provided sufficient wharf-accommodation, they are empowered, with the previous sanction of the Local Government, to issue an order requiring that all goods [illegible]

be shipped and landed at their wharves and through the agency of their servants, and to fix tolls and charges for the use of such wharves and for the services rendered. In order, however, to meet the case of ships engaged in the rice-trade, which, under the present system of conducting business, could not conveniently take in their cargoes from the Commissioners' wharves, a provision (28) has been inserted empowering the Local Government to exempt particular classes of ships from the obligation to use those wharves. By sections 32 and 33, corresponding to sections 56 and 57 of the Calcutta Act, the erection of wharves, &c., by private persons below high water-mark is prohibited.

8. To enable the Commissioners to discharge the duties imposed on them, all Government land required for port purposes is (by section 12) vested in them, and in addition to the tolls and charges above referred to, the port-dues and other revenues realised in the port under the Indian Ports Act are (section 14) made over to them.

They are, moreover, empowered by section 16 to borrow money with the sanction of the Governor-General in Council for carrying out works of improvement.

9. All property thus vested in the Commissioners and all moneys thus received or raised by them are (section 15) to be held by them in trust for the purposes of the Act, but subject to an obligation (section 11, clause (*d*)) to continue to the Rangoon municipality a certain annual allowance which it has hitherto been receiving from the income of the Port, and (section 44) to provide such sums as the Local Government may from time to time require for the establishment of river-police.

RIVERS THOMPSON.

Calcutta,
24th December 1878.

D. FITZPATRICK,
Secy. to the Govt. of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, JANUARY 11, 1879.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 31st December 1878, and was referred to a Select Committee:—

No. 11 OF 1878.

THE RANGOON PORT COMMISSIONERS BILL, 1878.

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(*h*) all such other works and appliances as may, in the opinion of the Commissioners, be necessary for carrying out the provisions of this Act.

Power to make Port Rules.

18. With the previous sanction of the Local Government, the Commissioners may from time to time make rules consistent with this Act and with the Indian Ports Act, 1875, for any of the following purposes, (that is to say):—

(*a*) for regulating the time at which, and the manner in which, vessels shall enter into or go out of the port;

(*b*) for regulating the berths, stations, and anchorages to be occupied by vessels in the port;

(*c*) for striking the yards and topmasts and for rigging in the booms and yards of vessels in the port, and for swinging and taking in davits, boats, and other things projecting from such vessels;

(*d*) for the removal or proper hanging or placing of anchors, spars, and other things in, or attached to, vessels in the port;

(*e*) for regulating vessels whilst taking in or discharging ballast or cargo, or any particular kind of cargo, in the port, and the stations to be occupied by such vessels whilst so engaged;

(*f*) for regulating, declaring, and defining the wharfs, quays, jetties, stages, and piers on which goods shall be landed from vessels and shipped on board vessels;

(*g*) for keeping free passages of such width as may be deemed necessary within the port and along or near to the piers, jetties, landing-places, wharfs, quays, docks, moorings, and other works in, or adjoining to, the same, and for marking out the spaces so to be kept free;

(*h*) for the safe and convenient use of the piers, jetties, landing-places, wharfs, quays, docks, warehouses, sheds, and other works in, and adjoining to, the same;

(*i*) for the removal of wrecks and keeping clean the river, the river bank, and the works of the Commissioners, and for preventing filth or rubbish being thrown therein or thereon;

(*j*) for regulating the anchoring, fastening, mooring, and unmooring of vessels in the port;

(*k*) for regulating the mooring and warping of all vessels within the port and the use of warps therein;

(*l*) for regulating the use of the mooring-buoys, chain, and other moorings in the port;

(*m*) for fixing from time to time the rates to be paid for the use of such moorings, or of any boat, hawser, or other thing;

(*n*) for licensing and regulating cargo, ferry, and other boats plying for hire in the port;

(*o*) for regulating the use of fires and lights within the port;

(*p*) for enforcing and regulating the use of signal lights by vessels at night in the port;

(*q*) for regulating the number of the crew which must be on board any vessel afloat within the port;

(*r*) for fixing the limits within which vessels shall be prohibited from having on board any quantity of gunpowder or other explosive substance in excess of such quantity as the Local Government prescribes in this behalf;

(*s*) for regulating the reception and removal of goods within and from the premises of the Commissioners, and for declaring the procedure to be followed in taking charge of goods which shall have been damaged before landing, or shall be alleged to be so damaged;

(*t*) for the mode of payment of tolls, charges, dues, and rates levied under this Act;

(*u*) for providing water for ships and for licensing and regulating water boats;

(*v*) for otherwise carrying out the purposes of this Act.

Such rules when sanctioned by the Local Government shall be published in the *British Burma Gazette*, and shall thereupon have the force of law.

Commissioners to control conservancy.

19. Subject to the provisions of the Indian Ports Act, 1875, the Commissioners shall, within the limits of the port, regulate the conservancy of the port, direct and control the Conservator and his establishment, and enforce all rules for the safety of shipping and the preservation of the port; and the Conservator and his establishment shall, within the limits of the port, act under the Commissioners and obey their lawful orders.

Control of Pilots within the port.

20. Within the limits of the port, Pilots in charge of vessels shall obey all lawful orders issued to them by the Commissioners in respect to such vessels.

Free public landing-places.

21. The Commissioners shall make a sufficient number of landing-places from and upon which the public shall be permitted to embark and land free of charge.

Removal of bathing and landing-places.

22. The Commissioners may occupy, or remove, or modify any bathing-place or landing-place, and prohibit the public from resorting to or using the same, provided that in case of such prohibition the Commissioners shall provide for the use of the public such other bathing-places or landing-places as the Local Government may direct.

Appliances for shipping, &c., for sea-going vessels.

23. For the expeditious and convenient shipment and landing and storing of goods in and from sea-going vessels, the Commissioners shall provide and maintain sufficient wharfs, quays, stages, jetties, piers, warehouses, and sheds, and sufficient servants and appliances, and shall by their servants land and ship all goods from and upon any such vessel coming to such wharf, quay, stage, jetty, or pier, except where there is a lawful excuse for refusing to land or ship such goods, or such vessel is by reason of the breach or non-observance of any law or regulation not entitled to have her cargo shipped or discharged: provided that—

(*a*) the Commissioners shall not be bound to land, ship, or move any single article or package exceeding ten tons of twenty hundredweight in weight, except at such special charge as may be agreed on in respect of such article or package;

(*b*) the Commissioners may by special agreement with the masters of vessels or the owners of goods permit goods to be landed and shipped by others than their own servants.

Sea-going vessels compelled to use wharfs, &c.

24. When any wharf, quay, stage, jetty, or pier has been made and completed with sufficient warehouses, sheds and appliances for landing and shipping, or for landing or for shipping goods from and upon sea-going vessels, the Commissioners may, with the sanction of the Local Government, and by a notification published in three consecutive numbers of the *British Burma Gazette*, declare that such wharf, quay, stage, jetty, or pier is ready for receiving, landing and shipping, or landing, or shipping goods from and upon sea-going vessels.

From and after such publication, the Commissioners may require the Conservator of the port, or other person exercising the rights, powers and authorities of the Conservator of the port, from time to time, when there shall be room at such wharf, quay, stage, jetty, or pier, to order to come alongside of such wharf, quay, stage, jetty, or pier, for the purpose of being laden or unladen, any sea-going vessel which has not commenced to discharge cargo, or which being about to take in cargo has not commenced to take in cargo.

If accommodation sufficient, all sea-going vessels compelled to use wharfs, &c.

25. When a sufficient number of wharfs, quays, stages, jetties, piers, warehouses, sheds and appliances have been provided as aforesaid, the Commissioners may with the sanction of the Local Government, by an order published in three consecutive numbers of the *British Burma Gazette*, direct that no goods shall be landed or shipped from or upon any sea-going vessels within the port, save at such wharfs, quays, stages, jetties, and piers, and may, in like manner, alter, vary or revoke any such order.

Inland vessels compelled to use wharfs, &c.

26. When any wharf, quay, stage, jetty, or pier for receiving, landing, or shipping goods from vessels, not being sea-going vessels, has been made and completed with sufficient warehouses, sheds and appliances in that behalf, the Commissioners may, with the sanction of the Local Government, and by an order published in three consecutive numbers of the *British Burma Gazette*, declare that such wharf, quay, stage, jetty, or pier is ready for receiving, landing, and shipping goods from vessels, not being sea-going vessels, and that within certain prescribed limits to be therein specified in such order, it shall not be lawful to land or ship any goods out of or into any vessel, not being a sea-going vessel, of any class specified in such order, except at such wharf, quay, stage, jetty or pier, and may in like manner alter, vary or revoke any such order. From and after such publication, it shall not be lawful for any vessel of such class to land or ship any goods at any place within the limits so specified, except at such wharf, quay, stage, jetty or pier, nor for any such vessel while within such limits to anchor, fasten, or lay within fifty yards of low-water mark without the consent of the Commissioners.

If after such publication any such vessel, while within such limits, so anchors, fastens or lays, the Commissioners may cause the same to be removed out of the said limits.

Power to order removal of vessels from wharfs, &c.

27. The Commissioners may by notice in writing order the master, owner or agent of any vessel to remove such vessel from any wharf, quay, stage, jetty, or pier, belonging to the Commissioners; and unless such vessel shall be removed therefrom within thirty-six hours after service of such notice on the officer in charge of such vessel, or the master, owner, or agent thereof, the Commissioners may charge in respect of such vessel such sum not exceeding fifty rupees for each day of twenty-four hours or portion of such day after the expiry of such thirty-six hours during which such vessel remains at such wharf, quay, stage, jetty or pier as the Commissioners think fit.

Power to exempt from obligation to use wharfs, &c.

28. Notwithstanding anything contained in sections 24, 25 and 26, the Local Government may, by notification in the *British Burma Gazette*, from time to time permit certain specified vessels or classes of vessels to discharge or ship cargo, or certain specified goods or cargoes or classes of goods or cargoes to be landed or shipped, elsewhere and at such part of the port and for such time and on such conditions as the Local Government may think fit, and otherwise grant exemption from the provisions of the sections aforesaid. The Local Government may also by like notification cancel or modify any such notice.

Discharge of liability on goods landed.

29. Whenever any goods are landed by the Commissioners from any vessel, the Commissioners shall if so required give to the person in charge of such vessel a receipt in the form or to the effect set forth in schedule (B) hereto annexed, and may in any such receipt include all goods landed from such vessel during one day; and no person to whom such receipt is so given, nor the master nor owner of the vessel from which the goods in respect of which such receipt is given may have been landed, shall be liable for any loss or damage to such goods which may occur after they have been so landed.

Wharfs, &c., to be appointed under Customs Acts.

30. When the Local Government appoints, under the provisions of any Act for the regulation of duties of customs, any wharf, quay, stage, jetty, pier, warehouse or shed provided under this Act for the use of sea-going vessels to be a wharf for the landing, or a warehouse for the storing, of goods within the meaning of such Act, the Commissioners shall set apart, maintain and secure on such wharf, quay, stage, jetty, pier, warehouse or shed such portion thereof, or place therein, or adjoining thereto, for the use of the officers of customs, as the Local Government approves of or appoints in that behalf.

Dues at customs wharfs, &c.

31. Notwithstanding that any wharf, quay, stage, jetty, pier, warehouse or shed, or portion thereof, has, under the provisions of the last section, been set apart for the use of the officers of customs, all dues, rates, tolls, charges and rents payable in respect thereof, or for the use thereof, or for the stowage of goods therein, shall be paid and be payable to the Commissioners or to such persons as they may appoint to receive the same.

Private wharfs, &c., prohibited.

32. It shall not be lawful for any person, save the Commissioners, to make, erect or fix below high-water mark within the port, any wharf, dock, quay, stage, jetty, pier, erection or mooring.

Any matter or thing so made, erected or fixed may be removed by the Commissioners, and the person who has so made, erected or fixed any such matter or thing shall be punished with fine which may extend to one thousand rupees, and with a further fine which may extend to one hundred rupees for every day during which such matter or thing has been permitted to remain so made, erected or fixed, after notice to remove the same has been given to him, and shall also be liable to pay all expenses which may have been

incurred by the Commissioners in removing such matter or thing.

Wharfs, &c., beyond port limits.

33. In case any wharf, dock, quay, jetty, stage, pier, erection or mooring is, without the consent in writing of the Local Government, made, erected or fixed below high-water mark without the limits for the time being of the port, and thereafter the limits of the port are extended so as to include the place in which such wharf, dock, quay, jetty, pier, erection or mooring has been made, erected or fixed, the Commissioners may remove, fill up or destroy such wharf, dock, quay, jetty, pier, erection or mooring without making any compensation therefor.

34. The Commissioners shall frame—

Scale of tolls and charges to be framed.

(*a*) a scale of tolls, dues, rates and charges for the landing and shipment of goods from and into sea-going vessels and vessels not being sea-going vessels respectively, at the wharfs, quays, stages, jetties and piers, and for the use thereof by such vessels, and for the storing and keeping of any goods stored in any premises belonging to the Commissioners, and for the removal of goods, and for the use of any mooring;

(*b*) a scale of tolls for the use of the said wharfs, quays, moorings, stages, jetties and piers by any such vessels, in case the Commissioners permit the goods to be landed or shipped by others than their own servants; and

(*c*) a scale of charges for any services to be performed by the Commissioners or their servants in respect of any vessels or goods, or for the use of any works or appliances to be provided by the Commissioners.

Such scales shall be submitted to the Local Government, and, after approval or modification by the Local Government, shall be published by the Commissioners in the *British Burma Gazette*.

Subject to the like approval or modification and publication, the Commissioners may, in like manner, from time to time alter the said scales.

Every such scale shall be printed in the English and Burmese languages and characters, and shall be hung up, and kept hung up, in some conspicuous place at the several wharfs, quays, stages, jetties, piers, warehouses and sheds.

Commissioners' lien for tolls and charges.

35. For the amount of all tolls, charges, dues and rates levied under this Act in respect of any goods, the Commissioners shall have a lien on such goods, and shall be entitled to seize and detain the same until such tolls, charges, dues and rates are fully paid.

Tolls, charges, dues and rates in respect of goods to be landed shall become payable immediately on the landing of the goods, and, in respect of goods to be removed from the premises of the Commissioners, or to be shipped for export, shall be payable before the goods are removed or shipped.

The lien for such tolls, charges, dues and rates shall have priority over all other liens and claims, except for general average, for the ship-owner's lien for freight upon the said goods where such lien exists and has been preserved in the manner hereinafter provided, for primage, and for money payable to Her Majesty or the Secretary of State for India in Council under any law for the time being in force.

Ship-owners' lien for freight.

36. If the master or owner of any vessel, or his agent, at or before the time of landing from such vessel any goods at any wharf, quay, stage, jetty or pier, gives to the Commissioners notice in writing that such goods are to remain subject to a lien for freight or other charges payable to the ship-owner to an amount to be mentioned in such notice, such goods shall continue liable to the same lien, if any, for such charges as they were subject to before the landing thereof.

Such goods shall be retained either in the warehouses and sheds of the Commissioners, or, with the consent of the Chief Officer of Customs, in the public warehouses, at the risk and expense of the owners of the said goods, until the lien is discharged as hereinafter mentioned.

Discharge of ship-owners' lien for freight.

37. Upon the production to any officer appointed by the Commissioners in that behalf of a document purporting to be a receipt for, or a release from, the amount so mentioned, executed by the person by or on whose behalf such notice as aforesaid has been given, the Commissioners may permit such goods to be removed without regard to such lien as aforesaid, provided they shall have used reasonable care in respect to the authenticity of such document.

Goods may be removed to warehouses.

38. Whenever goods have, without any default on the part of the Commissioners, been left for two clear days on or in any wharf or shed belonging to the Commissioners, the Commissioners may cause such goods to be removed, either to any warehouse belonging to them, or, with the consent of the Chief Officer of Customs, to the public warehouses; and the removal to, and detention in, any such warehouse shall be at the risk and expense of the owners of the said goods.

Whenever any goods are so removed, the Commissioners shall give notice to the consignee or owner of such goods of such removal, if his address be known, by letter sent by post to such address or left thereat; and shall also publish in the *British Burma Gazette* and in two local newspapers notice of such removal, and shall specify therein the numbers, marks, and descriptions of such goods so far as the same appear, and the consignee or owner of such goods, in addition to the expenses of the removal of the same, shall be liable, in case the goods are removed to any warehouse of the Commissioners, to a charge for warehousing for the time during which the goods shall remain in the said warehouse.

If the said goods are removed to the public warehouses, the said consignee or owner shall be liable to the charges for warehousing goods in such public warehouses, and the said goods shall remain subject to all liens to which they would have been liable if they had remained in the possession of the Commissioners, and shall be subject to the power of sale hereinafter given.

Recovery of tolls and charges by sale of goods.

39. If the tolls, charges, dues, and rates payable to the Commissioners in respect of any goods under this Act are not paid, or if the lien of the ship-owner for freight where such notice as aforesaid has been given is not discharged, the Commissioners may, and in the latter event, if required by or on behalf of the person claiming such lien for freight, shall, at

the expiration of four months from the time when the goods were placed in their custody, sell by public auction the said goods, or so much as may be necessary to satisfy the amounts hereinafter directed to be paid out of the produce of such sale.

Before making such sale, ten days' notice of the same shall be given by publication thereof in the *British Burma Gazette* and in two local newspapers.

If the address of the owner of the goods has been stated on the manifest of the cargo, or in any of the documents which have come into the hands of the Commissioners, or is otherwise known, notice shall also be given to the owner of the goods by letter delivered at such address or sent by the post; but the title of a *bonâ fide* purchaser of such goods shall not be invalidated by reason of the omission to send such notice, nor shall any such purchaser be bound to enquire whether such notice has been sent:

Provided that if such goods are of so perishable a nature as, in the opinion of the officer appointed by the Commissioners in that behalf, to render early or immediate sale necessary or advisable, the Commissioners may, within such period not less than twenty-four hours after the landing of the goods as they think fit, sell by public auction the said goods or such portion of them as aforesaid, in which event such notice shall be given to the owner of the goods as the urgency of the case admits of.

Application of sale proceeds.

40. The proceeds of every such sale shall be applied as follows:—

(*a*). In payment of the expenses of the sale.

(*b*). In payment according to their respective priorities of the liens and claims excepted in section 35 from the priority of the lien of the Commissioners.

(*c*). In payment of the tolls, charges, and expenses of landing, removing, storing, or warehousing the same, and of all other charges due to the Commissioners in respect thereto.

(*d*). The surplus, if any, shall be paid to the importer, owner, or consignee of the goods, or to his agent, on his applying for the same, provided such application be made within one year from the sale, or reason be shown to the satisfaction of the Commissioners why such application was not so made; and in case such application shall not be so made, nor reason shown, such surplus shall be held by the Commissioners upon trust for the purposes of this Act.

Recovery of tolls and charges by distraint of vessel.

41. If the master of any vessel in respect of which any tolls, dues, rates, penalties, or charges are payable under this Act, or any rules or orders made in pursuance thereof, refuse or neglect to pay the same or any part thereof on demand, the Commissioners may apply to the Collector of Customs of the port, and such Collector shall distrain or arrest such vessel, and the tackle, apparel and furniture belonging thereto, or any part thereof, and detain the same until the amount so due to the Commissioners is paid;

and in case any part of the said tolls, dues, rates, penalties or charges, or of the costs of the distress or arrestment, or of the keeping of the same, remains unpaid for the space of five days next after any such distress or arrestment has been so made, the Collector of Customs may cause the vessel or other thing so distrained or arrested to be sold, and, with the proceeds of such sale, shall satisfy such tolls, dues, rates, penalties or charges, and costs, including the costs of sale, remaining unpaid, rendering the surplus (if any) to the master of such vessel on demand.

Port clearance not to be granted till tolls, &c., are paid.

42. If the Commissioners give to the officer of Government, whose duty it is to grant the port-clearance of any vessel, a notice stating that an amount therein specified is due in respect of tolls, dues, rates, charges, or penalties chargeable under this Act, or any rules or orders made in pursuance thereof, against such vessel, or the owner or master of such vessel, in respect thereof, or against or in respect of any goods on board such vessel, such officer shall not grant such port clearance until the amount so chargeable has been paid.

Compensation for damage to property of Commissioners.

43. In case any damage or mischief is done to any wharfs, quays, jetties, piers or works constructed or acquired by the Commissioners under this Act, by any vessel, through the negligence of any person having the guidance or command thereof, or of any of the mariners or persons employed therein, any Magistrate of the town of Rangoon may, on the application of the Commissioners, and on declaration by them that payment for such damage or mischief has been refused or has not been made on demand, issue a summons to the master of, or agent for, such vessel, requiring him to attend on a day and at an hour named in the summons to answer touching such damage or mischief.

If at the time appointed in the summons, and whether the person summoned appears or not, it is proved that the alleged damage was done through such negligence as aforesaid, and that the pecuniary amount of the same does not exceed two hundred rupees, the Magistrate may issue his warrant of distress, under which a sufficient portion of the boats, masts, spars, ropes, cables, anchors or stores of the vessel may be seized and sold to cover the expenses of and attending the execution of the distress, and the pecuniary amount of damage as aforesaid, and such amount shall be paid to the Commissioners out of the proceeds of the distress: provided that if at the time of the damage or mischief the vessel was under the orders of a duly authorized officer belonging to the Pilot Service or the Harbour-Master's or Master-Attendant's Department, the case shall not be cognizable by the Magistrate under this section.

River Police.

44. The Commissioners shall provide such sums as the Local Government may from time to time require for the establishment and maintenance of police, to be called "River Police," for the protection of the port, the approaches to the port, and the river. Such sums shall be a first charge on any property vested in and on any moneys raised by, or paid, or payable to the Commissioners under this Act.

The River Police shall be enrolled under Act No. V of 1861 (*for the Regulation of Police*).

CHAPTER IV.

OF THE GENERAL CONTROL OF GOVERNMENT.

Commissioners' acts subject to approval.

45. All acts and proceedings of the Commissioners shall be subject to the approval of the Local Government and the Local Government may cancel, suspend, or modify any

such acts or proceedings, and may grant exemption from the payment of any tolls, charges, dues, or rates leviable under this Act.

Control over works and expenditure.

46. The Local Government may from time to time make rules consistent with this Act as to the cost and class of works which the Commissioners may execute, and the objects to which the receipts of the Commissioners shall be applied.

Local Government may order survey.

47. The Local Government may at any time order a local survey and examination of any works of the Commissioners under this Act, or the site thereof, and the cost of such survey or examination shall be borne and paid by the Commissioners.

Local Government may carry out neglected works.

48. If the Commissioners allow any work acquired or constructed by them under this Act to fall into disrepair, or do not complete any work commenced by them, or duly estimated for and sanctioned, and do not, after notice given by the Local Government in writing, proceed effectually to repair or complete such work, the Local Government may cause such work to be restored, completed, or constructed, and the cost thereof shall be borne and paid by the Commissioners.

Governor-General may revoke powers of Commissioners.

49. If at any time the Governor-General in Council is satisfied that the purposes intended to be accomplished under this Act have not been, and are not likely to be, properly accomplished by the Commissioners, the Governor-General in Council may, by notification in the *Gazette of India*, to be republished in the *British Burma Gazette*, give notice that, unless within six months the Commissioners shall take measures to the satisfaction of the Governor-General in Council for properly accomplishing the said purposes, the powers by this Act conferred on the Commissioners will, at the end of such period, be withdrawn and revoked.

On the expiration of the period aforesaid, the Governor-General in Council may declare such powers to be withdrawn or revoked, and may direct the Local Government to assume such powers; and thereupon such powers shall be withdrawn and revoked accordingly, and all the powers, rights and authorities vested by this Act in the Commissioners shall thereupon vest in the Local Government.

Local Government may delegate powers to survey steamers.

50. The Local Government may, from time to time, delegate to the Commissioners all or any of the powers conferred on the Chief Commissioner of British Burma within the port under the Burmese Steamer Survey Act, 1871, and may at any time resume the same.

Commissioners may license Surveyors.

51. The Commissioners may issue licenses to properly qualified persons to survey ships within the port, and may cancel and revoke such licenses.

When there is in Rangoon a Surveyor licensed by the Commissioners, it shall not be lawful for any servant of Government to undertake the survey of private vessels.

Nothing in this section shall affect the powers vested in the Chief Commissioner of British Burma under the Burmese Steamer Survey Act, 1871, except only and in so far as such powers have been delegated to the Commissioners under section 50.

CHAPTER V.

OF SUITS BY AND AGAINST THE COMMISSIONERS.

Chairman to sue.

52. The Commissioner shall sue and be sued in the name of their Chairman or of their Vice-Chairman.

Commissioners not personally liable.

53. No Commissioner shall be personally liable for any contract made or expense incurred by or on behalf of the Commissioners; but the funds from time to time in the hands of the Commissioners shall be liable for, and chargeable with, all contracts made in manner hereinafter provided.

Commissioners liable for breach of trust.

54. Every Commissioner shall be liable for any misapplication of money entrusted to the Commissioners to which he has been a party, or which happens through, or is facilitated by, the neglect of his duty, and he shall be liable to be sued for the same in such court as the Local Government directs as for money due to Government.

Limitation of suits.

55. No suits shall be brought against the Commissioners, or any of their officers, or any person acting under their direction, for anything done under this Act, until the expiration of one month next after notice in writing has been delivered or left at the office of the Commissioners, or at the place of abode of such person, stating the cause of suit and the name and place of abode of the intending plaintiff.

Unless such notice be proved, the court shall find for the defendant.

Every such suit shall be commenced within six months next after the accrual of the right to sue, and not afterwards.

If any person to whom any such notice of suit is given shall, before suit is brought, tender sufficient amends to the plaintiff, such plaintiff shall not recover.

Indemnity to Commissioners for acts of Harbour-Master, &c.

56. The Commissioners shall not be answerable for any act or default of any Master-Attendant, Harbour-Master, or other Conservator of the port, or of any Pilot, or of any deputy or assistant of any of the officers above-mentioned, or of any person acting under the authority or direction of any such officer or assistant, done within the limits of the port; nor for any damage sustained by any vessel in consequence of any defect in any of the moorings, hawsers, or other things within the said limits which may be used by such vessel.

Provided that nothing in this section shall protect the Commissioners from a suit in respect of any act done by or under their express order or sanction.

CHAPTER VI.

OF MEETINGS, ESTABLISHMENT, CONTRACTS, AND THE GENERAL CONDUCT OF BUSINESS.

A Commissioner may be Secretary.

57. The Commissioners may, if they think fit, elect any one of their number to be Secretary to the Commissioners.

Seal and place of business.

58. The Commissioners shall have a common seal inscribed "Port Commissioners, Rangoon," and an office where the Commissioners shall meet for the transaction of business.

Monthly meetings and remuneration for attendance.

59. The Commissioners shall meet for the transaction of business at least once in every month; and for attendance at every such meeting, the Commissioners shall, subject to such conditions as the Local Government may from time to time prescribe, receive such fees as the Local Government may from time to time direct: provided that such fees shall not be given for attendance at such meetings oftener than once a month.

Chairman and Vice-Chairman to attend.

60. The Chairman and Vice-Chairman shall, unless prevented by sickness or other reasonable cause, attend all meetings of the Commissioners.

Ordinary and special meetings.

61. The Chairman, or, in the event of his illness or absence from Rangoon, the Vice-Chairman, may whenever he thinks fit, and shall upon a requisition made in writing by not less than three Commissioners, convene a meeting of the Commissioners. Meetings so convened are special meetings: all other meetings are ordinary meetings.

Notice of meetings.

62. At least three days' notice shall be given of every meeting of the Commissioners, and the notice shall state the nature of the business to be transacted.

Conduct of business at meetings.

63. At all meetings of the Commissioners, the business shall be conducted in accordance with the following rules:—

(*a*) The Chairman, or, in his absence, the Vice-Chairman, shall be President; if both be absent, the Commissioners may elect one of their number to be President;

(*b*) The President may, with the consent of the meeting, adjourn the meeting from time to time;

(*c*) At special meetings, no business shall be transacted other than the special business for the consideration of which the meeting was specially called; at ordinary meetings, any business may be transacted of which due notice has been given.

(*d*) The quorum necessary for the transaction of business shall be such number, not less than five, as the Commissioners may from time to time prescribe;

(*e*) All questions which may come before the Commissioners at any meeting shall be decided by a majority of votes. Each Commissioner shall have one vote; and in case of equality of votes, the President shall have a second or casting vote;

(*f*) Minutes of the proceedings at all meetings of the Commissioners shall be drawn up after each meeting and shall be signed by the President and at least one other member who was present at such meeting. A copy of all such minutes shall, as soon as conveniently may be, be transmitted to the Secretary to the Local Government.

Mode of giving effect to resolutions.

64. The Commissioners may appoint one or more of their number to carry out their resolutions, and to enforce any of the rules made under the provisions of this Act, or they may appoint a special officer for such purpose.

Proceedings not invalidated by defect of form.

65. No proceedings of the Commissioners at any special or ordinary meeting shall be deemed invalid solely by reason of defect of notice or defect of form.

Schedule of establishment.

66. The Commissioners shall from time time prepare and submit to the Local Government a schedule setting forth the number of officers and servants necessary for carrying out the purposes of this Act, and of the salaries, fees, and allowances which it is proposed to assign to such officers and servants. The Local Government may sanction such schedule, or modify and sanction the same. Every such schedule so sanctioned shall remain in force till some other such schedule has been so prepared and sanctioned.

It shall not be lawful for the Commissioners to employ any officer or servant for any office or employment not sanctioned in such schedule, nor to pay or allow to any officer or servants any salaries, allowances or fees greater than, or beyond those, sanctioned therein.

Nothing in this section applies to artisans, porters or labourers.

Commissioners may make bye-laws.

67. The Commissioners may from time to time make bye-laws consistent with this Act for regulating the time and place of their meetings, the conduct of their business, the division of the duties among themselves, the guidance of persons employed by them, the appointment, payment, leave, suspension, and removal of their officers and servants mentioned in the schedule last aforesaid, and for other similar matters.

The making of contracts.

68. The Chairman or Vice-Chairman, together with two other Commissioners, one of whom shall be an *ex officio* Commissioner, may for and on behalf of the Commissioners enter jointly into any contract or agreement whereof the value or amount shall not exceed two hundred rupees, in such manner and form as, according to the law for the time being administered in Rangoon, would bind them if such contract or agreement were on their own behalf; but every other contract or agreement by or on behalf of the Commissioners shall be in writing, and signed by the Chairman or Vice-Chairman and by two other Commissioners, of whom one shall be an *ex officio* Commissioner, and shall be sealed with the common seal of the Commissioners; and no contract or agreement, not executed as in this section is provided, shall be binding on the Commissioners: provided that—

(*a*) No contract under or by virtue of which a sum greater than ten thousand rupees may in any event be payable by the Commissioners, shall be valid without the assent in writing of the Local Government.

(*b*) No new work the estimated cost of which exceeds five hundred rupees shall be commenced by the Commissioners, nor shall any contract be entered into by the Commissioners in respect of any such work, until a plan and estimate thereof has been approved by the Commissioners at a meeting.

(*c*) In case the estimated cost of such new work shall exceed five thousand rupees, it shall not be commenced, nor shall any contract be entered into in respect of it, until such plan and estimate have been submitted to the Local Government, and

sanctioned by the Local Government in an order published in the *British Burma Gazette*.

(*d*) And in case the estimated cost of any such work exceeds fifty thousand rupees, the Local Government shall not sanction the same until such plan and estimate have been submitted to the Governor-General in Council and approved by him.

Money to be kept in bank.

69. All moneys raised by, and paid to, the Commissioners under this Act, shall be kept in the Bank of Bengal in Rangoon, and no disbursement of such funds, or any part thereof, shall be made:—

(*a*) in excess of such sum as may in that behalf be from month to month appropriated by the Commissioners at a meeting, or

(*b*) except under the signature of the Chairman or Vice-Chairman.

Submission of reports, accounts, and estimates.

70. The Commissioners shall annually, or oftener if directed by the Local Government so to do, submit in such form as the Local Government may from time to time direct—

(*a*) statements of their receipts and disbursements under this Act;

(*b*) reports of all works executed, and proceedings taken by them under this Act;

(*c*) an estimate of their probable receipts for the financial year next following, with proposals for the expenditure of the same.

Audit of accounts, and sanction and publication of estimates.

71. The accounts of the Commissioners shall be examined and audited in such manner as the Local Government may from time to time direct; and subject to the provisions of this Act, the estimate of probable receipts, and the proposals for expenditure as aforesaid, may on submission be sanctioned by the Local Government, or may be modified or altered and sanctioned; and an abstract of such estimates and proposals shall, when sanctioned, be published in the *British Burma Gazette*.

CHAPTER VII.

PENALTIES.

Commissioners not to be interested in contract, &c.

72. Any Commissioner, or servant of the Commissioners, who directly or indirectly lends money to the Commissioners, or becomes interested in any contract made by, or on behalf of, the Commissioners, or participates, or agrees to participate, in any profits of any work done by order or on behalf of the Commissioners, shall forfeit his office or employment, as the case may be, and shall be incapable afterwards of being a Commissioner or holding employment under the Commissioners, and shall further be liable to a fine not exceeding five hundred rupees.

But may be shareholder in a company so interested.

73. No Commissioner, or servant of the Commissioners, shall be deemed to be liable to a penalty under the preceding section solely by reason of his being a shareholder in any duly incorporated or registered company which may lend money to, or make contracts with, or do work for or on behalf of the Commissioners.

Infringement of sections 24, 25, and 26.

74. Whoever infringes any order issued under sections 24, 25 and 26 shall be liable to a fine not exceeding one hundred rupees; and if the infringement be continuing, to a further fine not exceeding one hundred rupees for every day such order is infringed.

Infringement of rules.

75. Whoever infringes any rule framed by the Commissioners under section 18 shall be liable to a fine not exceeding fifty rupees; and if the infringement be continuing, to a further fine not exceeding ten rupees for every day after notice of such infringement has been given by the Commissioners to the person continuing such infringement.

Punishment in default of fine.

76. Whenever an offender is sentenced to a fine under this Act, the convicting Court may direct that, in default of payment of the fine, the offender shall suffer simple imprisonment for a term which shall not exceed the following scale:—

(*a*) Two months in the case of continuing infringement of section 32.

(*b*) One month in the case of continuing infringement of sections 24, 25, and 26.

(*c*) Fourteen days if the fine does not exceed fifty rupees.

(*d*) One month if the fine does not exceed one hundred rupees.

(*e*) Two months if the fine does exceed one hundred rupees.

Sections 68 and 69 of the Indian Penal Code apply to imprisonment in default of payment of fine under this Act.

Prosecutions.

77. Prosecutions under this Act may be instituted by the Commissioners, or any person authorised by them in this behalf.

CHATER VIII.

MISCELLANEOUS.

Commissioners are public servants.

78. The Commissioners and the servants of the Commissioners, other than artisans, porters and labourers, shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Saving of previous port regulations.

79. All acts done and proceedings taken by the Strand Bank Committee, before this Act comes into force, and all orders, rules and regulations relating to the port, and to wharfs, quays, stages, jetties, piers, landing-places, tolls, charges, rates and dues within the port made and issued before this Act comes into force, shall be deemed to have been respectively done, taken, made and issued under the provisions of this Act.

Receiving of dues as revenue.

80. All fees and sums due on account of property for the time being vested in the Commissioners, and all arrears of tolls, charges, rates, and dues imposed under this Act, may be recovered as if they were arrears of land revenue.

SCHEDULE A.

(*Referred to in Section 12.*)

1. All the land belonging to Government between the river on the south and the Strand Road on the north, from East Street on the east to the canal on the west, except—

(*a*) the land occupied by the Municipality of Rangoon;

(*b*) the land occupied by the military authorities to an extent of 100 feet on each side of Godwin's Wharf.

2. All other land belonging to Government within the limits of the present port of Rangoon, lying within a line drawn at fifty yards from high-water mark, except—

(*a*) the land occupied by the Rangoon Jail Saw-Mill;

(*b*) the land occupied as Government timber depôts at Ahlone and Monkey Point;

(*c*) the land occupied by the military authorities for the defences at Monkey Point;

(*d*) the land assigned for railway purposes;

(*e*) the land occupied on the east side of East Street by the Department of Public Works;

(*f*) the Dalla Dockyard and the lands attached thereto.

SCHEDULE B.

(*Referred to in sec. 29.*)

RECEIPT FOR GOODS.

By the Port Commissioners, Rangoon.

Landed during the day of from the , by the Port Commissioners, Rangoon, the noted in the margin, contents and state of the contents unknown.

NOTE.—*If there be any apparent injury, this is to be stated.*

For the Port Commissioners, Rangoon.

RANGOON,
The day of } A. B.

STATEMENT OF OBJECTS AND REASONS.

THE trade of the port of Rangoon has increased with extraordinary rapidity within the last fifteen years.

Its total value, which in 1861-62 was two and a half millions sterling, had risen in 1866-67 to four millions, and in 1871-72 to five and a half millions. In 1876-77 it amounted to eight and a half millions.

In the same period the shipping had increased from 867 vessels aggregating 295,000 tons, to 1,687 vessels aggregating nearly one million tons.

2. Much has already been done towards the improvement of the port. The approaches have been lighted and buoyed. Several wharves and boat-jetties have been constructed, and a steam-dredger and flats have been purchased for the improvement of the bed of the harbour; but the progress made in this respect has hardly kept pace with the rapid development of the trade. There is still a deficiency of wharf-accommodation. There are as yet no moorings in the river (fixed or floating), no floating-jetties, no cranes capable of lifting more than five tons weight. The system of river-police, too, is defective.

3. Moreover, the need of a properly constituted body, such as exists at Calcutta and Bombay, legally invested with all powers requisite to improve the port and conduct its administration, is much felt. Till the year 1874, the affairs of the port were to some extent at least supervised by the town magistracy; from that year to 1876 by the Municipal Commissioners: and they are at present under the control of the Conservator and a committee which has no legal status whatever. The Chief Commissioner considers this state of things objectionable; not only as it is likely to give rise to legal difficulties, but also because it leaves the management of the port entirely in official hands. It is "not right," in his opinion, "that in so large and important a harbour the mercantile community, whose commercial enterprise is the very life and soul of the place, should have no voice in the management of the affairs of the port," and that while their industry is taxed, they should have nothing to say to the expenditure of the money.

4. To meet the wants thus felt, the present Bill has been framed by the Chief Commissioner, and it is introduced as nearly as possible in the form in which it has been received from him.

5. It provides (in section 5) for the appointment by the Local Government of a body of Commissioners, not more than twelve or less than nine in number, of whom a certain proportion must be non-officials. Subject to the control of the Government (see in particular chapter IV and section 68), these Commissioners will conduct the entire administration of the port.

6. They are (section 17) to construct wharves, jetties, tramways, warehouses and other conveniences for the landing, storing and shipping of goods, to lay down moorings, to improve the port by reclaiming the banks and deepening the river-bed, and to provide tug-steamers. They are, with the previous sanction of the Government (section 18), to make the port-rules which the Local Government is empowered to make under the seventh section of the Indian Ports Act, and additional rules in regard to certain other matters. They are (section 19) to have the control of the Conservator appointed under the Indian Ports Act, and (section 20) of pilots while within port limits.

7. Their functions in regard to the landing and shipping of goods being of special importance, are provided for in considerable detail in sections 23 to 34 which are based on sections 56 to 65 of the Calcutta Port Commissioners' Act. By these sections, when the Commissioners have provided sufficient wharf-accommodation, they are empowered, with the previous sanction of the Local Government, to issue an order requiring that all goods shall

be shipped and landed at their wharves and through the agency of their servants, and to fix tolls and charges for the use of such wharves and for the services rendered. In order, however, to meet the case of ships engaged in the rice-trade, which, under the present system of conducting business, could not conveniently take in their cargoes from the Commissioners' wharves, a provision (28) has been inserted empowering the Local Government to exempt particular classes of ships from the obligation to use those wharves. By sections 32 and 33, corresponding to sections 56 and 57 of the Calcutta Act, the erection of wharves, &c., by private persons below high water-mark is prohibited.

8. To enable the Commissioners to discharge the duties imposed on them, all Government land required for port purposes is (by section 12) vested in them, and in addition to the tolls and charges above referred to, the port-dues and other revenues realised in the port under the Indian Ports Act are (section 14) made over to them.

They are, moreover, empowered by section 16 to borrow money with the sanction of the Governor-General in Council for carrying out works of improvement.

9. All property thus vested in the Commissioners and all moneys thus received or raised by them are (section 15) to be held by them in trust for the purposes of the Act, but subject to an obligation (section 11, clause (*d*)) to continue to the Rangoon municipality a certain annual allowance which it has hitherto been receiving from the income of the Port, and (section 44) to provide such sums as the Local Government may from time to time require for the establishment of river-police.

RIVERS THOMPSON.

Calcutta,
24th December 1878.

D. FITZPATRICK,
Secy. to the Govt. of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, JANUARY 18, 1879.

☞ Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 31st December 1878, and was referred to a Select Committee:—

No. 11 OF 1878.

THE RANGOON PORT COMMISSIONERS BILL, 1878.

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A Bill to Appoint Commissioners for the Port of Rangoon.

Preamble.

Whereas it is expedient to provide for the management of the affairs of the port of Rangoon, and for that purpose to appoint Commissioners: It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called "The Rangoon Port Commissioners Act, 1879."

Extent.

2. It shall come into force on such date as the Local Government may notify in the *British Burma Gazette*, and it shall extend—

(*a*) to the Port of Rangoon as for the time being defined by the Local Government under the provisions of this or any other Act;

(*b*) to the approaches as for the time being defined as aforesaid to the said port;

(*c*) to such parts of the river and other places or things outside the said port and the approaches to the said port as in this Act provided.

But nothing in this Act contained shall affect—

(*a*) any power or authority vested in the Chief Revenue Authority, or the Collector of Customs, under any law for the time being in force; or

(*b*) the powers conferred on the Chief Commissioner of British Burma under the British Burma Municipal Act, 1874, section 28.

Interpretation.

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

"Port" means the port of Rangoon:

"The River" means any flowing water within a radius of eight statute miles from Soolay Pagoda wharf navigable by vessels, and includes the bank up to high-water mark:

"High-water mark" means a line drawn through the highest points reached by ordinary spring-tides at any season of the year, or through any lower points which may be declared or described by the Local Government under section 4:

"Low-water mark" means the lowest point reached by ebb-spring tides at any season of the year:

"Vessel" includes anything made for the conveyance by water of human beings or of property:

"Land" includes the bed of the river below high-water mark, and also things attached to the earth, or permanently fastened to anything attached to the earth; and the expression

"Commissioners" means the Commissioners appointed under this Act.

Power to alter limits.

4. With the previous sanction of the Governor General in Council, the Local Government may from time to time alter the limits within which this Act shall be in force, and declare or describe by notification in the *British Burma Gazette*, or by means of maps, posts, or otherwise, the extent of such limits or any portion thereof.

CHAPTER II.

OF THE APPOINTMENT AND REMOVAL OF COMMISSIONERS.

Appointment of Commissioners.

5. The Local Government may from time to time, by notification in the *British Burma Gazette*, appoint persons either by name or by virtue of their office, to be Commissioners for the port of Rangoon.

Provided that—

(*a*) the number of such Commissioners holding office at one and the same time shall not be more than twelve or less than nine;

(*b*) the number of such Commissioners who are persons holding salaried offices under Government shall be—

(i) not less than four or more than six, when the total number of Commissioners is eleven or twelve.

(ii) not less than three or more than five, when the total number of Commissioners is nine or ten.

Tenure of office.

6. Commissioners appointed under section 5 shall hold office for two years, and may thereafter be appointed; but the Local Government may at any time accept the resignation of any such Commissioner.

Removal of Commissioners.

7. Notwithstanding anything in sections 5 and 6, the Local Government may—

(*a*) with the previous sanction of the Governor General in Council by written order direct that any Commissioner shall cease from a specified date to be a Commissioner;

(*b*) by written order direct that any Commissioner therein named who, without the written consent of the Local Government, absents himself from six consecutive meetings of the Commissioners, shall cease to be a Commissioner:

And the Commissioner so named shall cease to be a Commissioner accordingly.

Chairman and Vice-Chairman.

8. The Local Government may from time to time appoint one of the Commissioners to be Chairman and another of the Commissioners to be Vice-Chairman, cancel such appointment, and fix the remuneration, if any, which the Chairman and Vice-Chairman shall respectively receive.

Appointments, &c., to be notified.

9. Every appointment, cancellation of appointment, and removal from office made, and resignation accepted, under sections 5, 6, 7 and 8, shall be notified in the *British Burma Gazette*.

CHAPTER III.

POWERS AND DUTIES OF COMMISSIONERS.

Administration vests in Commissioners.

10. Subject to the powers respectively conferred on, and reserved to, the Governor General in Council and the Local Government by this Act or by any general or local law, the execution and administration of the powers and trusts created and declared by this Act shall be vested in the Commissioners.

Power to hold property.

11. With the previous sanction of the Local Government, the Commissioners may acquire and hold movable or immovable property within or without the limits of the port, and with the same sanction may lease, mortgage, sell or exchange such property.

Transfer of Government property to Commissioners.

12. The property specified in schedule (A) hereto annexed, shall be vested in the Commissioners, provided that—

(*a*) no buildings or other permanent structures shall be erected thereon, except with the sanction of, and on plans to be previously approved of by, the Local Government;

(*b*) any portion of such property required by Government for a public purpose may be resumed by Government without claim to compensation on the part of the Commissioners except for buildings or other permanent structures erected thereon with the sanction of the Local Government subsequently to the passing of this Act.

(*c*) nothing in this section shall apply to, or affect the rights or interests of, private persons or of the Municipality of Rangoon in any such property or the land occupied as a Government timber depôt or the land occupied or to be occupied by Government for the defences of the port or for the Strand Bank Railway.

(*d*) out of the rents and income derived from the property aforesaid, the Local Government may assign annually to the municipality of Rangoon such sum, not exceeding the average of the sums so assigned during the five years last preceding the passing of this Act, as the Local Government thinks fit.

(*e*) if any question should arise between the Government and the Commissioners as to the boundaries of any portion of such land, the Local Government may define and demarcate such boundaries, and the decision of the Local Government in respect to such boundaries shall be final.

Acquisition of land.

13. When any land is required for the purposes of this Act, the Local Government may proceed to acquire it under the provisions of the Land Acquisition Act, 1870, and on payment by the Commissioners of the compensation awarded under that Act, the land shall vest in the Commissioners.

Port dues and other revenues.

14. All port dues collected under the Indian Ports Act, 1875, and all mooring rates, license-fees, fines, penalties, expenses, proceeds of sales, salvage, harbour-master's fees, fees for hauling and services rendered to vessels and other moneys realised under the said Act, shall, unless where the said Act otherwise provides, be paid to the Commissioners.

Property to be in trust.

15. All property vested in, or acquired or held by, and all moneys raised by, or paid, or payable to, the Commissioners shall be held and applied by them in trust for the purposes of this Act.

Power to borrow money.

16. With the previous sanction of the Governor-General in Council, and under such rules and conditions as the Governor-General in Council may from time to time prescribe, the Commissioners may from time to time borrow money to cover the estimated cost of works duly sanctioned for the improvement of the port.

A separate account shall be kept of all such money borrowed and of the expenditure thereof on such works, and also of the receipts and profits, if any, from such works; and the interest of the money borrowed shall be a first charge on any property vested in, and on any moneys paid by, or paid, or payable to, the Commissioners.

Works to be constructed.

17. The works to be constructed and carried out by the Commissioners may include the following:—

(*a*) wharfs, quays, stages, jetties, and piers, with all necessary and convenient drains, arches, landing-places, stairs, fences, and approaches;

(*b*) tramways, warehouses, sheds, engines, and other appliances for conveying, receiving, and storing goods and merchandise landed or to be shipped;

(*c*) laying down moorings, and the erection of cranes, scales, and all other necessary appliances for loading and unloading vessels;

(*d*) reclaiming, enclosing, and raising any part of the river bank or the river bed within the limits of the port;

(*e*) the construction and application of dredges and other machines for cleaning, deepening, and improving the river bed within the limits of the port;

(*f*) procuring and employing steam vessels in towing vessels into, out of, in or upon the river, or in the port;

(*g*) the construction of such works without the limits of the port as shall be necessary for the protection of works executed under this Act;

(*k*) all such other works and appliances as may, in the opinion of the Commissioners, be necessary for carrying out the provisions of this Act.

Power to make Port Rules.

18. With the previous sanction of the Local Government, the Commissioners may from time to time make rules consistent with this Act and with the Indian Ports Act, 1875, for any of the following purposes, (that is to say):—

(*a*) for regulating the time at which, and the manner in which, vessels shall enter into or go out of the port;

(*b*) for regulating the berths, stations, and anchorages to be occupied by vessels in the port;

(*c*) for striking the yards and topmasts and for rigging in the booms and yards of vessels in the port, and for swinging and taking in davits, boats, and other things projecting from such vessels;

(*d*) for the removal or proper hanging or placing of anchors, spars, and other things in, or attached to, vessels in the port;

(*e*) for regulating vessels whilst taking in or discharging ballast or cargo, or any particular kind of cargo, in the port, and the stations to be occupied by such vessels whilst so engaged;

(*f*) for regulating, declaring, and defining the wharfs, quays, jetties, stages, and piers on which goods shall be landed from vessels and shipped on board vessels;

(*g*) for keeping free passages of such width as may be deemed necessary within the port and along or near to the piers, jetties, landing-places, wharfs, quays, docks, moorings, and other works in, or adjoining to, the same, and for marking out the spaces so to be kept free;

(*h*) for the safe and convenient use of the piers, jetties, landing-places, wharfs, quays, docks, warehouses, sheds, and other works in, and adjoining to, the same;

(*i*) for the removal of wrecks and keeping clean the river, the river bank, and the works of the Commissioners, and for preventing filth or rubbish being thrown therein or thereon;

(*j*) for regulating the anchoring, fastening, mooring, and unmooring of vessels in the port;

(*k*) for regulating the mooring and warping of all vessels within the port and the use of warps therein;

(*l*) for regulating the use of the mooring-buoys, chain, and other moorings in the port;

(*m*) for fixing from time to time the rates to be paid for the use of such moorings, or of any boat, hawser, or other thing;

(*n*) for licensing and regulating cargo, ferry, and other boats plying for hire in the port;

(*o*) for regulating the use of fires and lights within the port;

(*p*) for enforcing and regulating the use of signal lights by vessels at night in the port;

(*q*) for regulating the number of the crew which must be on board any vessel afloat within the port;

(*r*) for fixing the limits within which vessels shall be prohibited from having on board any quantity of gunpowder or other explosive substance in excess of such quantity as the Local Government prescribes in this behalf;

(*s*) for regulating the reception and removal of goods within and from the premises of the Commissioners, and for declaring the procedure to be followed in taking charge of goods which shall have been damaged before landing, or shall be alleged to be so damaged;

(*t*) for the mode of payment of tolls, charges, dues, and rates levied under this Act;

(*u*) for providing water for ships and for licensing and regulating water boats;

(*v*) for otherwise carrying out the purposes of this Act.

Such rules when sanctioned by the Local Government shall be published in the *British Burma Gazette*, and shall thereupon have the force of law.

Commissioners to control conservancy.

19. Subject to the provisions of the Indian Ports Act, 1875, the Commissioners shall, within the limits of the port, regulate the conservancy of the port, direct and control the Conservator and his establishment, and enforce all rules for the safety of shipping and the preservation of the port; and the Conservator and his establishment shall, within the limits of the port, act under the Commissioners and obey their lawful orders.

Control of Pilots within the port.

20. Within the limits of the port, Pilots in charge of vessels shall obey all lawful orders issued to them by the Commissioners in respect to such vessels.

Free public landing-places.

21. The Commissioners shall make a sufficient number of landing-places from and upon which the public shall be permitted to embark and land free of charge.

Removal of bathing and landing-places.

22. The Commissioners may occupy, or remove, or modify any bathing-place or landing-place, and prohibit the public from resorting to or using the same, provided that in case of such prohibition the Commissioners shall provide for the use of the public such other bathing-places or landing-places as the Local Government may direct.

Appliances for shipping, &c., for sea-going vessels.

23. For the expeditious and convenient shipment and landing and storing of goods in and from sea-going vessels, the Commissioners shall provide and maintain sufficient wharfs, quays, stages, jetties, piers, warehouses, and sheds, and sufficient servants and appliances, and shall by their servants land and ship all goods from and upon any such vessel coming to such wharf, quay, stage, jetty, or pier, except where there is a lawful excuse for refusing to land or ship such goods, or such vessel is by reason of the breach or non-observance of any law or regulation not entitled to have her cargo shipped or discharged: provided that—

(*a*) the Commissioners shall not be bound to land, ship, or move any single article or package exceeding ten tons of twenty hundredweight in weight, except at such special charge as may be agreed on in respect of such article or package;

(*b*) the Commissioners may by special agreement with the masters of vessels or the owners of goods permit goods to be landed and shipped by others than their own servants.

Sea-going vessels compelled to use wharfs, &c.

24. When any wharf, quay, stage, jetty, or pier has been made and completed with sufficient warehouses, sheds and appliances for landing and shipping, or for landing or for shipping goods from and upon sea-going vessels, the Commissioners may, with the sanction of the Local Government, and by a notification published in three consecutive numbers of the *British Burma Gazette*, declare that such wharf, quay, stage, jetty, or pier is ready for receiving,

landing and shipping, or landing, or shipping goods from and upon sea-going vessels.

From and after such publication, the Commissioners may require the Conservator of the port, or other person exercising the rights, powers and authorities of the Conservator of the port, from time to time, when there shall be room at such wharf, quay, stage, jetty, or pier, to order to come alongside of such wharf, quay, stage, jetty, or pier, for the purpose of being laden or unladen, any sea-going vessel which has not commenced to discharge cargo, or which being about to take in cargo has not commenced to take in cargo.

If accommodation sufficient, all sea-going vessels compelled to use wharfs, &c.

25. When a sufficient number of wharfs, quays, stages, jetties, piers, warehouses, sheds and appliances have been provided as aforesaid, the Commissioners may with the sanction of the Local Government, by an order published in three consecutive numbers of the *British Burma Gazette*, direct that no goods shall be landed or shipped from or upon any sea-going vessels within the port, save at such wharfs, quays, stages, jetties, and piers, and may, in like manner, alter, vary or revoke any such order.

Inland vessels compelled to use wharfs, &c.

26. When any wharf, quay, stage, jetty, or pier for receiving, landing, or shipping goods from vessels, not being sea-going vessels, has been made and completed with sufficient warehouses, sheds and appliances in that behalf, the Commissioners may, with the sanction of the Local Government, and by an order published in three consecutive numbers of the *British Burma Gazette*, declare that such wharf, quay, stage, jetty, or pier is ready for receiving, landing, and shipping goods from vessels, not being sea-going vessels, and that within certain prescribed limits to be therein specified in such order, it shall not be lawful to land or ship any goods out of or into any vessel, not being a sea-going vessel, of any class specified in such order, except at such wharf, quay, stage, jetty or pier, and may in like manner alter, vary or revoke any such order. From and after such publication, it shall not be lawful for any vessel of such class to land or ship any goods at any place within the limits so specified, except at such wharf, quay, stage, jetty or pier, nor for any such vessel while within such limits to anchor, fasten, or lay within fifty yards of low-water mark without the consent of the Commissioners.

If after such publication any such vessel, while within such limits, so anchors, fastens or lays, the Commissioners may cause the same to be removed out of the said limits.

Power to order removal of vessels from wharfs, &c.

27. The Commissioners may by notice in writing order the master, owner or agent of any vessel to remove such vessel from any wharf, quay, stage, jetty, or pier, belonging to the Commissioners; and unless such vessel shall be removed therefrom within thirty-six hours after service of such notice on the officer in charge of such vessel, or the master, owner, or agent thereof, the Commissioners may charge in respect of such vessel such sum not exceeding fifty rupees for each day of twenty-four hours or portion of such day after the expiry of such thirty-six hours during which such vessel remains at such wharf, quay, stage, jetty or pier as the Commissioners think fit.

Power to exempt from obligation to use wharfs, &c.

28. Notwithstanding anything contained in sections 24, 25 and 26, the Local Government may, by notification in the *British Burma Gazette*, from time to time permit certain specified vessels or classes of vessels to discharge or ship cargo, or certain specified goods or cargoes or classes of goods or cargoes to be landed or shipped, elsewhere and at such part of the port and for such time and on such conditions as the Local Government may think fit, and otherwise grant exemption from the provisions of the sections aforesaid. The Local Government may also by like notification cancel or modify any such notice.

Discharge of liability on goods landed.

29. Whenever any goods are landed by the Commissioners from any vessel, the Commissioners shall if so required give to the person in charge of such vessel a receipt in the form or to the effect set forth in schedule (B) hereto annexed, and may in any such receipt include all goods landed from such vessel during one day; and no person to whom such receipt is so given, nor the master nor owner of the vessel from which the goods in respect of which such receipt is given may have been landed, shall be liable for any loss or damage to such goods which may occur after they have been so landed.

Wharfs, &c., to be appointed under Customs Acts.

30. When the Local Government appoints, under the provisions of any Act for the regulation of duties of customs, any wharf, quay, stage, jetty, pier, warehouse or shed provided under this Act for the use of sea-going vessels to be a wharf for the landing, or a warehouse for the storing, of goods within the meaning of such Act, the Commissioners shall set apart, maintain and secure on such wharf, quay, stage, jetty, pier, warehouse or shed such portion thereof, or place therein, or adjoining thereto, for the use of the officers of customs, as the Local Government approves of or appoints in that behalf.

Dues at customs wharfs, &c.

31. Notwithstanding that any wharf, quay, stage, jetty, pier, warehouse or shed, or portion thereof, has, under the provisions of the last section, been set apart for the use of the officers of customs, all dues, rates, tolls, charges and rents payable in respect thereof, or for the use thereof, or for the stowage of goods therein, shall be paid and be payable to the Commissioners or to such persons as they may appoint to receive the same.

Private wharfs, &c., prohibited.

32. It shall not be lawful for any person, save the Commissioners, to make, erect or fix below high-water mark within the port, any wharf, dock, quay, stage, jetty, pier, erection or mooring.

Any matter or thing so made, erected or fixed may be removed by the Commissioners, and the person who has so made, erected or fixed any such matter or thing shall be punished with fine which may extend to one thousand rupees, and with a further fine which may extend to one hundred rupees for every day during which such matter or thing has been permitted to remain so made, erected or fixed, after notice to remove the same has been given to him, and shall also be liable to pay all expenses which may have been

incurred by the Commissioners in removing such matter or thing.

Wharfs, &c., beyond port limits.

33. In case any wharf, dock, quay, jetty, stage, pier, erection or mooring is, without the consent in writing of the Local Government, made, erected or fixed below high-water mark without the limits for the time being of the port, and thereafter the limits of the port are extended so as to include the place in which such wharf, dock, quay, jetty, pier, erection or mooring has been made, erected or fixed, the Commissioners may remove, fill up or destroy such wharf, dock, quay, jetty, pier, erection or mooring without making any compensation therefor.

34. The Commissioners shall frame—

Scale of tolls and charges to be framed.

(*a*) a scale of tolls, dues, rates and charges for the landing and shipment of goods from and into sea-going vessels and vessels not being sea-going vessels respectively, at the wharfs, quays, stages, jetties and piers, and for the use thereof by such vessels, and for the storing and keeping of any goods stored in any premises belonging to the Commissioners, and for the removal of goods, and for the use of any mooring;

(*b*) a scale of tolls for the use of the said wharfs, quays, moorings, stages, jetties and piers by any such vessels, in case the Commissioners permit the goods to be landed or shipped by others than their own servants; and

(*c*) a scale of charges for any services to be performed by the Commissioners or their servants in respect of any vessels or goods, or for the use of any works or appliances to be provided by the Commissioners.

Such scales shall be submitted to the Local Government, and, after approval or modification by the Local Government, shall be published by the Commissioners in the *British Burma Gazette*.

Subject to the like approval or modification and publication, the Commissioners may, in like manner, from time to time alter the said scales.

Every such scale shall be printed in the English and Burmese languages and characters, and shall be hung up, and kept hung up, in some conspicuous place at the several wharfs, quays, stages, jetties, piers, warehouses and sheds.

Commissioners' lien for tolls and charges.

35. For the amount of all tolls, charges, dues and rates levied under this Act in respect of any goods, the Commissioners shall have a lien on such goods, and shall be entitled to seize and detain the same until such tolls, charges, dues and rates are fully paid.

Tolls, charges, dues and rates in respect of goods to be landed shall become payable immediately on the landing of the goods, and, in respect of goods to be removed from the premises of the Commissioners, or to be shipped for export, shall be payable before the goods are removed or shipped.

The lien for such tolls, charges, dues and rates shall have priority over all other liens and claims, except for general average, for the ship-owner's lien for freight upon the said goods where such lien exists and has been preserved in the manner hereinafter provided, for primage, and for money payable to Her Majesty or the Secretary of State for India in Council under any law for the time being in force.

Ship-owners' lien for freight.

36. If the master or owner of any vessel, or his agent, at or before the time of landing from such vessel any goods at any wharf, quay, stage, jetty or pier, gives to the Commissioners notice in writing that such goods are to remain subject to a lien for freight or other charges payable to the ship-owner to an amount to be mentioned in such notice, such goods shall continue liable to the same lien, if any, for such charges as they were subject to before the landing thereof.

Such goods shall be retained either in the warehouses and sheds of the Commissioners, or, with the consent of the Chief Officer of Customs, in the public warehouses, at the risk and expense of the owners of the said goods, until the lien is discharged as hereinafter mentioned.

Discharge of ship-owners' lien for freight.

37. Upon the production to any officer appointed by the Commissioners in that behalf of a document purporting to be a receipt for, or a release from, the amount so mentioned, executed by the person by or on whose behalf such notice as aforesaid has been given, the Commissioners may permit such goods to be removed without regard to such lien as aforesaid, provided they shall have used reasonable care in respect to the authenticity of such document.

Goods may be removed to warehouses.

38. Whenever goods have, without any default on the part of the Commissioners, been left for two clear days on or in any wharf or shed belonging to the Commissioners, the Commissioners may cause such goods to be removed, either to any warehouse belonging to them, or, with the consent of the Chief Officer of Customs, to the public warehouses; and the removal to, and detention in, any such warehouse shall be at the risk and expense of the owners of the said goods.

Whenever any goods are so removed, the Commissioners shall give notice to the consignee or owner of such goods of such removal, if his address be known, by letter sent by post to such address or left thereat; and shall also publish in the *British Burma Gazette* and in two local newspapers notice of such removal, and shall specify therein the numbers, marks, and descriptions of such goods so far as the same appear, and the consignee or owner of such goods, in addition to the expenses of the removal of the same, shall be liable, in case the goods are removed to any warehouse of the Commissioners, to a charge for warehousing for the time during which the goods shall remain in the said warehouse.

If the said goods are removed to the public warehouses, the said consignee or owner shall be liable to the charges for warehousing goods in such public warehouses, and the said goods shall remain subject to all liens to which they would have been liable if they had remained in the possession of the Commissioners, and shall be subject to the power of sale hereinafter given.

Recovery of tolls and charges by sale of goods.

39. If the tolls, charges, dues, and rates payable to the Commissioners in respect of any goods under this Act are not paid, or if the lien of the ship-owner for freight where such notice as aforesaid has been given is not discharged, the Commissioners may, and in the latter event, if required by or on behalf of the person claiming such lien for freight, shall, at the expiration of four months from the time when the goods were placed in their custody, sell by public auction the said goods, or so much as may be necessary to satisfy the amounts hereinafter directed to be paid out of the produce of such sale.

Before making such sale, ten days' notice of the same shall be given by publication thereof in the *British Burma Gazette* and in two local newspapers.

If the address of the owner of the goods has been stated on the manifest of the cargo, or in any of the documents which have come into the hands of the Commissioners, or is otherwise known, notice shall also be given to the owner of the goods by letter delivered at such address or sent by the post; but the title of a *bonâ fide* purchaser of such goods shall not be invalidated by reason of the omission to send such notice, nor shall any such purchaser be bound to enquire whether such notice has been sent:

Provided that if such goods are of so perishable a nature as, in the opinion of the officer appointed by the Commissioners in that behalf, to render early or immediate sale necessary or advisable, the Commissioners may, within such period not less than twenty-four hours after the landing of the goods as they think fit, sell by public auction the said goods or such portion of them as aforesaid, in which event such notice shall be given to the owner of the goods as the urgency of the case admits of.

Application of sale proceeds.

40. The proceeds of every such sale shall be applied as follows:—

(*a*). In payment of the expenses of the sale.

(*b*). In payment according to their respective priorities of the liens and claims excepted in section 35 from the priority of the lien of the Commissioners.

(*c*). In payment of the tolls, charges, and expenses of landing, removing, storing, or warehousing the same, and of all other charges due to the Commissioners in respect thereto.

(*d*). The surplus, if any, shall be paid to the importer, owner, or consignee of the goods, or to his agent, on his applying for the same, provided such application be made within one year from the sale, or reason be shown to the satisfaction of the Commissioners why such application was not so made; and in case such application shall not be so made, nor reason shown, such surplus shall be held by the Commissioners upon trust for the purposes of this Act.

Recovery of tolls and charges by distraint of vessel.

41. If the master of any vessel in respect of which any tolls, dues, rates, penalties, or charges are payable under this Act, or any rules or orders made in pursuance thereof, refuse or neglect to pay the same or any part thereof on demand, the Commissioners may apply to the Collector of Customs of the port, and such Collector shall distrain or arrest such vessel, and the tackle, apparel and furniture belonging thereto, or any part thereof, and detain the same until the amount so due to the Commissioners is paid;

and in case any part of the said tolls, dues, rates, penalties or charges, or of the costs of the distress or arrestment, or of the keeping of the same, remains unpaid for the space of five days next after any such distress or arrestment has been so made, the Collector of Customs may cause the vessel or other thing so distrained or arrested to be sold, and, with the proceeds of such sale, shall satisfy such tolls, dues, rates, penalties or charges, and costs, including the costs of sale, remaining unpaid, rendering the surplus (if any) to the master of such vessel on demand.

Port clearance not to be granted till tolls, &c., are paid.

42. If the Commissioners give to the officer of Government, whose duty it is to grant the port-clearance of any vessel, a notice stating that an amount therein specified is due in respect of tolls, dues, rates, charges, or penalties chargeable under this Act, or any rules or orders made in pursuance thereof, against such vessel, or the owner or master of such vessel, in respect thereof, or against or in respect of any goods on board such vessel, such officer shall not grant such port clearance until the amount so chargeable has been paid.

Compensation for damage to property of Commissioners.

43. In case any damage or mischief is done to any wharfs, quays, jetties, piers or works constructed or acquired by the Commissioners under this Act, by any vessel, through the negligence of any person having the guidance or command thereof, or of any of the mariners or persons employed therein, any Magistrate of the town of Rangoon may, on the application of the Commissioners, and on declaration by them that payment for such damage or mischief has been refused or has not been made on demand, issue a summons to the master of, or agent for, such vessel, requiring him to attend on a day and at an hour named in the summons to answer touching such damage or mischief.

If at the time appointed in the summons, and whether the person summoned appears or not, it is proved that the alleged damage was done through such negligence as aforesaid, and that the pecuniary amount of the same does not exceed two hundred rupees, the Magistrate may issue his warrant of distress, under which a sufficient portion of the boats, masts, spars, ropes, cables, anchors or stores of the vessel may be seized and sold to cover the expenses of and attending the execution of the distress, and the pecuniary amount of damage as aforesaid, and such amount shall be paid to the Commissioners out of the proceeds of the distress: provided that if at the time of the damage or mischief the vessel was under the orders of a duly authorized officer belonging to the Pilot Service or the Harbour-Master's or Master-Attendant's Department, the case shall not be cognizable by the Magistrate under this section.

River Police.

44. The Commissioners shall provide such sums as the Local Government may from time to time require for the establishment and maintenance of police, to be called "River Police," for the protection of the port, the approaches to the port, and the river. Such sums shall be a first charge on any property vested in and on any moneys raised by, or paid, or payable to the Commissioners under this Act.

The River Police shall be enrolled under Act No. V of 1861 (*for the Regulation of Police*).

CHAPTER IV.

OF THE GENERAL CONTROL OF GOVERNMENT.

Commissioners' acts subject to approval.

45. All acts and proceedings of the Commissioners shall be subject to the approval of the Local Government and the Local Government may cancel, suspend, or modify any

such acts or proceedings, and may grant exemption from the payment of any tolls, charges, dues, or rates leviable under this Act.

Control over works and expenditure.

46. The Local Government may from time to time make rules consistent with this Act as to the cost and class of works which the Commissioners may execute, and the objects to which the receipts of the Commissioners shall be applied.

Local Government may order survey.

47. The Local Government may at any time order a local survey and examination of any works of the Commissioners under this Act, or the site thereof, and the cost of such survey or examination shall be borne and paid by the Commissioners.

Local Government may carry out neglected works.

48. If the Commissioners allow any work acquired or constructed by them under this Act to fall into disrepair, or do not complete any work commenced by them, or duly estimated for and sanctioned, and do not, after notice given by the Local Government in writing, proceed effectually to repair or complete such work, the Local Government may cause such work to be restored, completed, or constructed, and the cost thereof shall be borne and paid by the Commissioners.

Governor-General may revoke powers of Commissioners.

49. If at any time the Governor-General in Council is satisfied that the purposes intended to be accomplished under this Act have not been, and are not likely to be, properly accomplished by the Commissioners, the Governor-General in Council may, by notification in the *Gazette of India*, to be republished in the *British Burma Gazette*, give notice that, unless within six months the Commissioners shall take measures to the satisfaction of the Governor-General in Council for properly accomplishing the said purposes, the powers by this Act conferred on the Commissioners will, at the end of such period, be withdrawn and revoked.

On the expiration of the period aforesaid, the Governor-General in Council may declare such powers to be withdrawn or revoked, and may direct the Local Government to assume such powers; and thereupon such powers shall be withdrawn and revoked accordingly, and all the powers, rights and authorities vested by this Act in the Commissioners shall thereupon vest in the Local Government.

Local Government may delegate powers to survey steamers.

50. The Local Government may, from time to time, delegate to the Commissioners all or any of the powers conferred on the Chief Commissioner of British Burma within the port under the Burmese Steamer Survey Act, 1871, and may at any time resume the same.

Commissioners may license Surveyors.

51. The Commissioners may issue licenses to properly qualified persons to survey ships within the port, and may cancel and revoke such licenses.

When there is in Rangoon a Surveyor licensed by the Commissioners, it shall not be lawful for any servant of Government to undertake the survey of private vessels.

Nothing in this section shall affect the powers vested in the Chief Commissioner of British Burma under the Burmese Steamer Survey Act, 1871, except only and in so far as such powers have been delegated to the Commissioners under section 50.

CHAPTER V.

OF SUITS BY AND AGAINST THE COMMISSIONERS.

Chairman to sue.

52. The Commissioner shall sue and be sued in the name of their Chairman or of their Vice-Chairman.

Commissioners not personally liable.

53. No Commissioner shall be personally liable for any contract made or expense incurred by or on behalf of the Commissioners; but the funds from time to time in the hands of the Commissioners shall be liable for, and chargeable with, all contracts made in manner hereinafter provided.

Commissioners liable for breach of trust.

54. Every Commissioner shall be liable for any misapplication of money entrusted to the Commissioners to which he has been a party, or which happens through, or is facilitated by, the neglect of his duty, and he shall be liable to be sued for the same in such court as the Local Government directs as for money due to Government.

Limitation of suits.

55. No suits shall be brought against the Commissioners, or any of their officers, or any person acting under their direction, for anything done under this Act, until the expiration of one month next after notice in writing has been delivered or left at the office of the Commissioners, or at the place of abode of such person, stating the cause of suit and the name and place of abode of the intending plaintiff.

Unless such notice be proved, the court shall find for the defendant.

Every such suit shall be commenced within six months next after the accrual of the right to sue, and not afterwards.

If any person to whom any such notice of suit is given shall, before suit is brought, tender sufficient amends to the plaintiff, such plaintiff shall not recover.

Indemnity to Commissioners for acts of Harbour-Master, &c.

56. The Commissioners shall not be answerable for any act or default of any Master-Attendant, Harbour-Master, or other Conservator of the port, or of any Pilot, or of any deputy or assistant of any of the officers above-mentioned, or of any person acting under the authority or direction of any such officer or assistant, done within the limits of the port; nor for any damage sustained by any vessel in consequence of any defect in any of the moorings, hawsers, or other things within the said limits which may be used by such vessel.

Provided that nothing in this section shall protect the Commissioners from a suit in respect of any act done by or under their express order or sanction.

CHAPTER VI.

OF MEETINGS, ESTABLISHMENT, CONTRACTS, AND THE GENERAL CONDUCT OF BUSINESS.

A Commissioner may be Secretary.

57. The Commissioners may, if they think fit, elect any one of their number to be Secretary to the Commissioners.

58. The Commissioners shall have a common seal inscribed "Port Commissioners, Rangoon," and an office where the Commissioners shall meet for the transaction of business.

Seal and place of business.

59. The Commissioners shall meet for the transaction of business at least once in every month; and for attendance at every such meeting, the Commissioners shall, subject to such conditions as the Local Government may from time to time prescribe, receive such fees as the Local Government may from time to time direct: provided that such fees shall not be given for attendance at such meetings oftener than once a month.

Monthly meetings and remuneration for attendance.

60. The Chairman and Vice-Chairman shall, unless prevented by sickness or other reasonable cause, attend all meetings of the Commissioners.

Chairman and Vice-Chairman to attend.

61. The Chairman, or, in the event of his illness or absence from Rangoon, the Vice-Chairman, may whenever he thinks fit, and shall upon a requisition made in writing by not less than three Commissioners, convene a meeting of the Commissioners. Meetings so convened are special meetings: all other meetings are ordinary meetings.

Ordinary and special meetings.

62. At least three days' notice shall be given of every meeting of the Commissioners, and the notice shall state the nature of the business to be transacted.

Notice of meetings.

63. At all meetings of the Commissioners, the business shall be conducted in accordance with the following rules:—

Conduct of business at meetings.

(*a*) The Chairman, or, in his absence, the Vice-Chairman, shall be President; if both be absent, the Commissioners may elect one of their number to be President;

(*b*) The President may, with the consent of the meeting, adjourn the meeting from time to time;

(*c*) At special meetings, no business shall be transacted other than the special business for the consideration of which the meeting was specially called; at ordinary meetings, any business may be transacted of which due notice has been given.

(*d*) The quorum necessary for the transaction of business shall be such number, not less than five, as the Commissioners may from time to time prescribe;

(*e*) All questions which may come before the Commissioners at any meeting shall be decided by a majority of votes. Each Commissioner shall have one vote; and in case of equality of votes, the President shall have a second or casting vote;

(*f*) Minutes of the proceedings at all meetings of the Commissioners shall be drawn up after each meeting and shall be signed by the President and at least one other member who was present at such meeting. A copy of all such minutes shall, as soon as conveniently may be, be transmitted to the Secretary to the Local Government.

64. The Commissioners may appoint one or more of their number to carry out their resolutions, and to enforce any of the rules made under the provisions of this Act, or they may appoint a special officer for such purpose.

Mode of giving effect to resolutions.

Proceedings not invalidated by defect of form.

65. No proceedings of the Commissioners at any special or ordinary meeting shall be deemed invalid solely by reason of defect of notice or defect of form.

Schedule of establishment.

66. The Commissioners shall from time time prepare and submit to the Local Government a schedule setting forth the number of officers and servants necessary for carrying out the purposes of this Act, and of the salaries, fees, and allowances which it is proposed to assign to such officers and servants. The Local Government may sanction such schedule, or modify and sanction the same. Every such schedule so sanctioned shall remain in force till some other such schedule has been so prepared and sanctioned.

It shall not be lawful for the Commissioners to employ any officer or servant for any office or employment not sanctioned in such schedule, nor to pay or allow to any officer or servants any salaries, allowances or fees greater than, or beyond those, sanctioned therein.

Nothing in this section applies to artisans, porters or labourers.

Commissioners may make bye-laws.

67. The Commissioners may from time to time make bye-laws consistent with this Act for regulating the time and place of their meetings, the conduct of their business, the division of the duties among themselves, the guidance of persons employed by them, the appointment, payment, leave, suspension, and removal of their officers and servants mentioned in the schedule last aforesaid, and for other similar matters.

The making of contracts.

68. The Chairman or Vice-Chairman, together with two other Commissioners, one of whom shall be an *ex officio* Commissioner, may for and on behalf of the Commissioners enter jointly into any contract or agreement whereof the value or amount shall not exceed two hundred rupees, in such manner and form as, according to the law for the time being administered in Rangoon, would bind them if such contract or agreement were on their own behalf; but every other contract or agreement by or on behalf of the Commissioners shall be in writing, and signed by the Chairman or Vice-Chairman and by two other Commissioners, of whom one shall be an *ex officio* Commissioner, and shall be sealed with the common seal of the Commissioners; and no contract or agreement, not executed as in this section is provided, shall be binding on the Commissioners: provided that—

(*a*) No contract under or by virtue of which a sum greater than ten thousand rupees may in any event be payable by the Commissioners, shall be valid without the assent in writing of the Local Government.

(*b*) No new work the estimated cost of which exceeds five hundred rupees shall be commenced by the Commissioners, nor shall any contract be entered into by the Commissioners in respect of any such work, until a plan and estimate thereof has been approved by the Commissioners at a meeting.

(*c*) In case the estimated cost of such new work shall exceed five thousand rupees, it shall not be commenced, nor shall any contract be entered into in respect of it, until such plan and estimate have been submitted to the Local Government, and

sanctioned by the Local Government in an order published in the *British Burma Gazette*.

(*d*) And in case the estimated cost of any such work exceeds fifty thousand rupees, the Local Government shall not sanction the same until such plan and estimate have been submitted to the Governor-General in Council and approved by him.

Money to be kept in bank.

69. All moneys raised by, and paid to, the Commissioners under this Act, shall be kept in the Bank of Bengal in Rangoon, and no disbursement of such funds, or any part thereof, shall be made:—

(*a*) in excess of such sum as may in that behalf be from month to month appropriated by the Commissioners at a meeting, or

(*b*) except under the signature of the Chairman or Vice-Chairman.

Submission of reports, accounts, and estimates.

70. The Commissioners shall annually, or oftener if directed by the Local Government so to do, submit in such form as the Local Government may from time to time direct—

(*a*) statements of their receipts and disbursements under this Act;

(*b*) reports of all works executed, and proceedings taken by them under this Act;

(*c*) an estimate of their probable receipts for the financial year next following, with proposals for the expenditure of the same.

Audit of accounts, and sanction and publication of estimates.

71. The accounts of the Commissioners shall be examined and audited in such manner as the Local Government may from time to time direct; and subject to the provisions of this Act, the estimate of probable receipts, and the proposals for expenditure as aforesaid, may on submission be sanctioned by the Local Government, or may be modified or altered and sanctioned; and an abstract of such estimates and proposals shall, when sanctioned, be published in the *British Burma Gazette*.

CHAPTER VII.

PENALTIES.

Commissioners not to be interested in contract, &c.

72. Any Commissioner, or servant of the Commissioners, who directly or indirectly lends money to the Commissioners, or becomes interested in any contract made by, or on behalf of, the Commissioners, or participates, or agrees to participate, in any profits of any work done by order or on behalf of the Commissioners, shall forfeit his office or employment, as the case may be, and shall be incapable afterwards of being a Commissioner or holding employment under the Commissioners, and shall further be liable to a fine not exceeding five hundred rupees.

But may be shareholder in a company so interested.

73. No Commissioner, or servant of the Commissioners, shall be deemed to be liable to a penalty under the preceding section solely by reason of his being a shareholder in any duly incorporated or registered company which may lend money to, or make contracts with, or do work for or on behalf of the Commissioners.

Infringement of sections 24, 25, and 26.

74. Whoever infringes any order issued under sections 24, 25 and 26 shall be liable to a fine not exceeding one hundred rupees; and if the infringement be continuing, to a further fine not exceeding one hundred rupees for every day such order is infringed.

Infringement of rules.

75. Whoever infringes any rule framed by the Commissioners under section 18 shall be liable to a fine not exceeding fifty rupees; and if the infringement be continuing, to a further fine not exceeding ten rupees for every day after notice of such infringement has been given by the Commissioners to the person continuing such infringement.

Punishment in default of fine.

76. Whenever an offender is sentenced to a fine under this Act, the convicting Court may direct that, in default of payment of the fine, the offender shall suffer simple imprisonment for a term which shall not exceed the following scale:—

(*a*) Two months in the case of continuing infringement of section 32.

(*b*) One month in the case of continuing infringement of sections 24, 25, and 26.

(*c*) Fourteen days if the fine does not exceed fifty rupees.

(*d*) One month if the fine does not exceed one hundred rupees.

(*e*) Two months if the fine does exceed one hundred rupees.

Sections 68 and 69 of the Indian Penal Code apply to imprisonment in default of payment of fine under this Act.

Prosecutions.

77. Prosecutions under this Act may be instituted by the Commissioners, or any person authorised by them in this behalf.

CHAPTER VIII.

MISCELLANEOUS.

Commissioners are public servants.

78. The Commissioners and the servants of the Commissioners, other than artisans, porters and labourers, shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Saving of previous port regulations.

79. All acts done and proceedings taken by the Strand Bank Committee, before this Act comes into force, and all orders, rules and regulations relating to the port, and to wharfs, quays, stages, jetties, piers, landing-places, tolls, charges, rates and dues within the port made and issued before this Act comes into force, shall be deemed to have been respectively done, taken, made and issued under the provisions of this Act.

Receiving of dues as revenue.

80. All fees and sums due on account of property for the time being vested in the Commissioners, and all arrears of tolls, charges, rates, and dues imposed under this Act, may be recovered as if they were arrears of land revenue.

SCHEDULE A.

(*Referred to in Section 12.*)

1. All the land belonging to Government between the river on the south and the Strand Road on the north, from East Street on the east to the canal on the west, except—

(*a*) the land occupied by the Municipality of Rangoon;

(*b*) the land occupied by the military authorities to an extent of 100 feet on each side of Godwin's Wharf.

2. All other land belonging to Government within the limits of the present port of Rangoon, lying within a line drawn at fifty yards from high-water mark, except—

(*a*) the land occupied by the Rangoon Jail Saw-Mill;

(*b*) the land occupied as Government timber depôts at Ahlone and Monkey Point;

(*c*) the land occupied by the military authorities for the defences at Monkey Point;

(*d*) the land assigned for railway purposes;

(*e*) the land occupied on the east side of East Street by the Department of Public Works;

(*f*) the Dalla Dockyard and the lands attached thereto.

SCHEDULE B.

(*Referred to in sec. 29.*)

RECEIPT FOR GOODS.

By the Port Commissioners, Rangoon.

Landed during the day of from the , by the Port Commissioners, Rangoon, the noted in the margin, contents and state of the contents unknown.

NOTE.—*If there be any apparent injury, this is to be stated.*

For the Port Commissioners, Rangoon.

RANGOON,
The day of } A. B.

STATEMENT OF OBJECTS AND REASONS.

THE trade of the port of Rangoon has increased with extraordinary rapidity within the last fifteen years.

Its total value, which in 1861-62 was two and a half millions sterling, had risen in 1866-67 to four millions, and in 1871-72 to five and a half millions. In 1876-77 it amounted to eight and a half millions.

In the same period the shipping had increased from 867 vessels aggregating 295,000 tons, to 1,687 vessels aggregating nearly one million tons.

2. Much has already been done towards the improvement of the port. The approaches have been lighted and buoyed. Several wharves and boat-jetties have been constructed, and a steam-dredger and flats have been purchased for the improvement of the bed of the harbour; but the progress made in this respect has hardly kept pace with the rapid development of the trade. There is still a deficiency of wharf-accommodation. There are as yet no moorings in the river (fixed or floating), no floating-jetties, no cranes capable of lifting more than five tons weight. The system of river-police, too, is defective.

3. Moreover, the need of a properly constituted body, such as exists at Calcutta and Bombay, legally invested with all powers requisite to improve the port and conduct its administration, is much felt. Till the year 1874, the affairs of the port were to some extent at least supervised by the town magistracy; from that year to 1876 by the Municipal Commissioners: and they are at present under the control of the Conservator and a committee which has no legal status whatever. The Chief Commissioner considers this state of things objectionable; not only as it is likely to give rise to legal difficulties, but also because it leaves the management of the port entirely in official hands. It is "not right," in his opinion, "that in so large and important a harbour the mercantile community, whose commercial enterprise is the very life and soul of the place, should have no voice in the management of the affairs of the port," and that while their industry is taxed, they should have nothing to say to the expenditure of the money.

4. To meet the wants thus felt, the present Bill has been framed by the Chief Commissioner, and it is introduced as nearly as possible in the form in which it has been received from him.

5. It provides (in section 5) for the appointment by the Local Government of a body of Commissioners, not more than twelve or less than nine in number, of whom a certain proportion must be non-officials. Subject to the control of the Government (see in particular chapter IV and section 68), these Commissioners will conduct the entire administration of the port.

6. They are (section 17) to construct wharves, jetties, tramways, warehouses and other conveniences for the landing, storing and shipping of goods, to lay down moorings, to improve the port by reclaiming the banks and deepening the river-bed, and to provide tug-steamers. They are, with the previous sanction of the Government (section 18), to make the port-rules which the Local Government is empowered to make under the seventh section of the Indian Ports Act, and additional rules in regard to certain other matters. They are (section 19) to have the control of the Conservator appointed under the Indian Ports Act, and (section 20) of pilots while within port limits.

7. Their functions in regard to the landing and shipping of goods being of special importance, are provided for in considerable detail in sections 23 to 34 which are based on sections 56 to 65 of the Calcutta Port Commissioners' Act. By these sections, when the Commissioners have provided sufficient wharf-accommodation, they are empowered, with the previous sanction of the Local Government, to issue an order requiring that all goods shall

be shipped and landed at their wharves and through the agency of their servants, and to fix tolls and charges for the use of such wharves and for the services rendered. In order, however, to meet the case of ships engaged in the rice-trade, which, under the present system of conducting business, could not conveniently take in their cargoes from the Commissioners' wharves, a provision (28) has been inserted empowering the Local Government to exempt particular classes of ships from the obligation to use those wharves. By sections 32 and 33, corresponding to sections 56 and 57 of the Calcutta Act, the erection of wharves, &c., by private persons below high water-mark is prohibited.

8. To enable the Commissioners to discharge the duties imposed on them, all Government land required for port purposes is (by section 12) vested in them, and in addition to the tolls and charges above referred to, the port-dues and other revenues realised in the port under the Indian Ports Act are (section 14) made over to them.

They are, moreover, empowered by section 16 to borrow money with the sanction of the Governor-General in Council for carrying out works of improvement.

9. All property thus vested in the Commissioners and all moneys thus received or raised by them are (section 15) to be held by them in trust for the purposes of the Act, but subject to an obligation (section 11, clause (*d*)) to continue to the Rangoon municipality a certain annual allowance which it has hitherto been receiving from the income of the Port, and (section 44) to provide such sums as the Local Government may from time to time require for the establishment of river-police.

Calcutta,
24th December 1878.

RIVERS THOMPSON.

D. FITZPATRICK,
Secy. to the Govt. of India.

The following Report of the Select Committee on the Bill to consolidate and amend the law relating to Stamps and Court-fees was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 15th January, 1879.

REPORT.

WE, the undersigned Members of the Select Committee to which the Bill to consolidate and amend the law relating to Stamps and Court-fees was referred, have the honour to report that we have further considered the Bill in connection with the papers noted in the margin.

From Babú Káli Prasád, Vakíl, Judicial Commissioner's Court, Oudh, dated 9th July, 1878, and enclosure.
" Secretary to Government, North-Western Provinces and Oudh, No. 241 A, dated 5th July, 1878.
" Secretary to Chief Commissioner, Mysore, No. 5245—9 J, dated 10th October, 1878, and enclosure.
Office memorandum from Financial Department, No. 3661, dated 28th October, 1878.
From Secretary, Puna Sarvajanak Sabhá, No. 408, dated 1st November, 1878.
" Chief Secretary to Government, Bombay, No. 5678, dated 6th November, 1878, and enclosures.
" Chief Secretary to Government, Bombay, No. 5796, dated 11th November, 1878, and enclosure.
" Secretary for Birár, to Resident, Haidarábád, No. 109 G.—B., dated 8th November, 1878, and enclosure.
" Chief Secretary to Government, Bombay, No. 5377, dated 21st October, 1878, and enclosures.
" Chief Commissioner, Ajmer and Mhairwára, No. 775, dated 14th November, 1878.
" Officiating Secretary to Government of Bengal, No. 5163, dated 19th November, 1878, and enclosures.
" Secretary to Government, North-Western Provinces and Oudh, No. 405 A, dated 18th November, 1878, and enclosures.
" Honorary Secretary, British Indian Association, dated 23rd November, 1878, and enclosure.
" Babú Opendro Nath Mitter, Pleader, High Court, Calcutta, dated 25th November, 1878.
" Secretary, Calcutta Trades Association, dated 3rd December, 1878.
" Girísa Chandra Set, dated 19th November, 1878.
" Certain Articled Clerks to Vakíls, High Court, Calcutta, dated — December, 1878, and enclosure.
" Secretary to Government, Bombay, No. 6259, dated 4th December, 1878.
" Secretary to Government, North-Western Provinces and Oudh, No. 428A, dated 3rd December, 1878, and enclosures.
" Secretary to Chief Commissioner, British Burma, No. 1425—352, dated 30th November, 1878, and enclosures.
" Secretary to Government of Bengal, No. 3056, dated 11th December, 1878.
" Honorary Secretary, Calcutta Attorney's Association, High Court, dated 12th December, 1878.
" Secretary to Government, Panjáb, No. 4082, dated 2nd December, 1878, and enclosures.
" Secretary to Chief Commissioner, Assam, No. 2297, dated 10th December, 1878, and enclosure.
" Secretary to Government, North-Western Provinces and Oudh, No. 441A, dated 13th December, and enclosure.
" Acting Chief Secretary to Government, Fort St. George, No. 2508, dated 12th December, 1878, and enclosures.

2. We have, at the instance of some of the Authorities consulted, restored the definitions of "banker," "bottomry-bond," "letter of credit," "protest," "protest of the master of a ship" and re-"spondentia-bond," placing the five last in the schedule, where only the terms are found.

3. We have enlarged the definition of "settlement" so as to include under it dispositions of property for charitable and religious purposes.

4. We have amended section 6 relating to the case of several instruments employed to effect a single transaction, by providing that each of the subordinate instruments shall bear a fixed duty of one rupee. The result of this amendment, we believe, will be to afford relief in all but an insignificant number of the transactions in question.

5. We have, in section 8, given the Governor General in Council power to exempt from stamp-duty retrospectively as well as prospectively.

6. We have added to the list of documents in section 10 for which adhesive stamps may be used, "entry as an advocate, vakíl or attorney on the roll of any High Court" and "Notarial Acts." The former manifestly could be stamped only with an adhesive stamp, and it was represented to us that the present mode of stamping the latter is inconvenient in practice.

7. We have modified section 11 regarding the cancellation of adhesive stamps so as to meet the cases in which the stamp is affixed before the instrument is executed or (as in the case of the cheques contained in the cheque books issued by some banks to their customers) before the instrument is completely drawn up. We have provided that in such cases the person first executing the instrument shall cancel the stamp.

8. We have confined section 12 to impressed stamps, as it has been represented to us that inconvenience would arise from its being applied to cheques, which are very commonly stamped by affixing an adhesive stamp to the back.

9. We have excepted certain receipts endorsed on instruments from the operation of the rule of section 13, which prohibits a second instrument being written on one piece of stamped paper.

10. We have omitted sections 14 and 15 of the Bill as last settled by us and marked No. II, which provided for the number of impressed stamps to be used for the stamping of any instrument, and have, by an addition to section 9, given power to the Governor General in Council to provide for the matter by rules.

11. To remove a doubt which might otherwise have been felt, we have added a section (14) providing that "Every instrument written in contravention of section 12 or 13 shall be deemed to be unstamped." Any hardship which might otherwise arise from this, we think, will be effectually prevented by the provisions of chapter IV empowering the Collector to remit the penalty in such cases, and by the provision for an allowance of the value of the stamp which we have now inserted in section 52.

12. We have, at the instance of some of the Authorities consulted, extended from two to three months the period within which, under section 17, an instrument executed abroad and brought into British India may be stamped.

13. We have, in section 29, added a clause (*d*) providing that the cost of the stamp for a counterpart of a lease shall be borne by the lessor, and a clause (*e*) empowering a Revenue-authority making a partition to direct in what proportion the stamp chargeable in respect of such partition shall be borne by the co-owners.

14. A question having been raised as to whether a public officer would be bound by section 34 of the Bill No. II to institute any inquiry regarding an instrument produced before him with a view to ascertaining whether such instrument was duly stamped, we have made it clear in section 33 of the amended Bill that all that he is bound to do is to examine such an instrument with a view to ascertaining whether it bears a stamp of the proper value and description. If, however, it should happen that the instrument was not duly stamped owing to some circumstance which did not appear on the face of it, as, *e. g.*, if a stamp had been illegally affixed after execution, and this fact should appear incidentally in the course of some proceeding before the officer, it would of course be his duty to impound it and proceed in regard to it in the manner prescribed by the Act.

15. We have in section 35 provided that any person receiving a document in evidence under section 34 on payment of duty shall send the amount of such duty and of the penalty levied with it to the Collector.

16. Exception having been taken to the proviso to section 40 of Bill No. II, we have recast it (see section 39 of the amended Bill) and it now runs as follows:—

"Provided that no instrument which has been admitted in evidence upon payment of duty and a penalty under section 34 shall be so delivered before the expiration of one month from the date of such impounding, or if the Collector has certified that its further detention is necessary and has not cancelled such certificate."

17. We have added a provision in section 49 requiring references made by a Revenue Court under that section to be made through the Court immediately superior to it.

18. We have rendered Revenue Courts subject to the power of revision conferred by section 50.

19. We have omitted the latter portion of clause (*a*) of section 53 of the Bill No. II (now section 51) and clause (*c*) of the first proviso to the same section, as unnecessary in this country.

20. We have made the period of six months within which, under the second proviso to the same section, certain applications for allowances for spoiled stamps must be made, to run from the date on which the stamp is spoiled, instead of from the date of purchase.

21. We have transferred the power of making rules regarding the sale of stamps from the Governor General in Council to the Local Government.

22. We have inserted a section (59) like section 17 of the present Stamp Act, saving the provisions of the law relating to Court-fees.

23. We have raised the penalty in section 66 from five hundred to one thousand rupees, and restored in section 67 the penalty for post-dating bills and notes imposed by section 13 of Act X of 1862.

24. It having been represented to us that the permission accorded to private persons by section 66 of the Bill No. II to sell stamps purchased in good faith for their own private use

and no longer required, would facilitate a practice which prevails in some parts of the country of keeping stocks of old stamps for sale to persons desiring to forge instruments of old date, we have in section 68 of the amended Bill withdrawn that permission and have substituted for it (in section 54) a provision borrowed from the English Act of 1870 requiring the Collector to purchase back stamps held by private persons and no longer required by them.

25. The provision of the Bill No. II relating to the jurisdiction to try offences against the stamp law having been objected to on the ground that it seemed to deprive the Court of Session of power to try such offences, we have now simply provided (in section 70) that no Magistrate whose powers are less than those of a Magistrate of the second class shall try such offences. Subject to this, the ordinary provisions of the law defining the jurisdiction of the Criminal Courts will apply.

26. Proceeding next to the schedules, it will be observed that we have, with reference to the opinions expressed by many of the Authorities consulted, and to the dissents appended to our preliminary report, recast (in article 1 of the first schedule as now settled) the 46th article of the same schedule in the Bill No. II. That article now stands as follows:—

"1. Acknowledgment of a debt exceeding twenty rupees in amount or value written or signed by or on behalf of a debtor in order to supply evidence of such debt in any book (other than a banker's pass-book) or on a separate piece of paper when such book or paper is left in the creditor's possession."

27. We have, on considering the representations made by certain articled clerks who have already paid a fee of Rs. 500 under the present stamp-law on being bound, and who urge that article 27 of the first schedule would operate unfairly in their case, introduced an exemption in their favour in article 11 of the second schedule.

28. We have re-drawn the article of the first schedule relating to certified copies and extracts. It now runs as follows:—

"22. Copy or extract, certified to be a true copy or extract, by or by order of any public officer and not chargeable under the Court-fees Act, 1870.	(*a*). If the original was not chargeable with stamp-duty, or if the duty with which it was chargeable does not exceed one rupee	Eight annas.
	(*b*). In any other case... ...	One rupee."

This involves a slight advance on the duties imposed by Bill No. II, but still gives a considerable reduction as compared with the present law.

29. We have relieved the brokers' and agents' notes referred to in article 46 of the first schedule (as now settled) from all duty in cases where the goods or securities comprised therein do not exceed twenty rupees in value.

30. We have, in article 50 of the first schedule, made the duty chargeable on a power-of-attorney depend on the number of persons appointed by it to act. It seems to us only reasonable that the powers so commonly executed in Bengal in favour of a large number of persons should bear a higher duty than an ordinary power in favour of two or three persons or the members of a single firm.

31. We have again, at the request of the Bengal Government, considered the proposal made by the Board of Revenue to tax a blank transfer of shares each time it passes from hand to hand; but we see no reason for altering our opinion regarding it. Indeed, it is not easy to see how the Board's proposal could be given effect to, inasmuch as there is but one transaction (contract or conveyance) in writing on which to impose a duty, namely, that between the first seller and the last purchaser. The intermediate steps, we understand, are effected simply by oral communication, and we are not prepared to recommend the enactment of a law altering the course of business in this respect.

32. We have in Schedule II, No. 15 (*g*), included among the instruments exempted from duty receipts given by headmen and lambardárs for land-revenue and taxes collected by them.

33. We have afforded some additional relief in the exemption-schedule besides that just referred to, and have made several amendments in the drafting of the Bill which it seems unnecessary to notice in detail.

34. The Bill has been published in English in the *Gazette of India* and in all the local Gazettes except those of Assam and Ajmer, in which there are practical difficulties about publishing a Bill of this size. We recommend that it be passed with the amendments we have now made.

F. R. COCKERELL.
WHITLEY STOKES.
B. W. COLVIN.
JOTÍNDRA MOHAN TAGORE.
T. H. THORNTON.
G. H. P. EVANS.
E. C. MORGAN.

CALCUTTA;
The 31st December, 1878.

[First publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 15th January, 1879, and was referred to a Select Committee.

No. 1 OF 1879.

A Bill to amend the law relating to Coast-lights in the eastern part of the Bay of Bengal.

WHEREAS it is expedient to increase the Coast-light dues paid under the provisions of Act No. XIII of 1867 (*An Act to provide for the establishment and maintenance of Coast-lights in the eastern part of the Bay of Bengal*) and to render chargeable with such dues certain vessels which are not now so chargeable; It is hereby enacted as follows:— (Preamble.)

Preliminary.

1. This Act may be called the "Burma Coast-lights Act, 1879;" (Short title.)

It extends to the territories respectively administered by the Governors of Fort St. George and Bombay in Council, the Lieutenant-Governor of Bengal and the Chief Commissioners of British Burma and the Andamans. (Local extent.)

But nothing herein contained shall apply to any vessel belonging to, or in the service of, Her Majesty, or the Government of India, or to any vessel of war belonging to any Foreign Prince or State.

2. Act No. XIII of 1867 (*An Act to provide for the establishment and maintenance of Coast-lights in the eastern part of the Bay of Bengal*) and section 77 of the Indian Ports Act, 1875, are hereby repealed. (Repeal of enactments.)

But any appointment made under the said Act No. XIII of 1867 shall be deemed to have been made under this Act.

3. In this Act, unless there is something repugnant in the subject or context, — (Interpretation-clause.)

"Customs-Collector" means a Customs-Collector appointed under the Sea Customs Act, 1878, and includes any person appointed by the Local Government by name or in virtue of his office to discharge the functions of a Customs-Collector under this Act at any port: ("Customs-Collector.")

"Vessel" includes anything made for the conveyance by water of human beings or of property: ("Vessel.")

"Master," when used in relation to any vessel, means any person (except a Pilot or Harbour Master) having for the time being the charge or control of such vessel: ("Master.")

"Voyage" means the whole distance between a vessel's place of departure and her final place of arrival; ("Voyage.")

but the return of a vessel from any place shall, notwithstanding the terms of any charter party, be deemed a distinct voyage.

Coast-light Dues.

4. A toll, hereinafter called "Coast-light dues," shall be paid in respect of every vessel of the burden of fifty tons and upwards making any voyage mentioned in the schedule hereto annexed, at the rate of one anna six pie per ton of burden: (Coast light-dues payable in respect of vessels of fifty tons.)

Provided that such vessel sails from or enters during the course of, or at the termination of, any such voyage a port in British India.

5. The said toll shall become due and payable— (When dues payable.)

(*a*) in the case of a vessel clearing out of a port in British India upon any such voyage, previous to the grant of any port-clearance;

(*b*) in the case of a vessel entering a port in British India in the course, or at the termination, of any such voyage, immediately upon her entering such port:

Provided that the said toll shall not be levied more than once on any vessel in the course of the same voyage.

6. The Governor General in Council may from time to time, by notification in the *Gazette of India*, reduce or raise the rate of Coast-light dues, in respect of all vessels or any particular class of vessels: (Power to vary rates of dues.)

Provided that such rate shall not in any case exceed the rate fixed by section four. (Proviso.)

7. The Customs-Collector shall collect the Coast-light dues; (Collection of Coast-light-dues.)

and shall grant to the person paying the same a proper voucher in writing under his hand, setting forth the name of his office, the port at which the Coast-light dues are paid, and the name, tonnage and other proper description of the vessel in respect of which such payment is made. (Voucher to be given.)

8. Within twenty-four hours after the arrival within a port of any vessel chargeable with Coast-light dues, the master of such vessel shall give notice of such arrival to the Customs-Collector. (Master to report arrival.)

9. In order to ascertain the tonnage of any vessel chargeable with Coast-light dues, the following rules shall be observed:— (Tonnage of vessel chargeable with Coast-light dues how ascertained.)

(*a*.)—If such vessel be a British registered vessel, or a vessel registered under Act No. X of 1841, or Act No. XI of 1850, or under any other law for the time being in force for the registration of vessels in India, the Customs-Collector may require the owner or Master of such vessel, or any person having possession of her register, to produce such register for inspection. If any such owner, Master or other person neglects or refuses to produce such register, or otherwise to satisfy the Customs-Collector as to what is the true tonnage of the vessel in respect of which such Coast-light dues are payable, he shall be punished with fine which may extend to one hundred rupees, and the Customs-Collector may cause such vessel to be measured and the tonnage thereof to be ascertained; and in such case the owner or Master of such vessel shall also be liable to pay the expenses of such measurement. (If registered.)

(*b*.)—If such vessel be not a British registered vessel, or a vessel registered under Act No. X of 1841, or Act No. XI of 1850, or under any other law for the (If not registered.)

time being in force for the registration of vessels in India, and the owner or Master thereof fails to satisfy the Customs-Collector as to what is her true tonnage according to the mode of measurement prescribed by the law in force for the time being for regulating the measurement of British registered vessels, the Customs-Collector shall cause such vessel to be measured and the tonnage thereof, according to the mode aforesaid, to be ascertained; and in such case the owner or Master of such vessel shall be liable to pay the expenses of such measurement.

Explanation.—In this section "owner" includes any agent to whom the vessel referred to is consigned.

On refusal to pay dues or expenses, the Collector may distrain and sell.

10. If the Master of any vessel refuses or neglects to pay to the Customs-Collector on demand by him the amount of any dues or expenses payable in respect of such vessel under this Act, the Customs-Collector may distrain or arrest such vessel, and the tackle, apparel and furniture belonging thereto, or any part thereof, and detain the same until the amount of such dues or expenses is paid;

and in case any part of such dues or expenses, or of the costs of the distress or arrest, or of the keeping of the same, remains unpaid for the space of five days next after any such distress or arrest so made, the Customs-Collector may cause the vessel or other thing so distrained or arrested to be sold, and with the proceeds of such sale may satisfy such dues, expenses and costs, including the costs of sale remaining unpaid, and shall render the surplus (if any) to the Master of such vessel upon demand.

No port-clearance to be granted until dues, &c., are paid.

11. The officer of Government whose duty it is to grant a port-clearance for any vessel shall not grant such port-clearance until her Master, or some other person, has paid, or secured to the satisfaction of such officer, the amount of all dues, expenses and costs with which such vessel is chargeable under this Act, and of any fine to which any person is liable for anything done by him in contravention of this Act.

Master to specify on demand voyage on which ship is bound.

12. The Master of any vessel departing from or entering any port in British India upon, or in the course of, or at the termination of, any voyage, shall, upon the demand of the Customs-Collector, specify upon what voyage he is or has been bound.

Penalty for evading payment of Coast-light dues, &c.

13. If the Master of any vessel evades, or attempts to evade, the payment of any Coast-light dues, expenses or costs payable in respect of such vessel under this Act, he shall be punished with fine which may extend to two hundred rupees.

Determination of Disputes under Act.

Magistrate to decide disputes.

14. If any dispute arises as to whether any vessel is chargeable with any Coast-light dues, expenses or costs under this Act, or as to the amount of such dues, expenses or costs, such dispute shall, upon application made in that behalf by either of the disputing parties, be heard and determined by any Magistrate exercising powers under the Code of Criminal Procedure not less than those of a Magistrate of the second class, or in the towns of Calcutta, Madras and Bombay by a Presidency Magistrate; and the decision of such Magistrate shall be final.

Maulmain and Bassein Port-dues.

Application of Maulmain and Bassein port-dues.

15. The port-due leviable under the Indian Ports Act, 1875, in either of the ports of Maulmain and Bassein, shall, to the extent of one anna six pie, be applicable in the first place to defray the expenses of maintaining the existing port-lights of British Burma.

Saving of Prosecutions under other Laws.

Saving of prosecutions under other laws.

16. Nothing herein contained shall prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act: provided that no person shall be punished twice for the same act or omission.

SCHEDULE.

(*See section 4.*)

1. A voyage to or from Chittagong or any place west of the longitude of Chittagong—	(*a*) from or to any port in British Burma; or
	(*b*) from or to Port Blair, or any place east of the longitude of Mergui, by a route passing between the northern extremity of the Andaman Islands and the coast of British Burma.
2. A voyage to or from any port in British Burma—	from or to any other port in British Burma.
Except voyages to or from Maulmain from or to Tavoy or Mergui, or to or from Tavoy from or to Mergui.	
3. A voyage to or from Rangoon and any port in British Burma west of the longitude of Rangoon—	from or to any place east of Mergui.
4. A voyage to or from any port in British Burma other than Tavoy and Mergui.	from or to Port Blair.

STATEMENT OF OBJECTS AND REASONS.

THE present coast-light dues of one anna per ton levied under section 3 of Act XIII of 1867 (*An Act to provide for the establishment and maintenance of Coast-lights in the eastern part of the Bay of Bengal*) have been found insufficient to pay a fair rate of interest on the capital expended on the lights which at present exist on the coast of British Burma and provide for their maintenance. Moreover, the recent total destruction of the Krishna Shoal Light-house will immediately entail a large expenditure. It has therefore been determined to raise the present coast-light dues from one anna per ton to one anna six pie and to subject to the dues vessels making certain voyages not mentioned in the Act but in the course of which they benefit by the lights These voyages are—

(*a*) voyages from ports in British Burma to Chittagong and places west of Chittagong;

(*b*) voyages from Chittagong to ports in British Burma;

(*c*) voyages by certain routes to or from Chittagong and places west of Chittagong (except Calcutta) from or to Port Blair and places east of Mergui;

(*d*) voyages from places east of Mergui to Rangoon and from Rangoon and ports in British Burma west of Rangoon to places east of Mergui;

(*e*) voyages to or from any port in British Burma other than Tavoy and Mergui from or to Port Blair.

2. The Bill repeals Act XIII of 1867 (which has already been amended) and re-enacts it in a simpler form, with the requisite alterations, in respect of the coast-light dues and with some changes in wording and arrangement.

WHITLEY STOKES.

The 14th January, 1879.

[First publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 15th January, 1879, and was referred to a Select Committee.

No. 2 OF 1879.

A Bill to amend the Oudh Land-Revenue Act, 1876.

Preamble.

WHEREAS it is expedient to provide for the recovery of advances made in Oudh for purposes other than those specified in the Land Improvement Act, 1871, and to amend the Oudh Land-Revenue Act, 1876, accordingly; It is hereby enacted as follows:—

New section to follow section 160 of Act XVII of 1876.

1. After section 160 of the said Oudh Land-Revenue Act, 1876, the following section shall be inserted:—

"160A. All advances made by the Government to landholders for the relief of distress, the purchase of seed and cattle, the construction, maintenance and repair of dwelling-houses and other buildings, and for other purposes not specified in the Land Improvement Act, 1871, shall, when they become due, be recoverable from the person to whom the advance was made, or from any person who has become surety for the repayment thereof, as if they were arrears of land-revenue due by the person to whom the advance was made or by his surety."

Recovery of certain takkavi advances.

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to provide for the recovery by the Local Government in Oudh of advances made by it to landholders for the relief of distress, the purchase of seed and cattle, and other purposes not specified in the Land Improvement Act, 1871. Such advances will when due be recoverable as if they were arrears of land-revenue. A similar provision has been inserted in the Bill to amend the North-Western Provinces Land-Revenue Act, 1873; but, as the Select Committee, to which that Bill stands referred, consider it would be somewhat awkward to insert in it a clause providing for Oudh, the present Bill has been prepared to meet the case of that Province.

B. W. COLVIN.

The 19th December, 1878.

D. FITZPATRICK,

Secy. to the Govt. of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, JANUARY 25, 1879.

☞ Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 15th January, 1879, and was referred to a Select Committee.

No. 1 OF 1879.

A Bill to amend the law relating to Coast-lights in the eastern part of the Bay of Bengal.

Preamble.

WHEREAS it is expedient to increase the Coast-light dues paid under the provisions of Act No. XIII of 1867 (*An Act to provide for the establishment and maintenance of Coast-lights in the eastern part of the Bay of Bengal*) and to render chargeable with such dues certain vessels which are not now so chargeable; It is hereby enacted as follows:—

Preliminary.

Short title.

1. This Act may be called the "Burma Coast-lights Act, 1879;"

Local extent.

It extends to the territories respectively administered by the Governors of Fort St. George and Bombay in Council, the Lieutenant-Governor of Bengal and the Chief Commissioners of British Burma and the Andamans.

But nothing herein contained shall apply to any vessel belonging to, or in the service of, Her Majesty, or the Government of India, or to any vessel of war belonging to any Foreign Prince or State.

Repeal of enactments.

2. Act No. XIII of 1867 (*An Act to provide for the establishment and maintenance of Coast-lights in the eastern part of the Bay of Bengal*) and section 77 of the Indian Ports Act, 1875, are hereby repealed.

But any appointment made under the said Act No. XIII of 1867 shall be deemed to have been made under this Act.

Interpretation-clause.

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

"Customs-Collector." "Customs-Collector" means a Customs-Collector appointed under the Sea Customs Act, 1878, and includes any person appointed by the Local Government by name or in virtue of his office to discharge the functions of a Customs-Collector under this Act at any port:

"Vessel." "Vessel" includes anything made for the conveyance by water of human beings or of property:

"Master." "Master," when used in relation to any vessel, means any person (except a Pilot or Harbour Master) having for the time being the charge or control of such vessel:

"Voyage." "Voyage" means the whole distance between a vessel's place of departure and her final place of arrival; but the return of a vessel from any place shall, notwithstanding the terms of any charter party, be deemed a distinct voyage.

Coast-light Dues.

Coast light-dues payable in respect of vessels of fifty tons.

4. A toll, hereinafter called "Coast-light dues," shall be paid in respect of every vessel of the burden of fifty tons and upwards making any voyage mentioned in the schedule hereto annexed, at the rate of one anna six pie per ton of burden:

Provided that such vessel sails from or enters during the course of, or at the termination of, any such voyage a port in British India.

When dues payable.

5. The said toll shall become due and payable—

(*a*) in the case of a vessel clearing out of a port in British India upon any such voyage, previous to the grant of any port-clearance;

(*b*) in the case of a vessel entering a port in British India in the course, or at the termination, of any such voyage, immediately upon her entering such port:

Provided that the said toll shall not be levied more than once on any vessel in the course of the same voyage.

6. The Governor General in Council may from time to time, by notification in the *Gazette of India*, reduce or raise the rate of Coast-light dues, in respect of all vessels or any particular class of vessels:

Power to vary rates of dues.

Provided that such rate shall not in any case exceed the rate fixed by section four.

Proviso.

7. The Customs-Collector shall collect the Coast-light dues;

Collection of Coast-light-dues.

and shall grant to the person paying the same a proper voucher in writing under his hand, setting forth the name of his office, the port at which the Coast-light dues are paid, and the name, tonnage and other proper description of the vessel in respect of which such payment is made.

Voucher to be given.

8. Within twenty-four hours after the arrival within a port of any vessel chargeable with Coast-light dues, the master of such vessel shall give notice of such arrival to the Customs-Collector.

Master to report arrival.

9. In order to ascertain the tonnage of any vessel chargeable with Coast-light dues, the following rules shall be observed:—

Tonnage of vessel chargeable with Coast-light dues how ascertained.

(*a.*)—If such vessel be a British registered vessel, or a vessel registered under Act No. X of 1841, or Act No. XI of 1850, or under any other law for the time being in force for the registration of vessels in India, the Customs-Collector may require the owner or Master of such vessel, or any person having possession of her register, to produce such register for inspection. If any such owner, Master or other person neglects or refuses to produce such register, or otherwise to satisfy the Customs-Collector as to what is the true tonnage of the vessel in respect of which such Coast-light dues are payable, he shall be punished with fine which may extend to one hundred rupees, and the Customs-Collector may cause such vessel to be measured and the tonnage thereof to be ascertained; and in such case the owner or Master of such vessel shall also be liable to pay the expenses of such measurement.

If registered.

(*b.*)—If such vessel be not a British registered vessel, or a vessel registered under Act No. X of 1841, of Act No. XI of 1850, or under any other law for the time being in force for the registration of vessels in India, and the owner or Master thereof fails to satisfy the Customs-Collector as to what is her true tonnage according to the mode of measurement prescribed by the law in force for the time being for regulating the measurement of British registered vessels, the Customs-Collector shall cause such vessel to be measured and the tonnage thereof, according to the mode aforesaid, to be ascertained; and in such case the owner or Master of such vessel shall be liable to pay the expenses of such measurement.

If not registered.

Explanation.—In this section "owner" includes any agent to whom the vessel referred to is consigned.

10. If the Master of any vessel refuses or neglects to pay to the Customs-Collector on demand by him the amount of any dues or expenses payable in respect of such vessel under this Act, the Customs-Collector may distrain or arrest such vessel, and the tackle, apparel and furniture belonging thereto, or any part thereof, and detain the same until the amount of such dues or expenses is paid;

On refusal to pay dues or expenses, the Collector may distrain and sell.

and in case any part of such dues or expenses, or of the costs of the distress or arrest, or of the keeping of the same, remains unpaid for the space of five days next after any such distress or arrest so made, the Customs-Collector may cause the vessel or other thing so distrained or arrested to be sold, and with the proceeds of such sale may satisfy such dues, expenses and costs, including the costs of sale remaining unpaid, and shall render the surplus (if any) to the Master of such vessel upon demand.

11. The officer of Government whose duty it is to grant a port-clearance for any vessel shall not grant such port-clearance until her Master, or some other person, has paid, or secured to the satisfaction of such officer, the amount of all dues, expenses and costs with which such vessel is chargeable under this Act, and of any fine to which any person is liable for anything done by him in contravention of this Act.

No port-clearance to be granted until dues, &c., are paid.

12. The Master of any vessel departing from or entering any port in British India upon, or in the course of, or at the termination of, any voyage, shall, upon the demand of the Customs-Collector, specify upon what voyage he is or has been bound.

Master to specify on demand voyage on which ship is bound.

13. If the Master of any vessel evades, or attempts to evade, the payment of any Coast-light dues, expenses or costs payable in respect of such vessel under this Act, he shall be punished with fine which may extend to two hundred rupees.

Penalty for evading payment of Coast-light dues, &c.

Determination of Disputes under Act.

14. If any dispute arises as to whether any vessel is chargeable with any Coast-light dues, expenses or costs under this Act, or as to the amount of such dues, expenses or costs, such dispute shall, upon application made in that behalf by either of the disputing parties, be heard and determined by any Magistrate exercising powers under the Code of Criminal Procedure not less than those of a Magistrate of the second class, or in the towns of Calcutta, Madras and Bombay by a Presidency Magistrate; and the decision of such Magistrate shall be final.

Magistrate to decide disputes.

Maulmain and Bassein Port-dues.

15. The port-due leviable under the Indian Ports Act, 1875, in either of the ports of Maulmain and Bassein, shall, to the extent of one anna six pie, be applicable in the first place to defray the expenses of maintaining the existing port-lights of British Burma.

Application of Maulmain and Bassein port-dues.

Prosecutions under other Laws.

16. Nothing herein contained shall prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act: provided that no person shall be punished twice for the same act or omission.

Saving of prosecutions under other laws.

SCHEDULE.

(See section 4.)

1. A voyage to or from Chittagong or any place west of the longitude of Chittagong—	*(a)* from or to any port in British Burma; or
	(b) from or to Port Blair, or any place east of the longitude of Mergui, by a route passing between the northern extremity of the Andaman Islands and the coast of British Burma.
2. A voyage to or from any port in British Burma—	from or to any other port in British Burma.
Except voyages to or from Maulmain or Mergui, or to or from Tavoy	from or to Tavoy or to Mergui.
3. A voyage to or from Rangoon and any port in British Burma west of the longitude of Rangoon—	from or to any place east of Mergui.
4. A voyage to or from any port in British Burma other than Tavoy and Mergui—	from or to Port Blair.

STATEMENT OF OBJECTS AND REASONS.

THE present coast-light dues of one anna per ton levied under section 3 of Act XIII of 1867 (*An Act to provide for the establishment and maintenance of Coast-lights in the eastern part of the Bay of Bengal*) have been found insufficient to pay a fair rate of interest on the capital expended on the lights which at present exist on the coast of British Burma and provide for their maintenance. Moreover, the recent total destruction of the Krishna Shoal Light-house will immediately entail a large expenditure. It has therefore been determined to raise the present coast-light dues from one anna per ton to one anna six pie and to subject to the dues vessels making certain voyages not mentioned in the Act but in the course of which they benefit by the lights. These voyages are—

(*a*) voyages from ports in British Burma to Chittagong and places west of Chittagong;

(*b*) voyages from Chittagong to ports in British Burma;

(*c*) voyages by certain routes to or from Chittagong and places west of Chittagong (except Calcutta) from or to Port Blair and places east of Mergui;

(*d*) voyages from places east of Mergui to Rangoon and from Rangoon and ports in British Burma west of Rangoon to places east of Mergui;

(*e*) voyages to or from any port in British Burma other than Tavoy and Mergui from or to Port Blair.

2. The Bill repeals Act XIII of 1867 (which has already been amended) and re-enacts it in a simpler form, with the requisite alterations in respect of the coast-light dues and with some changes in wording and arrangement.

WHITLEY STOKES.

The 14th January, 1879.

D. FITZPATRICK,
Secy. to the Govt. of India.

Second publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 15th January, 1879, and was referred to a Select Committee.

No. 2 OF 1879.

A Bill to amend the Oudh Land-Revenue Act, 1876.

WHEREAS it is expedient to provide for the recovery of advances made in Oudh for purposes other than those specified in the Land Improvement Act, 1871, and to amend the Oudh Land-Revenue Act, 1876, accordingly; It is hereby enacted as follows:—

Preamble.

1. After section 160 of the said Oudh Land-Revenue Act, 1876, the following section shall be inserted:—

New section to follow section 160 of Act XVII of 1876.

"160A. All advances made by the Government to landholders for the relief of distress, the purchase of seed and cattle, the construction, maintenance and repair of dwelling-houses and other buildings, and for other purposes not specified in the Land Improvement Act, 1871, shall, when they become due, be recoverable from the person to whom the advance was made, or from any person who has become surety for the repayment thereof, as if they were arrears of land-revenue due by the person to whom the advance was made or by his surety."

Recovery of certain takkavi advances.

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to provide for the recovery by the Local Government in Oudh of advances made by it to landholders for the relief of distress, the purchase of seed and cattle, and other purposes not specified in the Land Improvement Act, 1871. Such advances will when due be recoverable as if they were arrears of land-revenue. A similar provision has been inserted in the Bill to amend the North-Western Provinces Land-Revenue Act, 1873; but, as the Select Committee, to which that Bill stands referred, consider it would be somewhat awkward to insert in it a clause providing for Oudh, the present Bill has been prepared to meet the case of that Province.

B. W. COLVIN.

The 19th December, 1878.

D. FITZPATRICK,
Secy. to the Govt. of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, FEBRUARY 1, 1879.

☞ Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 15th January, 1879, and was referred to a Select Committee.

No. 1 OF 1879.

A Bill to amend the law relating to Coast-lights in the eastern part of the Bay of Bengal.

Preamble.

WHEREAS it is expedient to increase the Coast-light dues paid under the provisions of Act No. XIII of 1867 (*An Act to provide for the establishment and maintenance of Coast-lights in the eastern part of the Bay of Bengal*) and to render chargeable with such dues certain vessels which are not now so chargeable; It is hereby enacted as follows:—

Preliminary.

Short title.

1. This Act may be called the "Burma Coast-lights Act, 1879;"

Local extent.

It extends to the territories respectively administered by the Governors of Fort St. George and Bombay in Council, the Lieutenant-Governor of Bengal and the Chief Commissioners of British Burma and the Andamans.

But nothing herein contained shall apply to any vessel belonging to, or in the service of, Her Majesty, or the Government of India, or to any vessel of war belonging to any Foreign Prince or State.

Repeal of enactments.

2. Act No. XIII of 1867 (*An Act to provide for the establishment and maintenance of Coast-lights in the eastern part of the Bay of Bengal*) and section 77 of the Indian Ports Act, 1875, are hereby repealed.

But any appointment made under the said Act No. XIII of 1867 shall be deemed to have been made under this Act.

Interpretation-clause.

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

"Customs-Collector." "Customs-Collector" means a Customs-Collector or appointed under the Sea Customs Act, 1878, and includes any person appointed by the Local Government by name or in virtue of his office to discharge the functions of a Customs-Collector under this Act at any port:

"Vessel." "Vessel" includes anything made for the conveyance by water of human beings or of property:

"Master." "Master," when used in relation to any vessel, means any person (except a Pilot or Harbour Master) having for the time being the charge or control of such vessel:

"Voyage." "Voyage" means the whole distance between a vessel's place of departure and her final place of arrival; but the return of a vessel from any place shall, notwithstanding the terms of any charter party, be deemed a distinct voyage.

Coast-light Dues.

Coast light-dues payable in respect of vessels of fifty tons.

4. A toll, hereinafter called "Coast-light dues," shall be paid in respect of every vessel of the burden of fifty tons and upwards making any voyage mentioned in the schedule hereto annexed, at the rate of one anna six pie per ton of burden:

Provided that such vessel sails from or enters during the course of, or at the termination of, any such voyage a port in British India.

When dues payable.

5. The said toll shall become due and payable—

(*a*) in the case of a vessel clearing out of a port in British India upon any such voyage, previous to the grant of any port-clearance;

(*b*) in the case of a vessel entering a port in British India in the course, or at the termination, of any such voyage, immediately upon her entering such port:

Provided that the said toll shall not be levied more than once on any vessel in the course of the same voyage.

6. The Governor General in Council may from time to time, by notification in the *Gazette of India*, reduce or raise the rate of Coast-light dues, in respect of all vessels or any particular class of vessels:

Power to vary rates of dues.

Provided that such rate shall not in any case exceed the rate fixed by section four.

Proviso.

7. The Customs-Collector shall collect the Coast-light dues;

Collection of Coast-light-dues.

and shall grant to the person paying the same a proper voucher in writing under his hand, setting forth the name of his office, the port at which the Coast-light dues are paid, and the name, tonnage and other proper description of the vessel in respect of which such payment is made.

Voucher to be given.

8. Within twenty-four hours after the arrival within a port of any vessel chargeable with Coast-light dues, the master of such vessel shall give notice of such arrival to the Customs-Collector.

Master to report arrival.

9. In order to ascertain the tonnage of any vessel chargeable with Coast-light dues, the following rules shall be observed:—

Tonnage of vessel chargeable with Coast-light dues how ascertained.

(*a*.)—If such vessel be a British registered vessel, or a vessel registered under Act No. X of 1841, or Act No. XI of 1850, or under any other law for the time being in force for the registration of vessels in India, the Customs-Collector may require the owner or Master of such vessel, or any person having possession of her register, to produce such register for inspection. If any such owner, Master or other person neglects or refuses to produce such register, or otherwise to satisfy the Customs-Collector as to what is the true tonnage of the vessel in respect of which such Coast-light dues are payable, he shall be punished with fine which may extend to one hundred rupees, and the Customs-Collector may cause such vessel to be measured and the tonnage thereof to be ascertained; and in such case the owner or Master of such vessel shall also be liable to pay the expenses of such measurement.

If registered.

(*b*.)—If such vessel be not a British registered vessel, or a vessel registered under Act No. X of 1841, or Act No. XI of 1850, or under any other law for the time being in force for the registration of vessels in India, and the owner or Master thereof fails to satisfy the Customs-Collector as to what is her true tonnage according to the mode of measurement prescribed by the law in force for the time being for regulating the measurement of British registered vessels, the Customs-Collector shall cause such vessel to be measured and the tonnage thereof, according to the mode aforesaid, to be ascertained; and in such case the owner or Master of such vessel shall be liable to pay the expenses of such measurement.

If not registered.

Explanation.—In this section "owner" includes any agent to whom the vessel referred to is consigned.

10. If the Master of any vessel refuses or neglects to pay to the Customs-Collector on demand by him the amount of any dues or expenses payable in respect of such vessel under this Act, the Customs-Collector may distrain or arrest such vessel, and the tackle, apparel and furniture belonging thereto, or any part thereof, and detain the same until the amount of such dues or expenses is paid;

On refusal to pay dues or expenses, the Collector may distrain and sell.

and in case any part of such dues or expenses, or of the costs of the distress or arrest, or of the keeping of the same, remains unpaid for the space of five days next after any such distress or arrest so made, the Customs-Collector may cause the vessel or other thing so distrained or arrested to be sold, and with the proceeds of such sale may satisfy such dues, expenses and costs, including the costs of sale remaining unpaid, and shall render the surplus (if any) to the Master of such vessel upon demand.

11. The officer of Government whose duty it is to grant a port-clearance for any vessel shall not grant such port-clearance until her Master, or some other person, has paid, or secured to the satisfaction of such officer, the amount of all dues, expenses and costs with which such vessel is chargeable under this Act, and of any fine to which any person is liable for anything done by him in contravention of this Act.

No port-clearance to be granted until dues, &c., are paid.

12. The Master of any vessel departing from or entering any port in British India upon, or in the course of, or at the termination of, any voyage, shall, upon the demand of the Customs-Collector, specify upon what voyage he is or has been bound.

Master to specify on demand voyage on which ship is bound.

13. If the Master of any vessel evades, or attempts to evade, the payment of any Coast-light dues, expenses or costs payable in respect of such vessel under this Act, he shall be punished with fine which may extend to two hundred rupees.

Penalty for evading payment of Coast-light dues, &c.

Determination of Disputes under Act.

14. If any dispute arises as to whether any vessel is chargeable with any Coast-light dues, expenses or costs under this Act, or as to the amount of such dues, expenses or costs, such dispute shall, upon application made in that behalf by either of the disputing parties, be heard and determined by any Magistrate exercising powers under the Code of Criminal Procedure not less than those of a Magistrate of the second class, or in the towns of Calcutta, Madras and Bombay by a Presidency Magistrate; and the decision of such Magistrate shall be final.

Magistrate to decide disputes.

Maulmain and Bassein Port-dues.

15. The port-due leviable under the Indian Ports Act, 1875, in either of the ports of Maulmain and Bassein, shall, to the extent of one anna six pie, be applicable in the first place to defray the expenses of maintaining the existing port-lights of British Burma.

Application of Maulmain and Bassein port-dues.

Prosecutions under other Laws.

16. Nothing herein contained shall prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act: provided that no person shall be punished twice for the same act or omission.

Saving of prosecutions under other laws.

SCHEDULE.

(*See section 4.*)

1. A voyage to or from Chittagong or any place west of the longitude of Chittagong—	(*a*) from or to any port in British Burma; or (*b*) from or to Port Blair, or any place east of the longitude of Mergui, by a route passing between the northern extremity of the Andaman Islands and the coast of British Burma.
2. A voyage to or from any port in British Burma—	from or to any other port in British Burma.

Except voyages to or from Maulmain from or to Tavoy or Mergui, or to or from Tavoy from or to Mergui.

3. A voyage to or from Rangoon and any port in British Burma west of the longitude of Rangoon—	from or to any place east of Mergui.
4. A voyage to or from any port in British Burma other than Tavoy and Mergui—	from or to Port Blair.

STATEMENT OF OBJECTS AND REASONS.

THE present coast-light dues of one anna per ton levied under section 3 of Act XIII of 1867 (*An Act to provide for the establishment and maintenance of Coast-lights in the eastern part of the Bay of Bengal*) have been found insufficient to pay a fair rate of interest on the capital expended on the lights which at present exist on the coast of British Burma and provide for their maintenance. Moreover, the recent total destruction of the Krishna Shoal Light-house will immediately entail a large expenditure. It has therefore been determined to raise the present coast-light dues from one anna per ton to one anna six pie and to subject to the dues vessels making certain voyages not mentioned in the Act but in the course of which they benefit by the lights. These voyages are—

(*a*) voyages from ports in British Burma to Chittagong and places west of Chittagong;

(*b*) voyages from Chittagong to ports in British Burma;

(*c*) voyages by certain routes to or from Chittagong and places west of Chittagong (except Calcutta) from or to Port Blair and places east of Mergui;

(*d*) voyages from places east of Mergui to Rangoon and from Rangoon and ports in British Burma west of Rangoon to places east of Mergui;

(*e*) voyages to or from any port in British Burma other than Tavoy and Mergui from or to Port Blair.

2. The Bill repeals Act XIII of 1867 (which has already been amended) and re-enacts it in a simpler form, with the requisite alterations in respect of the coast-light dues, and with some changes in wording and arrangement.

WHITLEY STOKES.

The 14th January, 1879.

D. FITZPATRICK,

Secy. to the Govt. of India.

[First publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 29th January, 1879, and was referred to a Select Committee:—

No. 3 OF 1879.

A Bill for the regulation and control of Hackney-carriages in certain Municipalities and Cantonments.

WHEREAS it is expedient to provide for the regulation and control of hackney-carriages in certain municipalities and cantonments; It is hereby enacted as follows:—

Preamble.

1. This Act may be called "The Hackney-Carriage Act, 1879,"

Short title.

and it shall come into force at once;

Commencement.

but nothing herein contained shall affect any power conferred by any law relating to municipalities.

Saving.

2. In this Act—

Interpretation-clause.

"Hackney-carriage" means any wheeled vehicle drawn by animals and used for the conveyance of human beings, which is kept, or offered, or plies, for hire, and

"Committee" means a Municipal Committee, or a body of Municipal Commissioners constituted under the provisions of any enactment for the time being in force.

3. The Lieutenant-Governors of the North-Western Provinces and the Panjáb, and the Chief Commissioners of Oudh, the Central Provinces, British Burma, Assam, Ajmer and Coorg may, by notification in the official Gazette, apply this Act to any municipality in the territories administered by them respectively.

Application of Act to municipalities.

When this Act has been so applied to any municipality, the Committee of such municipality may from time to time make rules for the regulation and control of hackney-carriages within the limits of such municipality, in the manner in which, under the law for the time being in force, it makes rules or bye-laws for the regulation and control of other matters within such limits.

Power of Committees to make rules.

Every rule made under this section shall, when confirmed by the Local Government and published for such time and in such manner as the Local Government may from time to time prescribe, have the force of law.

Sanction and publication of rules.

Provided that the Local Government may at any time rescind any such rule.

Power of Local Government to rescind rule.

4. The Local Government of any of the said territories may, from time to time, with the previous sanction of the Governor General in Council, make rules for the regulation and control of hackney-carriages in any military cantonment situated in the territory administered by it, and

Power to make rules for cantonments.

the Governor General in Council may, from time to time, make rules for the regulation and control of hackney-carriages in any place in India, but not in British India, in which British troops are cantoned.

5. The rules to be made under section three or section four may, among other matters,

What rules under sections 3 and 4 may provide for.

(*a*) direct that no hackney-carriage, or no hackney-carriage of a particular description, shall be let to hire, or taken to ply, or offered, for hire, except under a license granted in that behalf;

(*b*) direct that no person shall act as driver of a hackney-carriage except under a license granted in that behalf;

(*c*) provide for the issue of the licenses referred to in clauses (*a*) and (*b*), prescribe the conditions (if any) on which such licenses shall be granted, and fix the fees (if any) to be paid therefor;

(*d*) regulate the description of animals, harness, and other things to be used with licensed carriages, and the condition in which such carriages, and the animals, harness, and other things used therewith, shall be kept;

(*e*) provide for the inspection of the premises on which any such carriages, animals, harness, and other things are kept;

(*f*) fix the time for which such licenses shall continue in force and the events (if any) upon which within such time they shall be subject to revocation or suspension;

(*g*) determine the times at which, and the circumstances under which, any person keeping a hackney-carriage shall be bound to let such carriage to any person requiring the same, and any driver of a hackney-carriage, being with such carriage in a public place, shall be bound to go with any person desirous of hiring such carriage;

(*h*) appoint places as stands for hackney-carriages and prohibit such carriages waiting for hire except at such places;

(*i*) limit the rates or fares, as well for time as distance, which may be demanded for the hire of any hackney-carriage; and

(*j*) limit the number of persons, and the weight of property, which may be conveyed by any such carriage.

6. Any person breaking any rule made under this Act shall be punished with fine which may extend to fifty rupees.

Penalty for breach of rules.

7. The amount of any fees received, and the amount of any expenses incurred, by any Committee in giving effect to this Act shall respectively be credited and debited to the Municipal Fund, and in any cantonment where there is a Cantonment Fund, to such Fund.

Fees and expenses in municipalities.

8. If any dispute arises between the hirer of any hackney-carriage and the owner or driver of such carriage as to the amount of the fare payable by such hirer under any rule made under this Act, such dispute shall, upon application made in that behalf by either of the disputing parties, be heard and determined by a Magistrate or bench of Magistrates, and the decision of such Magistrate or bench shall be final.

Power of Magistrate to decide disputes regarding fares.

When any such dispute is heard by a bench, any difference of opinion arising between the members of such bench shall be settled in the same manner as differences of opinion arising between such members in the trial of criminal cases.

STATEMENT OF OBJECTS AND REASONS.

THE want of a law to regulate hackney-carriages in towns and cantonments in the interior of India has long been felt, and has lately been pressed upon the notice of the Government of India by the Lieutenant-Governor of the Panjáb and His Excellency the Commander-in-Chief.

2. The present Bill has been prepared to supply this want in the case of municipalities in those parts of India which have not local Legislatures, and in all cantonments, whether in British India or in Native States.

3. It gives power to the Municipal Committee, in the case of a municipality, and to the Local Government, in the case of a cantonment, to make rules (subject, in the former case, to the sanction of the Local Government, and in the latter, to that of the Governor General in Council) to ensure that carriages offered for hire, and the animals and harness used with them, shall be in proper condition; that fit persons shall be employed as drivers; that the fares charged shall be reasonable, and that the carriages shall not be over-laden.

4. It further provides that breach of these rules shall be punishable with fine which may extend to fifty rupees, and that disputes between the hirer and owner of a carriage, as to the amount of a fare, shall be determinable by a Magistrate.

T. H. THORNTON.

The 20th January, 1879.

D. FITZPATRICK,
Secy. to the Govt. of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, FEBRUARY 8, 1879.

☞ Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 29th January, 1879, and was referred to a Select Committee:—

No. 3 OF 1879.

A Bill for the regulation and control of Hackney-carriages in certain Municipalities and Cantonments.

Preamble.

WHEREAS it is expedient to provide for the regulation and control of hackney-carriages in certain municipalities and cantonments; It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Hackney-Carriage Act, 1879,"

Commencement.

and it shall come into force at once;

Saving.

but nothing herein contained shall affect any power conferred by any law relating to municipalities.

Interpretation-clause.

2. In this Act—

"Hackney-carriage" means any wheeled vehicle drawn by animals and used for the conveyance of human beings, which is kept, or offered, or plies, for hire, and

"Committee" means a Municipal Committee, or a body of Municipal Commissioners constituted under the provisions of any enactment for the time being in force.

Application of Act to municipalities.

3. The Lieutenant-Governors of the North-Western Provinces and the Panjáb, and the Chief Commissioners of Oudh, the Central Provinces, British Burma, Assam, Ajmer and Coorg may, by notification in the official Gazette, apply this Act to any municipality in the territories administered by them respectively.

Power of Committees to make rules.

When this Act has been so applied to any municipality, the Committee of such municipality may from time to time make rules for the regulation and control of hackney-carriages within the limits of such municipality, in the manner in which, under the law for the time being in force, it makes rules or bye-laws for the regulation and control of other matters within such limits.

Sanction and publication of rules.

Every rule made under this section shall, when confirmed by the Local Government and published for such time and in such manner as the Local Government may from time to time prescribe, have the force of law.

Power of Local Government to rescind rule.

Provided that the Local Government may at any time rescind any such rule.

Power to make rules for cantonments.

4. The Local Government of any of the said territories may, from time to time, with the previous sanction of the Governor General in Council, make rules for the regulation

and control of hackney-carriages in any military cantonment situated in the territory administered by it, and

the Governor General in Council may, from time to time, make rules for the regulation and control of hackney-carriages in any place in India, but not in British India, in which British troops are cantoned.

What rules under sections 3 and 4 may provide for.

5. The rules to be made under section three or section four may, among other matters,

(*a*) direct that no hackney-carriage, or no hackney-carriage of a particular description, shall be let to hire, or taken to ply, or offered, for hire, except under a license granted in that behalf;

(*b*) direct that no person shall act as driver of a hackney-carriage except under a license granted in that behalf;

(*c*) provide for the issue of the licenses referred to in clauses (*a*) and (*b*), prescribe the conditions (if any) on which such licenses shall be granted, and fix the fees (if any) to be paid therefor;

(*d*) regulate the description of animals, harness, and other things to be used with licensed carriages, and the condition in which such carriages, and the animals, harness, and other things used therewith, shall be kept;

(*e*) provide for the inspection of the premises on which any such carriages, animals, harness, and other things are kept;

(*f*) fix the time for which such licenses shall continue in force and the events (if any) upon which within such time they shall be subject to revocation or suspension;

(*g*) determine the times at which, and the circumstances under which, any person keeping a hackney-carriage shall be bound to let such carriage to any person requiring the same, and any driver of a hackney-carriage, being with such carriage in a public place, shall be bound to go with any person desirous of hiring such carriage;

(*h*) appoint places as stands for hackney-carriages and prohibit such carriages waiting for hire except at such places;

(*i*) limit the rates or fares, as well for time as distance, which may be demanded for the hire of any hackney-carriage; and

(*j*) limit the number of persons, and the weight of property, which may be conveyed by any such carriage.

Penalty for breach of rules.

6. Any person breaking any rule made under this Act shall be punished with fine which may extend to fifty rupees.

Fees and expenses in municipalities.

7. The amount of any fees received, and the amount of any expenses incurred, by any Committee in giving effect to this Act shall respectively be credited and debited to the Municipal Fund, and in any cantonment where there is a Cantonment Fund, to such Fund.

Power of Magistrate to decide disputes regarding fares.

8. If any dispute arises between the hirer of any hackney-carriage and the owner or driver of such carriage as to the amount of the fare payable by such hirer under any rule made under this Act, such dispute shall, upon application made in that behalf by either of the disputing parties, be heard and determined by a Magistrate or bench of Magistrates, and the decision of such Magistrate or bench shall be final.

When any such dispute is heard by a bench, any difference of opinion arising between the members of such bench shall be settled in the same manner as differences of opinion arising between such members in the trial of criminal cases.

STATEMENT OF OBJECTS AND REASONS.

THE want of a law to regulate hackney-carriages in towns and cantonments in the interior of India has long been felt, and has lately been pressed upon the notice of the Government of India by the Lieutenant-Governor of the Panjáb and His Excellency the Commander-in-Chief.

2. The present Bill has been prepared to supply this want in the case of municipalities in those parts of India which have not local Legislatures, and in all cantonments, whether in British India or in Native States.

3. It gives power to the Municipal Committee, in the case of a municipality, and to the Local Government, in the case of a cantonment, to make rules (subject, in the former case, to the sanction of the Local Government, and in the latter, to that of the Governor General in Council) to ensure that carriages offered for hire, and the animals and harness used with them, shall be in proper condition; that fit persons shall be employed as drivers; that the fares charged shall be reasonable, and that the carriages shall not be over-laden.

4. It further provides that breach of these rules shall be punishable with fine which may extend to fifty rupees, and that disputes between the hirer and owner of a carriage, as to the amount of a fare, shall be determinable by a Magistrate.

T. H. THORNTON.

The 20th January, 1879.

D. FITZPATRICK,
Secy. to the Govt. of India.

[First publication.]

The following preliminary Report of a Select Committee, together with the Bill as settled by them, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 29th January, 1879:—

WE, the undersigned Members of the Select Committee to which the Bill to amend the Pleaders, Mukhtárs and Revenue Agents Act, 1865, was referred, have the honour to report that we have considered the Bill and the papers noted in the margin.

From Secretary for Birár to Resident, Haidarábád, No. 10B, dated 19th November, 1878.
„ Secretary to Chief Commissioner, Mysore, No. 7039-13J, dated 25th November, 1878.
Memorandum by Pandit Srikishen, Pleader, Judicial Commissioner's Court, Oudh, dated 30th November, 1878.
From Officiating Chief Secretary to Government, Fort St. George, No. 2440, dated 3rd December, 1878.
„ Secretary to Chief Commissioner, Assam, No. 2296, dated 10th December, 1878.
„ Under Secretary to Government, Bombay, No. 7183, dated 10th December, 1878, and enclosures.
„ Chief Commissioner, Ajmer and Merwára, No. 19, dated 3rd January, 1879.
„ Officiating Secretary, to Chief Commissioner, Central Provinces, No. 119-255, dated 9th January, 1879.
Note by the Hon'ble the Chief Justice, High Court, Calcutta, dated 22nd January, 1879.

2. We have deemed it well, instead of adding a fifth Act to the four Acts already in force relating to pleaders, mukhtárs and revenue-agents, to frame a consolidation measure embracing the entire law.

3. We have, at the instance of the Hon'ble the Chief Justice of Bengal, restored in section 16 of the Bill now submitted, the power of the High Courts to make rules for the admission and control of mukhtárs practising on the appellate side of those Courts, which was conferred by section 44 of Act XX of 1865, but which has been held by the Calcutta High Court to have been *ultra vires*.

4. We have made the Bill applicable to the Courts of Small Causes in the Presidency towns, where we understand some such law is needed.

5. We have substituted, for the stamp-duties on certificates prescribed by Act XX of 1865, fees fixed according to the scale which was proposed in the Bill to amend the law relating to stamps and court-fees recently before the Council. The alterations here made are of no substantial importance.

6. We have made several amendments in arrangement and drafting, with a view to clearness and simplicity.

7. We recommend that the Bill now submitted be published.

8. The publication ordered by the Council has been made.

W. STOKES.
F. R. COCKERELL.
T. H. THORNTON.

The 29th January, 1879.

THE LEGAL PRACTITIONERS' BILL, 1879.

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No. II.

A bill to Consolidate and amend the law relating to Legal Practitioners.

WHEREAS it is expedient to consolidate and amend the law relating to legal Practitioners, in the Lower Provinces of Bengal, the North-Western Provinces, the Panjáb, Oudh and Assam; and to empower each of the Local Governments of the rest of British India to extend to the territories administered by it such portions of this Act as such Government may think fit; It is hereby enacted as follows:— Preamble.

CHAPTER I.—*Preliminary.*

1. This Act may be called "The Legal Practitioners' Act, 1879:" and shall come into force on the first day of April, 1879. Short title. Commencement of Act.

This section and section two extend to the whole of British India. Local extent.

The rest of this Act extends, in the first instance, only to the territories respectively administered by the Lieutenant-Governors of the Lower Provinces of Bengal, the North-Western Provinces and the Panjáb, and the Chief Commissioners of Oudh and Assam. But any other Local Government may from time to time, by notification in the official Gazette, extend all or any of the provisions of the rest of this Act to the whole or any part of the territories under its administration.

2. On and from the first day of April, 1879, the enactments mentioned in the first schedule hereto annexed shall be repealed to the extent specified therein. Repeal of enactments.

All rules and appointments made, penalties prescribed, fees fixed, persons admitted, names enrolled, certificates issued, sanctions given and orders passed under any enactment hereby repealed shall be deemed to be respectively made, prescribed, fixed, admitted, enrolled, issued, given and passed under this Act. Saving of rules, &c.

All references made to any enactment hereby repealed, in any Act or Regulation passed, or notification published, subsequently thereto, shall be read as if made to this Act. References to repealed enactments.

3. In this Act, unless there be something repugnant in the subject or context— Interpretation-clause.

"Judge" means the presiding judicial officer in every civil and criminal Court by whatever title he is designated: "Judge."

"Subordinate Court" means all Courts subordinate to the High Court, including Courts of Small Causes established under Act No. IX of 1850 or Act No. XI of 1865: "Subordinate Court."

"Officer subordinate to such Authority," "Subordinate Revenue-officer" and "Revenue-office" include all Courts (other than civil Courts) trying suits under any Act for the time being in force relating to landholders and their tenants or agents. "Officer subordinate to such Authority." "Subordinate Revenue-officer." "Revenue-office."

CHAPTER II.—*Of Advocates, Vakíls and Attorneys.*

4. Every person now or hereafter entered as an Advocate or Vakíl on the roll of any High Court under the Letters Patent constituting such Court shall, notwithstanding anything herein contained, be entitled as such to practise in any Court in British India other than a High Court on whose roll he is not entered, or in any such Court with the permission of the Court, and in any Revenue-office, subject nevertheless to the rules in force relating to the language in which the Court or office is to be addressed by Pleaders or Revenue-agents: Advocates and Vakíls of chartered High Court.

Provided that no such Vakíl shall be entitled to practise under this section before a Judge of the High Court, Division Court, or High Court exercising original jurisdiction.

5. Every person now or hereafter entered as an Attorney on the roll of any High Court shall, notwithstanding anything herein contained, be entitled as such to practise in any Court of British India other than a High Court established by Royal Charter and in any Revenue-office. Attorneys of High Court.

CHAPTER III.—*Of Pleaders and Mukhtárs.*

6. The High Court may, from time to time, make rules consistent with this Act— Power to make rules as to qualification, &c., of pleaders and mukhtárs.

(*a*) for the qualification, admission and certificates of proper persons to be pleaders of the subordinate Courts, and of the revenue-offices situate within the local limits of its appellate jurisdiction, and, in the case of a High Court not established by Royal Charter, of such Court:

(*b*) for the qualification, admission and certificates of proper persons to be mukhtárs of the subordinate Courts, and, in the case of a High Court not established by Royal Charter, of such Court:

(*c*) for the fees to be paid for the examination and admission of such persons; and

(*d*) for their suspension and dismissal.

All such rules shall be published in the local official Gazette and shall thereupon have the force of law; provided that, in the case of rules made by a High Court not established by Royal Charter, such rules have been previously approved by the Local Government. Publication of rules.

7. On the admission, under section six, of any person as a pleader or mukhtár, the High Court shall cause a certificate, signed by such officer as the Court from time to time appoints in this behalf, to be issued to such person, authorizing him to practise for the period of one year from its date in the Courts and, in the case of a pleader, the offices, specified therein. Certificates to pleaders and mukhtárs.

At the expiration of such period, the holder of the certificate, if he desires to continue to practise, shall be entitled to have his certificate renewed by the Judge of the District Court within the local limits of whose jurisdiction he then ordinarily practises, or by such officer as the High Court from time to time appoints in this behalf.

On every such renewal, the certificate then in possession of such pleader or mukhtár shall be cancelled and retained by such Judge or officer.

Every certificate so renewed shall be signed by such Judge or officer.

Every Judge or officer so renewing a certificate shall notify such renewal to the High Court.

8. Every pleader holding a certificate issued under section seven, may apply to be enrolled in any Court or office mentioned therein and situate within the local limits of the appellate jurisdiction of the High Court by which he has been admitted, and on being so enrolled, may appear, plead and act in such Court or office. Pleaders on enrolment may practise in Courts and revenue-offices.

9. Every mukhtár holding a certificate issued under section seven, may apply to be enrolled in any civil or criminal Court mentioned therein and situate within the same limits, and, on being so enrolled, may appear and act in any such civil Court, and may (subject to the provisions of the Code of Criminal Procedure, section 186) appear, plead and act in any such criminal Court. Mukhtárs on enrolment may practise in Courts.

10. Except as provided by the Code of Civil Procedure, section 37, or any other enactment for the time being in force, no person shall appear, plead or act as a pleader or mukhtár in any Court not established by Royal Charter, unless he holds a certificate issued under section seven and has been enrolled in such Court: No person to practise as pleader or mukhtár unless qualified.

Provided that persons holding certificates as revenue-agents under this Act in the territories subject to the Lieutenant-Governor of Bengal may, on being enrolled in any Munsif's Court, appear, plead and act in such Court in suits under Bengal Act No. VIII of 1869 (*to amend the procedure in suits between Landlord and Tenant*) or under any other Act for the time being in force, regulating the procedure in suits between landholders and their tenants or agents. Revenue-agents may appear, plead and act in Munsifs' Courts in suits under Bengal Act VIII of 1869.

11. The High Court may suspend or dismiss any pleader or mukhtár holding a certificate issued under this Act, who is convicted of any criminal offence. Dismissal of pleader or mukhtár convicted of a criminal offence.

12. The High Court may also, after such enquiry as it thinks fit, suspend or dismiss any pleader or mukhtár holding a certificate as aforesaid, who is guilty of fraudulent or grossly improper conduct in the discharge of his professional duty, or of giving, receiving or retaining commission on remuneration paid to any legal practitioner, or for any other reasonable cause. Dismissal of High Court pleader or mukhtár guilty of unprofessional conduct.

13. If any such pleader or mukhtár practising in any subordinate Court or in any revenue-office, is charged in such Court or office with any such conduct as aforesaid, the presiding officer shall send him a copy of the charge and also a notice that, on a day to be therein appointed, such charge will be taken into consideration. Procedure when charge of unprofessional conduct is brought in a subordinate Court or revenue-office.

Such copy and notice shall be served upon the pleader or mukhtár at least ten days before the day so appointed.

On such day or on any subsequent day to which the enquiry may be adjourned, the presiding officer shall receive all evidence properly produced in support of the charge, or by the pleader or mukhtár, and shall proceed to adjudicate on the charge.

If such officer finds the charge established, and considers that the pleader or mukhtár should be suspended or dismissed in consequence, he shall record his finding and the grounds thereof, and shall report the same to the High Court, and the High Court shall proceed to acquit, suspend or dismiss the pleader or mukhtár.

Any Judge or Chief Controlling Revenue-Authority acting under this section may, and, with the previous sanction of the Chief Controlling Revenue-Authority, any subordinate revenue-officer so acting may, pending the investigation and the orders of the High Court, suspend the pleader or mukhtár from practising as such in his Court or office. Suspension pending investigation.

Every report made to the High Court under this section shall—

(*a*) when made by any Civil Judge other than the District Judge, be made through the Judge;

(*b*) when made by a Magistrate subordinate to the Magistrate of the District, be made through the Magistrate of the District and the Sessions Judge;

(*c*) when made by the Magistrate of the District, be made through the Sessions Judge;

(*d*) when made by any subordinate revenue-officer, be made through the Revenue-Authorities to which he is subordinate.

Every such report shall be accompanied by the opinion of each Judge, Magistrate or Revenue-Authority through whom or which it is made.

Power to call for record in case of acquittal under section 13.

14. The High Court, in any case in which a pleader or mukhtár has been acquitted under section thirteen otherwise than by an order of the High Court, may call for the record and pass such order thereon as it thinks fit.

Report when dismissed mukhtár is also a revenue-agent.

15. Whenever a mukhtár who has been suspended or dismissed by order of the High Court is also a revenue-agent holding a certificate under this Act, the High Court shall forward a report of the case to the Chief Controlling Revenue-Authority.

Such Authority, after making any enquiry which it thinks necessary, may suspend or dismiss him as such revenue-agent.

Power to make rules for mukhtárs on appellate side of High Court.

16. Notwithstanding anything contained in any Letters Patent or in the Code of Civil Procedure, section 37, clause (*a*), any High Court established by Royal Charter may from time to time make rules consistent with this Act—

(*a*) for the qualification, admission, suspension and dismissal of proper persons to be mukhtárs practising on the appellate side of such Court;

(*b*) for the security which they may be required to give for their honesty and good conduct; and

(*c*) as to their powers and duties;

and may prescribe and impose fines for the infringement of such rules not exceeding in any case five hundred rupees; and such fines, when imposed, may be recovered as if they had been imposed in the exercise of the High Court's ordinary original criminal jurisdiction.

CHAPTER IV.—*Of Revenue-Agents.*

Power to make rules as to qualifications, &c., of revenue-agents.

17. The Chief Controlling Revenue-Authority may from time to time make rules consistent with this Act—

(*a*) for the qualification, admission and certificates of proper persons to be revenue-agents;

(*b*) for the fees to be paid for the examination and admission of such persons; and

(*c*) for their suspension and dismissal.

Publication of rules.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

Certificates to revenue-agents.

18. On the admission of any person as a Revenue-agent under section seventeen, the Chief Controlling Revenue-Authority shall cause a certificate, signed by such officer as such Authority from time to time appoints in this behalf, to be issued to such person, authorizing him to practise for the period of one year from its date in such offices as may be specified therein.

At the expiration of such period, the holder of the certificate, if he desires to continue to practise, shall be entitled to have his certificate renewed by the Secretary of the Chief Controlling Revenue-Authority, or by any other officer authorized by such Authority in that behalf.

On every such renewal, the certificate then in the possession of such revenue-agent shall be cancelled and retained by such Secretary or other officer.

Every certificate so renewed shall be signed by such Secretary or other officer.

Every officer so renewing a certificate shall notify the renewal to the Chief Controlling Revenue-Authority.

Enrolment of revenue-agent.

19. Every revenue-agent holding a certificate issued under section eighteen may apply to be enrolled in any revenue-office mentioned therein and situate within the limits of the territory under the Chief Controlling Revenue-Authority, and, on being so enrolled, may practise in such office as a revenue-agent.

No person to act as agent in revenue-offices, unless qualified.

20. Except as provided by any enactment for the time being in force, no person, other than a pleader duly qualified under the provisions hereinbefore contained, shall practise as a revenue-agent in any revenue-office, unless he holds a certificate issued under section eighteen, and has been enrolled in such office:

Provided that any person duly authorized in this behalf may, with the sanction of the Chief Controlling Revenue-Authority, or of an officer empowered by the Local Government in this behalf, transact all or any business in which his employer may be concerned in any revenue-office:

The sanction mentioned in this section may be general or special, and may at any time be revoked or suspended by such Authority or officer.

Dismissal of revenue-agent convicted of criminal offence.

21. The Chief Controlling Revenue-Authority may suspend or dismiss any revenue-agent holding a certificate issued under this Act, who is convicted of any criminal offence.

Dismissal of revenue-agent guilty of unprofessional conduct.

22. The Chief Controlling Revenue-Authority may also, after making such enquiry as it thinks fit, suspend or dismiss any revenue-agent holding a certificate issued under this Act who is guilty of fraudulent or grossly improper conduct in the discharge of his professional duty, or of giving, receiving or retaining commission on remuneration paid to any legal practitioner, or for any other reasonable cause.

Procedure when revenue-agent is so charged in subordinate office.

23. If any revenue-agent holding a certificate issued under this Act is charged with any such conduct in any office subordinate to the Chief Controlling Revenue-Authority, or in the Court of any Munsif, the officer at the head of such office, or such Munsif, as the case may be, shall send him a copy of the charge and also a notice that, on a day to be therein appointed, such charge will be taken into consideration.

Such copy and notice shall be served upon the person charged at least ten days before the day so appointed. On such day or on any other day to which the enquiry may be adjourned, the officer or Munsif shall receive all evidence properly produced in support of the charge, or by the person charged, and shall proceed to adjudicate on the charge.

If the officer or Munsif finds the charge established and considers that the person charged should be suspended or dismissed in consequence, he shall record his finding, and the grounds thereof, and report the same to the Chief Controlling Revenue-Authority; and such Authority shall proceed to acquit, suspend or dismiss him.

Where any officer acting under this section is subordinate to the Commissioner of a Division, he shall forward the report through such Commissioner, who shall accompany the same with an expression of his own opinion on the case.

Power to Chief Controlling Revenue-Authority to call for record.

24. The Chief Controlling Revenue-Authority, in any case in which a revenue-agent has been acquitted under section twenty-three, otherwise than by an order of the Chief Controlling Revenue-Authority, may call for the record and pass such order thereon as seems fit.

Report to High Court when dismissed revenue-agent is also a mukhtár.

25. Whenever a revenue-agent who has been dismissed or suspended by order of the Chief Controlling Revenue-Authority is also a mukhtár holding a certificate under this Act, the Chief Controlling Revenue-Authority shall forward a report of the case to the High Court by which he was admitted.

Such Court, after making any enquiry which it thinks necessary, may suspend or dismiss him as such mukhtár.

CHAPTER V.—*Of Certificates.*

Fee for certificates.

26. For every certificate, whether original or renewed, issued under this Act, a fee of the amount prescribed therefor in the second schedule hereto annexed, shall be paid by the person entitled to such certificate.

Dismissed practitioners to surrender certificates.

27. When any pleader, mukhtár or revenue-agent is suspended or dismissed under this Act, he shall forthwith deliver up his certificate to the Court, or officer at the head of the office, before or in which he was practising at the time he was so suspended or dismissed, or to any Court or officer to which the High Court or Chief Controlling Revenue-Authority (as the case may be) orders him to deliver the same.

CHAPTER VI.—*Of the Remuneration of Pleaders, Mukhtárs and Revenue-Agents.*

High Court and Chief Controlling Revenue-Authority to fix fees on civil and revenue proceedings.

28. The High Court shall from time to time fix and regulate the fees payable by any party in respect of the fees of his adversary's pleader or vakíl upon all proceedings (*a*) on the appellate side of such Court, (*b*) in the case of a High Court not established by Royal Charter, on its original side, and (*c*) in the subordinate Courts.

The Chief Controlling Revenue-Authority shall from time to time fix and regulate the fees payable upon all proceedings in the revenue-offices by any party in respect of the fees of his adversary's pleader or revenue-agent.

Tables of the fees so fixed shall be published in the local official Gazette.

Exception as to agents mentioned in section 20.

Nothing in this section applies to the agents mentioned in the proviso to section twenty.

Agreements with pleaders, &c.

29. All persons employing pleaders, mukhtárs or revenue-agents shall be at liberty to settle with them by private agreement the remuneration to be paid for their professional services; and it shall not be necessary to specify such agreement in the power under which such pleaders, mukhtárs or revenue-agents for the time being act.

Such agreements shall not be enforced otherwise than by suit.

CHAPTER VII.—*Penalties.*

On persons illegally practising as pleaders, mukhtárs or revenue-agents.

30. Any person who appears, pleads, acts or practises in any Court or office in contravention of the provisions of section ten or section twenty, shall be liable, by order of such Court, or the officer at the head of such office, to a fine not exceeding ten times the amount of the fee required by this Act to be paid for a certificate authorizing him to appear, plead, act or practise in such Court or office, and, in default of payment, to imprisonment in the civil jail for a term which may extend to six months.

He shall also be incapable of maintaining any suit for, or enforcing any lien in respect of, any fee or reward for, or in respect of, anything done, or any disbursement made, by him as pleader or mukhtár or revenue-agent whilst he has been contravening the provisions of either of such sections.

On suspended or dismissed pleader, &c., failing to deliver certificate.

31. Any pleader, mukhtár or revenue-agent failing to deliver up his certificate as required by section twenty-seven, shall be liable, by order of the Court, Authority or officer to which or to whom, or according to whose orders, the delivery should be made, to a fine not exceeding two hundred rupees and, in default of payment, to imprisonment in the civil jail for a term which may extend to three months.

On suspended or dismissed practitioner practising during suspension or after dismissal.

32. Any pleader, mukhtár or revenue-agent who, under the provisions of this Act, has been suspended or dismissed, and who, during such suspension or after such dismissal, practises as a pleader or mukhtár or revenue-agent in any Court or office, shall be liable, by order of such Court, or the officer at the head of such office, to a fine not exceeding five hundred rupees and, in default of payment, to imprisonment in the civil jail for a term which may extend to six months.

Revision of fines.

33. Every order under section thirty, thirty-one or thirty-two shall be subject to revision, by the High Court, where the order has been passed by a subordinate Court, and by the Chief Controlling Revenue-Authority, where the order has been passed by an officer subordinate to such Authority.

CHAPTER VIII.—*Miscellaneous.*

Local Government to appoint examiners.

34. To facilitate the ascertainment of the qualifications respectively mentioned in sections six and seventeen, the Local Government shall from time to time appoint persons to be examiners for the purposes aforesaid, and make regulations for conducting such examinations.

Exemption of High Court practitioners from certain parts of Act.

35. Except as provided by sections four, five, sixteen and twenty-eight, nothing in this Act applies to advocates, vakíls and attorneys admitted and enrolled by any High Court under the Letters Patent by which such Court is constituted, or to mukhtárs practising in such Court.

FIRST SCHEDULE.

(*See section 2*).

Number and date of enactments.	Title.	Extent of repeal.
Act XX of 1865 ...	To amend the law relating to Pleaders and Mukhtárs.	The whole.
Act XXIX of 1865	To amend the Pleaders, Mukhtárs and Revenue-Agents' Act, 1865.	So much as has not been repealed.
Act IX of 1866 ...	To extend to the Sudder Court of the North-Western Provinces certain provisions of "the Pleaders, Mukhtárs and Revenue Agents' Act, 1865," and of Act No. XXIX of 1865.	The whole.
Act IV of 1876 ...	To authorize Revenue-Agents to practise in certain suits in the Munsifs' Courts of the Lower Provinces of Bengal.	The whole.
Act XVII of 1877	The Panjáb Courts Act, 1877.	Section forty-five.

SECOND SCHEDULE.

(*See section 26*).

FEES FOR CERTIFICATES.

I.

For a certificate authorizing the holder to practise as a Pleader—

(*a.*) In the High Court and any subordinate Court—rupees fifty :

(*b.*) In any Court of Small Causes in a Presidency-town—rupees twenty-five :

(*c.*) In all other subordinate Courts—rupees twenty-five :

SECOND SCHEDULE—*concluded.*

(*d.*) In the Courts of Subordinate Judges, Munsifs, Magistrates, Assistant Commissioners, Extra Assistant Commissioners and Tahsíldárs, and in Courts of Small Causes outside the Presidency-towns—rupees fifteen :

(*e.*) In the Munsifs' Courts and any Court of first instance not hereinbefore specifically mentioned—rupees five.

II.

For a certificate authorizing the holder to practise as a Mukhtár—

(*f.*) In the High Court and any subordinate Court—rupees twenty-five :

(*g.*) In any Court of Small Causes in a Presidency-town—rupees fifteen :

(*h.*) In all other subordinate Courts—rupees fifteen :

(*i.*) In the Courts of Subordinate Judges, Munsifs, Magistrates, Assistant Commissioners, Extra Assistant Commissioners and Tahsíldárs, and in Courts of Small Causes outside the Presidency Towns—rupees ten :

(*j.*) In the Munsifs' Courts and any Court of first instance not hereinbefore specifically mentioned—rupees five.

III.

For a certificate authorizing the holder to practise as a Revenue-Agent—

(*k*) In the office of the Chief Controlling Revenue-Authority and in any office subordinate to such Authority—rupees fifteen :

(*l*) In the office of a Commissioner and in any office subordinate to a Commissioner—rupees ten :

(*m*) In the office of a Collector and in any office subordinate to a Collector—rupees five.

D. FITZPATRICK,
Secy. to the Govt. of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, FEBRUARY 15, 1879.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 29th January, 1879, and was referred to a Select Committee :—

No. 3 OF 1879.

A Bill for the regulation and control of Hackney-carriages in certain Municipalities and Cantonments.

WHEREAS it is expedient to provide for the regulation and control of hackney-carriages in certain municipalities and cantonments; It is hereby enacted as follows :— Preamble.

1. This Act may be called "The Hackney-Carriage Act, 1879," Short title.

and it shall come into force at once ; Commencement.

but nothing herein contained shall affect any power conferred by any law relating to municipalities. Saving.

2. In this Act— Interpretation-clause.

"Hackney-carriage" means any wheeled vehicle drawn by animals and used for the conveyance of human beings, which is kept, or offered, or plies, for hire, and

"Committee" means a Municipal Committee, or a body of Municipal Commissioners constituted under the provisions of any enactment for the time being in force.

3. The Lieutenant-Governors of the North-Western Provinces and the Panjáb, and the Chief Commissioners of Oudh, the Central Provinces, British Burma, Assam, Ajmer and Coorg may, by notification in the official Gazette, apply this Act to any municipality in the territories administered by them respectively. Application of Act to municipalities.

When this Act has been so applied to any municipality, the Committee of such municipality may from time to time make rules for the regulation and control of hackney-carriages within the limits of such municipality, in the manner in which, under the law for the time being in force, it makes rules or bye-laws for the regulation and control of other matters within such limits. Power of Committees to make rules.

Every rule made under this section shall, when confirmed by the Local Government and published for such time and in such manner as the Local Government may from time to time prescribe, have the force of law. Sanction and publication of rules.

Provided that the Local Government may at any time rescind any such rule. Power of Local Government to rescind rule.

4. The Local Government of any of the said territories may, from time to time, with the previous sanction of the Governor General in Council, make rules for the regulation Power to make rules for cantonments.

and control of hackney-carriages in any military cantonment situated in the territory administered by it, and

the Governor General in Council may, from time to time, make rules for the regulation and control of hackney-carriages in any place in India, but not in British India, in which British troops are cantoned.

What rules under sections 3 and 4 may provide for.

5. The rules to be made under section three or section four may, among other matters,

(*a*) direct that no hackney-carriage, or no hackney-carriage of a particular description, shall be let to hire, or taken to ply, or offered, for hire, except under a license granted in that behalf;

(*b*) direct that no person shall act as driver of a hackney-carriage except under a license granted in that behalf;

(*c*) provide for the issue of the licenses referred to in clauses (*a*) and (*b*), prescribe the conditions (if any) on which such licenses shall be granted, and fix the fees (if any) to be paid therefor;

(*d*) regulate the description of animals, harness, and other things to be used with licensed carriages, and the condition in which such carriages, and the animals, harness, and other things used therewith, shall be kept;

(*e*) provide for the inspection of the premises on which any such carriages, animals, harness, and other things are kept;

(*f*) fix the time for which such licenses shall continue in force and the events (if any) upon which within such time they shall be subject to revocation or suspension;

(*g*) determine the times at which, and the circumstances under which, any person keeping a hackney-carriage shall be bound to let such carriage to any person requiring the same, and any driver of a hackney-carriage, being with such carriage in a public place, shall be bound to go with any person desirous of hiring such carriage;

(*h*) appoint places as stands for hackney-carriages and prohibit such carriages waiting for hire except at such places;

(*i*) limit the rates or fares, as well for time as distance, which may be demanded for the hire of any hackney-carriage; and

(*j*) limit the number of persons, and the weight of property, which may be conveyed by any such carriage.

Penalty for breach of rules.

6. Any person breaking any rule made under this Act shall be punished with fine which may extend to fifty rupees.

Fees and expenses in municipalities.

7. The amount of any fees received, and the amount of any expenses incurred, by any Committee in giving effect to this Act shall respectively be credited and debited to the Municipal Fund, and in any cantonment where there is a Cantonment Fund, to such Fund.

Power of Magistrate to decide disputes regarding fares.

8. If any dispute arises between the hirer of any hackney-carriage and the owner or driver of such carriage as to the amount of the fare payable by such hirer under any rule made under this Act, such dispute shall, upon application made in that behalf by either of the disputing parties, be heard and determined by a Magistrate or bench of Magistrates, and the decision of such Magistrate or bench shall be final.

When any such dispute is heard by a bench, any difference of opinion arising between the members of such bench shall be settled in the same manner as differences of opinion arising between such members in the trial of criminal cases.

STATEMENT OF OBJECTS AND REASONS.

THE want of a law to regulate hackney-carriages in towns and cantonments in the interior of India has long been felt, and has lately been pressed upon the notice of the Government of India by the Lieutenant-Governor of the Panjáb and His Excellency the Commander-in-Chief.

2. The present Bill has been prepared to supply this want in the case of municipalities in those parts of India which have not local Legislatures, and in all cantonments, whether in British India or in Native States.

3. It gives power to the Municipal Committee, in the case of a municipality, and to the Local Government, in the case of a cantonment, to make rules (subject, in the former case, to the sanction of the Local Government, and in the latter, to that of the Governor General in Council) to ensure that carriages offered for hire, and the animals and harness used with them, shall be in proper condition; that fit persons shall be employed as drivers; that the fares charged shall be reasonable, and that the carriages shall not be over-laden.

4. It further provides that breach of these rules shall be punishable with fine which may extend to fifty rupees, and that disputes between the hirer and owner of a carriage, as to the amount of a fare, shall be determinable by a Magistrate.

T. H. THORNTON.

The 20th January, 1879.

D. FITZPATRICK,
Secy. to the Govt. of India.

Second publication.

The following preliminary Report of a Select Committee, together with the Bill as settled by them, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 29th January, 1879:—

WE, the undersigned Members of the Select Committee to which the Bill to amend the Pleaders, Mukhtárs and Revenue Agents Act, 1865, was referred, have the honour to report that we have considered the Bill and the papers noted in the margin.

From Secretary for Birár to Resident, Haidarábád, No. 10B, dated 19th November, 1878.
„ Secretary to Chief Commissioner, Mysore, No. 7039-13J, dated 25th November, 1878.
Memorandum by Pandit Srikishen, Pleader, Judicial Commissioner's Court, Oudh, dated 30th November, 1878.
From Officiating Chief Secretary to Government, Fort St. George, No. 2440, dated 3rd December, 1878.
„ Secretary to Chief Commissioner, Assam, No. 2296, dated 10th December, 1878.
„ Under Secretary to Government, Bombay, No. 7183, dated 10th December, 1878, and enclosures.
„ Chief Commissioner, Ajmer and Merwára, No. 19, dated 3rd January, 1879.
„ Officiating Secretary to Chief Commissioner, Central Provinces, No. 119-255, dated 9th January, 1879.
Note by the Hon'ble the Chief Justice, High Court, Calcutta, dated 22nd January, 1879.

2. We have deemed it well, instead of adding a fifth Act to the four Acts already in force relating to pleaders, mukhtárs and revenue-agents, to frame a consolidation measure embracing the entire law.

3. We have, at the instance of the Hon'ble the Chief Justice of Bengal, restored in section 16 of the Bill now submitted, the power of the High Courts to make rules for the admission and control of mukhtárs practising on the appellate side of those Courts, which was conferred by section 44 of Act XX of 1865, but which has been held by the Calcutta High Court to have been *ultra vires*.

4. We have made the Bill applicable to the Courts of Small Causes in the Presidency towns, where we understand some such law is needed.

5. We have substituted, for the stamp-duties on certificates prescribed by Act XX of 1865, fees fixed according to the scale which was proposed in the Bill to amend the law relating to stamps and court-fees recently before the Council. The alterations here made are of no substantial importance.

6. We have made several amendments in arrangement and drafting, with a view to clearness and simplicity.

7. We recommend that the Bill now submitted be published.

8. The publication ordered by the Council has been made.

W. STOKES.
F. R. COCKERELL.
T. H. THORNTON.

The 29th January, 1879.

THE LEGAL PRACTITIONERS' BILL, 1879.

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No. II.

A Bill to Consolidate and amend the law relating to Legal Practitioners.

WHEREAS it is expedient to consolidate and amend the law relating to legal Practitioners, in the Lower Provinces of Bengal, the North-Western Provinces, the Panjáb, Oudh and Assam; and to empower each of the Local Governments of the rest of British India to extend to the territories administered by it such portions of this Act as such Government may think fit; It is hereby enacted as follows:—

Preamble.

CHAPTER I.—*Preliminary.*

1. This Act may be called "The Legal Practitioners' Act, 1879:" and shall come into force on the first day of April, 1879.

Short title.

Commencement of Act.

This section and section two extend to the whole of British India.

Local extent.

The rest of this Act extends, in the first instance, only to the territories respectively administered by the Lieutenant-Governors of the Lower Provinces of Bengal, the North-Western Provinces and the Panjáb, and the Chief Commissioners of Oudh and Assam. But any other Local Government may from time to time, by notification in the official Gazette, extend all or any of the provisions of the rest of this Act to the whole or any part of the territories under its administration.

2. On and from the first day of April, 1879, the enactments mentioned in the first schedule hereto annexed shall be repealed to the extent specified therein.

Repeal of enactments.

All rules and appointments made, penalties prescribed, fees fixed, persons admitted, names enrolled, certificates issued, sanctions given and orders passed under any enactment hereby repealed shall be deemed to be respectively made, prescribed, fixed, admitted, enrolled, issued, given and passed under this Act.

Saving of rules, &c.

All references made to any enactment hereby repealed, in any Act or Regulation passed, or notification published, subsequently thereto, shall be read as if made to this Act.

References to repealed enactments.

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

Interpretation-clause.

"Judge" means the presiding judicial officer in every civil and criminal Court by whatever title he is designated:

"Judge."

"Subordinate Court" means all Courts subordinate to the High Court, including Courts of Small Causes established under Act No. IX of 1850 or Act No. XI of 1865:

"Subordinate Court."

"Officer subordinate to such Authority," "Subordinate Revenue-officer" and "Revenue-office" include all Courts (other than civil Courts) trying suits under any Act for the time being in force relating to landholders and their tenants or agents.

"Officer subordinate to such Authority."

"Subordinate Revenue-officer."

"Revenue-office."

CHAPTER II.—*Of Advocates, Vakíls and Attorneys.*

4. Every person now or hereafter entered as an Advocate or Vakíl on the roll of any High Court under the Letters Patent constituting such Court shall, notwithstanding anything herein contained, be entitled as such to practise in any Court in British India other than a High Court on whose roll he is not entered, or in any such Court with the permission of the Court, and in any Revenue-office, subject nevertheless to the rules in force relating to the language in which the Court or office is to be addressed by Pleaders or Revenue-agents:

Advocates and Vakíls of chartered High Court.

Provided that no such Vakíl shall be entitled to practise under this section before a Judge of the High Court, Division Court, or High Court exercising original jurisdiction.

5. Every person now or hereafter entered as an Attorney on the roll of any High Court shall, notwithstanding anything herein contained, be entitled as such to practise in any Court of British India other than a High Court established by Royal Charter and in any Revenue-office.

Attorneys of High Court.

CHAPTER III.—*Of Pleaders and Mukhtárs.*

6. The High Court may, from time to time, make rules consistent with this Act—

Power to make rules as to qualification, &c., of pleaders and mukhtárs.

(*a*) for the qualification, admission and certificates of proper persons to be pleaders of the subordinate Courts, and of the revenue-offices situate within the local limits of its appellate jurisdiction, and, in the case of a High Court not established by Royal Charter, of such Court:

(*b*) for the qualification, admission and certificates of proper persons to be mukhtárs of the subordinate Courts, and, in the case of a High Court not established by Royal Charter, of such Court:

(*c*) for the fees to be paid for the examination and admission of such persons; and

(*d*) for their suspension and dismissal.

All such rules shall be published in the local official Gazette and shall thereupon have the force of law; provided that, in the case of rules made by a High Court not established by Royal Charter, such rules have been previously approved by the Local Government.

Publication of rules.

7. On the admission, under section six, of any person as a pleader or mukhtár, the High Court shall cause a certificate, signed by such officer as the Court from time to time appoints in this behalf, to be issued to such person, authorizing him to practise for the period of one year from its date in the Courts and, in the case of a pleader, the offices, specified therein.

Certificates to pleaders and mukhtárs.

At the expiration of such period, the holder of the certificate, if he desires to continue to practise, shall be entitled to have his certificate renewed by the Judge of the District Court within the local limits of whose jurisdiction he then ordinarily practises, or by such officer as the High Court from time to time appoints in this behalf.

On every such renewal, the certificate then in possession of such pleader or mukhtár shall be cancelled and retained by such Judge or officer.

Every certificate so renewed shall be signed by such Judge or officer.

Every Judge or officer so renewing a certificate shall notify such renewal to the High Court.

8. Every pleader holding a certificate issued under section seven, may apply to be enrolled in any Court or office mentioned therein and situate within the local limits of the appellate jurisdiction of the High Court by which he has been admitted, and on being so enrolled, may appear, plead and act in such Court or office.

Pleaders on enrolment may practise in Courts and revenue-offices.

9. Every mukhtár holding a certificate issued under section seven, may apply to be enrolled in any civil or criminal Court mentioned therein and situate within the same limits, and, on being so enrolled, may appear and act in any such civil Court, and may (subject to the provisions of the Code of Criminal Procedure, section 186) appear, plead and act in any such criminal Court.

Mukhtárs on enrolment may practise in Courts.

10. Except as provided by the Code of Civil Procedure, section 37, or any other enactment for the time being in force, no person shall appear, plead or act as a pleader or mukhtár in any Court not established by Royal Charter, unless he holds a certificate issued under section seven and has been enrolled in such Court:

No person to practise as pleader or mukhtár unless qualified.

Provided that persons holding certificates as revenue-agents under this Act in the territories subject to the Lieutenant-Governor of Bengal may, on being enrolled in any Munsif's Court, appear, plead and act in such Court in suits under Bengal Act No. VIII of 1869 (*to amend the procedure in suits between Landlord and Tenant*) or under any other Act for the time being in force, regulating the procedure in suits between landholders and their tenants or agents.

Revenue-agents may appear, plead and act in Munsifs' Courts in suits under Bengal Act VIII of 1869.

11. The High Court may suspend or dismiss any pleader or mukhtár holding a certificate issued under this Act, who is convicted of any criminal offence.

Dismissal of pleader or mukhtár convicted of a criminal offence.

12. The High Court may also, after such enquiry as it thinks fit, suspend or dismiss any pleader or mukhtár holding a certificate as aforesaid, who is guilty of fraudulent or grossly improper conduct in the discharge of his professional duty, or of giving, receiving or retaining commission on remuneration paid to any legal practitioner, or for any other reasonable cause.

Dismissal of High Court pleader or mukhtár guilty of unprofessional conduct.

13. If any such pleader or mukhtár practising in any subordinate Court or in any revenue-office, is charged in such Court or office with any such conduct as aforesaid, the presiding officer shall send him a copy of the charge and also a notice that, on a day to be therein appointed, such charge will be taken into consideration.

Procedure when charge of unprofessional conduct is brought in a subordinate Court or revenue-office.

Such copy and notice shall be served upon the pleader or mukhtár at least ten days before the day so appointed.

On such day or on any subsequent day to which the enquiry may be adjourned, the presiding officer shall receive all evidence properly produced in support of the charge, or by the pleader or mukhtár, and shall proceed to adjudicate on the charge.

If such officer finds the charge established, and considers that the pleader or mukhtár should be suspended or dismissed in consequence, he shall record his finding and the grounds thereof, and shall report the same to the High Court, and the High Court shall proceed to acquit, suspend or dismiss the pleader or mukhtár.

Any Judge or Chief Controlling Revenue-Authority acting under this section may, and, with the previous sanction of the Chief Controlling Revenue-Authority, any subordinate revenue-officer so acting may, pending the investigation and the orders of the High Court, suspend the pleader or mukhtár from practising as such in his Court or office.

Suspension pending investigation.

Every report made to the High Court under this section shall—

(*a*) when made by any Civil Judge other than the District Judge, be made through the Judge;

(*b*) when made by a Magistrate subordinate to the Magistrate of the District, be made through the Magistrate of the District and the Sessions Judge;

(*c*) when made by the Magistrate of the District, be made through the Sessions Judge;

(*d*) when made by any subordinate revenue-officer, be made through the Revenue-Authorities to which he is subordinate.

Every such report shall be accompanied by the opinion of each Judge, Magistrate or Revenue-Authority through whom or which it is made.

Power to call for record in case of acquittal under section 13.

14. The High Court, in any case in which a pleader or mukhtár has been acquitted under section thirteen otherwise than by an order of the High Court, may call for the record and pass such order thereon as it thinks fit.

Report when dismissed mukhtár is also a revenue-agent.

15. Whenever a mukhtár who has been suspended or dismissed by order of the High Court is also a revenue-agent holding a certificate under this Act, the High Court shall forward a report of the case to the Chief Controlling Revenue-Authority.

Such Authority, after making any enquiry which it thinks necessary, may suspend or dismiss him as such revenue-agent.

Power to make rules for mukhtárs on appellate side of High Court.

16. Notwithstanding anything contained in any Letters Patent or in the Code of Civil Procedure, section 37, clause (*a*), any High Court established by Royal Charter may from time to time make rules consistent with this Act—

(*a*) for the qualification, admission, suspension and dismissal of proper persons to be mukhtárs practising on the appellate side of such Court;

(*b*) for the security which they may be required to give for their honesty and good conduct; and

(*c*) as to their powers and duties;

and may prescribe and impose fines for the infringement of such rules not exceeding in any case five hundred rupees; and such fines, when imposed, may be recovered as if they had been imposed in the exercise of the High Court's ordinary original criminal jurisdiction.

CHAPTER IV.—*Of Revenue-Agents.*

Power to make rules as to qualifications, &c., of revenue-agents.

17. The Chief Controlling Revenue-Authority may from time to time make rules consistent with this Act—

(*a*) for the qualification, admission and certificates of proper persons to be revenue-agents;

(*b*) for the fees to be paid for the examination and admission of such persons; and

(*c*) for their suspension and dismissal.

Publication of rules.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

Certificates to revenue-agents.

18. On the admission of any person as a Revenue-agent under section seventeen, the Chief Controlling Revenue-Authority shall cause a certificate, signed by such officer as such Authority from time to time appoints in this behalf, to be issued to such person, authorizing him to practise for the period of one year from its date in such offices as may be specified therein.

At the expiration of such period, the holder of the certificate, if he desires to continue to practise, shall be entitled to have his certificate renewed by the Secretary of the Chief Controlling Revenue-Authority, or by any other officer authorized by such Authority in that behalf.

On every such renewal, the certificate then in the possession of such revenue-agent shall be cancelled and retained by such Secretary or other officer.

Every certificate so renewed shall be signed by such Secretary or other officer.

Every officer so renewing a certificate shall notify the renewal to the Chief Controlling Revenue-Authority.

Enrolment of revenue-agent.

19. Every revenue-agent holding a certificate issued under section eighteen, may apply to be enrolled in any revenue-office mentioned therein and situate within the limits of the territory under the Chief Controlling Revenue-Authority, and, on being so enrolled, may practise in such office as a revenue-agent.

No person to act as agent in revenue-offices, unless qualified.

20. Except as provided by any enactment for the time being in force, no person, other than a pleader duly qualified under the provisions hereinbefore contained, shall practise as a revenue-agent in any revenue-office, unless he holds a certificate issued under section eighteen, and has been enrolled in such office:

Provided that any person duly authorized in this behalf may, with the sanction of the Chief Controlling Revenue-Authority, or of an officer empowered by the Local Government in this behalf, transact all or any business in which his employer may be concerned in any revenue-office:

The sanction mentioned in this section may be general or special, and may at any time be revoked or suspended by such Authority or officer.

Dismissal of revenue-agent convicted of criminal offence.

21. The Chief Controlling Revenue-Authority may suspend or dismiss any revenue-agent holding a certificate issued under this Act, who is convicted of any criminal offence.

Dismissal of revenue-agent guilty of unprofessional conduct.

22. The Chief Controlling Revenue-Authority may also, after making such enquiry as it thinks fit, suspend or dismiss any revenue-agent holding a certificate issued under this Act who is guilty of fraudulent or grossly improper conduct in the discharge of his professional duty, or of giving, receiving or retaining commission on remuneration paid to any legal practitioner, or for any other reasonable cause.

Procedure when revenue-agent is so charged in subordinate office.

23. If any revenue-agent holding a certificate issued under this Act is charged with any such conduct in any office subordinate to the Chief Controlling Revenue-Authority, or in the Court of any Munsif, the officer at the head of such office, or such Munsif, as the case may be, shall send him a copy of the charge and also a notice that, on a day to be therein appointed, such charge will be taken into consideration.

Such copy and notice shall be served upon the person charged at least ten days before the day so appointed. On such day or on any other day to which the enquiry may be adjourned, the officer or Munsif shall receive all evidence properly produced in support of the charge, or by the person charged, and shall proceed to adjudicate on the charge.

If the officer or Munsif finds the charge established and considers that the person charged should be suspended or dismissed in consequence, he shall record his finding, and the grounds thereof, and report the same to the Chief Controlling Revenue-Authority; and such Authority shall proceed to acquit, suspend or dismiss him.

Where any officer acting under this section is subordinate to the Commissioner of a Division, he shall forward the report through such Commissioner, who shall accompany the same with an expression of his own opinion on the case.

Power to Chief Controlling Revenue-Authority to call for record.

24. The Chief Controlling Revenue-Authority, in any case in which a revenue-agent has been acquitted under section twenty-three, otherwise than by an order of the Chief Controlling Revenue-Authority, may call for the record and pass such order thereon as seems fit.

Report to High Court when dismissed revenue-agent is also a mukhtár.

25. Whenever a revenue-agent who has been dismissed or suspended by order of the Chief Controlling Revenue-Authority is also a mukhtár holding a certificate under this Act, the Chief Controlling Revenue-Authority shall forward a report of the case to the High Court by which he was admitted.

Such Court, after making any enquiry which it thinks necessary, may suspend or dismiss him as such mukhtár.

CHAPTER V.—*Of Certificates.*

Fee for certificates.

26. For every certificate, whether original or renewed, issued under this Act, a fee of the amount prescribed therefor in the second schedule hereto annexed, shall be paid by the person entitled to such certificate.

Dismissed practitioners to surrender certificates.

27. When any pleader, mukhtár or revenue-agent is suspended or dismissed under this Act, he shall forthwith deliver up his certificate to the Court, or officer at the head of the office, before or in which he was practising at the time he was so suspended or dismissed, or to any Court or officer to which the High Court or Chief Controlling Revenue-Authority (as the case may be) orders him to deliver the same.

CHAPTER VI.—*Of the Remuneration of Pleaders, Mukhtárs and Revenue-Agents.*

High Court and Chief Controlling Revenue-Authority to fix fees on civil and revenue proceedings.

28. The High Court shall from time to time fix and regulate the fees payable by any party in respect of the fees of his adversary's pleader or vakíl upon all proceedings (*a*) on the appellate side of such Court, (*b*) in the case of a High Court not established by Royal Charter, on its original side, and (*c*) in the subordinate Courts.

The Chief Controlling Revenue-Authority shall from time to time fix and regulate the fees payable upon all proceedings in the revenue-offices by any party in respect of the fees of his adversary's pleader or revenue-agent.

Tables of the fees so fixed shall be published in the local official Gazette.

Exception as to agents mentioned in section 20.

Nothing in this section applies to the agents mentioned in the proviso to section twenty.

Agreements with pleaders, &c.

29. All persons employing pleaders, mukhtárs or revenue-agents shall be at liberty to settle with them by private agreement the remuneration to be paid for their professional services; and it shall not be necessary to specify such agreement in the power under which such pleaders, mukhtárs or revenue-agents for the time being act.

Such agreements shall not be enforced otherwise than by suit.

CHAPTER VII.—*Penalties.*

On persons illegally practising as pleaders, mukhtárs or revenue-agents.

30. Any person who appears, pleads, acts or practises in any Court or office in contravention of the provisions of section ten or section twenty, shall be liable, by order of such Court, or the officer at the head of such office, to a fine not exceeding ten times the amount of the fee required by this Act to be paid for a certificate authorizing him to appear, plead, act or practise in such Court or office, and, in default of payment, to imprisonment in the civil jail for a term which may extend to six months.

He shall also be incapable of maintaining any suit for, or enforcing any lien in respect of, any fee or reward for, or in respect of, anything done, or any disbursement made, by him as pleader or mukhtár or revenue-agent whilst he has been contravening the provisions of either of such sections.

On suspended or dismissed pleader, &c., failing to deliver certificate.

31. Any pleader, mukhtár or revenue-agent failing to deliver up his certificate as required by section twenty-seven, shall be liable, by order of the Court, Authority or officer to which or to whom, or according to whose orders, the delivery should be made, to a fine not exceeding two hundred rupees and, in default of payment, to imprisonment in the civil jail for a term which may extend to three months.

On suspended or dismissed practitioner practising during suspension or after dismissal.

32. Any pleader, mukhtár or revenue-agent who, under the provisions of this Act, has been suspended or dismissed, and who, during such suspension or after such dismissal, practises as a pleader or mukhtár or revenue-agent in any Court or office, shall be liable, by order of such Court, or the officer at the head of such office, to a fine not exceeding five hundred rupees and, in default of payment, to imprisonment in the civil jail for a term which may extend to six months.

Revision of fines.

33. Every order under section thirty, thirty-one or thirty-two shall be subject to revision, by the High Court, where the order has been passed by a subordinate Court, and by the Chief Controlling Revenue-Authority, where the order has been passed by an officer subordinate to such Authority.

CHAPTER VIII.—*Miscellaneous.*

Local Government to appoint examiners.

34. To facilitate the ascertainment of the qualifications respectively mentioned in sections six and seventeen, the Local Government shall from time to time appoint persons to be examiners for the purposes aforesaid, and make regulations for conducting such examinations.

Exemption of High Court practitioners from certain parts of Act.

35. Except as provided by sections four, five, sixteen and twenty-eight, nothing in this Act applies to advocates, vakíls and attorneys admitted and enrolled by any High Court under the Letters Patent by which such Court is constituted, or to mukhtárs practising in such Court.

FIRST SCHEDULE.

(See section 2).

Number and date of enactments.	Title.	Extent of repeal.
Act XX of 1865 ...	To amend the law relating to Pleaders and Mukhtárs.	The whole.
Act XXIX of 1865	To amend the Pleaders, Mukhtárs and Revenue-Agents' Act, 1865.	So much as has not been repealed.
Act IX of 1866 ...	To extend to the Sudder Court of the North-Western Provinces certain provisions of "the Pleaders, Mukhtárs and Revenue Agents' Act, 1865," and of Act No. XXIX of 1865.	The whole.
Act IV of 1876 ...	To authorize Revenue-Agents to practise in certain suits in the Munsifs' Courts of the Lower Provinces of Bengal.	The whole.
Act XVII of 1877	The Panjáb Courts Act, 1877.	Section forty-five.

SECOND SCHEDULE.

(See section 26).

FEES FOR CERTIFICATES.

I.

For a certificate authorizing the holder to practise as a Pleader—

(*a.*) In the High Court and any subordinate Court—rupees fifty :

(*b.*) In any Court of Small Causes in a Presidency-town—rupees twenty-five :

(*c.*) In all other subordinate Courts—rupees twenty-five :

SECOND SCHEDULE—*concluded.*

(*d.*) In the Courts of Subordinate Judges, Munsifs, Magistrates, Assistant Commissioners, Extra Assistant Commissioners and Tahsíldárs, and in Courts of Small Causes outside the Presidency-towns—rupees fifteen :

(*e.*) In the Munsifs' Courts and any Court of first instance not hereinbefore specifically mentioned—rupees five.

II.

For a certificate authorizing the holder to practise as a Mukhtár—

(*f.*) In the High Court and any subordinate Court—rupees twenty-five :

(*g.*) In any Court of Small Causes in a Presidency-town—rupees fifteen :

(*h.*) In all other subordinate Courts—rupees fifteen :

(*i.*) In the Courts of Subordinate Judges, Munsifs, Magistrates, Assistant Commissioners, Extra Assistant Commissioners and Tahsíldárs, and in Courts of Small Causes outside the Presidency Towns—rupees ten :

(*j.*) In the Munsifs' Courts and any Court of first instance not hereinbefore specifically mentioned—rupees five.

III.

For a certificate authorizing the holder to practise as a Revenue-Agent—

(*k*) In the office of the Chief Controlling Revenue-Authority and in any office subordinate to such Authority—rupees fifteen :

(*l*) In the office of a Commissioner and in any office subordinate to a Commissioner—rupees ten :

(*m*) In the office of a Collector and in any office subordinate to a Collector—rupees five.

D. FITZPATRICK,
Secy. to the Govt. of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, FEBRUARY 22, 1879.

☞ Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third publication.]

The following preliminary Report of a Select Committee, together with the Bill as settled by them, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 29th January, 1879 :—

WE, the undersigned Members of the Select Committee to which the Bill to amend the Pleaders, Mukhtárs and Revenue Agents Act, 1865, was referred, have the honour to report that we have considered the Bill and the papers noted in the margin.

From Secretary for Birár to Resident, Haidarábád, No. 10B, dated 19th November, 1878.
„ Secretary to Chief Commissioner, Mysore, No. 7089-18J, dated 25th November, 1878.
Memorandum by Pándit Srikishen, Pleader, Judicial Commissioner's Court, Oudh, dated 30th November, 1878.
From Officiating Chief Secretary to Government, Fort St. George, No. 2440, dated 3rd December, 1878.
„ Secretary to Chief Commissioner, Assam, No. 2296, dated 10th December, 1878.
„ Under Secretary to Government, Bombay, No. 7183, dated 10th December, 1878, and enclosures.
„ Chief Commissioner, Ajmer and Merwára, No. 19, dated 3rd January, 1879.
„ Officiating Secretary to Chief Commissioner, Central Provinces, No. 119-255, dated 9th January, 1879.
Note by the Hon'ble the Chief Justice, High Court, Calcutta, dated 22nd January, 1879.

2. We have deemed it well, instead of adding a fifth Act to the four Acts already in force relating to pleaders, mukhtárs and revenue-agents, to frame a consolidation measure embracing the entire law.

3. We have, at the instance of the Hon'ble the Chief Justice of Bengal, restored in section 16 of the Bill now submitted, the power of the High Courts to make rules for the admission and control of mukhtárs practising on the appellate side of those Courts, which was conferred by section 44 of Act XX of 1865, but which has been held by the Calcutta High Court to have been *ultra vires*.

4. We have made the Bill applicable to the Courts of Small Causes in the Presidency towns, where we understand some such law is needed.

5. We have substituted, for the stamp-duties on certificates prescribed by Act XX of 1865, fees fixed according to the scale which was proposed in the Bill to amend the law relating to stamps and court-fees recently before the Council. The alterations here made are of no substantial importance.

6. We have made several amendments in arrangement and drafting, with a view to clearness and simplicity.

7. We recommend that the Bill now submitted be published.

8. The publication ordered by the Council has been made.

W. STOKES.
F. R. COCKERELL.
T. H. THORNTON.

The 29th January, 1879.

THE LEGAL PRACTITIONERS' BILL, 1879.

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34. Local Government to appoint examiners.
35. Exemption of High Court practitioners from certain parts of Act.

THE FIRST SCHEDULE.—Enactments repealed.
THE SECOND SCHEDULE.—Fees for Certificates.

No. II.

A Bill to Consolidate and amend the law relating to Legal Practitioners.

WHEREAS it is expedient to consolidate and amend the law relating to legal Practitioners, in the Lower Provinces of Bengal, the North-Western Provinces, the Panjáb, Oudh and Assam; and to empower each of the Local Governments of the rest of British India to extend to the territories administered by it such portions of this Act as such Government may think fit; It is hereby enacted as follows:— Preamble.

CHAPTER I.—*Preliminary.*

1. This Act may be called "The Legal Practitioners' Act, 1879:" and shall come into force on the first day of April, 1879. Short title. Commencement of Act.

This section and section two extend to the whole of British India. Local extent.

The rest of this Act extends, in the first instance, only to the territories respectively administered by the Lieutenant-Governors of the Lower Provinces of Bengal, the North-Western Provinces and the Panjáb, and the Chief Commissioners of Oudh and Assam. But any other Local Government may from time to time, by notification in the official Gazette, extend all or any of the provisions of the rest of this Act to the whole or any part of the territories under its administration.

2. On and from the first day of April, 1879, the enactments mentioned in the first schedule hereto annexed shall be repealed to the extent specified therein. Repeal of enactments.

All rules and appointments made, penalties prescribed, fees fixed, persons admitted, names enrolled, certificates issued, sanctions given and orders passed under any enactment hereby repealed shall be deemed to be respectively made, prescribed, fixed, admitted, enrolled, issued, given and passed under this Act. Saving of rules, &c.

All references made to any enactment hereby repealed, in any Act or Regulation passed, or notification published, subsequently thereto, shall be read as if made to this Act. References to repealed enactments.

3. In this Act, unless there be something repugnant in the subject or context— Interpretation-clause.

"Judge" means the presiding judicial officer in every civil and criminal Court by whatever title he is designated: "Judge."

"Subordinate Court" means all Courts subordinate to the High Court, including Courts of Small Causes established under Act No. IX of 1850 or Act No. XI of 1865: "Subordinate Court."

"Officer subordinate to such Authority," "Subordinate Revenue-officer" and "Revenue-office" include all Courts (other than civil Courts) trying suits under any Act for the time being in force relating to landholders and their tenants or agents. "Officer subordinate to such Authority." "Subordinate Revenue-officer." "Revenue-office."

CHAPTER II.—*Of Advocates, Vakíls and Attorneys.*

4. Every person now or hereafter entered as an Advocate or Vakíl on the roll of any High Court under the Letters Patent constituting such Court shall, notwithstanding anything herein contained, be entitled as such to practise in any Court in British India other than a High Court on whose roll he is not entered, or in any such Court with the permission of the Court, and in any Revenue-office, subject nevertheless to the rules in force relating to the language in which the Court or office is to be addressed by Pleaders or Revenue-agents: Advocates and Vakíls of chartered High Court.

Provided that no such Vakíl shall be entitled to practise under this section before a Judge of the High Court, Division Court, or High Court exercising original jurisdiction.

5. Every person now or hereafter entered as an Attorney on the roll of any High Court shall, notwithstanding anything herein contained, be entitled as such to practise in any Court of British India other than a High Court established by Royal Charter and in any Revenue-office. Attorneys of High Court.

CHAPTER III.—*Of Pleaders and Mukhtárs.*

6. The High Court may, from time to time, make rules consistent with this Act— Power to make rules as to qualification, &c., of pleaders and mukhtárs.

(*a*) for the qualification, admission and certificates of proper persons to be pleaders of the subordinate Courts, and of the revenue-offices situate within the local limits of its appellate jurisdiction, and, in the case of a High Court not established by Royal Charter, of such Court:

(*b*) for the qualification, admission and certificates of proper persons to be mukhtárs of the subordinate Courts, and, in the case of a High Court not established by Royal Charter, of such Court:

(*c*) for the fees to be paid for the examination and admission of such persons; and

(*d*) for their suspension and dismissal.

All such rules shall be published in the local official Gazette and shall thereupon have the force of law; provided that, in the case of rules made by a High Court not established by Royal Charter, such rules have been previously approved by the Local Government. Publication of rules.

7. On the admission, under section six, of any person as a pleader or mukhtár, the High Court shall cause a certificate, signed by such officer as the Court from time to time appoints in this behalf, to be issued to such person, authorizing him to practise for the period of one year from its date in the Courts and, in the case of a pleader, the offices, specified therein. Certificates to pleaders and mukhtárs.

At the expiration of such period, the holder of the certificate, if he desires to continue to practise, shall be entitled to have his certificate renewed by the Judge of the District Court within the local limits of whose jurisdiction he then ordinarily practises, or by such officer as the High Court from time to time appoints in this behalf.

On every such renewal, the certificate then in possession of such pleader or mukhtár shall be cancelled and retained by such Judge or officer.

Every certificate so renewed shall be signed by such Judge or officer.

Every Judge or officer so renewing a certificate shall notify such renewal to the High Court,

8. Every pleader holding a certificate issued under section seven, may apply to be enrolled in any Court or office mentioned therein and situate within the local limits of the appellate jurisdiction of the High Court by which he has been admitted, and on being so enrolled, may appear, plead and act in such Court or office. Pleaders on enrolment may practise in Courts and revenue-offices.

9. Every mukhtár holding a certificate issued under section seven, may apply to be enrolled in any civil or criminal Court mentioned therein and situate within the same limits, and, on being so enrolled, may appear and act in any such civil Court, and may (subject to the provisions of the Code of Criminal Procedure, section 186) appear, plead and act in any such criminal Court. Mukhtárs on enrolment may practise in Courts.

10. Except as provided by the Code of Civil Procedure, section 37, or any other enactment for the time being in force, no person shall appear, plead or act as a pleader or mukhtár in any Court not established by Royal Charter, unless he holds a certificate issued under section seven and has been enrolled in such Court: No person to practise as pleader or mukhtár unless qualified.

Provided that persons holding certificates as revenue-agents under this Act in the territories subject to the Lieutenant-Governor of Bengal may, on being enrolled in any Munsif's Court, appear, plead and act in such Court in suits under Revenue-agents may appear, plead and act in Munsifs' Courts in suits under Bengal Act VIII of 1869.

Bengal Act No. VIII of 1869 (*to amend the procedure in suits between Landlord and Tenant*) or under any other Act for the time being in force, regulating the procedure in suits between landholders and their tenants or agents.

Dismissal of pleader or mukhtár convicted of a criminal offence.

11. The High Court may suspend or dismiss any pleader or mukhtár holding a certificate issued under this Act, who is convicted of any criminal offence.

Dismissal of High Court pleader or mukhtár guilty of unprofessional conduct.

12. The High Court may also, after such enquiry as it thinks fit, suspend or dismiss any pleader or mukhtár holding a certificate as aforesaid, who is guilty of fraudulent or grossly improper conduct in the discharge of his professional duty, or of giving, receiving or retaining commission on remuneration paid to any legal practitioner, or for any other reasonable cause.

Procedure when charge of unprofessional conduct is brought in a subordinate Court or revenue-office.

13. If any such pleader or mukhtár practising in any subordinate Court or in any revenue-office, is charged in such Court or office with any such conduct as aforesaid, the presiding officer shall send him a copy of the charge and also a notice that, on a day to be therein appointed, such charge will be taken into consideration.

Such copy and notice shall be served upon the pleader or mukhtár at least ten days before the day so appointed.

On such day or on any subsequent day to which the enquiry may be adjourned, the presiding officer shall receive all evidence properly produced in support of the charge, or by the pleader or mukhtár, and shall proceed to adjudicate on the charge.

If such officer finds the charge established, and considers that the pleader or mukhtár should be suspended or dismissed in consequence, he shall record his finding and the grounds thereof, and shall report the same to the High Court, and the High Court shall proceed to acquit, suspend or dismiss the pleader or mukhtár.

Suspension pending investigation.

Any Judge or Chief Controlling Revenue-Authority acting under this section may, and, with the previous sanction of the Chief Controlling Revenue-Authority, any subordinate revenue-officer so acting may, pending the investigation and the orders of the High Court, suspend the pleader or mukhtár from practising as such in his Court or office.

Every report made to the High Court under this section shall—

(*a*) when made by any Civil Judge other than the District Judge, be made through the Judge;

(*b*) when made by a Magistrate subordinate to the Magistrate of the District, be made through the Magistrate of the District and the Sessions Judge;

(*c*) when made by the Magistrate of the District, be made through the Sessions Judge;

(*d*) when made by any subordinate revenue-officer, be made through the Revenue-Authorities to which he is subordinate.

Every such report shall be accompanied by the opinion of each Judge, Magistrate or Revenue-Authority through whom or which it is made.

Power to call for record in case of acquittal under section 13.

14. The High Court, in any case in which a pleader or mukhtár has been acquitted under section thirteen otherwise than by an order of the High Court, may call for the record and pass such order thereon as it thinks fit.

Report when dismissed mukhtár is also a revenue-agent.

15. Whenever a mukhtár who has been suspended or dismissed by order of the High Court is also a revenue-agent holding a certificate under this Act, the High Court shall forward a report of the case to the Chief Controlling Revenue-Authority.

Such Authority, after making any enquiry which it thinks necessary, may suspend or dismiss him as such revenue-agent.

Power to make rules for mukhtárs on appellate side of High Court.

16. Notwithstanding anything contained in any Letters Patent or in the Code of Civil Procedure, section 37, clause (*a*), any High Court established by Royal Charter may from time to time make rules consistent with this Act—

(*a*) for the qualification, admission, suspension and dismissal of proper persons to be mukhtárs practising on the appellate side of such Court;

(*b*) for the security which they may be required to give for their honesty and good conduct; and

(*c*) as to their powers and duties;

and may prescribe and impose fines for the infringement of such rules not exceeding in any case five hundred rupees; and such fines, when imposed, may be recovered as if they had been imposed in the exercise of the High Court's ordinary original criminal jurisdiction.

CHAPTER IV.—*Of Revenue-Agents.*

Power to make rules as to qualifications, &c., of revenue-agents.

17. The Chief Controlling Revenue-Authority may from time to time make rules consistent with this Act—

(*a*) for the qualification, admission and certificates of proper persons to be revenue-agents;

(*b*) for the fees to be paid for the examination and admission of such persons; and

(*c*) for their suspension and dismissal.

Publication of rules.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

Certificates to revenue-agents.

18. On the admission of any person as a Revenue-agent under section seventeen, the Chief Controlling Revenue-Authority shall cause a certificate, signed by such officer as such Authority from time to time appoints in this behalf, to be issued to such person, authorizing him to practise for the period of one year from its date in such offices as may be specified therein.

At the expiration of such period, the holder of the certificate, if he desires to continue to practise, shall be entitled to have his certificate renewed by the Secretary of the Chief Controlling Revenue-Authority, or by any other officer authorized by such Authority in that behalf.

On every such renewal, the certificate then in the possession of such revenue-agent shall be cancelled and retained by such Secretary or other officer.

Every certificate so renewed shall be signed by such Secretary or other officer.

Every officer so renewing a certificate shall notify the renewal to the Chief Controlling Revenue-Authority.

Enrolment of revenue-agent.

19. Every revenue-agent holding a certificate issued under section eighteen, may apply to be enrolled in any revenue-office mentioned therein and situate within the limits of the territory under the Chief Controlling Revenue-Authority, and, on being so enrolled, may practise in such office as a revenue-agent.

No person to act as agent in revenue-offices, unless qualified.

20. Except as provided by any enactment for the time being in force, no person, other than a pleader duly qualified under the provisions hereinbefore contained, shall practise as a revenue-agent in any revenue-office, unless he holds a certificate issued under section eighteen, and has been enrolled in such office:

Provided that any person duly authorized in this behalf may, with the sanction of the Chief Controlling Revenue-Authority, or of an officer empowered by the Local Government in this behalf, transact all or any business in which his employer may be concerned in any revenue-office:

The sanction mentioned in this section may be general or special, and may at any time be revoked or suspended by such Authority or officer.

Dismissal of revenue-agent convicted of criminal offence.

21. The Chief Controlling Revenue-Authority may suspend or dismiss any revenue-agent holding a certificate issued under this Act, who is convicted of any criminal offence.

Dismissal of revenue-agent guilty of unprofessional conduct.

22. The Chief Controlling Revenue-Authority may also, after making such enquiry as it thinks fit, suspend or dismiss any revenue-agent holding a certificate issued under this Act who is guilty of fraudulent or grossly improper conduct in the discharge of his professional duty, or of giving, receiving or retaining commission on remuneration paid to any legal practitioner, or for any other reasonable cause.

Procedure when revenue-agent is so charged in subordinate office.

23. If any revenue-agent holding a certificate issued under this Act is charged with any such conduct in any office subordinate to the Chief Controlling Revenue-Authority, or in the Court of any Munsif, the officer at the head of such office, or such Munsif, as the case may be, shall send him a copy of the charge and also a notice that, on a day to be therein appointed, such charge will be taken into consideration.

Such copy and notice shall be served upon the person charged at least ten days before the day so appointed. On such day or on any other day to which the enquiry may be adjourned, the officer or Munsif shall receive all evidence properly produced in support of the charge, or by the person charged, and shall proceed to adjudicate on the charge.

If the officer or Munsif finds the charge established and considers that the person charged should be suspended or dismissed in consequence, he shall record his finding, and the grounds thereof, and report the same to the Chief Controlling Revenue-Authority; and such Authority shall proceed to acquit, suspend or dismiss him.

Where any officer acting under this section is subordinate to the Commissioner of a Division, he shall forward the report through such Commissioner, who shall accompany the same with an expression of his own opinion on the case.

Power to Chief Controlling Revenue-Authority to call for record.

24. The Chief Controlling Revenue-Authority, in any case in which a revenue-agent has been acquitted under section twenty-three, otherwise than by an order of the Chief Controlling Revenue-Authority, may call for the record and pass such order thereon as seems fit.

Report to High Court when dismissed revenue-agent is also a mukhtár.

25. Whenever a revenue-agent who has been dismissed or suspended by order of the Chief Controlling Revenue-Authority is also a mukhtár holding a certificate under this Act, the Chief Controlling Revenue-Authority shall forward a report of the case to the High Court by which he was admitted.

Such Court, after making any enquiry which it thinks necessary, may suspend or dismiss him as such mukhtár.

CHAPTER V.—*Of Certificates.*

Fee for certificates.

26. For every certificate, whether original or renewed, issued under this Act, a fee of the amount prescribed therefor in the second schedule hereto annexed, shall be paid by the person entitled to such certificate.

Dismissed practitioners to surrender certificates.

27. When any pleader, mukhtár or revenue-agent is suspended or dismissed under this Act, he shall forthwith deliver up his certificate to the Court, or officer at the head of the office, before or in which he was practising at the time he was so suspended or dismissed, or to any Court or officer to which the High Court or Chief Controlling Revenue-Authority (as the case may be) orders him to deliver the same.

CHAPTER VI.—*Of the Remuneration of Pleaders, Mukhtárs and Revenue-Agents.*

High Court and Chief Controlling Revenue-Authority to fix fees on civil and revenue proceedings.

28. The High Court shall from time to time fix and regulate the fees payable by any party in respect of the fees of his adversary's pleader or vakíl upon all proceedings (*a*) on the appellate side of such Court, (*b*) in the case of a High Court not established by Royal Charter, on its original side, and (*c*) in the subordinate Courts.

The Chief Controlling Revenue-Authority shall from time to time fix and regulate the fees payable upon all proceedings in the revenue-offices by any party in respect of the fees of his adversary's pleader or revenue-agent.

Tables of the fees so fixed shall be published in the local official Gazette.

Exception as to agents mentioned in section 20.

Nothing in this section applies to the agents mentioned in the proviso to section twenty.

Agreements with pleaders, &c.

29. All persons employing pleaders, mukhtárs or revenue-agents shall be at liberty to settle with them by private agreement the remuneration to be paid for their professional services; and it shall not be necessary to specify such agreement in the power under which such pleaders, mukhtárs or revenue-agents for the time being act.

Such agreements shall not be enforced otherwise than by suit.

CHAPTER VII.—*Penalties.*

On persons illegally practising as pleaders, mukhtárs or revenue-agents.

30. Any person who appears, pleads, acts or practises in any Court or office in contravention of the provisions of section ten or section twenty, shall be liable, by order of such Court, or the officer at the head of such office, to a fine not exceeding ten times the amount of the fee required by this Act to be paid for a certificate authorizing him to appear, plead, act or practise in such Court or office, and, in default of payment, to imprisonment in the civil jail for a term which may extend to six months.

He shall also be incapable of maintaining any suit for, or enforcing any lien in respect of, any fee or reward for, or in respect of, anything done, or any disbursement made, by him as pleader or mukhtár or revenue-agent whilst he has been contravening the provisions of either of such sections.

On suspended or dismissed pleader, &c., failing to deliver certificate.

31. Any pleader, mukhtár or revenue-agent failing to deliver up his certificate as required by section twenty-seven, shall be liable, by order of the Court, Authority or officer to which or to whom, or according to whose orders, the delivery should be made, to a fine not exceeding two hundred rupees and, in default of payment, to imprisonment in the civil jail for a term which may extend to three months.

On suspended or dismissed practitioner practising during suspension or after dismissal.

32. Any pleader, mukhtár or revenue-agent who, under the provisions of this Act, has been suspended or dismissed, and who, during such suspension or after such dismissal, practises as a pleader or mukhtár or revenue-agent in any Court or office, shall be liable, by order of such Court, or the officer at the head of such office, to a fine not exceeding five hundred rupees and, in default of payment, to imprisonment in the civil jail for a term which may extend to six months.

Revision of fines.

33. Every order under section thirty, thirty-one or thirty-two shall be subject to revision, by the High Court, where the order has been passed by a subordinate Court, and by the Chief Controlling Revenue-Authority, where the order has been passed by an officer subordinate to such Authority.

CHAPTER VIII.—*Miscellaneous.*

Local Government to appoint examiners.

34. To facilitate the ascertainment of the qualifications respectively mentioned in sections six and seventeen, the Local Government shall from time to time appoint persons to be examiners for the purposes aforesaid, and make regulations for conducting such examinations.

Exemption of High Court practitioners from certain parts of Act.

35. Except as provided by sections four, five, sixteen and twenty-eight, nothing in this Act applies to advocates, vakíls and attorneys admitted and enrolled by any High Court under the Letters Patent by which such Court is constituted, or to mukhtárs practising in such Court.

FIRST SCHEDULE.

(See section 2).

Number and date of enactments	Title	Extent of repeal.
Act XX of 1865	To amend the Law relating to Pleaders and Mukhtárs.	The whole.
Act XXIX of 1865	To amend the Pleaders, Mukhtárs and Revenue-Agents' Act, 1865.	So much as has not been repealed.
Act IX of 1866	To extend to the Sudder Court of the North-Western Provinces certain provisions of "the Pleaders, Mukhtárs and Revenue-Agents' Act, 1865" and of Act No. XXIX of 1865.	The whole.
Act IV of 1876	To authorize Revenue-Agents to practise in certain Courts in the Mufassil Courts of the lower Provinces of Bengal.	The whole.
Act XVII of 1877	The Panjáb Courts Act, 1877.	Section forty-five.

SECOND SCHEDULE.

(See section 29).

FEES FOR CERTIFICATES.

I.

For a certificate authorizing the holder to practise as a Pleader—

(*a*.) In the High Court and any subordinate Court—rupees fifty :

(*b*.) In any Court of Small Causes in a Presidency-town—rupees twenty-five :

(*c*.) In all other subordinate Courts—rupees twenty-five :

(*d*.) In the Courts of Subordinate Judges, Munsifs, Magistrates, Assistant Commissioners, Extra Assistant Commissioners and Tahsildárs, and in Courts of Small Causes outside the Presidency-towns—rupees fifteen :

(*e*.) In the Munsifs' Courts and any Court of first instance not hereinbefore specifically mentioned—rupees five.

II.

For a certificate authorizing the holder to practise as a Mukhtár—

(*f*.) In the High Court and any subordinate Court—rupees twenty-five :

(*g*.) In any Court of Small Causes in a Presidency-town—rupees fifteen :

(*h*.) In all other subordinate Courts—rupees fifteen :

(*i*.) In the Courts of Subordinate Judges, Munsifs, Magistrates, Assistant Commissioners, Extra Assistant Commissioners and Tahsildárs, and in Courts of Small Causes outside the Presidency Towns—rupees ten :

(*j*.) In the Munsifs' Courts and any Court of first instance not hereinbefore specifically mentioned—rupees five.

III.

For a certificate authorizing the holder to practise as a Revenue-Agent—

(*k*.) In the office of the Chief Controlling Revenue-Authority and in any office subordinate to such Authority—rupees fifteen :

(*l*.) In the office of a Commissioner and in any office subordinate to a Commissioner—rupees ten :

(*m*.) In the office of a Collector and in any office subordinate to a Collector—rupees five.

D. FITZPATRICK,
Secy. to the Govt. of India.

[First publication.]

The following further Report of a Select Committee, together with the Bill as settled by them, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 19th of February, 1879 :—

WE, the undersigned Members of the Select Committee to which the Bill to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques was referred, have considered the Bill and the papers noted in the margin, and have the honour to present this further Report.

From Secretary to Chief Commissioner, Mysore, No. 3193—4 J, dated 26th July, 1878.
„ Acting Under Secretary to Government of Bombay, No. 4405, dated 30th July, 1878.
„ Assistant Secretary to Chief Commissioner, Central Provinces, No. 3012—147, dated 31st July, 1878.
„ Officiating Chief Commissioner, Ajmer and Merwára, No. 500, dated 5th August, 1878, and enclosure.
„ Under Secretary to Government of Bengal, No. 1745, dated 13th August, 1878.
„ Acting Under Secretary to Government, Bombay, No. 4792, dated 17th August, 1878, and enclosures.
„ Secretary to Chief Commissioner, Mysore, No. 3765—6, dated 15th August, 1878, and enclosure.
„ Secretary to Government, North-Western Provinces and Oudh, No. 626 A, dated 24th August, 1878, and enclosures.
„ Junior Secretary to Chief Commissioner, British Burma, No. 1440—51, dated 28th September, 1878, and enclosures.
„ Under Secretary to Government, Bombay, No. 6570, dated 15th November, 1878, and enclosure.
Note by Sir Richard Garth, Chief Justice, High Court, Calcutta, dated 21st November, 1878.
Remarks on the above note by A. Phillips, Esq., dated 30th November, 1878.
From Secretary to Government, Panjáb, No. 4404, dated 23rd December, 1878, and enclosures.
„ Government of Bengal, No. 260—24 M, dated 1st February, 1879, and enclosures.
„ Government of Bombay, No. 838, dated 6th February, 1879, and enclosures.

2. We have carefully considered the arguments urged on the one side by the learned Chief Justice of Bengal and the Bank of Bengal for the immediate application of the measure in its entirety to hundís, and, on the other side, by the Government of the Panjáb for the total exclusion of hundís from any part of the measure. We have come to the conclusion that the Bill should in this respect be left substantially as it stands. Admitting with the Chief Justice that one main principle of Indian codification is to reconcile and assimilate, as far as possible, the Native and European law on each subject, we would point out that this principle must be applied so as to produce as little friction as possible, and we feel assured that any sudden abolition of the numerous local usages (there is no general custom) as to hundís, uncertain and undefined as they often are, would cause much and justifiable dissatisfaction among Native bankers and merchants in certain parts of the country. But we believe that the effect of the Bill, if passed with a saving of the local usages in question, will be, not as the Chief Justice fears, to stereotype and perpetuate these usages, but to induce the Native mercantile community gradually to discard them for the corresponding rules contained in the Bill. The desirable uniformity of mercantile usage will thus be brought about without any risk of causing hardship to Native bankers and merchants. How long this change will take, it is of course impossible to prophesy. But the Bank of Bengal has supplied evidence that the Native usages as to negotiable paper have of recent years been greatly changing, and that the tendency is to assimilate them more and more to the European custom.

3. We do not share the apprehension of the Bank of Bengal that the recognition of Native usages would result in large withdrawal of European capital from operations in Native bills. For in this respect the Bill simply states the law as it stands. Such usages are now and have always been recognized by our Courts in all parts of India:* but the Bank itself admits that, for upwards of seventy years, its business in hundís has invariably been conducted according to the same laws and usages as apply to European bills, and that, with one exception (the alleged duty of the holder of a dishonoured hundí to exhaust the acceptor before having recourse to the drawer or endorser) Natives have made no difficulty about conforming to the Bank's requirements. It is, we understand, the practice of the Bank and, probably, of other large European purchasers of hundís to notify that they will not be bound by any local usage which contravenes the English law as to bills of exchange. Though the Bill should pass in its present form, this practice will remain legal and unaffected. It operates of course to bind only the seller to waive a defence which he might otherwise have made. But the other parties to the hundí are practically precluded from setting up any such usage by the knowledge that if they did so their credit would be destroyed by refusal of the Bank to buy hundís on which their names appear.

4. To exclude totally (as the Panjáb Government propose) hundís from any part of the Bill would be to render the proposed legislation to a great extent inoperative, and would probably result in withdrawal of the Bill. Considering the fact that the carrying on of the internal trade of India is becoming more and more dependent on English capital, and that the use in the Mufassal of bills in the English form is therefore largely increasing, we think that such withdrawal would be highly inexpedient. We are supported in this opinion by the fact that the Local Governments of Bengal, Bombay, the North-Western Provinces and Ajmer have all reported in favour of the Bill; that the Chambers of Commerce at Calcutta, Madras and Bombay, the Bank of Bombay, and the Calcutta Trades Association, have done the same; and that the Directors of the Bank of Bengal bear testimony as to the ability with which it was framed by Mr. Phillips.

5. Turning now to the details of the Bill, we have, in the first place, expressly saved the provisions of the Indian Paper Currency Act, 1871, section 21, which prohibits the issue of private bills or notes payable to bearer on demand.

* See, for example, 1 Suth. W. R. 75: 2 *ibid.* 214: 6 *ibid.* 301: 2 Hyde 259: 3 Beng. A. C. 198: 7 Beng. 276, 289, 481, 687: 9 Beng. Appendix I: 2 Sevestre 621, n.: N. W. P. 1868, p. 268: Perry 296: 6 Bomb. O. C. J. 24: 7 Bomb. O. C. J. 137, 140: 12 Bomb. 113.

6. We have struck out from section 16 the words "the whole or any part of," as they might have been taken to imply that there may be a special indorsement expressly directing payment of part of the amount mentioned in the instrument.

7. Section 21 was taken from the Law Commissioners' draft, and deals with a promissory note signed by two persons, and shewing that one of them subscribes only to an alternative liability. We think it very doubtful whether such an informal instrument is a promissory note at all, and for this and other reasons we have omitted the section.

8. We have also omitted section 33, as the matter appears to us to be sufficiently provided for by the Indian Contract Act; for the same reason we have omitted the first half of section 43.

9. We have omitted, as unlikely to be practically useful, sections 55 and 56, which provide for the delivery without indorsement, but with intent to transfer title, of bills payable to the order of a specified person or to a specified person or order.

10. We have omitted section 59, as the matter is sufficiently covered by the preceding section.

11. We do not think that the Bill should deal with collateral agreements, and have therefore struck out section 66.

12. We have amended the section (73, now 67) as to the drawee's term for deliberation. It now provides that the holder may allow the drawee twenty-four hours (exclusive of public holidays) to consider whether he will accept the Bill.

13. We think that, in order to charge the drawer of a cheque, the holder should only be bound to present it at the bank on which it is drawn before the relation between the drawer and the banker has been altered to the prejudice of the drawer. We have altered section 82 accordingly.

14. We have omitted from section 97 the explanation relating to material alterations.

15. We have made some changes in wording and arrangement.

16. The Bill No. III and the second report of the Select Committee have been published in English in all the local Gazettes except those for Assam and Rájputána. Publication of the Bill and report in the vernacular has been reported only by the Governments of Madras, Bengal and the North-Western Provinces and Oudh and the Chief Commissioner of the Central Provinces.

17. With the exception of our Hon'ble Colleague Mr. Morgan, we think that the Bill might now be passed as amended. Mr. Morgan would omit the clause saving local usages as to hundís. In other respects he approves of the Bill. We recommend that its further consideration be stayed until the new Law Commission has reported thereon. Meanwhile, we think the Bill, as now amended, should be published with this report in the *Gazette of India*.

WHITLEY STOKES.
G. C. PAUL.
G. H. P. EVANS.
F. R. COCKERELL.

CALCUTTA,
The 19th February, 1879.

Although I think that this Bill is, on the whole, a very good one, I cannot approve of the recognition which it accords to local usages relating to hundís. From a careful consideration of the papers which have been received with reference to the Bill, and from my own experience as regards the existing practice regarding hundís, I do not believe that there are any usages which call for special recognition at the hands of the legislature, and I think that the proposed recognition may put an arm into the hands of those who are dishonestly disposed, which they do not at present possess.

E. C. MORGAN.

No. IV.

THE NEGOTIABLE INSTRUMENTS BILL, 1879.

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SCHEDULE.

No. IV.

A Bill to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques.

Preamble. WHEREAS it is expedient to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title. 1. This Act may be called "The Negotiable Instruments Act, 1879:"

Local extent. It extends to the whole of British India; but nothing herein contained affects

Saving of usages relating to hundís, &c. any local usage relating to any instrument in an oriental language or affects the Indian Paper Currency Act, 1871, section twenty-one:

Commencement. And it shall come into force on the first day of January, 1880.

Repeal of enactments. 2. On and from that day the enactments specified in the schedule hereto annexed shall be repealed to the extent mentioned in the third column thereof.

Interpretation clause. 3. In this Act—

"Banker." "Banker" includes also persons or a corporation or company acting as bankers, and

"Notary Public." "Notary Public" includes also any officer appointed by the Governor General in Council to perform the functions of a Notary Public under this Act.

CHAPTER II.

OF NOTES, BILLS AND CHEQUES.

Promissory Note. 4. A promissory note is an instrument in writing (not being a bank note or a currency note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

Illustrations.

A signs instruments in the following terms:—

(*a*) "I promise to pay B or order Rs. 500."

(*b*) "I acknowledge myself to be indebted to B in Rs. 1,000 to be paid on demand, for value received."

(*c*) "Mr. B, I O U Rs. 1,000."

(*d*) "I promise to pay B Rs. 500 and all other sums which shall be due to him."

(*e*) "I promise to pay B Rs. 500, first deducting thereout any money which he may owe me."

(*f*) "I promise to pay B Rs. 500 seven days after my marriage with C."

(*g*) "I promise to pay B Rs. 500 on D's death, provided D leaves me enough to pay that sum."

(*h*) "I promise to pay B Rs. 500 and to deliver to him my black horse on 1st January next."

The instruments respectively marked (*a*), and (*b*) are promissory notes. The instruments respectively marked (*c*), (*d*), (*e*), (*f*), (*g*) and (*h*) are not promissory notes.

Bill of exchange. 5. A bill of exchange is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

Cheque. 6. A cheque is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand.

"Drawer." "Drawee." 7. The maker of a bill of exchange or cheque is called the "drawer;" the person thereby directed to pay is called the "drawee."

When the bill gives the name of any person in

"Drawee in case of need." addition to the drawee to be resorted to in case of need, such person is called a "drawee in case of need."

After the drawee of a bill has signed his assent

"Acceptor." upon the bill, or if there are more parts thereof than one, upon one of such parts, and delivered the same, or given notice of such signing to the holder or to some person on his behalf, he is called the "acceptor."

When acceptance is refused and the bill is

"Acceptor for honour." protested for non-acceptance, and any person accepts it *supra protest* for honour of the drawer or of any one of the indorsers, such person is called an "acceptor for honour."

The person named in the instrument, to whom or

"Payee." to whose order the money is by the instrument directed to be paid, is called the "payee."

"Holder." 8. The "holder" of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto.

Where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.

"Holder in due course." 9. "Holder in due course" means any person who became the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or indorsee thereof, if payable to, or to the order of, a payee, for consideration before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

"Payment in due course." 10. "Payment in due course" means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned.

Inland instrument. 11. A promissory note, bill of exchange or cheque drawn or made in British India, and made payable in, or drawn upon any person resident in, British India shall be deemed to be an inland instrument.

Foreign instrument. 12. Any such instrument not so drawn, made or made payable shall be deemed to be a foreign instrument.

Negotiable instrument. 13. A "negotiable instrument" means a promissory note, bill of exchange or cheque expressed to be payable to a specified person or his order, or to the order of a specified person, or to the bearer thereof, or to a specified person or the bearer thereof.

Negotiation. 14. When a promissory note, bill of exchange or cheque is transferred to any person, so as to constitute that person the holder thereof, the instrument is said to be negotiated.

Indorsement. 15. When the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the "indorser."

Indorsement "in blank" and "in full." 16. If the indorser signs his name only, the indorsement is said to be "in blank," and if he adds a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person, the

"Indorsee." indorsement is said to be "in full;" and the person so specified is called the "indorsee" of the instrument.

Ambiguous instruments. 17. Where an instrument may be construed either as a promissory note or bill of exchange, the holder may at his election treat it as either, and the instrument shall be thenceforward treated accordingly.

Where amount is stated differently in figures and words. 18. If the amount undertaken or ordered to be paid is stated differently in figures and in words, the amount stated in words shall be the amount undertaken or ordered to be paid.

19. A promissory note or bill of exchange, in which no time for payment is specified, and a cheque are payable on demand.

Instruments payable on demand.

20. Where a stamped paper, which is intended to be completed as a negotiable instrument, is signed and delivered by a competent person as maker, drawer, acceptor or indorser, the holder thereof may complete the same by filling up any blanks therein, and the person so signing shall be liable upon such instrument, in the capacity in which he signed the same, for any amount which may be specified therein not exceeding the amount covered by the stamp thereon: provided that as between the person delivering and the person receiving the instrument nothing in excess of the amount intended by them to be paid shall be recovered.

Blank stamped instruments.

Illustration.

A stamped paper intended to be completed as a negotiable instrument is made payable to " or order:" the holder of such instrument may fill up the blank with his own name, or that of any other person.

21. In a promissory note or bill of exchange the expressions " at sight" and " on presentment" mean on demand. The expression " after sight" means, in a promissory note, after presentment for sight, and in a bill of exchange, after acceptance or protest for non-acceptance.

" At sight."
" On presentment."
" After sight."

22. The maturity of a promissory note or bill of exchange is the date at which it falls due.

" Maturity."

Every promissory note or bill of exchange which is not expressed to be payable on demand, at sight, or on presentment, is at maturity on the third day after the day on which it is expressed to be payable.

Days of grace.

23. In calculating the date at which a promissory note or bill of exchange, made payable a stated number of months after date or after sight, or after a certain event, is at maturity, the period stated shall be held to terminate on the day of the month which corresponds with the day on which the instrument is dated, or presented for acceptance or sight or protested for non-acceptance, or the event happens, or, where the instrument is a bill of exchange made payable a stated number of months after sight and has been accepted for honour, with the day on which it was so accepted. If the month in which the period would terminate has no corresponding day, the period shall be held to terminate on the last day of such month.

Calculating maturity of bill or note payable so many months after date or sight.

Illustrations.

(*a*) A negotiable instrument dated 29th January 1878 is made payable at one month after date. The instrument is at maturity on the third day after the 28th February 1878.

(*b*) A negotiable instrument dated 30th August 1878 is made payable three months after date. The instrument is at maturity on the 3rd December 1878.

(*c*) A promissory note or bill of exchange, dated 31st August 1878, is made payable three months after date. The instrument is at maturity on the 3rd December 1878.

24. In calculating the date at which a promissory note or bill of exchange, made payable a certain number of days after date or after sight or after a certain event, is at maturity, the day of the date, or of presentment for acceptance or sight, or of protest for non-acceptance, or on which the event happens, shall be excluded.

Calculating maturity of bill or note payable so many days after date or sight.

25. When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business day.

When day of maturity is a holiday.

Explanation.—The expression " public holiday" includes Sundays: New-Year's day, Christmas day: if either of such days falls on a Sunday, the next following Monday: Good-Friday; and any other day declared by the Local Government, by notification in the official Gazette, to be a public holiday.

26. Until the contrary is proved, the following presumptions shall be made:—

Presumptions as to negotiable instruments;

(*a*) that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration:

of consideration;

(*b*) that every negotiable instrument bearing a date was made or drawn on such date:

as to date;

(*c*) that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity:

as to time of acceptance;

(*d*) that every transfer of a negotiable instrument was made before its maturity:

as to time of transfer;

(*e*) that the endorsements appearing upon a negotiable instrument were made in the order in which they appear thereon:

as to order of endorsements;

(*f*) that a lost promissory note, bill of exchange or cheque was duly stamped:

as to stamp;

(*g*) that the holder of a negotiable instrument is a holder in due course: provided that where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burthen of proving that the holder is a holder in due course lies upon him.

that holder is a holder in due course.

CHAPTER III.

PARTIES TO NOTES, BILLS AND CHEQUES.

27. Every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, indorsement, delivery and negotiation of a promissory note, bill of exchange or cheque.

Capacity to make, &c., promissory notes, &c.

A minor may draw, indorse, deliver and negotiate such instruments so as to bind all parties except himself.

Minor.

Nothing herein contained shall be deemed to empower a corporation to make, indorse or accept such instruments except in cases in which, under

the law for the time being in force, they are so empowered.

28. Every person capable of binding himself or of being bound, as mentioned in section 27, may so bind himself or be bound by a duly authorized agent acting in his name.

Agency.

A general authority to transact business and to receive and discharge debts does not confer upon an agent the power of accepting or indorsing bills of exchange so as to bind his principal.

An authority to draw bills of exchange does not of itself import an authority to indorse.

29. An agent who signs his name to a promissory note, bill of exchange or cheque, without indicating thereon that he signs as agent, or that he does not intend thereby to incur personal responsibility, is liable personally on the instrument, except to those who induced him to sign upon the belief that the principal only would be held liable.

Liability of agent signing.

30. A legal representative of a deceased person who signs his name to a promissory note, bill of exchange or cheque, is liable personally thereon unless he expressly limits his liability to the extent of the assets received by him as such.

Liability of legal representative signing.

31. Where there are several drawees of a bill of exchange who are not partners, each of them can accept it for himself, but none of them can accept it for another without his authority.

Acceptance by several drawees not partners.

32. The drawer of a bill of exchange or cheque is bound, in case of dishonour by the drawee or acceptor thereof, to compensate the holder for any loss or damage caused thereby, provided due notice of dishonour has been given to, or received by, the drawer as hereinafter provided.

Liability of drawer.

33. The drawee of a cheque having sufficient funds of the drawer in his hands properly applicable to the payment of such cheque, must pay the cheque when duly required so to do, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default.

Liability of drawee of cheque.

34. In the absence of a contract to the contrary, the maker of a promissory note and the acceptor before maturity of a bill of exchange, are bound to pay the amount thereof at maturity according to the apparent tenor of the note or acceptance respectively, and the acceptor of a bill of exchange at or after maturity is bound to pay the amount thereof to the holder on demand.

Liability of maker of note and acceptor of bill.

In default of such payment as aforesaid, such maker or acceptor is bound to compensate any party to the note or bill for any loss or damage sustained by him, and caused by such default.

The provisions of this section are subject to those of sections 27, 29, 48, 49, 50, 62, 68, 72, 73 and 86.

35. No person except the drawee of a bill of exchange, or all or some of several joint drawees, or a person named therein as a drawee in case of need, or an acceptor for honour, can bind himself by an acceptance.

Only drawee can be acceptor except in need or for honour.

36. In the absence of a contract to the contrary, whoever indorses and delivers a negotiable instrument before maturity, without, in such indorsement, expressly excluding or making conditional his own liability, is bound thereby to every subsequent holder, in case of dishonour by the drawee, acceptor or maker, to compensate such holder for any loss or damage caused to him by such dishonour, provided due notice of dishonour has been given to, or received by, such indorser as hereinafter provided.

Liability of indorser.

Every indorser after dishonour is liable as upon an instrument payable on demand.

The provisions of this section are subject to those of sections 27, 29, 48, 49, 50, 59, 60, 62, 65, 66, 68, 72, 76, 86, 87, 88, 90, 91 and 101, clause (*a*).

37. Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied.

Liability of prior parties to holder in due course.

38. The maker of a promissory note or cheque, the drawer of a bill of exchange until acceptance, and the acceptor are, in the absence of a contract to the contrary, respectively liable thereon as principal debtors, and the other parties thereto are liable thereon as sureties for the maker, drawer or acceptor, as the case may be.

Maker, drawer and acceptor principals.

39. As between the parties so liable as sureties, each prior party is, in the absence of a contract to the contrary, also liable thereon as a principal debtor in respect of each subsequent party.

Prior party a principal in respect of each subsequent party.

Illustration.

A draws a bill payable to his own order on B, who accepts. A afterwards indorses the bill to C, C to D, and D to E. As between E and B, B is the principal debtor, and A, C and D are his sureties. As between E and A, A is the principal debtor, and C and D are his sureties. As between E and C, C is the principal debtor and D is his surety.

40. When the holder of an accepted bill of exchange enters into any contract with the acceptor which under section 134 or 135 of the Indian Contract Act, 1872, would discharge the other parties, the holder may expressly reserve his right to charge the other parties, and in such case they are not discharged.

Suretyship.

41. Where the holder of a negotiable instrument, without the consent of the indorser, destroys or impairs the indorser's remedy against a prior party, the indorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity.

Discharge of indorser's liability.

Illustration.

A is the holder of a bill of exchange made payable to the order of B, which contains the following indorsements in blank:—

First indorsement, " B."
Second indorsement, " Peter Williams."
Third indorsement, " Wright and Co."
Fourth indorsement, " John Rozario."

This bill A puts in suit against John Rozario and strikes out, without John Rozario's consent, the indorsements by Peter Williams and Wright and Co. A is not entitled to recover anything from John Rozario.

42. No maker of a promissory note, and no drawer of a bill of exchange or cheque, and no acceptor of a bill of exchange for the honour of the drawer shall, in a suit thereon by a holder in due course, be permitted to deny the validity of the instrument as originally made or drawn.

Estoppel against denying original validity of instrument.

43. No maker of a promissory note and no acceptor of a bill of exchange payable to, or to the order of, a specified person shall, in a suit thereon by a holder in due course, be permitted to deny the payee's capacity, at the date of the note or bill, to indorse the same.

Estoppel against denying capacity of payee to indorse.

44. No indorser of a negotiable instrument shall, in a suit thereon by a subsequent holder, be permitted to deny the signature or capacity to contract of any prior party to the instrument.

Estoppel against denying signature or capacity of prior party.

45. An acceptor of a bill of exchange already indorsed is not relieved from liability by reason that such indorsement is forged, if he knew or had reason to believe the indorsement to be forged when he accepted the bill.

Acceptor bound, although indorsement forged.

46. An acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious, relieved from liability to any holder in due course claiming under an indorsement by the same hand as the drawer's signature, and purporting to be made by the drawer.

Acceptance of bill drawn in fictitious name.

47. If at any time there has been consideration between any parties to a negotiable instrument for the making, drawing, acceptance, indorsement, negotiation or transfer thereof, the party receiving such consideration is, in the absence of a contract to the contrary, liable upon the instrument to all subsequent parties thereto, and every subsequent holder is, as against him, a holder for consideration.

Party receiving consideration liable to subsequent parties.

The provisions of this section are subject to those of sections 27, 49, 50, 59, 65, 66, 68, 72, 73, 76, 86, 87, 88, 89, 90 and 91.

Illustrations.

(*a*) A indorses a bill of exchange to B, at the request of C, for C's account with B. B is a holder of the bill for consideration, and if he indorses it as a present to D, D is a holder for consideration as against A.

(*b*) A, the holder of a negotiable instrument, indorses it in full to B, in the belief that B has done something which he has not done. B, for consideration proceeding from C, indorses the instrument in blank to C, and C indorses it to D. D strikes out C's indorsement. D is a holder of the instrument for consideration as against B.

48. When there was no consideration for the making, drawing, acceptance or indorsement of a negotiable instrument, or when the consideration has wholly failed, the maker, drawer, acceptor or indorser is not liable thereon to the party in whose favour the instrument was so made, drawn, accepted or indorsed, or to any party claiming through him, unless consideration was given by the claimant or by some party through whom he derives title. But the maker, drawer, acceptor or indorser is liable to compensate any subsequent party who, being liable on such instrument, pays the amount due thereon.

Party not liable to one from whom no consideration moved.

49. When the consideration for which a person signed a promissory note, bill of exchange or cheque consisted of money, and was originally absent in part or has subsequently failed in part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

Partial absence or failure of money-consideration.

Explanation.—The drawer of a bill of exchange stands in immediate relation with the acceptor. The maker of a promissory note, bill of exchange or cheque, stands in immediate relation with the payee, and the indorser with his indorsee. Other signers may by agreement stand in immediate relation with a holder.

Illustration.

A draws a bill on B for Rs. 500 payable to the order of A. B accepts the bill, but subsequently dishonours it by non-payment. A sues B on the bill. B proves that it was accepted for value as to Rs. 400, and as an accommodation to the plaintiff as to the residue. A can only recover Rs. 400.

50. Where a part of the consideration for which a person signed a promissory note, bill of exchange or cheque, though not consisting of money, is ascertainable in money without collateral enquiry, and there has been a failure of that part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

Partial failure of consideration not consisting of money.

CHAPTER IV.

OF NEGOTIATION.

51. Subject to the provisions of section 62, a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof.

Negotiation by delivery.

Exception.—A promissory note, bill of exchange or cheque delivered on condition that it is not to take effect except in a certain event is not negotiable (except in the hands of a holder for value without notice of the condition) unless such event happens.

Illustrations.

(*a*) A, the holder of a negotiable instrument payable to bearer, delivers it to B's agent to keep for B. The instrument has been negotiated.

(*b*) A, the holder of a negotiable instrument payable to bearer which is in the hands of A's banker, who is at the time the banker of B, directs the banker to transfer the instrument to B's credit in the banker's account with B. The banker does so, and accordingly now possesses the instrument as B's agent. The instrument has been negotiated, and B has become the holder of it.

52. Subject to the provisions of section 62, a promissory note, bill of exchange or cheque payable to the order of a specified person, or to a specified person or order, is negotiable by the holder by indorsement and delivery thereof.

Negotiation by indorsement.

53. The holder of a negotiable instrument indorsed in blank may, without signing his own name, by writing above the indorser's signature a direction to pay to any other person as indorsee, convert the indorsement in blank into an indorsement in full; and the holder does not thereby incur the responsibility of an indorser.

Conversion of indorsement in blank into indorsement in full.

54. The indorsement of a negotiable instrument followed by delivery transfers to the indorsee the property therein with the right of further negotiation; but the indorsement may, by express words, restrict or exclude such right, or may merely constitute the indorsee an agent to indorse the instrument, or to receive its contents for the indorser, or for some other specified person.

Effect of indorsement.

Illustrations.

B signs the following indorsements on different negotiable instruments payable to bearer:—

(*a*) "Pay the contents to C only."

(*b*) "Pay C for my use."

(*c*) "Pay C or order for the account of B."

(*d*) "The within must be credited to C."

These indorsements exclude the right of further negotiation by C.

(*e*) "Pay C."

(*f*) "Pay C value in account with the Oriental Bank."

(*g*) "Pay the contents to C, being part of the consideration in a certain deed of assignment executed by C to the indorser and others."

These indorsements do not exclude the right of further negotiation by C.

55. Every sole maker, drawer, payee or indorsee, or all of several joint makers, drawers, payees or indorsees, of a negotiable instrument may, if the negotiability of such instrument has not been restricted or excluded, as mentioned in section 54, indorse and negotiate the same.

Who may negotiate.

Explanation.—Nothing in this section enables a maker or drawer to indorse or negotiate an instrument, unless he is in lawful possession or is holder thereof; or enables a payee or indorsee to indorse or negotiate an instrument, unless he is holder thereof.

Illustration.

A bill is drawn payable to A or order. A indorses it to B, the indorsement not containing the words "or order" or any equivalent words. B may negotiate the instrument.

56. The indorser of a negotiable instrument may, by express words in the indorsement, exclude his own liability thereon, or make such liability or the right of the indorsee to receive the amount due thereon, depend upon the happening of a specified event, although such event may never happen.

Indorser who excludes his own liability or makes it conditional.

Where an indorser so excludes his liability and afterwards becomes the holder of the instrument, all intermediate indorsers are liable to him.

Illustrations.

(*a*) The indorser of a negotiable instrument signs his name, adding the words—

"Without recourse"

Upon this indorsement he incurs no liability.

(*b*) A is the payee and holder of a negotiable instrument. Excluding personal liability by an endorsement "without recourse," he transfers the instrument to B, and B indorses it to C, who indorses it to A. A is not only reinstated in his former rights, but has the rights of an indorsee against B and C.

57. A holder of a negotiable instrument who derives title from a holder in due course has the rights thereon of that holder in due course.

Holder deriving title from holder in due course.

58. Subject to the provisions of sections 121 and 122, a negotiable instrument indorsed in blank is payable to the bearer thereof even although originally payable to order.

Instrument indorsed in blank.

59. If a negotiable instrument after having been indorsed in blank is indorsed in full, the amount of it cannot be claimed from the indorser in full, except by the person to whom it has been indorsed in full, or by one who derives title through such person.

Conversion of indorsement in blank into indorsement in full.

60. No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount of the instrument.

Indorsement for part of sum due.

61. The legal representative of a deceased person cannot negotiate by delivery only a promissory note, bill of exchange or cheque payable to order and indorsed by the deceased but not delivered.

Legal representative cannot by delivery only negotiate instrument indorsed by deceased.

62. When a negotiable instrument has been lost, or has been obtained from any maker, acceptor or holder thereof by means of an offence or fraud, or for an unlawful consideration, no possessor or indorsee who claims through the person who found or so obtained the instrument is entitled to receive the amount due thereon from such maker, acceptor or holder, or from any party prior to such holder, unless such possessor or indorsee is, or some person through whom he claims was, a holder thereof in due course.

Instrument obtained by unlawful means or for unlawful consideration.

63. The holder of a negotiable instrument, who has acquired it after dishonour, whether by non-acceptance or non-payment, with notice thereof, or after maturity, has only, as against the other parties, the rights thereon of his transferor:

Instrument acquired after dishonour or when overdue.

Provided that any person who, in good faith and for consideration, becomes the holder, after maturity, of a promissory note or bill of exchange made, drawn or accepted without consideration for the purpose of enabling some party thereto to raise money thereon, may recover the amount of the note or bill from any prior party.

Accommodation note or bill.

Illustration.

The acceptor of a bill of exchange, when he accepted it deposited with the drawer certain goods as a collateral security for the payment of the bill, with power to the drawer to sell the goods and apply the proceeds in discharge of the bill if it were not paid at maturity. The bill not having been paid at maturity, the drawer sold the goods and retained the proceeds, but indorsed the bill to A. A's title is subject to the same objection as the drawer's title.

64. A negotiable instrument may be negotiated (except by the maker, drawee or acceptor after maturity) until payment or satisfaction thereof by the maker, drawee or acceptor at or after maturity, but not after such payment or satisfaction.

Instrument negotiable till payment or satisfaction.

CHAPTER V.

OF PRESENTMENT.

65. A bill of exchange payable after sight must, if no time or place is specified therein for presentment, be presented to the drawee thereof for acceptance, if he can, after reasonable search, be found, by a person entitled to demand acceptance, within a reasonable time after it is drawn, and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

Presentment for acceptance.

If the drawee cannot, after reasonable search be found, the bill is dishonoured.

If the bill is directed to the drawee at a particular place, it must be presented at that place; and if at the due date for presentment he cannot, after reasonable search, be found there, the bill is dishonoured.

66. A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight, by a person entitled to demand payment, within a reasonable time after it is made and in business hours on a business day. In default of such presentment no party thereto is liable thereon to the person making such default.

Presentment of promissory note for sight.

67. The holder may allow the drawee of a bill of exchange presented to him for acceptance twenty-four hours (exclusive of public holidays) to consider whether he will accept it.

Drawee's time for deliberation.

68. Promissory notes, bills of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder.

Presentment for payment.

Exception.—Where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

69. Presentment for payment must be made during the usual hours of business, and, if at a banker's, within banking hours.

Hours for presentment.

70. A promissory note or bill of exchange, made payable at a specified period after date or sight thereof, must be presented for payment at maturity.

Presentment for payment of instrument payable after date or sight.

71. A promissory note payable by instalments must be presented for payment on the third day after the date fixed for payment of each instalment; and non-payment on such presentment has the same effect as non-payment of a note at maturity.

Presentment for payment of promissory note payable by instalments.

72. A promissory note, bill of exchange or cheque made, drawn or accepted payable at a specified place and not elsewhere must, in order to charge any party thereto, be presented for payment at that place.

Presentment for payment of instrument payable at specified place and not elsewhere.

73. A promissory note or bill of exchange made, drawn or accepted payable at a specified place must, in order to charge the maker or drawer thereof, be presented for payment at that place.

Instrument payable at specified place

74. A promissory note or bill of exchange, not made payable as mentioned in sections 72 and 73, must be presented for payment at one of the places specified (if any), or at the place of business (if any), or at the usual residence, of the maker, drawee or acceptor thereof, as the case may be.

Presentment where no exclusive place specified.

75. If the maker, drawee or acceptor of a negotiable instrument has no known place of business or fixed residence, and no place is specified in the instrument for presentment for acceptance or payment, such presentment may be made to him in person wherever he can be found.

Presentment when maker, &c., has no known place of business or residence.

76. A cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer.

Presentment of cheque to charge drawer.

77. A cheque must, in order to charge any person except the drawer, be presented within a reasonable time after delivery thereof by such person.

Presentment of cheque to charge any other person.

78. Subject to the provisions of section 33, a negotiable instrument payable on demand must be presented for payment within a reasonable time after it is received by the holder.

Presentment of instrument payable on demand.

79. Presentment for acceptance or payment may be made to the duly authorized agent of the drawee, maker or acceptor, as the case may be, or where the drawee, maker or acceptor has died, to his legal representative, or where he has been declared an insolvent, to his assignee.

Presentment by or to agent, representative of deceased, or assignee of insolvent.

80. No presentment for payment is necessary, and the instrument is dishonoured at the due date for presentment, in any of the following cases:—

When presentment unnecessary.

(*a*) if the maker, drawee or acceptor intentionally prevents the presentment of the instrument,

or, if the instrument being payable at his place of business, he closes such place on a business day during the usual business-hours, or

if the instrument being payable at some other specified place, neither he nor any person authorized to pay it attends at such place during the usual business hours, or

if the instrument not being payable at any specified place, he cannot after due search be found;

(*b*) as against any party if, after maturity, with knowledge that the instrument has not been presented—

he makes a part payment on account of the amount due on the instrument,

or promises to pay the amount due thereon in whole or in part,

or otherwise waives his right to take advantage of any default in presentment for payment;

(*c*) as against the drawer, if the drawer could not suffer damage from the want of such presentment.

81. When a bill of exchange, accepted payable at a specified bank, has been duly presented there for payment and dishonoured, if the banker so negligently or improperly keeps, deals with or delivers back such bill as to cause loss to the holder, he must compensate the holder for such loss.

Liability of banker for negligently dealing with bill presented for payment.

CHAPTER VI.

OF PAYMENT AND INTEREST.

82. Subject to the provisions of section 86, clause (*c*), payment of the amount due on a promissory note, bill of exchange or cheque must, in order to discharge the maker or acceptor, be made to the holder of the instrument.

To whom payment should be made.

83. When interest at a specified rate is expressly made payable on a promissory note or bill of exchange, interest shall be calculated at the rate specified, on the amount and from the date of the instrument, until tender or realization of the amount due thereon, or until such date after the institution of a suit to recover such amount as the Court directs.

Interest when rate specified.

84. When no rate of interest is specified in the instrument, interest on the amount thereof shall, except in cases provided for by the Code of Civil Procedure, section 532, be calculated at the rate of six per centum per annum, from the date at which the same ought to have been paid by the party charged, until tender or realization of the amount due thereon or until such date after the institution of a suit to recover such amount as the Court directs.

Interest when no rate specified.

Explanation.—When the party charged is the indorser of an instrument dishonoured by non-payment, he is liable to pay interest only from the time that he receives notice of the dishonour.

85. Any person liable to pay, and called upon by the holder thereof to pay, the amount due on a promissory note, bill of exchange or cheque is before payment entitled to have it shown, and is on payment entitled to have it delivered up, to him, or, if the instrument is lost or cannot be produced, to be indemnified against any further claim thereon against him.

Delivery of instrument on payment, or indemnity in case of loss.

CHAPTER VII.

OF DISCHARGE FROM LIABILITY ON NOTES, BILLS AND CHEQUES.

86. The maker, acceptor or indorser respectively of a negotiable instrument is discharged from liability thereon—

Discharge from liability,

(*a*) to a holder thereof who cancels such acceptor's or indorser's name with intent to discharge him, and to all parties claiming under such holder.

by cancellation,

(*b*) to a holder thereof who otherwise discharges such maker, acceptor or indorser, and to all parties deriving title under such holder after notice of such discharge;

by release,

(*c*) to all parties thereto, if the instrument is payable to bearer, or has been indorsed in blank, and such maker, acceptor or indorser makes payment in due course of the amount due thereon.

by payment.

87. If the holder of a bill of exchange allows the drawee more than twenty-four hours to consider whether he will accept the same, all previous parties not consenting to such allowance are thereby discharged from liability to such holder.

Discharge by allowing drawee more than twenty-four hours to accept.

88. When the holder of a cheque fails to present it for payment, and the drawer thereof sustains loss or damage from such failure, he is discharged from liability to the holder.

When cheque not duly presented and drawer damaged thereby.

89. Where a cheque payable to order, purports to be indorsed by or on behalf of the payee, the drawee is discharged by payment in due course.

Cheque payable to order.

90. If the holder of a bill of exchange acquiesces in a conditional acceptance, or one limited to part of the sum mentioned in the bill, or which substitutes a different place or time for payment, or which, where the drawers are not partners is not signed by all the drawees, all previous parties whose consent is not obtained to such acceptance are discharged as against the holder and those claiming under him.

Parties not consenting discharged by conditional or limited acceptance.

91. Save as provided in sections 20, 53, 90 and 120, any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties;

Effect of material alteration.

and any such alteration if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof.

Alteration by endorsee.

The provisions of this section are subject to those of sections 20, 53, 90 and 120.

92. An acceptor or indorser of a negotiable instrument is bound by his acceptance or indorsement notwithstanding any previous alteration of the instrument.

Acceptor or indorser bound notwithstanding previous alteration.

93. Where a promissory note, bill of exchange or cheque has been materially altered, but does not appear to have been so altered,

Payment of instrument on which alteration is not apparent.

or where a cheque is presented for payment which does not at the time of presentation appear to be crossed or to have had a crossing which has been obliterated,

payment thereof by a person or banker liable to pay and paying the same according to the apparent tenor thereof at the time of payment and otherwise in due course, shall discharge such person or banker from all liability thereon, and such payment shall not be questioned by reason of the instrument having been altered, or the cheque crossed.

CHAPTER VIII.

OF NOTICE OF DISHONOUR.

Dishonour by non-acceptance.

94. A bill of exchange is said to be dishonoured by non-acceptance when the drawee, or one of several drawees not being partners, makes default in acceptance upon being duly required to accept the bill.

Where the drawee is incompetent to contract the bill may be treated as dishonoured.

Dishonour by non-payment.

95. A promissory note, bill of exchange or cheque is said to be dishonoured by non-payment when the maker of the note, acceptor of the bill, or drawee of the cheque makes default in payment upon being duly required to pay the same.

By and to whom notice should be given.

96. When a promissory note, bill of exchange or cheque is dishonoured by non-acceptance or non-payment, the holder thereof, or some party thereto who remains liable thereon, must give notice that the instrument has been so dishonoured to all other parties whom the holder seeks to make severally liable thereon, and to some one of several parties whom he seeks to make jointly liable thereon.

Nothing in this section renders it necessary to give notice to the maker of the dishonoured promissory note, or the drawee or acceptor of the dishonoured bill of exchange or cheque.

Mode in which notice may be given.

97. Notice of dishonour may be given to a duly authorised agent of the person to whom it is required to be given, or, where he has died, to his legal representative, or, where he has been declared an insolvent, to his assignee; may be oral or written; may, if written, be sent by post; and may be in any form; but it must inform the party to whom it is given, either in express terms or by reasonable intendment, that the instrument has been dishonoured, and in what way, and that he will be held liable thereon; and it must be given within a reasonable time after dishonour, at the place of business, or (in case such party has no place of business) at the residence of the party for whom it is intended.

If the notice is sent by post and miscarries, such miscarriage does not render the notice invalid.

Party receiving must transmit notice of dishonour.

98. Any party receiving notice of dishonour must, in order to render any prior party liable to himself, transmit it to such party within a reasonable time, unless such party otherwise receives due notice as provided by section 96.

Agent for presentment.

99. When the instrument is deposited with an agent for presentment, the agent is entitled to the same time to give notice to his principal as if he were the holder giving notice of dishonour, and the principal is entitled to a further like period to give notice of dishonour.

When party to whom notice given is dead.

100. When the party to whom notice of dishonour is despatched is dead, but the party despatching the notice is ignorant of his death, the notice is sufficient.

When notice of dishonour is unnecessary.

101. No notice of dishonour is necessary—

(*a*) when it is dispensed with by the party entitled thereto;

(*b*) in order to charge the drawer, when he has countermanded payment;

(*c*) when the party charged could not suffer damage for want of notice;

(*d*) when the party entitled to notice cannot after due search be found; or the party bound to give notice is, for any other reason, unable without any fault of his own to give it;

(*e*) to charge the drawers, when the acceptor is also a drawer;

(*f*) in the case of a promissory note which is not negotiable;

(*g*) when the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.

CHAPTER IX.

OF NOTING AND PROTEST.

Noting.

102. When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may cause such dishonour to be noted by a notary public upon the instrument, or upon a paper attached thereto, or partly upon each.

Such note must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reason, if any, assigned for such dishonour, or, if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured, and the notary's charges.

Protest.

103. When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may, within a reasonable time, cause such dishonour to be noted and certified by a notary public. Such certificate is called a protest, and in a suit upon the instrument, on proof of the protest, the Court shall presume the fact of dishonour, unless and until such fact is disproved.

Protest for better security.

When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached, before the maturity of the bill, the holder may, within a reasonable time, cause a notary public to demand better security of the acceptor, and on its being refused may, within a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security.

Contents of protest.

104. A protest under section 103 must contain—

(*a*) either the instrument itself, or a literal transcript of the instrument and of everything written or printed thereupon;

(*b*) the name of the person for whom and against whom the instrument has been protested;

(*c*) a statement that payment or acceptance, or better security, as the case may be, has been demanded of such person by the notary public; the terms of his answer, if any, or a statement that he gave no answer, or that he could not be found;

(*d*) when the note or bill has been dishonoured, the place and time of dishonour, and when better security has been refused, the place and time of refusal;

(*e*) the subscription of the notary public making the protest;

(*f*) in the event of an acceptance for honour or of a payment for honour, the name of the person by whom, of the person for whom, and the manner in which, such acceptance or payment was offered and effected.

Notice of protest.

105. When a promissory note or bill of exchange is required by law to be protested, notice of such protest must be given instead of notice of dishonour, in the same manner and subject to the same conditions; but the notice may be given by the notary public who makes the protest.

Protest for non-payment after dishonour by non-acceptance.

106. All bills of exchange drawn payable at some other place than the place mentioned as the residence of the drawee, and which are dishonoured by non-acceptance, may, without further presentment to the drawee, be protested for non-payment, in the place specified for payment, unless paid before or at maturity.

CHAPTER X.

OF REASONABLE TIME.

Reasonable time.

107. In determining what is a reasonable time for presentment for acceptance or payment, for giving notice of dishonour and for noting, regard shall be had to the nature of the instrument and the usual course of dealing with respect to similar instruments; and in calculating such time, public holidays shall be excluded.

Reasonable time for presentment.

108. Presentment is made within a reasonable time, within the meaning of sections 65, 77 and 78, if it is made on the business day next after that on which the holder received the instrument referred to, or when there is no more delay than is occasioned by the residence of the parties to the instrument in different places.

Illustration.

A draws on B, resident at Calcutta, a bill of exchange in favour of C payable at sight, and sends it to C at Benares. C, the day after he receives it, indorses it to D, and despatches it to D at Calcutta. D, the day after he receives the bill, presents it for payment. The delay which has taken place in presenting the bill is not unreasonable.

Reasonable time of giving notice of dishonour.

109. If the holder and the party to whom notice of dishonour is given carry on business or live (as the case may be) in different places, such notice is given within a reasonable time if it is despatched by the next post or on the day next after the day of dishonour.

If the said parties carry on business or live in the same place, such notice is given within a reasonable time if it is despatched in time to reach its destination on the day next after the day of dishonour.

Reasonable time for transmitting such notice.

110. A party receiving notice of dishonour, who seeks to enforce his right against a prior party, transmits the notice within a reasonable time if he transmits it within the same time after its receipt as he would have had to give notice if he had been the holder.

CHAPTER XI.

OF ACCEPTANCE AND PAYMENT FOR HONOUR.

Acceptance for honour.

111. When a bill of exchange has been noted or protested for non-acceptance or for better security, any person may, with the consent of the holder, by writing on the bill, accept the same for the honour of any party thereto.

Acceptance not specifying for whose honour it is made.

112. Where the acceptance does not express for whose honour it is made, it shall be deemed to be made for the honour of the drawer.

Liability of acceptor for honour.

113. An acceptor for honour binds himself to all parties subsequent to the party for whose honour he accepts to pay the amount of the bill if the drawee do not; and such party and all prior parties are liable in their respective capacities to compensate the acceptor for honour for all loss or damage sustained by him in consequence of such acceptance.

But an acceptor for honour is not liable to the holder of the bill unless it is presented, or (in case the address given by such acceptor on the bill is a place other than the place where the bill is made payable) forwarded for presentment, not later than the day next after the day of its maturity.

When acceptor for honour may be charged.

114. An acceptor for honour cannot be charged unless the bill has at its maturity been presented to the drawee for payment and has been dishonoured by him, and noted or protested for such dishonour.

Payment for honour.

115. When a bill of exchange has been noted or protested for non-payment, any person may pay the same for the honour of any party liable to pay the same, provided that the person so paying has previously declared before a notary public the party for whose honour he pays, and that such declaration has been recorded by such notary public.

Right of payer for honour.

116. Any person so paying is entitled to all the rights, in respect of the bill, of the holder at the time of such payment, and may recover from the party for whose honour he pays all sums so paid, with interest thereon and with all expenses properly incurred in making such payment.

CHAPTER XII.

OF COMPENSATION.

117. The compensation payable in case of dishonour of a promissory note, bill of exchange or cheque, by any party liable to the holder or any indorsee, shall (except in cases provided for by the Code of Civil Procedure, section 532) be determined by the following rules :—

Rules as to compensation.

(*a*) The holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in presenting, noting and protesting it ;

(*b*) When the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places ;

(*c*) An indorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at six per centum per annum from the date of payment until tender or realization thereof, together with all expenses caused by the dishonour and payment ;

(*d*) When the person charged and such indorser reside at different places, the indorser is entitled to receive such sum at the current rate of exchange between the two places ;

(*e*) The party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him together with all expenses properly incurred by him. Such bill must be accompanied by the instrument dishonoured and the protest thereof (if any). If such bill is dishonoured, the party dishonouring the same is liable to make compensation thereof in the same manner as in the case of the original bill.

CHAPTER XIII.

OF CROSSED CHEQUES.

118. Where a cheque bears across its face an addition of the words "and company" or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words "not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally.

Cheque crossed generally.

119. Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker.

Cheque crossed specially.

120. Where a cheque is uncrossed, the holder may cross it generally or specially.

Crossing after issue.

Where a cheque is crossed generally, the holder may cross it specially.

Where a cheque is crossed generally or specially, the holder may add the words "not negotiable."

Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection.

121. Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker.

Payment of cheque crossed generally.

Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or his agent for collection.

Payment of cheque crossed specially.

122. Where a cheque is crossed specially to more than one banker, except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof.

Payment of cheque crossed specially more than once.

123. Where the banker on whom a crossed cheque is drawn has paid the same in due course, the banker paying the cheque, and (in case such cheque has come to the hands of the payee) the drawer thereof, shall respectively be entitled to the same rights, and be placed in the same position in all respects, as they would respectively be entitled to and placed in if the amount of the cheque had been paid to and received by the true owner thereof.

Payment in due course of crossed cheque.

124. Any banker paying a cheque crossed generally otherwise than to a banker, or a cheque crossed specially otherwise than to the banker to whom the same is crossed, or his agent for collection, being a banker, shall be liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

Payment of crossed cheque out of due course.

125. A person taking a cheque crossed generally or specially, bearing in either case the words "not negotiable," shall not have, and shall not be capable of giving, a better title to the cheque than that which the person from whom he took it had.

Cheque bearing "not negotiable."

But a banker who has in good faith and without negligence received payment from a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment.

CHAPTER XIV.

OF FOREIGN BILLS.

126. Foreign bills of exchange may be drawn in parts, each part being numbered and containing a provision that it shall continue payable only so long as the others remain unpaid. All the parts together make a set ; but the whole set constitutes only one bill, and is extinguished when one of the parts, if a separate bill, would be extinguished.

Set of bills.

Exception.—When a person accepts or indorses different parts of the bill in favour of different persons, he is liable on each part as if it were a separate bill.

127. As between holders in due course of different parts of the same set, he who first acquired title to his part is entitled to the other parts and the money represented by the bill.

Holder of first acquired part entitled to all.

128. Where a drawee in case of need is named in a foreign bill of exchange, the bill is not dishonoured until dishonoured by such drawee.

Drawee in case of need.

129. Foreign bills of exchange must be protested for dishonour when such protest is required by the law of the place where they are drawn.

Protest of foreign bills.

CHAPTER XV.

OF INTERNATIONAL LAW.

130. In the absence of a contract to the contrary, the liability of the maker or drawer of a foreign promissory note, bill of exchange or cheque is regulated in all essential matters by the law of the place where he made the instrument, and the respective liabilities of the acceptor and indorser by the law of the place where the instrument is made payable.

Law governing liability of maker, acceptor or indorser of foreign instrument.

Illustrations.

A bill of exchange was drawn by A in California, where the rate of interest is 25 per cent., and accepted by B, payable in Washington, where the rate of interest is 6 per cent. The bill is endorsed in British India, and is dishonoured. An action on the bill is brought against B in British India. He is liable to pay interest at the rate of 6 per cent. only; but if A is charged as drawer, A is liable to pay interest at the rate of 25 per cent.

131. Where a promissory note, bill of exchange or cheque is made payable in a different place from that in which it is made or indorsed, the law of the place where it is made payable determines what constitutes dishonour and what notice of dishonour is sufficient.

Law of place of payment governs dishonour.

Illustration.

A bill of exchange drawn and indorsed in British India, but accepted payable in France, is dishonoured. The indorsee causes it to be protested for such dishonour, and give notice thereof in accordance with the law of France, though not in accordance with the rules hereinc contained in respect of bills which are not foreign. The notice is sufficient.

132. If a negotiable instrument is made, drawn, accepted or indorsed out of British India, but in accordance with the law of British India, the circumstance that any agreement evidenced by such instrument is invalid according to the law of the country wherein it was entered into, does not invalidate any subsequent acceptance or endorsement made thereon in British India.

Instrument made, &c., out of British India, but in accordance with its law.

133. The law of any foreign country regarding promissory notes, bills of exchange and cheques shall be presumed to be the same as that of British India, unless and until the contrary is proved.

Presumption as to foreign law.

SCHEDULE.

(*a*) STATUTES.

Year and chapter.	Title.	Extent of repeal.
9 Wm. III. c. 17	An Act for the better payment of inland Bills of Exchange.	The whole.
3 & 4 Anne, c. 8.	An Act for giving like remedy upon promissory notes as is now used upon Bills of Exchange, and for the better payment of Inland Bills of Exchange.	The whole.

(*b*) ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

No. and year.	Title.	Extent of repeal.
VI of 1840 ...	An Act for the amendment of the law concerning the negotiation of Bills of Exchange.	The whole.
V of 1866 ...	An Act to amend in certain respects the Commercial Law of British India.	Sections 11, 12 and 13.
XV of 1874 ...	The Laws Local Extent Act, 1874.	The first schedule, so far as relates to Act VI of 1840 and Act V of 1866, sections 11, 12 and 13

D. FITZPATRICK,
Secy. to the Govt. of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, MARCH 1, 1879.

☞ Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second publication.]

The following further Report of a Select Committee, together with the Bill as settled by them, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 19th of February, 1879 :—

WE, the undersigned Members of the Select Committee to which the Bill to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques was referred, have considered the Bill and the papers noted in the margin, and have the honour to present this further Report.

From Secretary to Chief Commissioner, Mysore, No. 3193—4 J, dated 26th July, 1878.
„ Acting Under Secretary to Government of Bombay, No. 4405, dated 30th July, 1878.
„ Assistant Secretary to Chief Commissioner, Central Provinces, No. 3012—147, dated 31st July, 1878.
„ Officiating Chief Commissioner, Ajmer and Merwára, No. 500, dated 5th August, 1878, and enclosure.
„ Under Secretary to Government of Bengal, No. 1745, dated 13th August, 1878.
„ Acting Under Secretary to Government, Bombay, No. 4792, dated 17th August, 1878, and enclosures.
„ Secretary to Chief Commissioner, Mysore, No. 3765—6, dated 15th August, 1878, and enclosure.
„ Secretary to Government, North-Western Provinces and Oudh, No. 626 A, dated 24th August, 1878, and enclosures.
„ Junior Secretary to Chief Commissioner, British Burma, No. 1440—51, dated 28th September, 1878, and enclosures.
„ Under Secretary to Government, Bombay, No. 6570, dated 15th November, 1878, and enclosure.
Note by Sir Richard Garth, Chief Justice, High Court, Calcutta, dated 21st November, 1878.
Remarks on the above note by A. Phillips, Esq., dated 30th November, 1878.
From Secretary to Government, Panjáb, No. 4404, dated 23rd December, 1878, and enclosures.
„ Government of Bengal, No. 260—24 M, dated 1st February, 1879, and enclosures.
„ Government of Bombay, No. 838, dated 6th February, 1879, and enclosures.

2. We have carefully considered the arguments urged on the one side by the learned Chief Justice of Bengal and the Bank of Bengal for the immediate application of the measure in its entirety to hundís, and, on the other side, by the Government of the Panjáb for the total exclusion of hundís from any part of the measure. We have come to the conclusion that the Bill should in this respect be left substantially as it stands. Admitting with the Chief Justice that one main principle of Indian codification is to reconcile and assimilate, as far as possible, the Native and European law on each subject, we would point out that this principle must be applied so as to produce as little friction as possible, and we feel assured that any sudden abolition of the numerous local usages (there is no general custom) as to hundís, uncertain and undefined as they often are, would cause much and justifiable dissatisfaction among Native bankers and merchants in certain parts of the country. But we believe that the effect of the Bill, if passed with a saving of the local usages in question, will be, not as the Chief Justice fears, to stereotype and perpetuate these usages, but to induce the Native mercantile community gradually to discard them for the corresponding rules contained in the Bill. The desirable uniformity of mercantile usage will thus be brought about without any risk of causing hardship to Native bankers and merchants. How long this change will take, it is of course impossible to prophesy. But the Bank of Bengal has supplied evidence that the Native usages as to negotiable paper have of recent years been greatly changing, and that the tendency is to assimilate them more and more to the European custom.

3. We do not share the apprehension of the Bank of Bengal that the recognition of Native usages would result in large withdrawal of European capital from operations in Native bills. For in this respect the Bill simply states the law as it stands. Such usages are now and

have always been recognized by our Courts in all parts of India:* but the Bank itself admits that, for upwards of seventy years, its business in hundís has invariably been conducted according to the same laws and usages as apply to European bills, and that, with one exception (the alleged duty of the holder of a dishonoured hundí to exhaust the acceptor before having recourse to the drawer or endorser) Natives have made no difficulty about conforming to the Bank's requirements. It is, we understand, the practice of the Bank and, probably, of other large European purchasers of hundís to notify that they will not be bound by any local usage which contravenes the English law as to bills of exchange. Though the Bill should pass in its present form, this practice will remain legal and unaffected. It operates of course to bind only the seller to waive a defence which he might otherwise have made. But the other parties to the hundí are practically precluded from setting up any such usage by the knowledge that if they did so their credit would be destroyed by refusal of the Bank to buy hundís on which their names appear.

4. To exclude totally (as the Panjáb Government propose) hundís from any part of the Bill would be to render the proposed legislation to a great extent inoperative, and would probably result in withdrawal of the Bill. Considering the fact that the carrying on of the internal trade of India is becoming more and more dependent on English capital, and that the use in the Mufassal of bills in the English form is therefore largely increasing, we think that such withdrawal would be highly inexpedient. We are supported in this opinion by the fact that the Local Governments of Bengal, Bombay, the North-Western Provinces and Ajmer have all reported in favour of the Bill; that the Chambers of Commerce at Calcutta, Madras and Bombay, the Bank of Bombay, and the Calcutta Trades Association, have done the same; and that the Directors of the Bank of Bengal bear testimony as to the ability with which it was framed by Mr. Phillips.

5. Turning now to the details of the Bill, we have, in the first place, expressly saved the provisions of the Indian Paper Currency Act, 1871, section 21, which prohibits the issue of private bills or notes payable to bearer on demand.

6. We have struck out from section 16 the words "the whole or any part of," as they might have been taken to imply that there may be a special indorsement expressly directing payment of part of the amount mentioned in the instrument.

7. Section 21 was taken from the Law Commissioners' draft, and deals with a promissory note signed by two persons, and shewing that one of them subscribes only to an alternative liability. We think it very doubtful whether such an informal instrument is a promissory note at all, and for this and other reasons we have omitted the section.

8. We have also omitted section 33, as the matter appears to us to be sufficiently provided for by the Indian Contract Act; for the same reason we have omitted the first half of section 43.

9. We have omitted, as unlikely to be practically useful, sections 55 and 56, which provide for the delivery without indorsement, but with intent to transfer title, of bills payable to the order of a specified person or to a specified person or order.

10. We have omitted section 59, as the matter is sufficiently covered by the preceding section.

11. We do not think that the Bill should deal with collateral agreements, and have therefore struck out section 66.

12. We have amended the section (73, now 67) as to the drawee's term for deliberation. It now provides that the holder may allow the drawee twenty-four hours (exclusive of public holidays) to consider whether he will accept the Bill.

13. We think that, in order to charge the drawer of a cheque, the holder should only be bound to present it at the bank on which it is drawn before the relation between the drawer and the banker has been altered to the prejudice of the drawer. We have altered section 82 accordingly.

14. We have omitted from section 97 the explanation relating to material alterations.

15. We have made some changes in wording and arrangement.

16. The Bill No. III and the second report of the Select Committee have been published in English in all the local Gazettes except those for Assam and Rájputána. Publication of the Bill and report in the vernacular has been reported only by the Governments of Madras, Bengal and the North-Western Provinces and Oudh and the Chief Commissioner of the Central Provinces.

17. With the exception of our Hon'ble Colleague Mr. Morgan, we think that the Bill might now be passed as amended. Mr. Morgan would omit the clause saving local usages as to hundís. In other respects he approves of the Bill. We recommend that its further consideration be stayed until the new Law Commission has reported thereon. Meanwhile, we think the Bill, as now amended, should be published with this report in the *Gazette of India*.

WHITLEY STOKES.
G. C. PAUL.
G. H. P. EVANS.
F. R. COCKERELL.

CALCUTTA,
The 19th February, 1879.

Although I think that this Bill is, on the whole, a very good one, I cannot approve of the recognition which it accords to local usages relating to hundís. From a careful consideration of the papers which have been received with reference to the Bill, and from my own experience as regards the existing practice regarding hundís, I do not believe that there are any usages which call for special recognition at the hands of the legislature, and I think that the proposed recognition may put an arm into the hands of those who are dishonestly disposed, which they do not at present possess.

E. C. MORGAN.

* See, for example, 1 Suth. W. R. 75: 2 *ibid.* 214: 6 *ibid.* 301: 2 Hyde 259: 3 Beng. A. C. 198: 7 Beng. 275 289, 431, 687: 9 Beng. Appendix I: 2 Sevestre 621, n.: N. W. P. 1868, p. 268: Perry 295: 6 Bomb. O. C. J. 24: 7, Bomb. O. C. J. 137, 140: 12 Bomb. 113.

No. IV.

THE NEGOTIABLE INSTRUMENTS BILL, 1879.

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SCHEDULE.

No. IV.

A Bill to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques.

Preamble. WHEREAS it is expedient to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title. 1. This Act may be called "The Negotiable Instruments Act, 1879:"

Local extent. It extends to the whole of British India; but nothing herein contained affects

Saving of usages relating to hundis, &c. any local usage relating to any instrument in an oriental language or affects the Indian Paper Currency Act, 1871, section twenty-one:

Commencement. And it shall come into force on the first day of January, 1880.

Repeal of enactments. 2. On and from that day the enactments specified in the schedule hereto annexed shall be repealed to the extent mentioned in the third column thereof.

Interpretation clause. 3. In this Act—

"Banker." "Banker" includes also persons or a corporation or company acting as bankers, and

"Notary Public." "Notary Public" includes also any officer appointed by the Governor General in Council to perform the functions of a Notary Public under this Act.

CHAPTER II.

OF NOTES, BILLS AND CHEQUES.

Promissory Note. 4. A promissory note is an instrument in writing (not being a bank note or a currency note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

Illustrations.

A signs instruments in the following terms:—

(a) "I promise to pay B or order Rs. 500."

(b) "I acknowledge myself to be indebted to B in Rs. 1,000 to be paid on demand, for value received."

(c) "Mr. B, I O U Rs. 1,000."

(d) "I promise to pay B Rs. 500 and all other sums which shall be due to him."

(e) "I promise to pay B Rs. 500, first deducting thereout any money which he may owe me."

(f) "I promise to pay B Rs. 500 seven days after my marriage with C."

(g) "I promise to pay B Rs. 500 on D's death, provided D leaves me enough to pay that sum."

(h) "I promise to pay B Rs. 500 and to deliver to him my black horse on 1st January next."

The instruments respectively marked (a), and (b) are promissory notes. The instruments respectively marked (c), (d), (e), (f), (g) and (h) are not promissory notes.

Bill of exchange. 5. A bill of exchange is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

Cheque. 6. A cheque is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand.

"Drawer." "Drawee." 7. The maker of a bill of exchange or cheque is called the "drawer;" the person thereby directed to pay is called the "drawee."

"Drawee in case of need." When the bill gives the name of any person in addition to the drawee to be resorted to in case of need, such person is called a "drawee in case of need."

"Acceptor." After the drawee of a bill has signed his assent upon the bill, or if there are more parts thereof than one, upon one of such parts, and delivered the same, or given notice of such signing to the holder or to some person on his behalf, he is called the "acceptor."

"Acceptor for honour." When acceptance is refused and the bill is protested for non-acceptance, and any person accepts it *supra protest* for honour of the drawer or of any one of the indorsers, such person is called an "acceptor for honour."

"Payee." The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the "payee."

"Holder." 8. The "holder" of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto.

Where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.

"Holder in due course." 9. "Holder in due course" means any person who became the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or indorsee thereof, if payable to, or to the order of, a payee, for consideration before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

"Payment in due course." 10. "Payment in due course" means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned.

Inland instrument. 11. A promissory note, bill of exchange or cheque drawn or made in British India, and made payable in, or drawn upon any person resident in, British India shall be deemed to be an inland instrument.

Foreign instrument. 12. Any such instrument not so drawn, made or made payable shall be deemed to be a foreign instrument.

Negotiable instrument. 13. A "negotiable instrument" means a promissory note, bill of exchange or cheque expressed to be payable to a specified person or his order, or to the order of a specified person, or to the bearer thereof, or to a specified person or the bearer thereof.

Negotiation. 14. When a promissory note, bill of exchange or cheque is transferred to any person, so as to constitute that person the holder thereof, the instrument is said to be negotiated.

Indorsement. 15. When the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the "indorser."

Indorsement "in blank" and "in full." 16. If the indorser signs his name only, the indorsement is said to be "in blank," and if he adds a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person, the indorsement is said to be "in full;" and the person so specified is called the "indorsee" of the instrument.

"Indorsee."

Ambiguous instruments. 17. Where an instrument may be construed either as a promissory note or bill of exchange, the holder may at his election treat it as either, and the instrument shall be thenceforward treated accordingly.

Where amount is stated differently in figures and words. 18. If the amount undertaken or ordered to be paid is stated differently in figures and in words, the amount stated in words shall be the amount undertaken or ordered to be paid.

19. A promissory note or bill of exchange, in which no time for payment is specified, and a cheque are payable on demand.

Instruments payable on demand.

20. Where a stamped paper, which is intended to be completed as a negotiable instrument, is signed and delivered by a competent person as maker, drawer, acceptor or indorser, the holder thereof may complete the same by filling up any blanks therein, and the person so signing shall be liable upon such instrument, in the capacity in which he signed the same, for any amount which may be specified therein not exceeding the amount covered by the stamp thereon: provided that as between the person delivering and the person receiving the instrument nothing in excess of the amount intended by them to be paid shall be recovered.

Blank stamped instruments.

Illustration.

A stamped paper intended to be completed as a negotiable instrument is made payable to " or order:" the holder of such instrument may fill up the blank with his own name, or that of any other person.

21. In a promissory note or bill of exchange the expressions "at sight" and "on presentment" mean on demand. The expression "after sight" means, in a promissory note, after presentment for sight, and in a bill of exchange, after acceptance or protest for non-acceptance.

"At sight." "On presentment." "After sight."

22. The maturity of a promissory note or bill of exchange is the date at which it falls due.

"Maturity."

Every promissory note or bill of exchange which is not expressed to be payable on demand, at sight, or on presentment, is at maturity on the third day after the day on which it is expressed to be payable.

Days of grace.

23. In calculating the date at which a promissory note or bill of exchange made payable a stated number of months after date or after sight, or after a certain event, is at maturity, the period stated shall be held to terminate on the day of the month which corresponds with the day on which the instrument is dated, or presented for acceptance or sight or protested for non-acceptance, or the event happens, or, where the instrument is a bill of exchange made payable a stated number of months after sight and has been accepted for honour, with the day on which it was so accepted. If the month in which the period would terminate has no corresponding day, the period shall be held to terminate on the last day of such month.

Calculating maturity of bill or note payable so many months after date or sight.

Illustrations.

(*a*) A negotiable instrument dated 29th January 1878 is made payable at one month after date. The instrument is at maturity on the third day after the 28th February 1878.

(*b*) A negotiable instrument dated 30th August 1878 is made payable three months after date. The instrument is at maturity on the 3rd December 1878.

(*c*) A promissory note or bill of exchange, dated 31st August 1878, is made payable three months after date. The instrument is at maturity on the 3rd December 1878.

24. In calculating the date at which a promissory note or bill of exchange, made payable a certain number of days after date or after sight or after a certain event, is at maturity, the day of the date, or of presentment for acceptance or sight, or of protest for non-acceptance, or on which the event happens, shall be excluded.

Calculating maturity of bill or note payable so many days after date or sight.

25. When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business day.

When day of maturity is a holiday.

Explanation.—The expression "public holiday" includes Sundays: New-Year's day, Christmas day: if either of such days falls on a Sunday, the next following Monday: Good-Friday; and any other day declared by the Local Government, by notification in the official Gazette, to be a public holiday.

26. Until the contrary is proved, the following presumptions shall be made:—

Presumptions as to negotiable instruments;

(*a*) that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration:

of consideration;

(*b*) that every negotiable instrument bearing a date was made or drawn on such date:

as to date;

(*c*) that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity:

as to time of acceptance;

(*d*) that every transfer of a negotiable instrument was made before its maturity:

as to time of transfer;

(*e*) that the endorsements appearing upon a negotiable instrument were made in the order in which they appear thereon:

as to order of endorsements;

(*f*) that a lost promissory note, bill of exchange or cheque was duly stamped:

as to stamp;

(*g*) that the holder of a negotiable instrument is a holder in due course: provided that where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burthen of proving that the holder is a holder in due course lies upon him.

that holder is a holder in due course.

CHAPTER III.

PARTIES TO NOTES, BILLS AND CHEQUES.

27. Every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, indorsement, delivery and negotiation of a promissory note, bill of exchange or cheque.

Capacity to make, &c., promissory notes, &c.

A minor may draw, indorse, deliver and negotiate such instruments so as to bind all parties except himself.

Minor.

Nothing herein contained shall be deemed to empower a corporation to make, indorse or accept such instruments except in cases in which, under

the law for the time being in force, they are so empowered.

28. Every person capable of binding himself or of being bound, as mentioned in section 27, may so bind himself or be bound by a duly authorized agent acting in his name.

Agency.

A general authority to transact business and to receive and discharge debts does not confer upon an agent the power of accepting or indorsing bills of exchange so as to bind his principal.

An authority to draw bills of exchange does not of itself import an authority to indorse.

29. An agent who signs his name to a promissory note, bill of exchange or cheque, without indicating thereon that he signs as agent, or that he does not intend thereby to incur personal responsibility, is liable personally on the instrument, except to those who induced him to sign upon the belief that the principal only would be held liable.

Liability of agent signing.

30. A legal representative of a deceased person who signs his name to a promissory note, bill of exchange or cheque, is liable personally thereon unless he expressly limits his liability to the extent of the assets received by him as such.

Liability of legal representative signing.

31. Where there are several drawees of a bill of exchange who are not partners, each of them can accept it for himself, but none of them can accept it for another without his authority.

Acceptance by several drawees not partners.

32. The drawer of a bill of exchange or cheque is bound, in case of dishonour by the drawee or acceptor thereof, to compensate the holder for any loss or damage caused thereby, provided due notice of dishonour has been given to, or received by, the drawer as hereinafter provided.

Liability of drawer.

33. The drawee of a cheque having sufficient funds of the drawer in his hands properly applicable to the payment of such cheque, must pay the cheque when duly required so to do, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default.

Liability of drawee of cheque.

34. In the absence of a contract to the contrary, the maker of a promissory note and the acceptor before maturity of a bill of exchange, are bound to pay the amount thereof at maturity according to the apparent tenor of the note or acceptance respectively, and the acceptor of a bill of exchange at or after maturity is bound to pay the amount thereof to the holder on demand.

Liability of maker of note and acceptor of bill.

In default of such payment as aforesaid, such maker or acceptor is bound to compensate any party to the note or bill for any loss or damage sustained by him, and caused by such default.

The provisions of this section are subject to those of sections 27, 29, 48, 49, 50, 62, 68, 72, 73 and 86.

35. No person except the drawee of a bill of exchange, or all or some of several joint drawees, or a person named therein as a drawee in case of need, or an acceptor for honour, can bind himself by an acceptance.

Only drawee can be acceptor except in need or for honour.

36. In the absence of a contract to the contrary, whoever indorses and delivers a negotiable instrument before maturity, without, in such indorsement, expressly excluding or making conditional his own liability, is bound thereby to every subsequent holder, in case of dishonour by the drawee, acceptor or maker, to compensate such holder for any loss or damage caused to him by such dishonour, provided due notice of dishonour has been given to, or received by, such indorser as hereinafter provided.

Liability of indorser.

Every indorser after dishonour is liable as upon an instrument payable on demand.

The provisions of this section are subject to those of sections 27, 29, 48, 49, 50, 59, 60, 62, 65, 66, 68, 72, 76, 86, 87, 88, 90, 91 and 101, clause (*a*).

37. Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied.

Liability of prior parties to holder in due course.

38. The maker of a promissory note or cheque, the drawer of a bill of exchange until acceptance, and the acceptor are, in the absence of a contract to the contrary, respectively liable thereon as principal debtors, and the other parties thereto are liable thereon as sureties for the maker, drawer or acceptor, as the case may be.

Maker, drawer and acceptor principals.

39. As between the parties so liable as sureties, each prior party is, in the absence of a contract to the contrary, also liable thereon as a principal debtor in respect of each subsequent party.

Prior party a principal in respect of each subsequent party.

Illustration.

A draws a bill payable to his own order on B, who accepts. A afterwards indorses the bill to C, C to D, and D to E. As between E and B, B is the principal debtor, and A, C and D are his sureties. As between E and A, A is the principal debtor, and C and D are his sureties. As between E and C, C is the principal debtor and D is his surety.

40. When the holder of an accepted bill of exchange enters into any contract with the acceptor which under section 134 or 135 of the Indian Contract Act, 1872, would discharge the other parties, the holder may expressly reserve his right to charge the other parties, and in such case they are not discharged.

Suretyship.

41. Where the holder of a negotiable instrument, without the consent of the indorser, destroys or impairs the indorser's remedy against a prior party, the indorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity.

Discharge of indorser's liability.

Illustration.

A is the holder of a bill of exchange made payable to the order of B, which contains the following indorsements in blank:—

First indorsement, "B."
Second indorsement, "Peter Williams."
Third indorsement, "Wright and Co."
Fourth indorsement, "John Rozario."

This bill A puts in suit against John Rozario and strikes out, without John Rozario's consent, the indorsements by Peter Williams and Wright and Co. A is not entitled to recover anything from John Rozario.

42. No maker of a promissory note, and no drawer of a bill of exchange or cheque, and no acceptor of a bill of exchange for the honour of the drawer shall, in a suit thereon by a holder in due course, be permitted to deny the validity of the instrument as originally made or drawn.

Estoppel against denying original validity of instrument.

43. No maker of a promissory note and no acceptor of a bill of exchange payable to, or to the order of, a specified person shall, in a suit thereon by a holder in due course, be permitted to deny the payee's capacity, at the date of the note or bill, to indorse the same.

Estoppel against denying capacity of payee to indorse.

44. No indorser of a negotiable instrument shall, in a suit thereon by a subsequent holder, be permitted to deny the signature or capacity to contract of any prior party to the instrument.

Estoppel against denying signature or capacity of prior party.

45. An acceptor of a bill of exchange already indorsed is not relieved from liability by reason that such indorsement is forged, if he knew or had reason to believe the indorsement to be forged when he accepted the bill.

Acceptor bound, although indorsement forged.

46. An acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious, relieved from liability to any holder in due course claiming under an indorsement by the same hand as the drawer's signature, and purporting to be made by the drawer.

Acceptance of bill drawn in fictitious name.

47. If at any time there has been consideration between any parties to a negotiable instrument for the making, drawing, acceptance, indorsement, negotiation or transfer thereof, the party receiving such consideration is, in the absence of a contract to the contrary, liable upon the instrument to all subsequent parties thereto, and every subsequent holder is, as against him, a holder for consideration.

Party receiving consideration liable to subsequent parties.

The provisions of this section are subject to those of sections 27, 49, 50, 59, 65, 66, 68, 72, 73, 76, 86, 87, 88, 89, 90 and 91.

Illustrations.

(*a*) A indorses a bill of exchange to B, at the request of C, for C's account with B. B is a holder of the bill for consideration, and if he indorses it as a present to D, D is a holder for consideration as against A.

(*b*) A, the holder of a negotiable instrument, indorses it in full to B, in the belief that B has done something which he has not done. B, for consideration proceeding from C, indorses the instrument in blank to C, and C indorses it to D. D strikes out C's indorsement. D is a holder of the instrument for consideration as against B.

48. When there was no consideration for the making, drawing, acceptance or indorsement of a negotiable instrument, or when the consideration has wholly failed, the maker, drawer, acceptor or indorser is not liable thereon to the party in whose favour the instrument was so made, drawn, accepted or indorsed, or to any party claiming through him, unless consideration was given by the claimant or by some party through whom he derives title. But the maker, drawer, acceptor or indorser is liable to compensate any subsequent party who, being liable on such instrument, pays the thereon

Party not liable to one from whom no consideration moved.

49. When the consideration for which a person signed a promissory note, bill of exchange or cheque consisted of money, and was originally absent in part or has subsequently failed in part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

Partial absence or failure of money-consideration.

Explanation.—The drawer of a bill of exchange stands in immediate relation with the acceptor. The maker of a promissory note, bill of exchange or cheque, stands in immediate relation with the payee, and the indorser with his indorsee. Other signers may by agreement stand in immediate relation with a holder.

Illustration.

A draws a bill on B for Rs. 500 payable to the order of A. B accepts the bill, but subsequently dishonours it by non-payment. A sues B on the bill. B proves that it was accepted for value as to Rs. 400, and as an accommodation to the plaintiff as to the residue. A can only recover Rs. 400.

50. Where a part of the consideration for which a person signed a promissory note, bill of exchange or cheque, though not consisting of money, is ascertainable in money without collateral enquiry, and there has been a failure of that part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

Partial failure of consideration not consisting of money.

CHAPTER IV.

OF NEGOTIATION.

51. Subject to the provisions of section 62, a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof.

Negotiation by delivery.

Exception.—A promissory note, bill of exchange or cheque delivered on condition that it is not to take effect except in a certain event is not negotiable (except in the hands of a holder for value without notice of the condition) unless such event happens.

Illustrations.

(*a*) A, the holder of a negotiable instrument payable to bearer, delivers it to B's agent to keep for B. The instrument has been negotiated.

(*b*) A, the holder of a negotiable instrument payable to bearer which is in the hands of A's banker, who is at the time the banker of B, directs the banker to transfer the instrument to B's credit in the banker's account with B. The banker does so, and accordingly now possesses the instrument as B's agent. The instrument has been negotiated, and B has become the holder of it.

52. Subject to the provisions of section 62, a promissory note, bill of exchange or cheque payable to the order of a specified person, or to a specified person or order, is negotiable by the holder by indorsement and delivery thereof.

Negotiation by indorsement.

53. The holder of a negotiable instrument indorsed in blank may, without signing his own name, by writing above the indorser's signature a direction to pay to any other person as indorsee, convert the indorsement in blank into an indorsement in full; and the holder does not thereby incur the responsibility of an indorser.

Conversion of indorsement in blank into indorsement in full.

54. The indorsement of a negotiable instrument followed by delivery transfers to the indorsee the property therein with the right of further negotiation; but the indorsement may, by express words, restrict or exclude such right, or may merely constitute the indorsee an agent to indorse the instrument, or to receive its contents for the indorser, or for some other specified person.

Effect of indorsement.

Illustrations.

B signs the following indorsements on different negotiable instruments payable to bearer:—

(*a*) "Pay the contents to C only."

(*b*) "Pay C for my use."

(*c*) "Pay C or order for the account of B."

(*d*) "The within must be credited to C."

These indorsements exclude the right of further negotiation by C.

(*e*) "Pay C."

(*f*) "Pay C value in account with the Oriental Bank."

(*g*) "Pay the contents to C, being part of the consideration in a certain deed of assignment executed by C to the indorser and others."

These indorsements do not exclude the right of further negotiation by C.

55. Every sole maker, drawer, payee or indorsee, or all of several joint makers, drawers, payees or indorsees, of a negotiable instrument may, if the negotiability of such instrument has not been restricted or excluded, as mentioned in section 54, indorse and negotiate the same.

Who may negotiate.

Explanation.—Nothing in this section enables a maker or drawer to indorse or negotiate an instrument, unless he is in lawful possession or is holder thereof; or enables a payee or indorsee to indorse or negotiate an instrument, unless he is holder thereof.

Illustration.

A bill is drawn payable to A or order. A indorses it to B, the indorsement not containing the words "or order" or any equivalent words. B may negotiate the instrument.

56. The indorser of a negotiable instrument may, by express words in the indorsement, exclude his own liability thereon, or make such liability or the right of the indorsee to receive the amount due thereon, depend upon the happening of a specified event, although such event may never happen.

Indorser who excludes his own liability or makes it conditional.

Where an indorser so excludes his liability and afterwards becomes the holder of the instrument, all intermediate indorsers are liable to him.

Illustrations.

(*a*.) The indorser of a negotiable instrument signs his name, adding the words—

"Without recourse."

Upon this indorsement he incurs no liability.

(*b*.) A is the payee and holder of a negotiable instrument. Excluding personal liability by an endorsement "without recourse," he transfers the instrument to B, and B indorses it to C, who indorses it to A. A is not only reinstated in his former rights, but has the rights of an indorsee against B and C.

57. A holder of a negotiable instrument who derives title from a holder in due course has the rights thereon of that holder in due course.

Holder deriving title from holder in due course.

58. Subject to the provisions of sections 121 and 122, a negotiable instrument indorsed in blank is payable to the bearer thereof even although originally payable to order.

Instrument indorsed in blank.

59. If a negotiable instrument after having been indorsed in blank is indorsed in full, the amount of it cannot be claimed from the indorser in full, except by the person to whom it has been indorsed in full, or by one who derives title through such person.

Conversion of indorsement in blank into indorsement in full.

60. No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount of the instrument.

Indorsement for part of sum due.

61. The legal representative of a deceased person cannot negotiate by delivery only a promissory note, bill of exchange or cheque payable to order and indorsed by the deceased but not delivered.

Legal representative cannot by delivery only negotiate instrument indorsed by deceased.

62. When a negotiable instrument has been lost, or has been obtained from any maker, acceptor or holder thereof by means of an offence or fraud, or for an unlawful consideration, no possessor or indorsee who claims through the person who found or so obtained the instrument is entitled to receive the amount due thereon from such maker, acceptor or holder, or from any party prior to such holder, unless such possessor or indorsee is, or some person through whom he claims was, a holder thereof in due course.

Instrument obtained by unlawful means or for unlawful consideration.

63. The holder of a negotiable instrument, who has acquired it after dishonour, whether by non-acceptance or non-payment, with notice thereof, or after maturity, has only, as against the other parties, the rights thereon of his transferor:

Instrument acquired after dishonour or when overdue.

Provided that any person who, in good faith and for consideration, becomes the holder, after maturity, of a promissory note or bill of exchange made, drawn or accepted without consideration for the purpose of enabling some party thereto to raise money thereon, may recover the amount of the note or bill from any prior party.

Accommodation note or bill.

Illustration.

The acceptor of a bill of exchange, when he accepted it deposited with the drawer certain goods as a collateral security for the payment of the bill, with power to the drawer to sell the goods and apply the proceeds in discharge of the bill if it were not paid at maturity. The bill not having been paid at maturity, the drawer sold the goods and retained the proceeds, but indorsed the bill to A. A's title is subject to the same objection as the drawer's title.

64. A negotiable instrument may be negotiated (except by the maker, drawee or acceptor after maturity) until payment or satisfaction thereof by the maker, drawee or acceptor at or after maturity, but not after such payment or satisfaction.

Instrument negotiable till payment or satisfaction.

CHAPTER V.

OF PRESENTMENT.

65. A bill of exchange payable after sight must, if no time or place is specified therein for presentment, be presented to the drawee thereof for acceptance, if he can, after reasonable search, be found, by a person entitled to demand acceptance, within a reasonable time after it is drawn, and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

Presentment for acceptance.

If the drawee cannot, after reasonable search be found, the bill is dishonoured.

If the bill is directed to the drawee at a particular place, it must be presented at that place; and if at the due date for presentment he cannot, after reasonable search, be found there, the bill is dishonoured.

66. A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight, by a person entitled to demand payment, within a reasonable time after it is made and in business hours on a business day. In default of such presentment no party thereto is liable thereon to the person making such default.

Presentment of promissory note for sight.

67. The holder may allow the drawee of a bill of exchange presented to him for acceptance twenty-four hours (exclusive of public holidays) to consider whether he will accept it.

Drawee's time for deliberation.

68. Promissory notes, bills of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder.

Presentment for payment.

Exception.—Where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

69. Presentment for payment must be made during the usual hours of business, and, if at a banker's, within banking hours.

Hours for presentment.

70. A promissory note or bill of exchange, made payable at a specified period after date or sight thereof, must be presented for payment at maturity.

Presentment for payment of instrument payable after date or sight.

71. A promissory note payable by instalments must be presented for payment on the third day after the date fixed for payment of each instalment; and non-payment on such presentment has the same effect as non-payment of a note at maturity.

Presentment for payment of promissory note payable by instalments.

72. A promissory note, bill of exchange or cheque made, drawn or accepted payable at a specified place and not elsewhere must, in order to charge any party thereto, be presented for payment at that place.

Presentment for payment of instrument payable at specified place and not elsewhere.

73. A promissory note or bill of exchange made, drawn or accepted payable at a specified place must, in order to charge the maker or drawer thereof, be presented for payment at that place.

Instrument payable at specified place

74. A promissory note or bill of exchange, not made payable as mentioned in sections 72 and 73, must be presented for payment at one of the places specified (if any), or at the place of business (if any), or at the usual residence, of the maker, drawee or acceptor thereof, as the case may be.

Presentment where no exclusive place specified.

75. If the maker, drawee or acceptor of a negotiable instrument has no known place of business or fixed residence, and no place is specified in the instrument for presentment for acceptance or payment, such presentment may be made to him in person wherever he can be found.

Presentment when maker, &c., has no known place of business or residence.

76. A cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer.

Presentment of cheque to charge drawer.

77. A cheque must, in order to charge any person except the drawer, be presented within a reasonable time after delivery thereof by such person.

Presentment of cheque to charge any other person.

78. Subject to the provisions of section 33, a negotiable instrument payable on demand must be presented for payment within a reasonable time after it is received by the holder.

Presentment of instrument payable on demand.

79. Presentment for acceptance or payment may be made to the duly authorized agent of the drawee, maker or acceptor, as the case may be, or where the drawee, maker or acceptor has died, to his legal representative, or where he has been declared an insolvent, to his assignee.

Presentment by or to agent, representative of deceased, or assignee of insolvent.

80. No presentment for payment is necessary, and the instrument is dishonoured at the due date for presentment, in any of the following cases:—

When presentment unnecessary.

(*a*) if the maker, drawee or acceptor intentionally prevents the presentment of the instrument, or, if the instrument being payable at his place of business, he closes such place on a business day during the usual business-hours, or

if the instrument being payable at some other specified place, neither he nor any person authorized to pay it attends at such place during the usual business hours, or

if the instrument not being payable at any specified place, he cannot after due search be found;

(*b*) as against any party if, after maturity, with knowledge that the instrument has not been presented—

he makes a part payment on account of the amount due on the instrument,

or promises to pay the amount due thereon in whole or in part,

or otherwise waives his right to take advantage of any default in presentment for payment;

(*c*) as against the drawer, if the drawer could not suffer damage from the want of such presentment.

81. When a bill of exchange, accepted payable at a specified bank, has been duly presented there for payment and dishonoured, if the banker so negligently or improperly keeps, deals with or delivers back such bill as to cause loss to the holder, he must compensate the holder for such loss.

Liability of banker for negligently dealing with bill presented for payment.

CHAPTER VI.

OF PAYMENT AND INTEREST.

82. Subject to the provisions of section 86, clause (*c*), payment of the amount due on a promissory note, bill of exchange or cheque must, in order to discharge the maker or acceptor, be made to the holder of the instrument.

To whom payment should be made.

83. When interest at a specified rate is expressly made payable on a promissory note or bill of exchange; interest shall be calculated at the rate specified, on the amount and from the date of the instrument, until tender or realization of the amount due thereon, or until such date after the institution of a suit to recover such amount as the Court directs.

Interest when rate specified.

84. When no rate of interest is specified in the instrument, interest on the amount thereof shall, except in cases provided for by the Code of Civil Procedure, section 532, be calculated at the rate of six per centum per annum, from the date at which the same ought to have been paid by the party charged, until tender or realization of the amount due thereon or until such date after the institution of a suit to recover such amount as the Court directs.

Interest when no rate specified.

Explanation.—When the party charged is the indorser of an instrument dishonoured by non-payment, he is liable to pay interest only from the time that he receives notice of the dishonour.

85. Any person liable to pay, and called upon by the holder thereof to pay, the amount due on a promissory note, bill of exchange or cheque is before payment entitled to have it shown, and is on payment entitled to have it delivered up, to him, or, if the instrument is lost or cannot be produced, to be indemnified against any further claim thereon against him.

Delivery of instrument on payment, or indemnity in case of loss.

CHAPTER VII.

OF DISCHARGE FROM LIABILITY ON NOTES, BILLS AND CHEQUES.

86. The maker, acceptor or indorser respectively of a negotiable instrument is discharged from liability thereon—

Discharge from liability,

(*a*) to a holder thereof who cancels such acceptor's or indorser's name with intent to discharge him, and to all parties claiming under such holder.

by cancellation,

(*b*) to a holder thereof who otherwise discharges such maker, acceptor or indorser, and to all parties deriving title under such holder after notice of such discharge;

by release,

(*c*) to all parties thereto, if the instrument is payable to bearer, or has been indorsed in blank, and such maker, acceptor or indorser makes payment in due course of the amount due thereon.

by payment.

87. If the holder of a bill of exchange allows the drawee more than twenty-four hours to consider whether he will accept the same, all previous parties not consenting to such allowance are thereby discharged from liability to such holder.

Discharge by allowing drawee more than twenty-four hours to accept.

88. When the holder of a cheque fails to present it for payment, and the drawer thereof sustains loss or damage from such failure, he is discharged from liability to the holder.

When cheque not duly presented and drawer damaged thereby.

89. Where a cheque payable to order, purports to be indorsed by or on behalf of the payee, the drawee is discharged by payment in due course.

Cheque payable to order.

90. If the holder of a bill of exchange acquiesces in a conditional acceptance, or one limited to part of the sum mentioned in the bill, or which substitutes a different place or time for payment, or which, where the drawers are not partners is not signed by all the drawees, all previous parties whose consent is not obtained to such acceptance are discharged as against the holder and those claiming under him.

Parties not consenting discharged by conditional or limited acceptance.

91. Save as provided in sections 20, 53, 90 and 120, any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties;

Effect of material alteration.

and any such alteration if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof.

Alteration by indorsee.

The provisions of this section are subject to those of sections 20, 53, 90 and 120.

92. An acceptor or indorser of a negotiable instrument is bound by his acceptance or indorsement notwithstanding any previous alteration of the instrument.

Acceptor or indorser bound notwithstanding previous alteration.

93. Where a promissory note, bill of exchange or cheque has been materially altered, but does not appear to have been so altered,

Payment of instrument on which alteration is not apparent.

or where a cheque is presented for payment which does not at the time of presentation appear to be crossed or to have had a crossing which has been obliterated,

payment thereof by a person or banker liable to pay and paying the same according to the apparent tenor thereof at the time of payment and otherwise in due course, shall discharge such person or banker from all liability thereon, and such payment shall not be questioned by reason of the instrument having been altered, or the cheque crossed.

CHAPTER VIII.

OF NOTICE OF DISHONOUR.

Dishonour by non-acceptance.

94. A bill of exchange is said to be dishonoured by non-acceptance when the drawee, or one of several drawees not being partners, makes default in acceptance upon being duly required to accept the bill.

Where the drawee is incompetent to contract the bill may be treated as dishonoured.

Dishonour by non-payment.

95. A promissory note, bill of exchange or cheque is said to be dishonoured by non-payment when the maker of the note, acceptor of the bill, or drawee of the cheque makes default in payment upon being duly required to pay the same.

By and to whom notice should be given.

96. When a promissory note, bill of exchange or cheque is dishonoured by non-acceptance or non-payment, the holder thereof, or some party thereto who remains liable thereon, must give notice that the instrument has been so dishonoured to all other parties whom the holder seeks to make severally liable thereon, and to some one of several parties whom he seeks to make jointly liable thereon.

Nothing in this section renders it necessary to give notice to the maker of the dishonoured promissory note, or the drawee or acceptor of the dishonoured bill of exchange or cheque.

Mode in which notice may be given.

97. Notice of dishonour may be given to a duly authorised agent of the person to whom it is required to be given, or, where he has died, to his legal representative, or, where he has been declared an insolvent, to his assignee; may be oral or written; may, if written, be sent by post; and may be in any form; but it must inform the party to whom it is given, either in express terms or by reasonable intendment, that the instrument has been dishonoured, and in what way, and that he will be held liable thereon; and it must be given within a reasonable time after dishonour, at the place of business, or (in case such party has no place of business) at the residence of the party for whom it is intended.

If the notice is sent by post and miscarries, such miscarriage does not render the notice invalid.

Party receiving must transmit notice of dishonour.

98. Any party receiving notice of dishonour must, in order to render any prior party liable to himself, transmit it to such party within a reasonable time, unless such party otherwise receives due notice as provided by section 96.

Agent for presentment.

99. When the instrument is deposited with an agent for presentment, the agent is entitled to the same time to give notice to his principal as if he were the holder giving notice of dishonour, and the principal is entitled to a further like period to give notice of dishonour.

When party to whom notice given is dead.

100. When the party to whom notice of dishonour is despatched is dead, but the party despatching the notice is ignorant of his death, the notice is sufficient.

When notice of dishonour is unnecessary.

101. No notice of dishonour is necessary—

(*a*) when it is dispensed with by the party entitled thereto;

(*b*) in order to charge the drawer, when he has countermanded payment;

(*c*) when the party charged could not suffer damage for want of notice;

(*d*) when the party entitled to notice cannot after due search be found; or the party bound to give notice is, for any other reason, unable without any fault of his own to give it;

(*e*) to charge the drawers, when the acceptor is also a drawer;

(*f*) in the case of a promissory note which is not negotiable;

(*g*) when the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.

CHAPTER IX.

OF NOTING AND PROTEST.

Noting.

102. When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may cause such dishonour to be noted by a notary public upon the instrument, or upon a paper attached thereto, or partly upon each.

Such note must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reason, if any, assigned for such dishonour, or, if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured, and the notary's charges.

Protest.

103. When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may, within a reasonable time, cause such dishonour to be noted and certified by a notary public. Such certificate is called a protest, and in a suit upon the instrument, on proof of the protest, the Court shall presume the fact of dishonour, unless and until such fact is disproved.

Protest for better security.

When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached, before the maturity of the bill, the holder may, within a reasonable time, cause a notary public to demand better security of the acceptor, and on its being refused may, within a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security.

Contents of protest.

104. A protest under section 103 must contain—

(*a*) either the instrument itself, or a literal transcript of the instrument and of everything written or printed thereupon;

(*b*) the name of the person for whom and against whom the instrument has been protested;

(*c*) a statement that payment or acceptance, or better security, as the case may be, has been demanded of such person by the notary public; the terms of his answer, if any, or a statement that he gave no answer, or that he could not be found;

(*d*) when the note or bill has been dishonoured, the place and time of dishonour, and when better security has been refused, the place and time of refusal;

(*e*) the subscription of the notary public making the protest;

(*f*) in the event of an acceptance for honour or of a payment for honour, the name of the person by whom, of the person for whom, and the manner in which, such acceptance or payment was offered and effected.

Notice of protest.

105. When a promissory note or bill of exchange is required by law to be protested, notice of such protest must be given instead of notice of dishonour, in the same manner and subject to the same conditions; but the notice may be given by the notary public who makes the protest.

Protest for non-payment after dishonour by non-acceptance.

106. All bills of exchange drawn payable at some other place than the place mentioned as the residence of the drawee, and which are dishonoured by non-acceptance, may, without further presentment to the drawee, be protested for non-payment, in the place specified for payment, unless paid before or at maturity.

CHAPTER X.

OF REASONABLE TIME.

Reasonable time.

107. In determining what is a reasonable time for presentment for acceptance or payment, for giving notice of dishonour and for noting, regard shall be had to the nature of the instrument and the usual course of dealing with respect to similar instruments; and in calculating such time, public holidays shall be excluded.

Reasonable time for presentment.

108. Presentment is made within a reasonable time, within the meaning of sections 65, 77 and 78, if it is made on the business day next after that on which the holder received the instrument referred to, or when there is no more delay than is occasioned by the residence of the parties to the instrument in different places.

Illustration.

A draws on B, resident at Calcutta, a bill of exchange in favour of C payable at sight, and sends it to C at Benares. C, the day after he receives it, indorses it to D, and despatches it to D at Calcutta. D, the day after he receives the bill, presents it for payment. The delay which has taken place in presenting the bill is not unreasonable.

Reasonable time of giving notice of dishonour.

109. If the holder and the party to whom notice of dishonour is given carry on business or live (as the case may be) in different places, such notice is given within a reasonable time if it is despatched by the next post or on the day next after the day of dishonour.

If the said parties carry on business or live in the same place, such notice is given within a reasonable time if it is despatched in time to reach its destination on the day next after the day of dishonour.

Reasonable time for transmitting such notice.

110. A party receiving notice of dishonour, who seeks to enforce his right against a prior party, transmits the notice within a reasonable time if he transmits it within the same time after its receipt as he would have had to give notice if he had been the holder.

CHAPTER XI.

OF ACCEPTANCE AND PAYMENT FOR HONOUR.

Acceptance for honour.

111. When a bill of exchange has been noted or protested for non-acceptance or for better security, any person may, with the consent of the holder, by writing on the bill, accept the same for the honour of any party thereto.

Acceptance not specifying for whose honour it is made.

112. Where the acceptance does not express for whose honour it is made, it shall be deemed to be made for the honour of the drawer.

Liability of acceptor for honour.

113. An acceptor for honour binds himself to all parties subsequent to the party for whose honour he accepts to pay the amount of the bill if the drawee do not; and such party and all prior parties are liable in their respective capacities to compensate the acceptor for honour for all loss or damage sustained by him in consequence of such acceptance.

But an acceptor for honour is not liable to the holder of the bill unless it is presented, or (in case the address given by such acceptor on the bill is a place other than the place where the bill is made payable) forwarded for presentment, not later than the day next after the day of its maturity.

When acceptor for honour may be charged.

114. An acceptor for honour cannot be charged unless the bill has at its maturity been presented to the drawee for payment and has been dishonoured by him, and noted or protested for such dishonour.

Payment for honour.

115. When a bill of exchange has been noted or protested for non-payment, any person may pay the same for the honour of any party liable to pay the same, provided that the person so paying has previously declared before a notary public the party for whose honour he pays, and that such declaration has been recorded by such notary public.

Right of payer for honour.

116. Any person so paying is entitled to all the rights, in respect of the bill, of the holder at the time of such payment, and may recover from the party for whose honour he pays all sums so paid, with interest thereon and with all expenses properly incurred in making such payment.

CHAPTER XII.

OF COMPENSATION.

117. The compensation payable in case of dishonour of a promissory note, bill of exchange or cheque, by any party liable to the holder or any indorsee, shall (except in cases provided for by the Code of Civil Procedure, section 532) be determined by the following rules :—

Rules as to compensation.

(*a*) The holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in presenting, noting and protesting it ;

(*b*) When the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places ;

(*c*) An indorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at six per centum per annum from the date of payment until tender or realization thereof, together with all expenses caused by the dishonour and payment ;

(*d*) When the person charged and such indorser reside at different places, the indorser is entitled to receive such sum at the current rate of exchange between the two places ;

(*e*) The party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him together with all expenses properly incurred by him. Such bill must be accompanied by the instrument dishonoured and the protest thereof (if any). If such bill is dishonoured, the party dishonouring the same is liable to make compensation thereof in the same manner as in the case of the original bill.

CHAPTER XIII.

OF CROSSED CHEQUES.

118. Where a cheque bears across its face an addition of the words "and company" or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words "not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally.

Cheque crossed generally.

119. Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker.

Cheque crossed specially.

120. Where a cheque is uncrossed, the holder may cross it generally or specially.

Crossing after issue.

Where a cheque is crossed generally, the holder may cross it specially.

Where a cheque is crossed generally or specially, the holder may add the words "not negotiable."

Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection.

121. Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker.

Payment of cheque crossed generally.

Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or his agent for collection.

Payment of cheque crossed specially.

122. Where a cheque is crossed specially to more than one banker, except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof.

Payment of cheque crossed specially more than once.

123. Where the banker on whom a crossed cheque is drawn has paid the same in due course, the banker paying the cheque, and (in case such cheque has come to the hands of the payee) the drawer thereof, shall respectively be entitled to the same rights, and be placed in the same position in all respects, as they would respectively be entitled to and placed in if the amount of the cheque had been paid to and received by the true owner thereof.

Payment in due course of crossed cheque.

124. Any banker paying a cheque crossed generally otherwise than to a banker, or a cheque crossed specially otherwise than to the banker to whom the same is crossed, or his agent for collection, being a banker, shall be liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

Payment of crossed cheque out of due course.

125. A person taking a cheque crossed generally or specially, bearing in either case the words "not negotiable," shall not have, and shall not be capable of giving, a better title to the cheque than that which the person from whom he took it had.

Cheque bearing "not negotiable."

But a banker who has in good faith and without negligence received payment from a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment.

CHAPTER XIV.

OF FOREIGN BILLS.

126. Foreign bills of exchange may be drawn in parts, each part being numbered and containing a provision that it shall continue payable only so long as

Set of bills.

the others remain unpaid. All the parts together make a set ; but the whole set constitutes only one bill, and is extinguished when one of the parts, if a separate bill, would be extinguished.

Exception.—When a person accepts or indorses different parts of the bill in favour of different persons, he is liable on each part as if it were a separate bill.

127. As between holders in due course of different parts of the same set, he who first acquired title to his part is entitled to the other parts and the money represented by the bill.

Holder of first acquired part entitled to all.

128. Where a drawee in case of need is named in a foreign bill of exchange, the bill is not dishonoured until dishonoured by such drawee.

Drawee in case of need.

129. Foreign bills of exchange must be protested for dishonour when such protest is required by the law of the place where they are drawn.

Protest of foreign bills.

CHAPTER XV.

OF INTERNATIONAL LAW.

130. In the absence of a contract to the contrary, the liability of the maker or drawer of a foreign promissory note, bill of exchange or cheque is regulated in all essential matters by the law of the place where he made the instrument, and the respective liabilities of the acceptor and indorser by the law of the place where the instrument is made payable.

Law governing liability of maker, acceptor or indorser of foreign instrument.

Illustrations.

A bill of exchange was drawn by A in California, where the rate of interest is 25 per cent., and accepted by B, payable in Washington, where the rate of interest is 6 per cent. The bill is endorsed in British India, and is dishonoured. An action on the bill is brought against B in British India. He is liable to pay interest at the rate of 6 per cent. only; but if A is charged as drawer, A is liable to pay interest at the rate of 25 per cent.

131. Where a promissory note, bill of exchange or cheque is made payable in a different place from that in which it is made or indorsed, the law of the place where it is made payable determines what constitutes dishonour and what notice of dishonour is sufficient.

Law of place of payment governs dishonour.

Illustration.

A bill of exchange drawn and indorsed in British India, but accepted payable in France, is dishonoured. The indorsee causes it to be protested for such dishonour, and gives notice thereof in accordance with the law of France, though not in accordance with the rules herein contained in respect of bills which are not foreign. The notice is sufficient.

132. If a negotiable instrument is made, drawn, accepted or indorsed out of British India, but in accordance with the law of British India, the circumstance that any agreement evidenced by such instrument is invalid according to the law of the country wherein it was entered into, does not invalidate any subsequent acceptance or endorsement made thereon in British India.

Instrument made, &c., out of British India, but in accordance with its law.

133. The law of any foreign country regarding promissory notes, bills of exchange and cheques shall be presumed to be the same as that of British India, unless and until the contrary is proved.

Presumption as to foreign law.

SCHEDULE.

(*a*) STATUTES.

Year and chapter.	Title.	Extent of repeal.
9 Wm. III. c. 17	An Act for the better payment of inland Bills of Exchange.	The whole.
3 & 4 Anne, c. 8.	An Act for giving like remedy upon promissory notes as is now used upon Bills of Exchange, and for the better payment of Inland Bills of Exchange.	The whole.

(*b*) ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

No. and year.	Title.	Extent of repeal.
VI of 1840 ...	An Act for the amendment of the law concerning the negotiation of Bills of Exchange.	The whole.
V of 1866 ...	An Act to amend in certain respects the Commercial Law of British India.	Sections 11, 12 and 13.
XV of 1874 ...	The Laws Local Extent Act, 1874.	The first schedule, so far as relates to Act VI of 1840 and Act V of 1866, sections 11, 12 and 13.

D. FITZPATRICK,
Secy. to the Govt. of India.

[First publication.]

The following further Report of a Select Committee, together with the Bill as settled by them, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 19th of February, 1879:—

WE, the undersigned Members of the Select Committee to which the Bill to define and amend the law relating to the Transfer of Property was referred, have considered the Bill and the papers noted in the margin, and have the honour to present this further report.

From Secretary to Chief Commissioner, Assam, No. 532, dated 16th March, 1878.
„ Acting Under Secretary to Government, Bombay, No. 3583, dated 18th June, 1878, and enclosures.
Extract from a Memorandum by Pandit Srikishen, Pleader, Judicial Commissioner's Court, Oudh.
Third Note by the Hon'ble Whitley Stokes, dated 20th July, 1878.
From Secretary to Chief Commissioner, Mysore, No. 2705-3 J, dated 9th July, 1878, and enclosure.
„ Officiating Secretary to Chief Commissioner, Central Provinces, No. 3519-168, dated 24th August, 1878, and enclosure.
„ Officiating Under-Secretary to Government, Bengal, No. 3678, dated 6th September, 1878, and enclosures.
„ Secretary to Government, North-Western Provinces and Oudh, No. 687A, dated 11th September, 1878.
„ Junior Secretary to Chief Commissioner, British Burma, No. 1438-64, dated 28th September, 1878, and enclosures.
„ Secretary to Government, North-Western Provinces and Oudh, No. 721 A, dated 8th October, 1878, and enclosure.
„ Hon'ble H. S. Cunningham, dated 5th November, 1878, and enclosure.
„ Secretary to Government, Panjáb, No. 3925, dated 21st November, 1878, and enclosures.
Endorsement by Government of Bengal, No. 4556, dated 29th November, 1878, and enclosures.
Fourth Note by the Hon'ble Whitley Stokes, dated 9th January, 1879.
Forms of instruments taken from a Bengálí book of forms received from Mr. O'Kinealy.

2. The principal objections taken to this Bill in its second form are, first, that, as a whole, it is heterogeneous, and, secondly, that certain parts of it are neither necessary nor expedient. It is said, for instance, that, though the bulk of the Bill deals with transfer of property *inter vivos* by act of parties, it also treats, in sections 82, 83, of conditions in Wills, and, in section 129, of Succession to a deceased person. It is said, again, that the chapters dealing respectively with the rights and liabilities of owners of limited interests and with property held by several persons belong rather to the subject of the enjoyment, than to that of the transfer, of property. It is urged that settlements (in the conveyancer's sense of the word) are hardly ever made in India, that what are technically called Powers are almost unknown, and that the chapters respectively dealing with those subjects are certainly not necessary and can hardly be said to be expedient. We feel the force of these objections. In fact, we have always felt them. But we were not responsible for the first draft of the Bill, whatever were its excellences or defects. The matters thus objected to, together with others, such as Registration and Trusts, still more foreign to the proper subject of the Bill, are all dealt with by the draft prepared by the late Indian Law Commission, which was sent out in 1870 by the then Secretary of State with instructions to introduce a Bill founded upon it, revised by Sir A. Hobhouse and sent home by the Government of India in January, 1877, *i. e.*, nearly six months before the Bill was introduced and referred to a Select Committee. The great deference due to the Law Commission and to Sir A. Hobhouse has hitherto prevented us from dealing freely with the Bill. Until the opinions of the Local Governments and the results of local experience had been obtained, for us to have altered it would have been to set our individual views against those of the able and learned men who were answerable for the Bill as introduced. But now that the opinions and results above referred to have been obtained, we see that, if the Bill is to go on at all, it must be strictly confined to the subject of transfer of property by act of parties, that is to say, by contract or gift.

3. We have therefore omitted chapters VII to XII both inclusive.

4. We cannot maintain that they are in accordance with one of the canons laid down in our last report, namely, that no additions should be made to the existing law "which are not either necessary or clearly expedient." The chapters dealing respectively with settlements, the rights and liabilities of owners of limited interests, and property held by several persons, are, moreover, very incomplete; and, as Natives are excluded from chapter IX, it would apply to a very limited class of persons. Chapter XI (of Powers) would also be of little use. We believe that among Natives powers are almost unknown. So far as we are aware, the only reported cases in which anything like a power was given by a Native are in 2 Calc. 474, and N.-W. P. (1869) Part II, p. 6, in each of which cases a Hindú bequeathed land to his wife and expressly empowered her to alienate it, and in 5 Beng. 181, where a Hindú testator empowered his sister to appoint a trustee of a religious endowment. Moreover, powers may be created by will and are, as often as not, exerciseable by will. The subject therefore does not properly fall within a measure treating of the *transfer* of property, that is, as lawyers generally understand the expression, the conveyance of property from one living person to another.

5. As the Bill is, so far as it deals with immoveable property and debts, only a partial measure, we have made the preamble run thus:—"Whereas it is expedient to define and amend certain parts of the law relating to the transfer of property by act of parties." Compare the preamble to the Indian Contract Act, IX of 1872.

CHAPTER I.—*Preliminary.*

6. In section 2, we have expressly saved all transfers by operation of law (*e. g.*, in case of insolvency, forfeiture, sale in execution of a decree), with which the Bill is not intended to deal.

7. In section 3 we have omitted, as unnecessary, the definitions of "grantor," "grantee," and "grant;" and, for the last paragraph, we have said: "Chapters III, IV, V and VI of this Act shall be taken as part of the Indian Contract Act, 1872."

CHAPTER II.—*Of Assurances of Immoveable Property.*

8. This chapter should we think be entitled "Of Transfers of Immoveable Property," as it relates to all transfers of such property, whether or not an assurance is employed. We have omitted section 5 and the schedule to which it relates: they do not fitly form part of a Bill dealing with substantive law. Moreover, English experience shews that statutory forms of conveyances are rarely used, and they are dangerous, as tempting unskilled persons to try and be their own conveyancers.

9. Section 6 applies to transfers of immoveable property made by assurance; but it obviously ought to apply also to oral transfers of such property. We have therefore re-drawn it.

10. In section 7, we have provided for the case of a Sebáit, which has twice come before the Judicial Committee. (See 14 Beng. 450, and I. L. R. 2 Calc. 341).

11. As rents and profits of land are 'immoveable property,' we have, after this section, inserted section 1 of Act XI of 1855:—

"No person shall be chargeable with any rents or profits of any immoveable property which he has in good faith paid or delivered to any person of whom he in good faith held the same, notwithstanding it may afterwards appear that the person to whom such payment or delivery was made had no right to receive such rents or profits."

This section now applies only to cases to which the English law is applicable; but there seems no reason why so equitable and useful a rule should not be extended to every one in India.

12. Section 8 of Bill No. III applies not only to cases where land has passed *inter vivos* by act of parties, but also to cases in which it has been transferred by operation of law. It therefore seems beyond the scope of the Bill.

13. The Bill is silent as to the doctrine of *lis pendens*, which has in about a dozen reported cases been applied to Native purchasers and mortgagees (see 11 Bom. 24, 29, 30, 139; 8 Beng. 474; 1 O'Kin. 303, 309; 10 W. R. 469; Sev. 808, 951). We have inserted the following:—

"10. During the active prosecution in any Court having authority in British India or established beyond the limits of British India by the Governor General in Council, of a suit in which the right to any immoveable property is directly and specifically in question, the property cannot be transferred by any party to the suit so as to affect the rights of any other party thereto under any decree or order made therein."

14. Section 9 of Bill No. III (as to the effect of payment by one person, of consideration for which a transfer is made to another) properly belongs to the Trusts Bill and should, we think, be omitted from the present measure.

CHAPTER III.—*Sales of Immoveable Property.*

15. In accordance with a suggestion of Mr. Justice Cunningham we have prefixed to this chapter a section founded on section 78 of the Contract Act; but we do not think with him that the section should provide for part delivery, an expression which, in the sense in which it is used in the Contract Act, section 92, would be inappropriate as applied to land, nor do we consider that, in stating the time at which delivery takes place, the effect of executing and delivering the assurance should be ignored.

The section referred to is as follows:—

Sale how effected.

"Sale of immoveable property is effected by offer and acceptance of certain immoveable property for a price, or of a price for certain immoveable property,

"together with payment of the price and delivery of the property, or with tender, part-payment or earnest; or with an agreement, express or implied, that the payment, or delivery, or both, shall be postponed.

"Where there is a contract for the sale of immoveable property, the ownership of the property passes to the buyer when the whole or part of the price, or when the earnest, is paid, or when the property is delivered.

"If the parties agree, expressly or by implication, that the payment, or delivery, or both, shall be postponed, the ownership passes as soon as the proposal for sale is accepted.

"Delivery of immoveable property takes place—

"(*a*) if the transfer is made by assurance—when the assurance is executed and delivered by the seller, and (if its registration is required by law) registered:

"(*b*) if the transfer is not made by assurance, in the case of a reversion or other intangible thing—when the parties consent to its delivery, and in the case of other immoveable property—when the buyer becomes capable of exercising physical control over it and determines to exercise such control on his own behalf or on behalf of the person whom he represents."

This will have the effect of settling a moot point of Hindú law, namely, whether change of possession is necessary to complete a sale of land, whether, in other words, the vendor must, at the time of sale, be in possession of the property sold (I. L. R. 1 Calc. 302: I. L. R. 1 Bomb. 502: N. W. P. 1871, p. 2: *contra* 7 Bomb. A. C. J. 4: 10 Bomb. 491). This question is answered in the negative by the Calcutta High Court and Mr. J. D. Mayne, a considerable authority on Hindú law.

16. We have omitted clauses (*d*) and (*i*) of section 11 (now 12). The former is, as Mr. Jacob points out, provided for by the Contract Act, section 39; the latter by section 10 of the same Act. On the other hand, we have restored clauses (*e*) and (*f*) of Bill No. I, modified as follows:—

"Till the ownership of the property passes to the buyer, the seller is entitled to the rents and profits thereof.

"When the ownership of the property has passed to the buyer, he must bear any loss arising from the destruction, injury or deterioration of the property not caused by the seller, and he is entitled to the benefit of any improvement in, or increase in value of, the property and to the rents and profits thereof."

The latter clause corresponds with the provision of the Contract Act, section 86, as to goods.

17. We have recast and abridged section 10 (now 13) as follows:—

Disclosures required from seller and buyer.

"The following omissions are fraudulent:—

"(*a*) an omission of the seller of immoveable property to disclose to the buyer any defect therein of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover:

"(*b*) an omission of the buyer of immoveable property to disclose to the seller any fact as to the nature or extent of the seller's interest therein, of which the buyer is, and the seller is not, aware, and which increases the value of such interest."

This will attract section 17, clause (5), of the Contract Act, which declares that "fraud" includes "any such omission as the law specially declares to be fraudulent."

18. As the Bill is now strictly limited to transfers by act of parties, we have omitted section 13, as to the procedure where the buyer becomes insolvent before completion. For the same reason we have also omitted section 73, as to the procedure where, during the continuance of a lease, the lessee becomes insolvent.

19. Section 17 (now 18), as to joint purchases. We have added, as Mr. Field suggests: "In the absence of evidence as to the shares so advanced, such persons shall be presumed to be equally interested in the property."

CHAPTER IV.—*Of Exchanges.*

20. As this chapter deals with moveable as well as immoveable property, we have placed it after the chapter on leases and we have omitted the first paragraph of section 22 as the matter seems sufficiently provided for by Act IX of 1872, sections 64, 65, and Act I of 1867, sections 25, 37.

CHAPTER V.—*Of Mortgages of Immoveable Property.*

21. Section 27.—We fear that the abolition of equitable mortgages here proposed by the Law Commissioners would inconvenience the mercantile community. We have thought it better to say that a mortgage by deposit of title-deeds shall be deemed to create a charge on the property comprised therein and to insert the necessary clause in section 68 (now 63).

22. We have provided, in accordance with a suggestion of Mr. Field, that in the case of an usufructuary mortgage, the mortgagor may recover possession of the property, (1) where the mortgagee is authorized to pay himself from the rents and profits of the property the principal and interest of the mortgage-money—when such principal and interest are so paid; (2) where the mortgagee is authorized to pay himself from such rents and profits the interest of the mortgage-money—when the term (if any) of the mortgage expires and the mortgagor pays or tenders to the mortgagee, or deposits in such Court as last aforesaid, the principal of the mortgage-money."

23. Section 29 (now 24).—We have here declared the duty of a mortgagor to take all legal means to protect his rights in the mortgaged property (Macph. 112).

24. Section 31 (now 27).—This provided only for voluntary waste. We have now provided that the mortgagor is not liable for permissive waste.

25. Section 42 (now 39), clause (*c*).—We have added, in order to meet the case of patní tenures and saleable under-tenures, "and any arrears of rent in default of payment of which the property may be summarily sold."

We have provided that a mortgagee in possession ought to do such repairs as he can pay for out of the rents received after his interest is paid (see 9 W. R. 488).

We have omitted clause (*e*). The right which it gives is, as Mr. Field says, part of the mortgagee's right to take possession, which, as a general rule, finds no place in the Bill.

Where sufficient tender is made, the mortgagee in possession is thenceforth accountable for all his receipts from the mortgaged property (9 N.-W. P. 1: Macph. 159—160). We have provided for this.

26. Section 60 (now 57).—When a mortgagor obtains a decree in a redemption-suit and fails to pay the amount due, we think the mortgagee should be entitled either to a foreclosure or a sale. We have altered this section accordingly.

27. Section 61 (now 58).—We have omitted the second paragraph and the schedule to which it refers. It is hardly the function of a Bill codifying substantive law to give forms of decrees. They should, if necessary, be added to schedule IV of the Code of Civil Procedure.

CHAPTER VI.—*Of Leases.*

28. Section 70 (now 66).—We have substituted a section analogous to that above proposed as a substitute for section 10.

29. Section 71 (now 65).—We have struck out clauses (*c*) and (*g*). The former is superfluous, the latter is provided for by the Contract Act, sections 64 and 73.

Clause (*l*) now (*j*).—With reference to Couch, C. J.'s, decision in *Koegler* v. *Yule*, 5 Beng. 401, 416, we think this clause should run thus: "The lessee may use the property leased and its products (if any) as a reasonable owner would use them, but he must not use the property for a purpose other than that for which it was leased, or fell timber, open mines or quarries, or commit any other act which is destructive or permanently injurious thereto." We have added "The prohibition in this clause does not apply to mines which were open when the lease was granted."—See 8 Chan. Div. 526.

Clause (*q*) now (*o*).—We have inserted words in the proviso to shew that the lessor's transferee is not entitled to arrears of rent due before the transfer.

Clause (*r*) now (*p*).—We have made (in accordance with a suggestion of the Government of the North-Western Provinces) the second paragraph to run thus: "Nothing in this clause shall be deemed to authorize a tenant having a right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, and the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee."

30. Section 76 (now 70).—We have completed the list of events on which a lease determines.

31. We have redrawn the clause as to waiver of forfeiture and notice. It is now numbered 71, 72.

32. We have inserted a section (74) as to the effect of surrender and forfeiture of a lease, on sub-lessees.

33. We have made some other comparatively unimportant omissions, additions and alterations in wording and arrangement. We have added on the margins references to the reported decisions of the Indian Courts and the Judicial Committee, which justify the rules contained in the Bill. It will be seen that but few of these rules are devoid of this valuable support. The assertion that the Bill would introduce a mass of new law into India must therefore be

due to ignorance of the extent to which English law (under the name of justice, equity and good conscience) is actually administered to the Natives by the Anglo-Indian Courts. The object of the Bill, like that of all our Codes, is to strip our own law of all that is local and historical, and to mould the residue into a shape in which it would be suitable for an Indian population and could be easily administered by non-professional Judges. But the Bill will introduce hardly any new substantive law, and it will not (except in the case of the procedure relating to mortgages) displace any existing enactment. The rules, for instance, as to the relation of landlord and tenant contained in the local Acts, X of 1859, XVIII of 1873, XIX of 1868, XXVIII of 1868, Bengal Act VIII of 1869, and Madras Act VIII of 1865, will all remain untouched.

34. To the body of local usages and contractual incidents which in India, as in other countries, exists as to the transfer of land the tenderest care is shewn by the Bill. Not only is local usage expressly saved in sections 62, 65 and 68, but the effect of section 1, clause (*a*), will be to maintain intact the statutory force which the legislature has given to local usage in those two *pays de coutumes* the Panjáb and Oudh; and throughout India all the many incidents of a mortgage or a lease, which are not inconsistent with the provisions of the Bill, will remain wholly unaffected.

35. The Bill and preliminary report of the Select Committee have been published in English in the Presidency-towns, the Panjáb, the Central Provinces and British Burma. From the North-Western Provinces no report of publication has been received. Publication of the Bill and Report in the vernacular has been reported only by the Government of Bengal. We recommend that the Bill as now altered be published in the *Gazette of India* and sent to the various Local Governments for opinion. And we think that no further steps should be taken upon the Bill until it has been reported on by the new Indian Law Commission.

WHITLEY STOKES.
F. R. COCKERELL.

CALCUTTA;
The 19th February, 1879.

I concur in all the omissions and amendments made by the Committee and in their final recommendation; but I believe the Bill to be capable of further simplification and regret to notice the almost entire absence of illustrations.

T. H. THORNTON.

I have not had time to consider either the provisions of the Bill or the changes now made thoroughly; but I agree that the chapters on Powers, Settlements, &c., should be omitted, and think these omissions necessitate republication with a view to elicit fresh criticism to be laid before the new Commission.

I would modify the new section 10 by requiring a written instrument in all cases where the value of the property sold is Rs. 100 or upwards. This will involve registration and get rid of the inconvenience and anomaly which would arise from oral sales of valuable land with deferred possession and no registration. Subject to the above remarks, I approve of the additions now made to the Bill.

G. H. P. EVANS.

I concur in all the omissions and agree that there should be a further publication.

G. C. PAUL.

I am opposed to the republication of this Bill at the present time. I believe that there is a great deal still left in the Bill which it will be desirable to omit, as relating to matters on which legislation is not called for; and I think that there should be no further publication until the Law Commission have reported on the measure.

A. J. ARBUTHNOT.

I am inclined to think that there can be no harm in republishing the Bill in its present form (though I must say that I believe it admits of further improvement), inasmuch as the republication will elicit public criticisms which may be of some use to the Law Commission.

JOTÍNDRA MOHAN TAGORE.

No. III.

THE TRANSFER OF PROPERTY BILL, 1879.

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No. III.

A Bill to amend the law relating to the Transfer of Property by act of Parties.

Preamble.

WHEREAS it is expedient to define and amend certain parts of the law relating to the transfer of property by act of parties; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Bill s. 1: Bill II, s. 1.

Short title. Extent. Commencement.

1. This Act may be called "The Transfer of Property Act, 1879:"

It extends to the whole of British India;

And it shall come into force on the first day of *January*, 1880.

Bill, s. 2: Bill II, s. 1.

Repeal of Acts.

2. On and from that day the enactments specified in the schedule hereto annexed shall be repealed to the extent mentioned in the third column thereof. But nothing herein contained shall be deemed to affect—

Act IX of 1872, s. 1.

Saving of certain Acts, incidents, rights, liabilities, &c.

(*a*) the provisions of any enactment not hereby expressly repealed:

(*b*) any incidents of any contract which are not inconsistent with the provisions of this Act:

(*c*) any right or liability acquired or incurred before this Act comes into force, or any remedy in respect of any such right or liability:

(*d*) the right to anything affixed to the soil by the lessee under any lease granted before this Act comes into force:

1 Beng. A. C. 219.

(*e*) any right of pre-emption acquired after this Act comes into force:

I. L. R., 2 Bom. 541.

(*f*) any transfer by operation of law.

Bill, s. 3: Bill II, s. 1: Report, s. 2:

Act III of 1877, s. 17, cl. (*b*).

Interpretation-clause.

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

"assurance."

"assurance" means any non-testamentary instrument which purports or operates to create, transfer, or otherwise dispose of, whether in present or in future, any right, title or interest, whether vested or contingent, to or in immoveable property:

"registered."

"registered" means registered in British India under the law for the time being in force regulating the registration of documents:

"attached to the earth."

"attached to the earth" means—

(*a*) imbedded in the earth, as in the case of walls:

15, 44, clause 1.

(*b*) permanently resting upon it, as in the case of buildings; or

(*c*) attached to what is so imbedded or so rests, as by means of nails, bolts, screws, cement, solder or other permanent fastening.

Chapters III, IV, V and VI to be part of Act IX of 1872.

4. Chapters III, IV, V and VI of this Act shall be construed as one with the Indian Contract Act, 1872.

CHAPTER II.

OF TRANSFERS OF IMMOVEABLE PROPERTY.

Persons competent to make transfers of immoveable property.

5. Every person competent to contract may make a transfer of immoveable property: but subject to the law for the time being in force as to the circumstances and extent in and to which he may dispose of such property.

Bill, s. 4: Report, s. 4.

Operation of transfer.

6. Unless a different intention is expressed or necessarily implied, a transfer of immoveable property vests in the transferee all the interest which the transferor is then capable of passing therein and in the legal incidents thereof.

Bill, s. 10: Report, s. 10. v. last clause, Report. s. 6: 2 W. R. 125 (buildings): 14 W. R. 379.

Such incidents include (where the property is land) the easements annexed thereto, the mines and minerals thereunder, and the standing trees, and all other products of the soil,

N.-W.P. 1870, p. 251: 24 W. R. 330 (trees 'everything grown on it,' Morley, N. S. 259.

and (where the property is machinery attached to the earth) the moveable parts thereof,

and (where the property is a house) the easements annexed thereto and its locks, keys, bars, doors, windows, pankhas, half-doors, mats and blinds.

Title which transferor of immoveable property can give.

7. The transferor of immoveable property cannot give to another a title thereto better than his own, and where he has only a restricted power of alienating the property, he cannot give to another a title thereto valid as against third parties, except upon an alienation within the restriction:

9 Moo. I. A. 303.

Protection to innocent transferees for value.

Provided that where the transferor is (*a*) the manager of the property of a minor, an undivided family, or an endowed temple, (*b*) a sonless Hindú widow in possession of her deceased husband's property, or (*c*) a trustee, benámídár or other ostensible owner, the transferee's title shall not be impeached if the transfer has been made for a consideration and the transferee has acted in good faith and used due care and diligence to ascertain that the transferor had power to make the transfer.

6 Moo. I. A. 393: 2 W. R. 123: 3 W. R. 11: 8 W. R. 77: 1 Bom. 27: 8 Bom. 77: 9 Bom. 116: 12 Bom. 69: 14 Beng. 450: I. L. R. 2 Calc. 341, 438: 2 Mad. 407: 3 Mad. 294: 6 Mad. 371.

Rent *bonâ fide* paid to holder under defective title.

8. No person shall be chargeable with any rents or profits of any immoveable property which he has in good faith paid or delivered to any person of whom he in good faith held the same, notwithstanding it may afterwards appear that the person to whom such payment or delivery was made had no right to receive such rents or profits.

Act XI of 1855, s. 1.

11 Bom. 72, 76: 12 Bom. 138: 8 Mad. 12: 21 W. R. P. C. 237.

9. Where undivided immoveable property is held in possession by co-owners and one of them transfers his share or any interest therein, the transferee takes the share or interest subject to the right of the other co-owners to enforce a partition of the property; and when such partition is effected, the right of the transferee as such, in the absence of a contract to the contrary by the co-owners, extends only to the share allotted to himself or to his transferor.

Transfer of share of undivided property.

8 Beng. 478: 7 Mad. 111: 11 Bom. 24, 64, 139: N. W. P. 1867, p. 301: 10 W. R. 469: 7 W. R. 225: 15 W. R. 372: 23 W. R. 382: 2 Tayl. & Bell, 113: 1 O'Kin. 303, 309: 5 W. R. P. C. 63: 8 Bom. A. C. J. 61. Consider *Berry* v. *Gibbons*, L. R. 8 Ch. 747.

10. During the active prosecution in any Court having authority in British India, or established beyond the limits of British India by the Governor General in Council, of a suit in which the right to any immoveable property is directly and specifically in question, the property cannot be transferred by any party to the suit so as to affect the rights of any other party thereto under any decree or order therein.

Transfer of property pending suit relating thereto.

CHAPTER III.

OF SALES OF IMMOVEABLE PROPERTY.

Delivery not necessary in case of Hindús, 14 Beng. 307: 1 Bom 5, 19. Effect of part-payment, N.-W. P. 1866, p. 161: 15 W. R. 44: in Muhammadan law: Effect of earnest, W. R. 1864, 281: 1 Bom. 403. Cf. Act IX of 1872, s. 78, as to goods: postponement of payment, 7 W. R. 317. Effect of delivery before payment, 10 W. R. 194.

11. Sale of immoveable property is effected by offer and acceptance of certain immoveable property for a price, or of a price for certain immoveable property,

Sale how effected.

together with payment of the price and delivery of the property, or with tender, part-payment or earnest; or with an agreement, express or implied, that the payment, or delivery, or both, shall be postponed.

Where there is a contract for the sale of immoveable property, the ownership of the property passes to the buyer when the whole or part of the price, or when the earnest, is paid, or when the property is delivered.

If the parties agree, expressly or by implication, that the payment, or delivery, or both, shall be postponed, the ownership passes as soon as the proposal for sale is accepted.

Delivery of immoveable property takes place—

14 Beng. 307, 312: N.-W. P. 1866, p. 87. Consider 12 W. R. P. C. 6: as to delivery of assurance, W. R. 1864, p. 222: 5 W. R. 248: Morley N. S. 358. Right to redeem, N.-W. P. 1868, p. 376.

(*a*) if the transfer is made by assurance—when the assurance is executed and delivered by the seller, and (if its registration is required by law) registered:

(*b*) if the transfer is not made by assurance, in the case of a reversion or other intangible thing—when the parties consent to the delivery, and in the case of other immoveable property—when the buyer becomes capable of exercising physical control over it and determines to exercise such control on his own behalf or on behalf of the person whom he represents.

Bill, s. 11: Bill II, s. 11: Report, s. 14.

12. In the absence of a contract to the contrary, the buyer and the seller of immoveable property respectively have the rights, and are subject to the liabilities, mentioned in the ten rules next following, or such of them as are applicable to the property sold:

Rights and liabilities of buyer and seller.

Devaí Ghelá v. *Jivaráj Mukundás*, 2 Bom. 432 (no right to have good title shewn). Abstract of title, 1 Bom. 78.

(*a*). The seller must produce to the buyer, for examination, all documents of title relating to the property which are in his possession or power, and must inform the buyer of all facts not apparent thereon of which the seller is aware and which affect the seller's power to fulfil his contract, and must answer to the best of his information all relevant questions put to him by the buyer in respect to the property or the title thereto.

Bill, 11 (*c*).

(*b*). Till the ownership of the property passes to the buyer, the seller is entitled to the rents and profits thereof.

Cf. Act IX of 1872, s. 86. Bill, 11 (*f*).

(*c*). When the ownership of the property has passed to the buyer, he must bear any loss arising from the destruction, injury or decrease in value of the property not caused by the seller, and he is entitled to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof.

3 Bom. A. C. J. 102: 2 Hay 577.

(*d*). When the buyer has been let into possession of the property before payment of the whole of the purchase-money, the seller has a charge upon the property for the amount of the purchase-money, or any part thereof, remaining unpaid, and for interest on such amount or part; but as soon as the assurance, if any, is registered, such charge shall cease except as against the buyer.

3 Beng. O. C. J. 79.

(*e*). Unless the buyer has improperly declined to accept delivery of the property, he has, against the seller, a charge on the property, to the extent of the seller's interest therein, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery, and for interest on the amount of such payment; and, when the buyer properly declines to accept the delivery, also for the earnest (if any) and for his costs (if any) of a suit by himself or the seller to compel specific performance of the contract or to obtain a decree for its rescission.

(*f*). When the buyer has been let into beneficial possession of the property before payment of the price, and the price is not paid owing to defects in the seller's title, the buyer is not liable to pay for such possession.

(*g*). The seller must discharge all incumbrances on the property existing at the date of the contract. The buyer may retain, out of the unpaid purchase-money, the amount of such incumbrances, and shall pay the amount so retained to the parties entitled thereto.

(*h*). On payment or tender of the amount due in respect of the price, the seller is bound to execute a proper assurance of the property when the buyer tenders it to him for execution at a proper time and place.

(*i*). On delivery of the property, the buyer is entitled to all documents of title relating thereto which are in the seller's possession or power:

Provided that (1) where the seller retains any part of the property comprised in such documents, he is entitled to retain them all, and (2) where the whole of such property is sold to different buyers, the buyer of the lot of greatest value is entitled to such documents. But in case (1) the seller, and in case (2) the buyer of the lot of greatest value, is bound, upon every reasonable request by the buyer, or by any of the other buyers, as the case may be, or by any person claiming under him, and at the cost of the person making the request, to produce the said documents and furnish such true copies thereof as he may require; and, in the meantime, the seller or the buyer, as the case may be, of the lot of greatest value, must keep the said documents safe, uncancelled and undefaced, unless prevented from so doing by fire or other inevitable accident.

Bill, s. 41 (1) altered. N. W. P. 1867, p. 199: See 7 W. R. 196: 6 W. R. 152: 25 W. R. 46.

(*j*). Unless the sale is made by a person in a fiduciary character, the seller shall be deemed to contract with the buyer,

first, that notwithstanding anything done by the seller or any person through whom he claims, the seller has power to transfer the property to the buyer, free from incumbrances;

secondly, that the seller and all persons claiming any interest in the same through or for him, or any person through whom he claims, will on demand execute and deliver to the buyer at his expense any further assurance of the same that may reasonably be required;

further assurance, 5 W. R. P. C. 111.

and, where the property is leasehold, *thirdly*, that the lease is valid and subsisting and that the rent reserved thereby, the conditions contained therein and the contracts binding on the lessee have been paid, performed and observed down to the delivery.

When the sale is made by a person in a fiduciary character, the seller shall be deemed to contract with the buyer that the seller has done no act whereby the property is incumbered or whereby he is hindered from transferring it.

Bill II, s. 10.

Disclosures required from seller and buyer.

13. The following omissions are fraudulent:—

W. R., 258. Cf. Act IX of 1872, s. 17, clause (5). 16.

(*a*) an omission of the seller of immoveable property to disclose to the buyer any defect therein of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover:

(*b*) an omission of the buyer of immoveable property to disclose to the seller any fact as to the nature or extent of the seller's interest therein, of which the buyer is, and the seller is not, aware, and which increases the value of such interest.

s. 13 s. 12: s. 15: s. 30.

Contract for sale not of itself to create interest in property.

14. A contract for, or relating to, the sale of immoveable property, shall not of itself have the effect of creating any interest in, or charge on, such property; but the only right of any person under the contract shall be to apply for specific performance, or for compensation, or for both, according to the rules laid down in the Indian Contract Act, 1872, and the Specific Relief Act, 1877.

Bill II, s. 14.

Liability of buyer of leasehold.

15. As between the seller and buyer of leasehold property, the buyer is, in the absence of a contract to the contrary, bound to pay the rent reserved by the lease and accruing due after delivery of the property, to perform the contracts entered into by the lessee, and to indemnify the seller against all claims arising after the delivery in respect of non-payment of such rent or breach or non-observance of such contracts.

Bill II, s. 15.

Liability of buyer of right to redeem.

16. As between the seller and buyer of a right to redeem mortgaged property, the buyer is, in the absence of a contract to the contrary, bound (*a*) to pay to the mortgagee the principal sum which, on delivery of the right, is due on the mortgage, and all interest from time to time due for the same, when payment thereof, respectively, is lawfully demanded, and (*b*) to indemnify the seller against the payment thereof, and against all claims for non-payment thereof, respectively.

Bill II, s. 16.

Money received by seller under fire-policy.

17. If at the date of the contract the property is insured against loss or damage by fire, the buyer, in case of such loss or damage, may, in the absence of a contract to the contrary, require any money which the seller actually receives under the policy, or so much thereof as may be necessary, to be applied in reinstating the property.

Bill II, s. 17.

Joint purchases.

18. When two or more persons purchase any immoveable property, with separate funds belonging to them respectively, they shall, in the absence of a contract to the contrary, be interested in such property in proportion to the shares of the purchase-money which they respectively advanced.

In the absence of evidence as to the shares so advanced, such persons shall be presumed to be equally interested in the property.

Bill II, s. 18: 7 W. R. 483.

Right of buyer of one of two properties subject to common charge.

19. When two properties are subject to a common charge, and one of the properties is sold, the buyer is, as against the seller, in the absence of a contract to the contrary, entitled to have the charge satisfied out of the other property, so far as such property will extend.

Bill II, s. 19: 2 Hay 549: 1 W. R. 14: XXXI of 1854, s. 17 XXVIII of 1860, s. 31.

Bond fide buyer not bound to see to application of purchase-money.

20. When any property is sold, the proceeds of which are subject to any trust, the buyer in good faith of the property is not bound to see to the application of the purchase-money to the purposes of the trust nor is he answerable for the misapplication of such money.

CHAPTER IV.

OF MORTGAGES OF IMMOVEABLE PROPERTY AND CHARGES.

Bill II, s. 25: Bill, s. 14: Act XXVIII of 1866, s. 19: Mortgagor need not have present ownership, N.-W. P. 1872, p. 11. Macph. 4. Fulton 36. Purchaser of right of redemption, 11 Bom. 41.

21. When, for the purpose of securing money advanced or to be advanced by way of loan or an existing or future debt, or the performance of an engagement, one person transfers to another a right over specific immoveable property, the transfer is called a mortgage of immoveable property, the transferor is called a mortgagor, the transferee a mortgagee, the money of which payment is secured is called the mortgage-money, and the assurance by which the transfer is effected is called a mortgage-deed.

Mortgage, mortgagor and mortgagee defined.

For the purposes of this chapter, any person entitled as heir, legatee, assignee, lessee or otherwise than as a mortgagee to the interest of the transferor in the property subject to the mortgage, or any part of such interest, is a mortgagor; and any person entitled as heir, legatee, assignee or otherwise to the interest of the transferee under the mortgage, or any part thereof, is a mortgagee.

5 Beng. 393: 5 W. R. 230.

Where the mortgagor transfers the property to the mortgagee with a proviso that, upon payment of the mortgage-money at a certain date, the property shall be retransferred, the transaction is called a mortgage in the English form.

English mortgage.

Macph. 8, 12, 59: R. B. Ghose, 218, 219: 2 Moo. I. A. 487.

Where the mortgagor delivers possession of the property to the mortgagee, and authorizes him to retain such possession and to pay himself from the rents and profits of the property the interest, or the mortgage-money and interest, or to take such rents and profits in lieu of interest, or of the mortgage-money and interest, the transaction is called an usufructuary mortgage.

Usufructuary mortgage.

Macph. 10, 12.

Where the mortgagor binds himself personally to repay the mortgage-money, and pledges the property as collateral security for the repayment, but does not contract that, on default of payment of the mortgage-money and interest at a certain date, the property shall pass to the mortgagee, the transaction is called a simple mortgage.

Simple mortgage.

Macph. 11, 12.

Where the mortgagor not so binding himself, contracts that, on default of payment of the mortgage-money and interest at a certain date, the property shall pass to the mortgagee, the transaction is called a mortgage by conditional sale.

Mortgage by conditional sale.

Bill II, s. 26: See Macph. 53: R. B. Ghose 64.

22. A mortgage can be effected only by assurance signed by the mortgagor and attested by at least two witnesses.

Mortgage to be by assurance.

Rights and Liabilities of Mortgagor.

Bill II, s. 28: Bill, s. 15: 5 Beng. 450: 6 Beng. 562: 2 Mad. 420: 7 Mad. 395: In Cen. Provs. 13 Beng. 205.

23. A mortgagor has the following rights as against the mortgagee:—

Right of mortgagor to redeem, tender or deposit.

N.-W. P. 1868, p. 204: Bomb. 237, no redemption before expiration of period named. Redemption after fixed time has expired, 9 Bomb. 69. see 7 Ben. 136 (P. C.). English practice followed, with necessary modifications, in case of defendant Pársi. 5 Bom. A. C. J. 109.

(*a*) at any time after the mortgage-money has become payable, or has been paid, the mortgagor has a right on payment or tender, at a proper time and place, of the mortgage-money and interest remaining due on the mortgage, to require the mortgagee to re-transfer the mortgaged property to him, or to execute an acknowledgment in writing that any right in derogation of his ownership or other interest transferred to the mortgagee has been extinguished:

6 Bom. A. C. J. 265: N.-W. P. 1869, p. 128.

Provided that the mortgagee has not obtained an order absolute foreclosing such right, or that such right has not been after the date of the mortgage released or otherwise extinguished, or that the property has not been duly sold in pursuance of a decree or under a power given by the mortgage-deed.

The right conferred by this clause is called a right to redeem and a suit to enforce it is called a suit for redemption:

Beng. Reg. I of 1798, s. 2: Macph. 171.

(*b*) at any time after the mortgage-money has become payable and before such suit is barred, the mortgagor may deposit in any Court in which he might have instituted a suit for redemption of the mortgaged property, to the account of the mortgagee, the mortgage-money and interest remaining due on the mortgage:

(*c*) in the case of an usufructuary mortgage, he may recover possession of the property (1) where the mortgagee is authorized to pay himself from the rents and profits of the property the mortgage-money and interest thereof,—when such money and interest are so paid, (2) where the mortgagee is authorized to pay himself from such rents and profits the interest of the mortgage-money,—when the term (if any) of the mortgage expires and the mortgagor pays or tenders to the mortgagee the mortgage-money, or deposits it in such Court as last aforesaid.

N.-W. P. 1867, p. 88: 20 W. R. 387: 22 W. R. 262: 24 W. R. 24: N.-W. P. 1870, p. 4: N.-W. P. 1872, p. 98: N.-W. P. 1873, p. 146: R. B. Ghose 198; 13 Beng. 303.

Nothing in this section shall be deemed to authorize a person interested in part only of the mortgaged property to institute a suit for the redemption of his own part only, on payment of a proportionate part of the amount remaining due on the mortgage, except where there is but one mortgagee and the mortgagor's interest in part of the property becomes vested in such mortgagee, in which case the person so interested may institute such suit.

Redemption of portion of mortgaged property.

Bill II, s. 29. N.-W. P. 1867, 199.

24. In the absence of a contract to the contrary, the mortgagor shall be deemed to contract with the mortgagee,

Implied contracts by mortgagor.

first, that the mortgagor has power to grant the mortgaged property to the mortgagee, free from incumbrances;

S. D. A. 1857, p. 1195: 1853, p. 575.

secondly, that the mortgagor will take all legal means to protect his rights in the property:

thirdly, that the mortgagor and every person claiming any interest in the property will on demand (at the cost, until foreclosure or sale, of the mortgagor and afterwards of the person requiring the same) execute every such assurance of the same that may reasonably be required;

Effect of forfeiture of lease, N.-W. P. 1869, p. 128.

and, where the property is leasehold, *fourthly*, that the lease is valid and subsisting, that the rent reserved thereby, the conditions contained therein, and the contracts binding on the lessee have been paid, performed and observed down to the execution of the mortgage-deed; and that the mortgagor will, so long as the security exists, pay the rent reserved by the lease, perform the conditions contained therein and observe the contracts binding on the lessee and indemnify the mortgagee against all claims sustained by reason of the non-payment of the said rent or the non-performance or non-observance of the said conditions and contracts.

10 Bomb. 369: 11 Bomb. 32.

25. If after the date of the mortgage any accession is made to the mortgaged property, the mortgagor, upon redemption, shall, in the absence of a contract to the contrary, and subject to the law relating to alluvion for the time being in force, be entitled to such accession.

Accession to mortgaged property.

Illustration.

10 Bomb. 369, 371, and see N.-W. P. 1866, p. 281.

A mortgages to B a field the trees on which are the property of Government. B enters into possession of the field and as occupant thereof buys the trees. A redeems the field. He is entitled to the trees.

Bill II, s. 30.

26. Where the mortgaged property is a lease for a term of years, and the mortgagee, while in possession of the property, obtains a renewal of the lease, the mortgagor, upon redemption, shall, in the absence of a contract to the contrary, have the benefit of the new lease.

Renewal of mortgaged lease.

Bill II, s. 31.

27. A mortgagor in possession of the mortgaged property is not liable to the mortgagee for allowing the property to deteriorate; but he must not commit any act which is destructive or permanently injurious thereto, if the security is insufficient or will be rendered insufficient by such act.

Waste by mortgagor in possession.

Macph. 109. R. B. Ghose 147.

Explanation.—A security is insufficient within the meaning of this section unless the value of the mortgaged property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the amount for the time being due on the mortgage.

Bill II, s. 32.

28. A mortgagor proposing to make a second or other subsequent mortgage of the mortgaged property shall, before effecting the mortgage, give the second or other subsequent mortgagee notice in writing under his hand of the prior mortgage or mortgages, and a mortgagor effecting a second or other subsequent mortgage of the mortgaged property shall, as soon as may be, give the prior mortgagee or mortgagees like notice of such mortgage.

Notice to mesne incumbrancers.

12 W. R.

A mortgagor failing to give any notice required by this section shall, when the accounts are taken in pursuance of a decree made under this chapter, be debited with the loss, if any, occasioned by such failure, in addition to any other liability resulting therefrom.

Bill II, s. 33: Bill, s. 39: *Contra*, 6 Bomb. A. C. J. 90. But see R. B. G. 330, 331.

29. If the owner of two or more properties creates separate mortgages on them by separate assurances, each mortgage may be dealt with irrespectively of the other, though the mortgages are created in favour of the same mortgagee.

Right to redeem one of two properties separately mortgaged.

Illustration.

A, the owner of farms Z and Y, mortgages Z to B for Rs. 1,000. A afterwards mortgages Y to B for Rs. 1,000, making no stipulation as to any additional charge on Z. A may institute a suit for the redemption of the mortgage on Z alone

Rights and Liabilities of Mortgagee.

Bill II, s. 34: 2 Mad. 289: N.-W. P. 1870, p. 311: No foreclosure before expiration of period named, 2 Bomb. 242: Mortgagee's right to sale, 7 Bomb. A. C. J. 146: 9 Bomb. 12.

30. In the absence of a contract to the contrary, the mortgagee may, at any time after the mortgage-money has become payable to him, and before a decree has been made for the redemption of the mortgaged property, or the mortgage-money has been paid, institute against the mortgagor (1) a suit for a declaration that he has lost his right to redeem the property, or (2) a suit for a sale of the property.

Right to sue for foreclosure or sale.

A suit for a declaration that a mortgagor has lost his right to redeem the mortgaged property is called a suit for foreclosure.

Nothing in this section shall be deemed—

Simple mortgagee. N.-W. P. 1869, p. 184: Usufructuary, N.-W. P. 1875, p. 55.

(*a*) to authorize a simple mortgagee to institute a suit for foreclosure, or an usufructuary mortgagee to institute a suit for foreclosure or sale, or a conditional mortgagee to institute a suit for sale;

(*b*) to authorize a mortgagor who has become a trustee of the mortgaged property or legal representative of the mortgagee, to institute a suit for foreclosure;

(*c*) to authorize the mortgagee of a railway, canal or other work in the maintenance of which the public are interested, to institute a suit for foreclosure or sale; or

Cases *contra*, Macph. 195—6.

(*d*) to authorize a person interested in part only of the mortgage-money to institute a suit relating only to a corresponding part of the mortgaged property: but he may institute any suit which, under this Act, he is authorized to institute, relating to the whole of the mortgaged property, making the other mortgagees, if they cannot or will not join as plaintiffs, defendants.

Bill II, s. 35: Bill, s. 15, clause (*c*). Ben. Reg. I of 1798, s. 2. Macph. 171.

31. When the mortgagor deposits money in Court under section twenty-three, and pays the fee leviable for the service next hereinafter mentioned, the Court shall forthwith cause written notice of the deposit to be served on the mortgagee, and the mortgagee may, on depositing the mortgage-deed in the same Court and on filing a written statement (verified in manner prescribed by law for the verification of plaints) of the amount then due on the mortgage, apply for and receive in payment of such amount the money so deposited.

Right to money deposited by mortgagor.

Bill II, s. 36: Bill, s. 28, usufructuary mortgage, 16 W. R. 251.

32. Where the mortgagor and mortgagee have contracted as to the payment of interest on the mortgage-money, interest shall be payable in accordance with such contract.

Right to interest.

Where no such contract has been entered into, the mortgagee is entitled to interest on such money at the rate of six per cent. per annum:

9 N.-W. P. 1. Macph. 159, 160.

Provided that, when the mortgagor has tendered or deposited in Court under section twenty-three, the amount for the time being due on the mortgage, interest on the mortgage-money shall cease from the date of the tender or from the earliest time when the mortgagee could take such amount out of Court, as the case may be.

Proviso.

Bill II, s. 37: 6 Bomb. 121: Right to eject third persons wrongfully in possession, 9 Bomb. 275.

33. In the absence of a contract to the contrary, no mortgagee shall be entitled as such to take possession of the mortgaged property; but at any time after the expiration of one year from the time when the mortgage money has become payable according to the terms of the mortgage-deed, or after any interest thereon has been in arrear for six months, he may institute a suit for the appointment of a receiver of the rents and profits of the whole or any part of the mortgaged property.

Bar of entry by mortgagee.

Right to receiver.

In any suit for foreclosure or sale, the Court may, if it think fit, appoint such a receiver pending the proceedings in the suit, unless the mortgagee is already in possession of the mortgaged property.

Bill II, s. 38.

34. The mortgagee may sue the mortgagor for the mortgage-money in the following cases only:—

Right to sue for mortgage-money.

6 W. R. 283.

(*a*) where the mortgagor expressly binds himself to repay the same:

Macph. 233.

(*b*) where the mortgagor remains in possession of the mortgaged property and fails to pay arrears of revenue or rent due in respect thereof, and the property is consequently sold or attached:

Act XXXIII of 1871, s. 46.

7 Bomb. 116: 21 W. R. 226.

(*c*) where the property is destroyed by diluvion, fire or other superior force:

25 W. R. 7 (partial deprivation).

(*d*) where the mortgagee is deprived of his security by the wrongful act or default of the mortgagor:

2 Moo. I. A. 464: Marsh. 209: 7 S. D. A. 47: N.-W. P. 1860, p. 280. In the case of a Kánam mortgage, 2 Mad. 315.

(*e*) in the case of an usufructuary mortgage, where the rents and profits of the property are to be taken in lieu of interest only, or where the mortgagor fails to deliver to the mortgagee possession of the property or to secure the possession thereof to him without disturbance by the mortgagor or any other person.

Bill II, s. 39: Bill, s. 24: 8 Bomb. A. C. J. 142. 6 W. R. 283 (power to usufructuary mortgagee). Muhammadan law, Macph. 2.

35. A power conferred by the mortgage-deed on the mortgagee, or on any person on his behalf, to sell or concur in selling the mortgaged property, or any part thereof, is invalid, except where the mortgagee is the Secretary of State for India in Council, or the mortgaged property is situate within the towns of Calcutta, Madras, Bombay, Karáchí or Rangoon.

Power of sale invalid.

Act No. XXVIII of 1866, section 6, is repealed so far as it is inconsistent with this section.

Bill II, s. 40.

36. If, at the date of the mortgage, the mortgaged property is insured against loss or damage by fire, the mortgagee, in case of such loss or damage, may, in the absence of an express contract to the contrary, require any money which the mortgagor actually receives under the policy, or so much thereof as may be necessary, to be laid out in reinstating the property.

Right as to insurance-money.

Bill II, s. 41: 11 Bomb. 32.

37. If, after the date of the mortgage, any accession is made to the mortgaged property, the mortgagee, in the absence of a contract to the contrary, and subject to the law relating to alluvion for the time being in force, shall, for the purposes of the security, be entitled to such accession.

Accession to mortgaged property.

Illustrations.

(*a*) A mortgages to B a certain field bordering on a river. The field is increased by alluvion. For the purposes of his security, B is entitled to the increase.

(*b*). A mortgages a certain plot of building-land to B and afterwards erects a house on the plot. For the purposes of his security, B is entitled to the house as well as the plot.

38. When the mortgaged property is a lease for a term of years, and the mortgagor while in possession of the property, obtains a renewal of the lease, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to the new lease.

Renewal of mortgaged lease.

Bill II, s. 42: Bill, s. 16.

39. When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property, he has the following rights and liabilities:—

Mortgagee in possession.

2 Bomb. 222: Act IX of 1872, s. 151.

(*a*) he shall manage the property as a person of ordinary prudence would manage it if it were his own;

N.-W. P. 1875, p. 100.

(*b*) he shall use his best endeavours to collect the rents and profits thereof;

2 Bomb. 231.

(*c*) he shall, in the absence of a contract to the contrary, out of the income of the property pay the Government revenue, all other charges of a public nature accruing due in respect thereof during such possession and any arrears of rent in default of payment of which the property may be summarily sold;

Macph. 113, 119.

9 W. R. 488.

(*d*) he shall, in the absence of a contract to the contrary, make such necessary repairs of the property as he can pay for out of the rents and profits thereof after deducting from such rents and profits the payments mentioned in clause (*c*) and the interest on the mortgage-money;

Macph. 109, 113, 253: 1 Bomb. 199, 203: 5 Bom. A. C. J. 109, 116: N.-W. P. 1867, p. 187: 1 W. R. 133: 11 Moo. I. A. 241.

(*e*) he may spend such money as is necessary (1) for the due management of the property and the collection of the rents and profits thereof, (2) for its preservation from destruction, forfeiture or sale, (3) for supporting the mortgagor's title to the property, (4) for making his own title thereto good against the mortgagor, and (5), when the mortgaged property is a renewable leasehold, for the renewal of the lease; and may, in the absence of a contract to the contrary, add such money to the mortgage-money, at the same rate of interest;

28 & 24 Vic., c. 145, s. 11.

(*f*) where the property is by its nature insurable at ordinary rates, he may, in the absence of a contract to the contrary, insure and keep insured against loss or damage by fire the whole or any part of such property, and add the premiums paid for any such insurance to the mortgage-money at the same

rate of interest; and, in case of such loss or damage, shall apply any money which he may actually receive under the policy, or so much thereof as may be necessary, in reinstating the property;

2 Beng. P. C. 55: 5 W. R. 53, 271, &c.: Macph. 119.

(*g*) he shall keep clear, full and accurate accounts of all sums received and spent by him as mortgagee and, at any time during the continuance of the mortgage, give the mortgagor, at his request and cost, true copies of such accounts and of the vouchers by which they are supported;

5 Bomb. A. C. J. 196: 12 Bomb. 88: 10 Beng. 386: N.-W. P. 1866, p. 132: *ibid.* 1868, p. 153. when he cultivates, 7 W. R. 244; R. B. G. 262.

(*h*) his receipts from the mortgaged property, or, where such property is personally occupied by him, a fair occupation-rent in respect thereof, shall, after deducting the expenses mentioned in clauses (*c*), (*d*), (*e*) and (*f*), and interest thereon, be debited against him in reduction of the amount (if any) from time to time due to him on account of interest on the mortgage-money and, so far as such receipts exceed any interest due, in reduction or discharge of the mortgage-money. The surplus, if any, shall be paid to the mortgagor;

2 Moo. I. A. Ca. 1.

Macph. 159, 160.

(*i*) when the mortgagor tenders, or deposits in court under section twenty-three, the amount for the time being due on the mortgage, the mortgagee must, notwithstanding the provisions in the other clauses of this section, account for his gross receipts from the mortgaged property from the date of the tender or from the earliest time when he could take such amount out of court, as the case may be.

Bill II, s. 62.

If the mortgagee fail to perform any of the duties imposed upon him by this section, he may, when accounts are taken in pursuance of a decree made under this chapter, be debited with the loss, if any, occasioned by such failure.

Loss occasioned by his default.

Bill II, s 43: Bill, s. 17: Sev. 333. See 10 Moo. I. A. 340.

40. Nothing in section thirty-nine, clauses (*g*) and (*h*), applies to cases where there is a contract in writing between the mortgagee and the mortgagor that the receipts from the mortgaged property after deducting the said expenses, shall, so long as the mortgagee is in possession of the property, be taken in lieu of interest on the mortgage money.

Receipts in lieu of interest.

Bill II, s. 44: Bill, s. 18, altered: Macph. 118, 119, citing 7 N.-W. P. 436: 2 N.-W. P. 1: Act I of 1877, s. 54.

41. A mortgagee in possession of the mortgaged property must not commit any act which is destructive or permanently injurious thereto.

Waste by mortgagee.

Bill II, s. 45: Macph. 118, 234: 1 N.-W. R. 270: 10 W. R. 228.

42. When a mortgagor in possession of the mortgaged property fails to pay arrears of revenue or rent due in respect thereof, and the property is consequently sold, the mortgagee has a charge on the surplus, if any, of the proceeds, after payment thereout of the said arrears, for the amount remaining due on the mortgage.

Charge on proceeds of revenue-sale.

Bill II, s. 49: Bill, ss. 35, 36, 37: Report, ss. 31, 33.

43. Any second or other subsequent mortgagee may, at any time before a sale of the mortgaged property has taken place under this chapter, tender to the next prior mortgagee the amount due to him on account of his mortgage. Such mortgagee is bound to accept such tender and to give a receipt for the sum due, and on such receipt being registered, the person making the tender shall acquire, in respect of the property, all the rights and powers of the mortgagee, as such, to whom he has made such tender.

Right to pay off mortgagee in order to prevent sale.

Priority.

Bill II, s. 46: Evidence Act, s. 115: N.-W. P. 1868, p. 402: 4 Mad. 373: 2 Moo. I. A. 487: 11 W. R. 286: Hindú mortgagee in possession preferred, 8 Bom. A.C.J. 50, 55. *Secus* in Guzerat, 11 Bom. 41.

44. Where, through the fraud or gross neglect of a prior mortgagee, another person has been induced to advance money on the security of the mortgaged property, the prior mortgagee shall be postponed to the subsequent mortgagee.

Postponement of prior mortgagee.

Bill II, s. 47: Bill, s. 34: Report, s. 29.

45. If a mortgage made to secure the balance of a running account expresses the maximum to be secured thereby, a subsequent mortgage on the same property shall, if made with notice of the prior mortgage, or if the instrument effecting the prior mortgage is registered, be postponed to the prior mortgage in respect of all advances or debits not exceeding the maximum, though made or allowed with notice of the subsequent mortgage.

Mortgage to secure balance of account.

Illustration.

A mortgages Sultánpur to his bankers, B & Co., to secure the balance of his account with them to the extent of Rs. 10,000. A then mortgages Sultánpur to C, to secure Rs. 10,000; and C gives notice thereof to B & Co. At the date of the second mortgage, the balance due to B & Co. does not exceed Rs. 5,000. B & Co. subsequently advance to A sums making the balance of the account against him exceed the sum of Rs. 10,000. B & Co. are entitled, to the extent of Rs. 10,000, to priority over C.

Bill II, s. 48: Bill, s. 38: Report, s. 34: 2 Beng. App. 45: 5 Beng. 466: 11 W. R. 310.

46. No mortgagee paying off a prior mortgage, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his original security. And, except in the case provided for by section forty-five, no mortgagee making a subsequent advance to the mortgagor, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his security for such subsequent advance.

Tacking abolished.

Marshalling and Contribution.

Bill II, s. 50: W. R. 1864, p. 374: 1 W. R. 353: 7 W. R. 483: 12 W. R. 114: Macph. 205.

47. If the owner of two properties mortgages them both to one person and then mortgages one of the properties to another person who has not notice of the former mortgage, the second mortgagee is entitled to have the debt of the first mortgagee satisfied out of the property not mortgaged to the second mortgagee, so far as such property will extend; but not so as to prejudice the rights of the first mortgagee or of any other person having an incumbrance on either property.

Marshalling securities.

Macph. 136.

Bill II, s. 51: 12 W. R. 291: see 22 W. R. 480.

48. Where several properties, whether of one or several owners, are mortgaged to secure one debt, the several properties shall contribute rateably to the debt secured by the mortgage, after deducting from the value of each property the amount of any other incumbrance to which it is subject.

Contribution to mortgage-debt.

Where of two properties belonging to the same owner, one is mortgaged to secure one debt, and then both are mortgaged to secure another debt, and the former debt is paid out of the former property, each property shall contribute rateably to the latter debt, after deducting the amount of the

former debt from the value of the property out of which it has been paid.

Nothing in this section applies to a property liable under section forty-seven to the claim of the second mortgagee.

Suits for Redemption, Foreclosure or Sale.

Bill II, sec. 52: 14 Moo. I. A. 101: 1 W. R. 176: 21 W. R. 428: explained by Macph. 146. Seton i, 442, see Act X of 1877, sec. 32. 5 Bomb. O. C. J. 76, (legal representative of deceased mortgagor): 8 Beng. 104 (purchaser from mortgagor): Marshall 292, claimants of right of redemption, N.-W. P. 1868, p. 144.

49. Subject to the provisions of the Code of Civil Procedure, section 437, all persons having an interest either in the right of redemption or in the security ought to be joined as parties to any suit under this chapter, and the first or any subsequent mortgagee who institutes a suit for foreclosure or sale ought to make every mortgagee and other incumbrancer whose security is subsequent to his own, a party to the suit.

Parties to suits for redemption, foreclosure and sale.

Foreclosure and Sale.

Bill II, sec. 53: Bill, s. 19.

50. In a suit for foreclosure, if the plaintiff succeed, the Court shall pass a decree, ordering that an account be taken of what will be due to the plaintiff for principal and interest on the mortgage and for his costs of the suit, on the day next hereinafter referred to, or declaring the amount so due at the date of such decree,

Decree in foreclosure-suit.

and ordering that, upon the defendant paying to the plaintiff or into court the amount so due, on a day within six months from the date of declaring in court the amount so due, to be fixed by the Court, the plaintiff shall deliver up to the defendant, or to such person as he appoints, all documents in his possession or power relating to the mortgaged property, and shall transfer the mortgaged property to the defendant free from all incumbrances created by the plaintiff or any person claiming under him, or, where the plaintiff claims by derived title, by those under whom he claims; and shall, if necessary, put the defendant into possession of the mortgaged property; but

that, if such payment is not made on or before such day, the defendant shall be absolutely foreclosed of all right to redeem such property.

Bill II, sec. 54.

51. If payment is so made of such amount and of such subsequent costs as are mentioned in section fifty-nine, the defendant shall (if necessary) be put into possession of the mortgaged property.

Procedure in case of payment of amount due and subsequent costs.

If such payment is not so made, the plaintiff may apply to the Court for an order absolute for the foreclosure of the said mortgage, and the Court shall then pass an order absolute that the defendant be foreclosed of all right to redeem the mortgaged property, and may, if necessary, deliver possession of the property to the plaintiff; and thereupon the defendant's right to redeem and the security shall both be extinguished:

Order absolute for foreclosure.

W. R. 91.

Provided that the Court may, upon good cause shewn, from time to time postpone the day appointed for such payment.

Power to enlarge time.

In the Code of Civil Procedure, schedule IV, *No. 129, for the words* "Final Decree," **the words** "Order absolute" shall be substituted.

52. In a suit for a sale under this chapter, if the plaintiff succeed, the Court shall, and in any other suit by the mortgagee under this chapter, if the plaintiff succeed, the Court may, at his instance, pass a decree ordering as provided in the first and second paragraphs of section fifty and also ordering that, in default of the defendant making payment as therein mentioned, the mortgaged property or a sufficient part thereof be sold, and that the proceeds of the sale (after defraying thereout the expenses of the sale) be paid into Court and applied in payment of what is so found due to the plaintiff and that the balance, if any, be paid to the defendant or other persons entitled to receive the same.

Bill II, s. 55.

Decree for sale.

Power to decree sale at instance of mortgagee.

When the mortgagee sues only for a foreclosure, if the Court considers that he will not be dammified by such sale and if the defendant furnishes such security, if any, as the Court thinks sufficient for the payment of the balance due for the time being by him on the mortgage, the Court may, at the instance of the defendant, pass a like decree.

Bill, s. 21: 15 & 16 Vic., c. 8 s. 48.

Power to decree sale in foreclosure-suit at instance of mortgagor.

Any decree under this section may also direct the defendant to pay any balance remaining due to the plaintiff upon the mortgage after the proceeds of sale have been dealt with as above provided.

53. If in any case under section fifty-two, the defendant makes payment as mentioned in section fifty-one, he shall (if necessary) be put in possession of the mortgaged property: but if such payment is not so made, the plaintiff or the defendant, as the case may be, may apply to the Court for an order absolute for sale of the mortgaged property, and the Court shall then pass an order that such property, or a sufficient part thereof, be sold, and that the proceeds of the sale be dealt with as is mentioned in section fifty-two; and thereupon the defendant's right to redeem and the security shall both be extinguished.

Bill II, s. 56.

Procedure when defendant pays amount due and subsequent costs.

Order absolute for sale.

Bill II, sec. 57: Bill, s. 23.

54. When the nett proceeds of any such sale are insufficient to pay the amount due for the time being on the mortgage, the balance, if payable according to the contract between the parties by the defendant otherwise than out of the property sold, may be recovered either (if the Court thinks fit) in the same suit in the same manner as under a decree for money, or by any other legal process open to the mortgagee.

Recovery of balance due on mortgage.

Redemption.

Bill II, s. 58.

55. Besides the mortgagor, any of the following persons may institute a suit for redemption of the mortgaged property:—

Who may sue for redemption.

(*a*) any person (other than the mortgagee) having any interest in or charge upon the property;

(*b*) any person having any interest in or charge upon the right to redeem the property;

3 W. R. 230: 6 R. 230, &c. But see 17 W. R. 272.

(*c*) any surety for the payment of the mortgage-debt or any part thereof;

(*d*) the guardian of the property of a minor mortgagor;

(*e*) the committee or other legal curator of a lunatic or idiot mortgagor;

(*f*) the judgment-creditor of the mortgagor, when he has obtained execution;

(*g*) a creditor of the mortgagor who has in a suit for the administration of his estate obtained a decree for sale of the mortgaged property.

Bill II, s. 59: Bill, s. 25: See Code, C. P., section 461: N.-W. P. 1870, p. 207.

56. In a suit for redemption, if the plaintiff succeed, the Court shall pass a decree ordering that an account be taken of what will be due to the defendant for principal and interest on the mortgage, and for his costs of the suit, on the day next hereinafter referred to, or declaring the amount so due at the date of such decree; and

Decree in redemption-suit.

ordering that upon the plaintiff paying to the defendant or into court the amount so due on a day within six months from the date of declaring in court the amount so due, to be fixed by the Court, the defendant shall deliver up to the plaintiff, or to such person as he appoints, all documents in his possession or power relating to the mortgaged property, and shall (if such property has been transferred to the defendant) retransfer it to the plaintiff free from the mortgage and from all incumbrances created by the defendant or any person claiming under him, or, when the defendant claims by derived title, by those under whom he claims, and shall, if necessary, put the plaintiff into possession of the mortgaged property; but

that if such payment is not made on or before such day, the plaintiff shall be absolutely foreclosed of all right to redeem such property.

Bill II, s. 60.

57. If payment is made of such amount and of such subsequent costs as are mentioned in section fifty-nine, the plaintiff shall, if necessary, be put into possession of the mortgaged property.

In case of redemption, possession:

If such payment is not so made, the defendant may apply to the Court for an order absolute either for the foreclosure of the said right to redeem, or for a sale of the mortgaged property.

In default, foreclosure or sale.

If he apply for an order for foreclosure, the Court shall pass an order absolute ordering the plaintiff to be foreclosed of all right to redeem the mortgaged property, and may, if necessary, deliver possession of the property to the defendant.

If he apply for an order for sale, the Court shall pass an order that such property or a sufficient part thereof be sold, and that the proceeds of the sale (after defraying thereout the expenses of the sale) be paid into Court and applied in payment of what is found due to the defendant and that the balance be paid to the plaintiff or other persons entitled to receive the same.

On the passing of any order under this section the plaintiff's right to redeem and the security shall both be extinguished:

Provided that the Court may upon good cause shewn, from time to time, postpone the day fixed under section fifty-six for payment of the amount due.

Power to enlarge time.

Redemption and Foreclosure.

Bill II, s. 61: *Mulook Chund* v. *Aghooree*, 2 Sev. 573: *Sheopal* v. *Deen Dyal*, N.-W. P. 1873, p. 148: Macph. 139, 140.

58. When property is mortgaged for successive debts to successive mortgagees, any mesne mortgagee may institute a suit to redeem the interests of the prior mortgagees and to foreclose the rights of those that are posterior to himself and of the mortgagor.

Right of mesne mortgagee to redeem and foreclose.

Costs.

Bill II, s. 64: Bill, s. 30.

59. In finally adjusting the amount to be paid to a mortgagee in case of a redemption or a sale by the Court under this chapter, the Court shall, unless the conduct of the mortgagee has been such as to disentitle him to costs, add to the mortgage-money such costs of suit as have been properly incurred by him since the decree for foreclosure, redemption or sale up to the time of actual payment.

Costs of mortgagee subsequent to decree.

Sale of Property subject to prior mortgage.

Bill II, s. 65: Bill, s. 32: Report, s. 25, altered: Act X of 1877, s. 295.

60. If any property the sale of which is directed under this chapter is subject to a prior mortgage, the Court may, with the consent of the prior mortgagee, order that the property be sold free from the same, giving to such prior mortgagee the same interest in the proceeds of the sale as he had in the property sold.

Sale of property subject to prior mortgage.

Bill II, s. 66: Bill, s. 33: See Act X of 1877, s. 295.

61. Such proceeds shall be brought into court and applied as follows:—

Application of proceeds.

first, in payment of all expenses incident to the sale or properly incurred in any attempted sale:

secondly, if the property has been sold free from any prior mortgage, in payment of whatever is due on account of such mortgage;

thirdly, in payment of all interest due on account of the mortgage in consequence whereof the sale was directed, and of the costs of the suit in which the decree directing the sale was made;

fourthly, in payment of the principal money due on account of that mortgage; and

fifthly, the residue (if any) shall be paid to the person proving himself to be interested in the property sold, or if there be more such persons than one, then to such persons according to their respective interests therein or upon their joint receipt.

Anomalous Mortgages.

Bombay Reg. V of 1827, s. 15.

62. In the case of a mortgage not coming within any of the definitions contained in section twenty-one, the rights and liabilities of the parties shall be determined by their contract as evidenced in the mortgage-deed, and, so far as such contract does not extend, by local usage: Provided that, in the absence of an express contract to the contrary, the mortgaged property shall be deemed to be the only security for payment of the mortgage money.

Mortgages not described in section 21.

Charges.

Bill II, s. 68: Bill, s. 41.

68. If by any assurance other than a mortgage-deed, or by any will, or under the provisions of this or any other Act, or by operation of law, certain immoveable property of one person is made security for the payment of certain money to another, the latter person is said to have a charge on the

Charges.

property; and all the provisions hereinbefore applied to a mortgagor shall, so far as may be, apply to the owner of such property, and all the provisions hereinbefore applied to a mortgagee instituting a suit for the sale of the mortgaged property shall, so far as may be, apply to the person having such charge.

3 Beng. Appendix 140: N.-W. P. 1868, p. 184: N.-W. P. 1871, p. 207.

The delivery by a debtor to the creditor or his agent, of documents of title relating to property, with intent to create a security thereon, shall be deemed to create a charge on such property in favour of the creditor for the amount of the debt.

Bill, s. 31: Bill II, s. 27: 7 Beng. 653: 11 Beng. 405: N.-W. P. 1869, p. 74: 7 Bom. O. C. J. 45: I. L. R. 1 Bom. 237: 9 Moo. I. A. 303: Macph. 53, 54.

Effect of deposit of title-deeds.

Nothing in this section applies to the charge of a trustee on the trust-property for expenses properly incurred in the execution of his trust.

Bill II, s. 69: 7 Mad. 231: 14 W. R. 491: 3 O'Kin. 184: 5 Beng. 463: 11 Bom. 41.

64. Where a person is or becomes absolutely entitled to immoveable property, of a charge or other incumbrance on which he is also the owner, the charge or incumbrance shall be extinguished, unless he declares, by express words or necessary implication, that it shall continue to subsist, or unless such continuance would be for his benefit.

Extinguishment of charges.

CHAPTER V.

OF LEASES OF IMMOVEABLE PROPERTY.

Bill II, s. 71.

65. In the absence of a contract or local usage to the contrary, the lessor and the lessee of immoveable property, as against one another, respectively possess the rights and are subject to the liabilities mentioned in the sixteen rules next following, or such of them as are applicable to the property leased:—

Rights and liabilities of lessor and lessee.

39 (2) altered: cf. IX of 1872, s. 93: 11 W. R. 278: 12 W. R. 149:

(*a*.) The lessor is bound on the lessee's request to put him in possession of the property leased:

6 Beng. Appendix 44, 39 (3): 15 W. R. 230: 23 W. R. 121.

(*b*.) The lessor shall be deemed to contract with the lessee that the latter paying the rent reserved by the lease and performing the contracts binding on the lessee may hold the property leased during the time limited by the lease without interruption by the lessor or his transferees, or any person lawfully claiming through him or them:

6 W. R. 314.

(*c*.) The lessee is entitled to the enjoyment of all easements annexed to the property leased at the time when the lease was made until the lease determines or such easements are extinguished, whichever event first happens:

See 28 W. R. 84.

(*d*.) The lessee is bound to keep, and on the termination of the lease to restore, the property leased in as good condition as it was in at the time when he was put in possession, subject only to reasonable wear and tear, and to allow the lessor and his agents, at all reasonable times during the term, to enter into the property leased and inspect the condition thereof, and to give or leave notice of any defect in such condition and to make good all such defects within three months after such notice has been given or left:

8 Beng. 73.

(*e*.) If during the continuance of the lease any accession is made to the property leased, such accession (subject to the law relating to alluvion for the time being in force) shall be deemed to be comprised in the lease:

(*f*.) If by fire, tempest or flood, or violence of an army or of a mob, or other superior force, any part of the property leased be wholly destroyed or rendered substantially unfit for the purposes for which it was let, the lease shall be void as to that part, and any rent or fine payable under the lease shall proportionately abate, and a proportionate part of any fine paid by the lessee shall be returned by the lessor:

If the injury be occasioned by the wrongful act or default of either party, such party shall not be entitled to avail himself of the benefit of this provision:

(*g*.) If the lessor neglects to make, within a reasonable time after notice, repairs which he is bound to make to the property leased, the lessee may make the same himself, and deduct the expense of such repairs with interest from the rent, or otherwise recover it from the lessor:

(*h*.) If the lessor neglects to make any payment which he is bound to make, and which, if not made by him, is recoverable from the lessee or against the property leased, the lessee may make such payment himself, and deduct it from his rent, or otherwise recover it from the lessor:

(*i*.) Every lessee who becomes aware of any proceeding to recover the property leased or any part thereof, or of any encroachment made upon, or any interference with, the lessor's rights concerning such property, is bound to give notice thereof to the lessor with reasonable diligence; and, in default of so doing, he is liable to make compensation to the lessor for any loss or expenses occasioned by such omission:

(*j*.) The lessee may use the property leased and its products (if any) as a reasonable owner would use them; but he must not use the property for a purpose other than that for which it was leased, or fell timber, pull down or damage houses, open mines or quarries, or commit any other act which is destructive or permanently injurious thereto.

5 Beng. 401, 413: 8 Beng. Appendix 70: 10 Beng. Appx. 41, sed. v. 5 S. D. A. 205. 15 W. R. 360: 17 W. R. 416: 23 W. R. 298: W. R. Sp. (1864) 36.

The prohibition in this clause does not apply to mines which were open when the lease was granted:

(*k*.) No lessee shall, without the lessor's consent, erect on the property leased any permanent structure, except for agricultural purposes; and no such lessee who erects thereon any building, engine or machinery for agricultural purposes shall remove the same without first giving to the lessor or his agent one month's previous notice in writing of his intention so to do, and thereupon the lessor or his agent may elect to purchase the thing so proposed to be removed, and the lessee's right to remove the same shall thereby cease, and the same shall belong to the lessor, and the value thereof shall in case of dispute be ascertained and determined by two referees, one to be chosen by each party, or by an umpire to be named by such referees, and shall be paid or allowed in account by the lessor:

8 Beng. 242: 14 & 15 Vic., c. 35, s. 3.

(*l*.) Subject to the provisions of clause (*k*), the lessee has a right to remove, at any time during his possession of the property leased, all things which he has affixed to the soil: but he is liable to make compensation to the lessor for all damage caused to the property by such removal:

Re Thakoor Chunder Paramanick, Beng. F. B. Rulings 596: 8 Beng. 237: 12 Beng. 201, 205.

(*m*.) On the determination of the lease, the lessee is bound to put the lessor into possession of the property leased:

cf. Act XIX of 1868, s. 46. Act XVIII of 1873, s. 42.

(*n*.) When a lease of uncertain duration determines by any means except the fault of the lessee, he or his legal representative is entitled to all the crops planted or sown by the lessee and growing upon the property leased for the season current when the lease determines, and to free ingress and egress to reap and carry them:

14 W. R. 83: 24 W. R. 68.

(*o*.) If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee shall possess all the rights and, if the lessee so elects, be subject to all the liabilities, of the lessor as to the property or part transferred so long as he is the owner of it; but the lessor shall not by reason only of such transfer cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him: Provided that the transferee is not entitled to arrears of rent due before the transfer, and that if the lessee pay rent to the lessor without having reason to believe that such transfer has been made, the lessee shall not be liable to pay such rent over again to the transferee:

Act XI of 1855, s. 1: 4 Anne, c. 16, s. 10.

Where only a part of the property leased is transferred by the lessor, he may determine what proportion of the rent reserved by the lease is payable in respect of the part so transferred:

5 S. D. A. 205: 5 Mad. 120, 227: 7 Beng. 152: N.-W. P. 1875, p. 181: 12 W. R. 451: 16 W. R. 112: 6 S. D. A. 67.

(*p*.) The lessee may transfer, absolutely or by way of mortgage, the whole or any part of his interest in the property leased, and any transferee of such interest or part may again transfer it. The lessee shall not, by reason of such transfer, cease to be subject to any of the liabilities attaching to the lease, unless the lessor elects to treat the transferee as the person subject to such liabilities. Subject as aforesaid, each successive transferee, so long as he is entitled to the property leased, possesses all the rights, and is subject to all the liabilities, of the lessee as such.

15 W. R. 449.

Nothing in this section shall be deemed to authorize a tenant having a right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee.

8 Beng. 239: 13 Beng. 82.

Bill II, s. 70, altered.

66. The following omissions are fraudulent:—

Disclosures required from lessor and lessee.

Beng. A. C. J. 277.

(*a*) an omission of the lessor of immoveable property to disclose to the lessee any defect therein of which the former is, and the latter is not, aware, and which the latter could not with ordinary care discover;

(*b*) an omission of the lessee of immoveable property to disclose to the lessor any fact as to the nature or extent of the lessor's interest therein, of which the lessee is, and the lessor is not, aware, and which increases the value of such interest.

I. L. R. 2 Calc. 148.

67. A tenancy begins when the lessee enters, under the lease, into possession of the property leased, and until he so enters, he cannot sue for compensation for an unlawful entry thereon.

Lessee before entry.

68. In the absence of a contract in writing or local usage to the contrary, a lease of immoveable property for purposes of cultivation shall be a lease from year to year terminable on the part of either lessor or lessee, by six months' notice expiring with the end of a year of the tenancy; and a lease of immoveable property for any other purpose shall be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice expiring with the end of a month of the tenancy.

Bill II, s. 74: Bill, s. 46: Report, s. 40. 5 Bom. A. C. J. 178. 6 *ibid.*, 31: 7 *ibid.*, 111, and see 1 Beng. F. B. 25: 13 W. R. 190:

Duration of certain leases in absence of written contract or local usage.

4 Beng. Appendix 86. 12 Beng. 263: N.-W. P. 1873, p. 9: Perry, 480.

Every notice under this section must be in writing signed by or on behalf of the party giving it and tendered or delivered to the party who is intended to be bound by it, or affixed on a conspicuous part of the property.

Bill II, s. 75: Bill, s. 43.

69. Where the time limited by a lease of immoveable property is expressed as commencing from a particular day, in computing that time such day shall be excluded. Where no day of commencement is named, the time so limited begins from the making of the lease.

Exclusion of day on which term commences.

Where the time so limited is a year or a number of years, in the absence of an express agreement to the contrary, the lease shall last during the whole anniversary of the day from which such time commences.

Duration of lease for a year.

Where the time so limited is expressed to be determinable before its expiration at the option of the parties or one of them, the lessee, in the absence of an express agreement to the contrary, shall have such option.

Option to determine lease.

70. A lease of immoveable property determines—

Bill II, s. 76: 7 W. R. 288.

Determination of lease.

(*a*) by efflux of the time limited thereby:

3 Moo. I. A. 261: 16 W. R. 147.

(*b*) where such time is limited conditionally on the happening of some event—by the happening of such event:

(*c*) where the lessor can only alienate for his own life the property leased—by the death of the lessor:

Lease by Hindú widow, Marshall 166.

(*d*) where the lessor holds the property leased for the term of the life of another person—by the death of such person:

(*e*) on the expiration of a notice to determine the lease duly given in pursuance of a power therein contained:

(*f*) in case the interests of the lessee and the lessor in the whole of the property leased become vested at the same time in one person in the same right:

3 O'Kin. 159. But see per Peacock, C. J. 10 W. R. 15.

(*g*) by express surrender, that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them:

Surrender of right to redeem mortgaged lease, N.-W. P., 1869, p. 45. Surrender by one of several joint lessees, 9 W. R. 147.

(*h*) by implied surrender, that is to say, in case the lessee accepts from the lessor a new lease of the property leased, to take effect during the continuance of the existing lease:

(*i*) by forfeiture, that is to say, (1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter, or the lease shall become void; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself, and in either case the lessor or his transferee does some act evidencing his intention to determine the lease:

Marshall 250: 16 W. R. 103: 25 W. R. 227.

18 W. R. 465: But see 22 W. R. 448: 25 W. R. 147.

23 W. R. 238, 271.

(*j*) on the expiration of a notice to quit or of intention to quit the property leased duly given by one party to the other.

Bill II, s. 77, cl. 1: W. R. F. B. 10: Marshall 25.

71. A forfeiture under section seventy, clause (*i*), is waived by acceptance of rent which has become due since the forfeiture, or by distress for such rent, or by any other act on the part of the lessor showing an intention to treat the lease as subsisting:

Waiver of forfeiture.

Provided that the lessor is aware that the forfeiture has been incurred:

2 Bom. 73.

Provided also that, where rent is accepted after the institution of a suit to eject the lessee on the ground of forfeiture, such acceptance is not a waiver.

72. A notice given by the lessor under section seventy, clause (*j*), is waived, with the express or implied consent of the lessee, by acceptance of rent which has become due since the expiration of the notice, or by distress for such rent, or by duly giving to the lessee a second notice to quit, or by any other act on the part of the lessor shewing an intention to treat the lease as subsisting.

Waiver of notice to quit.

Bill II, s. 77, cl. 2: N.-W. P. 1867, Ex. o. c. j. 1.

73. Where a lease of immoveable property has determined by forfeiture for non-payment of rent and the lessor sues to eject the lessee, if, at the hearing of the suit, the lessee pays or tenders to the lessor the rent in arrear, together with interest thereon and his full costs of the suit, or gives such security as the Court thinks sufficient for making such payment within fifteen days, the Court may, in lieu of making a decree for ejectment, pass an order relieving the lessee against the forfeiture; and thereupon the lessee shall hold the property leased as if the forfeiture had not occurred.

Relief against forfeiture for non-payment of rent.

Tummarsé Puranik v. *Babiyá Kuppagondá*, 2 Bom. 70.

8 W. R. 225, per Peacock, C. J.

Nothing in this section applies to suits under Act No. X of 1859, or Bengal Act No. VIII of 1869.

10 W. R. 384: 13 W. R. 281: N.-W. P. 1871, p. 68.

74. The surrender, express or implied, of a lease of immoveable property does not prejudice an under-lease of the property or any part thereof previously granted by the lessee: but, unless the surrender is made for the purpose of obtaining a new lease, the rent payable by, and the contracts binding on, the under-lessee shall be respectively payable to, and enforceable by, the lessor.

Effect of surrender and forfeiture on under-leases.

The forfeiture of such a lease annuls all such under-leases.

Bill II, s. 78: Bill, s. 47: Report, s. 41: 3 Bom. A. C. J. 27: 12 Beng. 263: N.-W. P. 1870, p. 204.

7 W. R. 152: 16 W. R. 185: 22 W. R. 394, 548: 23 W. R. 271: 25 W. R. 234.

75. If a lessee or under-lessee of property remains in possession thereof after the determination of the lease, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year or from month to month, according to the purpose for which the property is leased, as specified in section sixty-eight.

Effect of holding over.

Illustrations.

(*a*.) A lets a house to B for five years. B underlets the house to C at a monthly rent of Rs. 100. The five years expire, but C continues in possession of the house and pays the rent to A. C's lease is renewed from month to month.

(*b*.) A lets a farm to B for the life of C. C dies, but B continues in possession with A's assent. B's lease is renewed from year to year.

CHAPTER VI.

OF EXCHANGES.

Bill II, s. 21: Bill, s. 48: N. Y. Code, ss. 905, 906: 1 Mad. 100.

76. When two persons contract to mutually give one thing for another, neither thing or both things being money only, the contract is called a contract of exchange.

"Exchange" defined.

Bill II, s. 22, clause 1

77. The party deprived of the thing he has received in exchange by reason of anything done by the other party or any person through whom the latter claims, may, at his option, sue for compensation or sue for the thing given by him.

Right of party evicted from thing received in exchange.

Bill II, s. 23: Bill, s. 48, para. 2.

78. Save as otherwise provided in this chapter, each party has the rights and is subject to the liabilities of a seller as to that which he gives, and has the rights and is subject to the liabilities of a buyer as to that which he takes.

Rights and liabilities of parties.

Bill II, s. 24: Bill, s. 48, para. 3 delivery must be immediate. 1 Morl. 105.

79. On an exchange of money, each party thereby warrants the genuineness of the money given by him.

Exchange of money.

CHAPTER VII.

OF TRANSFERS OF DEBTS.

Bill II, s. 136: Bill, s. 99: Report, s. 99: 36 & 37 Vic., c. 66, s. 25 (*b*): 1 Mad. 150.

80. No transfer of, or charge on, any debt, or any beneficial interest in moveable property, shall have any operation against the debtor or against the person in whom the property is vested, until express notice of the transfer or charge is given to him, unless he is a party to such transfer or charge; and every dealing by such debtor or person, not being a party to, and not having received express notice of, a transfer or charge, with the debt or property shall be valid as against such transfer or charge.

Transfer of debts.

See 5 W. R. 230. But see 10 N.-W. 474, cited Mad. 122.

Illustrations.

(*a*) A owes money to B, who transfers the debt to C. B then demands the debt from A, who, having no notice of the transfer, pays B. The payment is valid, and C cannot sue A for the debt.

(*b*) A has jewels deposited with B, a jeweller. A mortgages them to C. A then executes an instrument transferring them to D, who takes it to B and gets the jewels from him before he, B, has received any notice of C's mortgage. B is justified in handing the jewels to D, and C has no remedy against D.

Bill II, s. 137: Report, s. 100.

81. Every such notice must be in writing signed by the person making the transfer or charge, or by his agent duly authorized in this behalf.

Notice to be in writing signed.

Bill II, s. 138.

82. On receiving such notice, the debtor or person in whom the property is vested shall give effect to the transfer or charge, unless where the debtor resides, or the property is situate, in a foreign country and the title of the person in whose favour the transfer or charge is made is not complete according to the law of such country.

Debtor to give effect to transfer.

Bill II, s. 139.

83. The person to whom a debt or charge is transferred shall take it subject to all the liabilities to which the transferor was subject in respect thereof at the date of the transfer.

Liability of transferee of debt.

Illustration.

A debenture is issued in fraud of a public company to A. A sells and transfers the debenture to B, who has no notice of the fraud. The debenture is invalid in the hands of B.

Bill II, s. 67, para. 2.

84. Where a debt is transferred for the purpose of securing money advanced or to be advanced by way of loan, or an existing or future debt, the original debt, if recovered by either the transferor or transferee, is applicable, first, in payment of the costs of such recovery, secondly, in or towards satisfaction of the amount for the time being secured by the transfer; and the residue, if any, belongs to the transferor.

Mortgaged debt.

Bill II, s. 140.

85. Nothing in this chapter applies to debts secured by negotiable instruments.

Saving of negotiable instruments.

CHAPTER VIII.

OF APPORTIONMENT.

Bill II, s. 140: Bill, s. 60.

86. All rents, annuities, pensions, dividends and other periodical payments shall, upon the determination by death or otherwise, of the interest of the person entitled to receive such payment, be apportioned as if they had been made to accrue due from day to day, but to be payable on the days appointed for the payment thereof.

Apportionment of periodical payments on determination of interest of person entitled.

Nothing in this section shall affect any express provision in any instrument binding on such person.

THE SCHEDULE.

(*a*). STATUTE.

Year and chapter.	Subject.	Extent of repeal.
4 Wm. & Mary, c. 16 ...	Clandestine Mortgages.	The whole.

(*b*). ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

Number and year.	Subject.	Extent of repeal.
XXIX of 1842	Lease and release ...	The whole.
XXXI of 1854	Modes of conveying land.	Section 17.
XI of 1855 ...	Mesne profits and improvements.	Section 1, and in the title and preamble, the words "to mesne profits and" and "to limit the liability for mesne profits and."
XXVII of 1866	Indian Trustee Act	Section 31.
IV of 1872 ...	Panjáb Laws Act...	So far as it relates to Bengal Regulations I of 1798 and XVII of 1806.
XX of 1875 ...	Central Provinces Laws Act.	So far as it relates to Bengal Regulations I of 1798 and XVII of 1806.
XVIII of 1876	Oudh Laws Act ...	So far as it relates to Bengal Regulation XVII of 1806.
I of 1877	Specific Relief ...	In sections 35 and 36, the words "in writing."

(*c*). REGULATIONS.

Number and year.	Subject.	Extent of repeal.
Bengal Regulation I of 1798.	Conditional sales ...	The whole Regulation.
Bengal Regulation XVII of 1806.	Redemption ...	The whole Regulation.
Bombay Regulation V of 1827.	Mortgagees in possession.	Section 15.

D. FITZPATRICK,
Secy. to the Govt. of India.

The Gazette of India.

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CALCUTTA, SATURDAY, MARCH 8, 1879.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third publication.]

The following further Report of a Select Committee, together with the Bill as settled by them, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 19th of February, 1879:—

WE, the undersigned Members of the Select Committee to which the Bill to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques was referred, have considered the Bill and the papers noted in the margin, and have the honour to present this further Report.

From Secretary to Chief Commissioner, Mysore, No. 3193—4 J, dated 26th July, 1878.
" Acting Under Secretary to Government of Bombay, No. 4405, dated 30th July, 1878.
" Assistant Secretary to Chief Commissioner, Central Provinces, No. 3012—147, dated 31st July, 1878.
" Officiating Chief Commissioner, Ajmer and Merwára, No. 500, dated 5th August, 1878, and enclosure.
" Under Secretary to Government of Bengal, No. 1745, dated 13th August, 1878.
" Acting Under Secretary to Government, Bombay, No. 4792, dated 17th August, 1878, and enclosures.
" Secretary to Chief Commissioner, Mysore, No. 3765—6, dated 15th August, 1878, and enclosure.
" Secretary to Government, North-Western Provinces and Oudh, No. 626 A, dated 24th August, 1878, and enclosures.
" Junior Secretary to Chief Commissioner, British Burma, No. 1440—51, dated 28th September, 1878, and enclosures.
" Under Secretary to Government, Bombay, No. 6570, dated 15th November, 1878, and enclosure.
Note by Sir Richard Garth, Chief Justice, High Court, Calcutta, dated 21st November, 1878.
Remarks on the above note by A. Phillips, Esq., dated 30th November, 1878.
From Secretary to Government, Panjáb, No. 4404, dated 23rd December, 1878, and enclosures.
" Government of Bengal, No. 260—24 M, dated 1st February, 1879, and enclosures.
" Government of Bombay, No. 838, dated 6th February, 1879, and enclosures.

2. We have carefully considered the arguments urged on the one side by the learned Chief Justice of Bengal and the Bank of Bengal for the immediate application of the measure in its entirety to hundís, and, on the other side, by the Government of the Panjáb for the total exclusion of hundís from any part of the measure. We have come to the conclusion that the Bill should in this respect be left substantially as it stands. Admitting with the Chief Justice that one main principle of Indian codification is to reconcile and assimilate, as far as possible, the Native and European law on each subject, we would point out that this principle must be applied so as to produce as little friction as possible, and we feel assured that any sudden abolition of the numerous local usages (there is no general custom) as to hundís, uncertain and undefined as they often are, would cause much and justifiable dissatisfaction among Native bankers and merchants in certain parts of the country. But we believe that the effect of the Bill, if passed with a saving of the local usages in question, will be, not as the Chief Justice fears, to stereotype and perpetuate these usages, but to induce the Native mercantile community gradually to discard them for the corresponding rules contained in the Bill. The desirable uniformity of mercantile usage will thus be brought about without any risk of causing hardship to Native bankers and merchants. How long this change will take, it is of course impossible to prophesy. But the Bank of Bengal has supplied evidence that the Native usages as to negotiable paper have of recent years been greatly changing, and that the tendency is to assimilate them more and more to the European custom.

3. We do not share the apprehension of the Bank of Bengal that the recognition of Native usages would result in large withdrawal of European capital from operations in Native bills. For in this respect the Bill simply states the law as it stands. Such usages are now and

have always been recognized by our Courts in all parts of India:* but the Bank itself admits that, for upwards of seventy years, its business in hundís has invariably been conducted according to the same laws and usages as apply to European bills, and that, with one exception (the alleged duty of the holder of a dishonoured hundí to exhaust the acceptor before having recourse to the drawer or endorser) Natives have made no difficulty about conforming to the Bank's requirements. It is, we understand, the practice of the Bank and, probably, of other large European purchasers of hundís to notify that they will not be bound by any local usage which contravenes the English law as to bills of exchange. Though the Bill should pass in its present form, this practice will remain legal and unaffected. It operates of course to bind only the seller to waive a defence which he might otherwise have made. But the other parties to the hundí are practically precluded from setting up any such usage by the knowledge that if they did so their credit would be destroyed by refusal of the Bank to buy hundís on which their names appear.

4. To exclude totally (as the Panjáb Government propose) hundís from any part of the Bill would be to render the proposed legislation to a great extent inoperative, and would probably result in withdrawal of the Bill. Considering the fact that the carrying on of the internal trade of India is becoming more and more dependent on English capital, and that the use in the Mufassal of bills in the English form is therefore largely increasing, we think that such withdrawal would be highly inexpedient. We are supported in this opinion by the fact that the Local Governments of Bengal, Bombay, the North-Western Provinces and Ajmer have all reported in favour of the Bill; that the Chambers of Commerce at Calcutta, Madras and Bombay, the Bank of Bombay, and the Calcutta Trades Association, have done the same; and that the Directors of the Bank of Bengal bear testimony as to the ability with which it was framed by Mr. Phillips.

5. Turning now to the details of the Bill, we have, in the first place, expressly saved the provisions of the Indian Paper Currency Act, 1871, section 21, which prohibits the issue of private bills or notes payable to bearer on demand.

6. We have struck out from section 16 the words "the whole or any part of," as they might have been taken to imply that there may be a special indorsement expressly directing payment of part of the amount mentioned in the instrument.

7. Section 21 was taken from the Law Commissioners' draft, and deals with a promissory note signed by two persons, and shewing that one of them subscribes only to an alternative liability. We think it very doubtful whether such an informal instrument is a promissory note at all, and for this and other reasons we have omitted the section.

8. We have also omitted section 33, as the matter appears to us to be sufficiently provided for by the Indian Contract Act; for the same reason we have omitted the first half of section 43.

9. We have omitted, as unlikely to be practically useful, sections 55 and 56, which provide for the delivery without indorsement, but with intent to transfer title, of bills payable to the order of a specified person or to a specified person or order.

10. We have omitted section 59, as the matter is sufficiently covered by the preceding section.

11. We do not think that the Bill should deal with collateral agreements, and have therefore struck out section 66.

12. We have amended the section (73, now 67) as to the drawee's term for deliberation. It now provides that the holder may allow the drawee twenty-four hours (exclusive of public holidays) to consider whether he will accept the Bill.

13. We think that, in order to charge the drawer of a cheque, the holder should only be bound to present it at the bank on which it is drawn before the relation between the drawer and the banker has been altered to the prejudice of the drawer. We have altered section 82 accordingly.

14. We have omitted from section 97 the explanation relating to material alterations.

15. We have made some changes in wording and arrangement.

16. The Bill No. III and the second report of the Select Committee have been published in English in all the local Gazettes except those for Assam and Rájputána. Publication of the Bill and report in the vernacular has been reported only by the Governments of Madras, Bengal and the North-Western Provinces and Oudh and the Chief Commissioner of the Central Provinces.

17. With the exception of our Hon'ble Colleague Mr. Morgan, we think that the Bill might now be passed as amended. Mr. Morgan would omit the clause saving local usages as to hundís. In other respects he approves of the Bill. We recommend that its further consideration be stayed until the new Law Commission has reported thereon. Meanwhile, we think the Bill, as now amended, should be published with this report in the *Gazette of India*.

WHITLEY STOKES.
G. C. PAUL.
G. H. P. EVANS.
F. R. COCKERELL.

CALCUTTA,
The 19th February, 1879.

Although I think that this Bill is, on the whole, a very good one, I cannot approve of the recognition which it accords to local usages relating to hundís. From a careful consideration of the papers which have been received with reference to the Bill, and from my own experience as regards the existing practice regarding hundís, I do not believe that there are any usages which call for special recognition at the hands of the legislature, and I think that the proposed recognition may put an arm into the hands of those who are dishonestly disposed, which they do not at present possess.

E. C. MORGAN.

* See, for example, 1 Suth. W. R. 75: 2 *ibid.* 214: 6 *ibid.* 301: 2 Hyde 259: 3 Beng. A. C. 198: 7 Beng. 275 289, 431, 687: 9 Beng. Appendix I: 2 Sevestre 621, n.: N.-W. P. 1868, p. 268: Perry 296: 6 Bomb. O. C. J. 24: 7, Bomb. O. C. J. 137, 140: 12 Bomb. 113.

No. IV.

THE NEGOTIABLE INSTRUMENTS BILL, 1879.

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SCHEDULE.

No. IV.

A Bill to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques.

WHEREAS it is expedient to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques; It is hereby enacted as follows:— Preamble.

CHAPTER I.

PRELIMINARY.

1. This Act may be called "The Negotiable Instruments Act, 1879:" Short title.

It extends to the whole of British India; but nothing herein contained affects any local usage relating to any instrument in an oriental language or affects the Indian Paper Currency Act, 1871, section twenty-one: Local extent. Saving of usages relating to hundís, &c.

And it shall come into force on the first day of January, 1880. Commencement.

2. On and from that day the enactments specified in the schedule hereto annexed shall be repealed to the extent mentioned in the third column thereof. Repeal of enactments.

3. In this Act— Interpretation clause.

"Banker" includes also persons or a corporation or company acting as bankers; "Banker."

"Notary Public" includes also any officer appointed by the Governor General in Council to perform the functions of a Notary Public under this Act. "Notary Public."

CHAPTER II.

OF NOTES, BILLS AND CHEQUES.

4. A promissory note is an instrument in writing (not being a bank note or a currency note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument. Promissory Note.

Illustrations.

A signs instruments in the following terms:—

(*a*) "I promise to pay B or order Rs. 500."

(*b*) "I acknowledge myself to be indebted to B in Rs. 1,000 to be paid on demand, for value received."

(*c*) "Mr. B, I O U Rs. 1,000."

(*d*) "I promise to pay B Rs. 500 and all other sums which shall be due to him."

(*e*) "I promise to pay B Rs. 500, first deducting thereout any money which he may owe me."

(*f*) "I promise to pay B Rs. 500 seven days after my marriage with C."

(*g*) "I promise to pay B Rs. 500 on D's death, provided D leaves me enough to pay that sum."

(*h*) "I promise to pay B Rs. 500 and to deliver to him my black horse on 1st January next."

The instruments respectively marked (*a*), and (*b*) are promissory notes. The instruments respectively marked (*c*), (*d*), (*e*), (*f*), (*g*) and (*h*) are not promissory notes.

5. A bill of exchange is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument. Bill of exchange.

6. A cheque is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand. Cheque.

7. The maker of a bill of exchange or cheque is called the "drawer;" the person thereby directed to pay is called the "drawee." "Drawer." "Drawee."

When the bill gives the name of any person in addition to the drawee to be resorted to in case of need, such person is called a "drawee in case of need." "Drawee in case of need."

After the drawee of a bill has signed his assent upon the bill, or if there are more parts thereof than one, upon one of such parts, and delivered the same, or given notice of such signing to the holder or to some person on his behalf, he is called the "acceptor." "Acceptor."

When acceptance is refused and the bill is protested for non-acceptance, and any person accepts it *supra protest* for honour of the drawer or of any one of the indorsers, such person is called an "acceptor for honour." "Acceptor for honour."

The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the "payee." "Payee."

8. The "holder" of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto. "Holder."

Where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.

9. "Holder in due course" means any person who became the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or indorsee thereof, if payable to, or to the order of, a payee, for consideration before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title. "Holder in due course."

10. "Payment in due course" means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned. "Payment in due course."

11. A promissory note, bill of exchange or cheque drawn or made in British India, and made payable in, or drawn upon any person resident in, British India shall be deemed to be an inland instrument. Inland instrument.

12. Any such instrument not so drawn, made or made payable shall be deemed to be a foreign instrument. Foreign instrument.

13. A "negotiable instrument" means a promissory note, bill of exchange or cheque expressed to be payable to a specified person or his order, or to the order of a specified person, or to the bearer thereof, or to a specified person or the bearer thereof. Negotiable instrument.

14. When a promissory note, bill of exchange or cheque is transferred to any person, so as to constitute that person the holder thereof, the instrument is said to be negotiated. Negotiation.

15. When the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the "indorser." Indorsement.

16. If the indorser signs his name only, the indorsement is said to be "in blank," and if he adds a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person, the indorsement is said to be "in full;" and the person so specified is called the "indorsee" of the instrument. Indorsement "in blank" and "in full." "Indorsee."

17. Where an instrument may be construed either as a promissory note or bill of exchange, the holder may at his election treat it as either, and the instrument shall be thenceforward treated accordingly. Ambiguous instruments.

18. If the amount undertaken or ordered to be paid is stated differently in figures and in words, the amount stated in words shall be the amount undertaken or ordered to be paid. Where amount is stated differently in figures and words.

19. A promissory note or bill of exchange, in which no time for payment is specified, and a cheque are payable on demand.

Instruments payable on demand.

20. Where a stamped paper, which is intended to be completed as a negotiable instrument, is signed and delivered by a competent person as maker, drawer, acceptor or indorser, the holder thereof may complete the same by filling up any blanks therein, and the person so signing shall be liable upon such instrument, in the capacity in which he signed the same, for any amount which may be specified therein not exceeding the amount covered by the stamp thereon: provided that as between the person delivering and the person receiving the instrument nothing in excess of the amount intended by them to be paid shall be recovered.

Blank stamped instruments.

Illustration.

A stamped paper intended to be completed as a negotiable instrument is made payable to " or order:" the holder of such instrument may fill up the blank with his own name, or that of any other person.

21. In a promissory note or bill of exchange the expressions "at sight" and "on presentment" mean on demand. The expression "after sight" means, in a promissory note, after presentment for sight, and in a bill of exchange, after acceptance or protest for non-acceptance.

"At sight." "On presentment." "After sight."

22. The maturity of a promissory note or bill of exchange is the date at which it falls due.

"Maturity."

Every promissory note or bill of exchange which is not expressed to be payable on demand, at sight, or on presentment, is at maturity on the third day after the day on which it is expressed to be payable.

Days of grace.

23. In calculating the date at which a promissory note or bill of exchange, made payable a stated number of months after date or after sight, or after a certain event, is at maturity, the period stated shall be held to terminate on the day of the month which corresponds with the day on which the instrument is dated, or presented for acceptance or sight or protested for non-acceptance, or the event happens, or, where the instrument is a bill of exchange made payable a stated number of months after sight and has been accepted for honour, with the day on which it was so accepted. If the month in which the period would terminate has no corresponding day, the period shall be held to terminate on the last day of such month.

Calculating maturity of bill or note payable so many months after date or sight.

Illustrations.

(*a*) A negotiable instrument dated 29th January 1878 is made payable at one month after date. The instrument is at maturity on the third day after the 28th February 1878.

(*b*) A negotiable instrument dated 30th August 1878 is made payable three months after date. The instrument is at maturity on the 3rd December 1878.

(*c*) A promissory note or bill of exchange, dated 31st August 1878, is made payable three months after date. The instrument is at maturity on the 3rd December 1878.

24. In calculating the date at which a promissory note or bill of exchange, made payable a certain number of days after date or after sight or after a certain event, is at maturity, the day of the date, or of presentment for acceptance or sight, or of protest for non-acceptance, or on which the event happens, shall be excluded.

Calculating maturity of bill or note payable so many days after date or sight.

25. When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business day.

When day of maturity is a holiday.

Explanation.—The expression "public holiday" includes Sundays: New-Year's day, Christmas day: if either of such days falls on a Sunday, the next following Monday: Good-Friday; and any other day declared by the Local Government, by notification in the official Gazette, to be a public holiday.

26. Until the contrary is proved, the following presumptions shall be made:—

Presumptions as to negotiable instruments;

(*a*) that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration:

of consideration;

(*b*) that every negotiable instrument bearing a date was made or drawn on such date:

as to date;

(*c*) that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity:

as to time of acceptance;

(*d*) that every transfer of a negotiable instrument was made before its maturity:

as to time of transfer;

(*e*) that the endorsements appearing upon a negotiable instrument were made in the order in which they appear thereon:

as to order of endorsements;

(*f*) that a lost promissory note, bill of exchange or cheque was duly stamped:

as to stamp;

(*g*) that the holder of a negotiable instrument is a holder in due course: provided that where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burthen of proving that the holder is a holder in due course lies upon him.

that holder is a holder in due course.

CHAPTER III.

PARTIES TO NOTES, BILLS AND CHEQUES.

27. Every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, indorsement, delivery and negotiation of a promissory note, bill of exchange or cheque.

Capacity to make, &c., promissory notes, &c.

A minor may draw, indorse, deliver and negotiate such instruments so as to bind all parties except himself.

Minor.

Nothing herein contained shall be deemed to empower a corporation to make, indorse or accept such instruments except in cases in which, under

the law for the time being in force, they are so empowered.

28. Every person capable of binding himself or of being bound, as mentioned in section 27, may so bind himself or be bound by a duly authorized agent acting in his name.

Agency.

A general authority to transact business and to receive and discharge debts does not confer upon an agent the power of accepting or indorsing bills of exchange so as to bind his principal.

An authority to draw bills of exchange does not of itself import an authority to indorse.

29. An agent who signs his name to a promissory note, bill of exchange or cheque, without indicating thereon that he signs as agent, or that he does not intend thereby to incur personal responsibility, is liable personally on the instrument, except to those who induced him to sign upon the belief that the principal only would be held liable.

Liability of agent signing.

30. A legal representative of a deceased person who signs his name to a promissory note, bill of exchange or cheque, is liable personally thereon unless he expressly limits his liability to the extent of the assets received by him as such.

Liability of legal representative signing.

31. Where there are several drawees of a bill of exchange who are not partners, each of them can accept it for himself, but none of them can accept it for another without his authority.

Acceptance by several drawees not partners.

32. The drawer of a bill of exchange or cheque is bound, in case of dishonour by the drawee or acceptor thereof, to compensate the holder for any loss or damage caused thereby, provided due notice of dishonour has been given to, or received by, the drawer as hereinafter provided.

Liability of drawer.

33. The drawee of a cheque having sufficient funds of the drawer in his hands properly applicable to the payment of such cheque, must pay the cheque when duly required so to do, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default.

Liability of drawee of cheque.

34. In the absence of a contract to the contrary, the maker of a promissory note and the acceptor before maturity of a bill of exchange, are bound to pay the amount thereof at maturity according to the apparent tenor of the note or acceptance respectively, and the acceptor of a bill of exchange at or after maturity is bound to pay the amount thereof to the holder on demand.

Liability of maker of note and acceptor of bill.

In default of such payment as aforesaid, such maker or acceptor is bound to compensate any party to the note or bill for any loss or damage sustained by him, and caused by such default.

The provisions of this section are subject to those of sections 27, 29, 48, 49, 50, 62, 68, 72, 73 and 86.

35. No person except the drawee of a bill of exchange, or all or some of several joint drawees, or a person named therein as a drawee in case of need, or an acceptor for honour, can bind himself by an acceptance.

Only drawee can be acceptor except in need or for honour.

36. In the absence of a contract to the contrary, whoever indorses and delivers a negotiable instrument before maturity, without, in such indorsement, expressly excluding or making conditional his own liability, is bound thereby to every subsequent holder, in case of dishonour by the drawee, acceptor or maker, to compensate such holder for any loss or damage caused to him by such dishonour, provided due notice of dishonour has been given to, or received by, such indorser as hereinafter provided.

Liability of indorser.

Every indorser after dishonour is liable as upon an instrument payable on demand.

The provisions of this section are subject to those of sections 27, 29, 48, 49, 50, 59, 60, 62, 65, 66, 68, 72, 76, 86, 87, 88, 90, 91 and 101, clause (*a*).

37. Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied.

Liability of prior parties to holder in due course.

38. The maker of a promissory note or cheque, the drawer of a bill of exchange until acceptance, and the acceptor are, in the absence of a contract to the contrary, respectively liable thereon as principal debtors, and the other parties thereto are liable thereon as sureties for the maker, drawer or acceptor, as the case may be.

Maker, drawer and acceptor principals.

39. As between the parties so liable as sureties, each prior party is, in the absence of a contract to the contrary, also liable thereon as a principal debtor in respect of each subsequent party.

Prior party a principal in respect of each subsequent party.

Illustration.

A draws a bill payable to his own order on B, who accepts. A afterwards indorses the bill to C, C to D, and D to E. As between E and B, B is the principal debtor, and A, C and D are his sureties. As between E and A, A is the principal debtor, and C and D are his sureties. As between E and C, C is the principal debtor and D is his surety.

40. When the holder of an accepted bill of exchange enters into any contract with the acceptor which under section 134 or 135 of the Indian Contract Act, 1872, would discharge the other parties, the holder may expressly reserve his right to charge the other parties, and in such case they are not discharged.

Suretyship.

41. Where the holder of a negotiable instrument, without the consent of the indorser, destroys or impairs the indorser's remedy against a prior party, the indorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity.

Discharge of indorser's liability.

Illustration.

A is the holder of a bill of exchange made payable to the order of B, which contains the following indorsements in blank:—

First indorsement, "B."

Second indorsement, "Peter Williams."

Third indorsement, "Wright and Co."

Fourth indorsement, "John Rozario."

This bill A puts in suit against John Rozario and strikes out, without John Rozario's consent, the indorsements by Peter Williams and Wright and Co. A is not entitled to recover anything from John Rozario.

42. No maker of a promissory note, and no drawer of a bill of exchange or cheque, and no acceptor of a bill of exchange for the honour of the drawer shall, in a suit thereon by a holder in due course, be permitted to deny the validity of the instrument as originally made or drawn.

Estoppel against denying original validity of instrument.

43. No maker of a promissory note and no acceptor of a bill of exchange payable to, or to the order of, a specified person shall, in a suit thereon by a holder in due course, be permitted to deny the payee's capacity, at the date of the note or bill, to indorse the same.

Estopped against denying capacity of payee to indorse.

44. No indorser of a negotiable instrument shall, in a suit thereon by a subsequent holder, be permitted to deny the signature or capacity to contract of any prior party to the instrument.

Estopped against denying signature or capacity of prior party.

45. An acceptor of a bill of exchange already indorsed is not relieved from liability by reason that such indorsement is forged, if he knew or had reason to believe the indorsement to be forged when he accepted the bill.

Acceptor bound, although indorsement forged.

46. An acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious, relieved from liability to any holder in due course claiming under an indorsement by the same hand as the drawer's signature, and purporting to be made by the drawer.

Acceptance of bill drawn in fictitious name.

47. If at any time there has been consideration between any parties to a negotiable instrument for the making, drawing, acceptance, indorsement, negotiation or transfer thereof, the party receiving such consideration is, in the absence of a contract to the contrary, liable upon the instrument to all subsequent parties thereto, and every subsequent holder is, as against him, a holder for consideration.

Party receiving consideration liable to subsequent parties.

The provisions of this section are subject to those of sections 27, 49, 50, 59, 65, 66, 68, 72, 73, 76, 86, 87, 88, 89, 90 and 91.

Illustrations.

(*a*) A indorses a bill of exchange to B, at the request of C, for C's account with B. B is a holder of the bill for consideration and if he indorses it as a present to D, D is a holder for consideration as against A.

(*b*) A, the holder of a negotiable instrument, indorses it in full to B, in the belief that B has done something which he has not done. B, for consideration proceeding from C, indorses the instrument in blank to C, and C indorses it to D. D strikes out C's indorsement. D is a holder of the instrument for consideration as against B.

48. When there was no consideration for the making, drawing, acceptance or indorsement of a negotiable instrument, or when the consideration has wholly failed, the maker, drawer, acceptor or indorser is not liable thereon to the party in whose favour the instrument was so made, drawn, accepted or indorsed, or to any party claiming through him, unless consideration was given by the claimant or by some party through whom he derives title. But the maker, drawer, acceptor or indorser is liable to compensate any subsequent party who, being liable on such instrument, pays the amount due thereon.

Party not liable to one from whom no consideration moved.

49. When the consideration for which a person signed a promissory note, bill of exchange or cheque consisted of money, and was originally absent in part or has subsequently failed in part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

Partial absence or failure of money-consideration.

Explanation.—The drawer of a bill of exchange stands in immediate relation with the acceptor. The maker of a promissory note, bill of exchange or cheque, stands in immediate relation with the payee, and the indorser with his indorsee. Other signers may by agreement stand in immediate relation with a holder.

Illustration.

A draws a bill on B for Rs. 500 payable to the order of A. B accepts the bill, but subsequently dishonours it by non-payment. A sues B on the bill. B proves that it was accepted for value as to Rs. 400, and as an accommodation to the plaintiff as to the residue. A can only recover Rs. 400.

50. Where a part of the consideration for which a person signed a promissory note, bill of exchange or cheque, though not consisting of money, is ascertainable in money without collateral enquiry, and there has been a failure of that part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

Partial failure of consideration not consisting of money.

CHAPTER IV.

OF NEGOTIATION.

51. Subject to the provisions of section 62, a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof.

Negotiation by delivery.

Exception.—A promissory note, bill of exchange or cheque delivered on condition that it is not to take effect except in a certain event is not negotiable (except in the hands of a holder for value without notice of the condition) unless such event happens.

Illustrations.

(*a*) A, the holder of a negotiable instrument payable to bearer, delivers it to B's agent to keep for B. The instrument has been negotiated.

(*b*) A, the holder of a negotiable instrument payable to bearer which is in the hands of A's banker, who is at the time the banker of B, directs the banker to transfer the instrument to B's credit in the banker's account with B. The banker does so, and accordingly now possesses the instrument as B's agent. The instrument has been negotiated, and B has become the holder of it.

52. Subject to the provisions of section 62, a promissory note, bill of exchange or cheque payable to the order of a specified person, or to a specified person or order, is negotiable by the holder by indorsement and delivery thereof.

Negotiation by indorsement.

53. The holder of a negotiable instrument indorsed in blank may, without signing his own name, by writing above the indorser's signature a direction to pay to any other person as indorsee, convert the indorsement in blank into an indorsement in full; and the holder does not thereby incur the responsibility of an indorser.

Conversion of indorsement in blank into indorsement in full.

54. The indorsement of a negotiable instrument followed by delivery transfers to the indorsee the property therein with the right of further negotiation; but the indorsement may, by express words, restrict or exclude such right, or may merely constitute the indorsee an agent to indorse the instrument, or to receive its contents for the indorser, or for some other specified person.

Effect of indorsement.

Illustrations.

B signs the following indorsements on different negotiable instruments payable to bearer:—

(*a*) "Pay the contents to C only."

(*b*) "Pay C for my use."

(*c*) "Pay C or order for the account of B."

(*d*) "The within must be credited to C."

These indorsements exclude the right of further negotiation by C.

(*e*) "Pay C."

(*f*) "Pay C value in account with the Oriental Bank."

(*g*) "Pay the contents to C, being part of the consideration in a certain deed of assignment executed by C to the indorser and others."

These indorsements do not exclude the right of further negotiation by C.

55. Every sole maker, drawer, payee or indorsee, or all of several joint makers, drawers, payees or indorsees, of a negotiable instrument may, if the negotiability of such instrument has not been restricted or excluded, as mentioned in section 54, indorse and negotiate the same.

Who may negotiate.

Explanation.—Nothing in this section enables a maker or drawer to indorse or negotiate an instrument, unless he is in lawful possession or is holder thereof; or enables a payee or indorsee to indorse or negotiate an instrument, unless he is holder thereof.

Illustration.

A bill is drawn payable to A or order. A indorses it to B, the indorsement not containing the words "or order" or any equivalent words. B may negotiate the instrument.

56. The indorser of a negotiable instrument may, by express words in the indorsement, exclude his own liability thereon, or make such liability or the right of the indorsee to receive the amount due thereon, depend upon the happening of a specified event, although such event may never happen.

Indorser who excludes his own liability or makes it conditional.

Where an indorser so excludes his liability and afterwards becomes the holder of the instrument, all intermediate indorsers are liable to him.

Illustrations.

(*a*.) The indorser of a negotiable instrument signs his name, adding the words—

"Without recourse."

Upon this indorsement he incurs no liability.

(*b*.) A is the payee and holder of a negotiable instrument. Excluding personal liability by an endorsement "without recourse," he transfers the instrument to B, and B indorses it to C, who indorses it to A. A is not only reinstated in his former rights, but has the rights of an indorsee against B and C.

57. A holder of a negotiable instrument who derives title from a holder in due course has the rights thereon of that holder in due course.

Holder deriving title from holder in due course.

58. Subject to the provisions of sections 121 and 122, a negotiable instrument indorsed in blank is payable to the bearer thereof even although originally payable to order.

Instrument indorsed in blank.

59. If a negotiable instrument after having been indorsed in blank is indorsed in full, the amount of it cannot be claimed from the indorser in full, except by the person to whom it has been indorsed in full, or by one who derives title through such person.

Conversion of indorsement in blank into indorsement in full.

60. No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount of the instrument.

Indorsement for part of sum due.

61. The legal representative of a deceased person cannot negotiate by delivery only a promissory note, bill of exchange or cheque payable to order and indorsed by the deceased but not delivered.

Legal representative cannot by delivery only negotiate instrument indorsed by deceased.

62. When a negotiable instrument has been lost, or has been obtained from any maker, acceptor or holder thereof by means of an offence or fraud, or for an unlawful consideration, no possessor or indorsee who claims through the person who found or so obtained the instrument is entitled to receive the amount due thereon from such maker, acceptor or holder, or from any party prior to such holder, unless such possessor or indorsee is, or some person through whom he claims was, a holder thereof in due course.

Instrument obtained by unlawful means or for unlawful consideration.

63. The holder of a negotiable instrument, who has acquired it after dishonour, whether by non-acceptance or non-payment, with notice thereof, or after maturity, has only, as against the other parties, the rights thereon of his transferor:

Instrument acquired after dishonour or when overdue.

Provided that any person who, in good faith and for consideration, becomes the holder, after maturity, of a promissory note or bill of exchange made, drawn or accepted without consideration for the purpose of enabling some party thereto to raise money thereon, may recover the amount of the note or bill from any prior party.

Accommodation note or bill.

Illustration.

The acceptor of a bill of exchange, when he accepted it deposited with the drawer certain goods as a collateral security for the payment of the bill, with power to the drawer to sell the goods and apply the proceeds in discharge of the bill if it were not paid at maturity. The bill not having been paid at maturity, the drawer sold the goods and retained the proceeds, but indorsed the bill to A. A's title is subject to the same objection as the drawer's title.

64. A negotiable instrument may be negotiated (except by the maker, drawee or acceptor after maturity) until payment or satisfaction thereof by the maker, drawee or acceptor at or after maturity, but not after such payment or satisfaction.

Instrument negotiable till payment or satisfaction.

CHAPTER V.

OF PRESENTMENT.

Presentment for acceptance.

65. A bill of exchange payable after sight must, if no time or place is specified therein for presentment, be presented to the drawee thereof for acceptance, if he can, after reasonable search, be found, by a person entitled to demand acceptance, within a reasonable time after it is drawn, and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

If the drawee cannot, after reasonable search be found, the bill is dishonoured.

If the bill is directed to the drawee at a particular place, it must be presented at that place; and if at the due date for presentment he cannot, after reasonable search, be found there, the bill is dishonoured.

Presentment of promissory note for sight.

66. A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight, by a person entitled to demand payment, within a reasonable time after it is made and in business hours on a business day. In default of such presentment no party thereto is liable thereon to the person making such default.

Drawee's time for deliberation.

67. The holder may allow the drawee of a bill of exchange presented to him for acceptance twenty-four hours (exclusive of public holidays) to consider whether he will accept it.

Presentment for payment.

68. Promissory notes, bills of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder.

Exception.—Where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

Hours for presentment.

69. Presentment for payment must be made during the usual hours of business, and, if at a banker's, within banking hours.

Presentment for payment of instrument payable after date or sight.

70. A promissory note or bill of exchange, made payable at a specified period after date or sight thereof, must be presented for payment at maturity.

Presentment for payment of promissory note payable by instalments.

71. A promissory note payable by instalments must be presented for payment on the third day after the date fixed for payment of each instalment; and non-payment on such presentment has the same effect as non-payment of a note at maturity.

Presentment for payment of instrument payable at specified place and not elsewhere.

72. A promissory note, bill of exchange or cheque made, drawn or accepted payable at a specified place and not elsewhere must, in order to charge any party thereto, be presented for payment at that place.

Instrument payable at specified place.

73. A promissory note or bill of exchange made, drawn or accepted payable at a specified place must, in order to charge the maker or drawer thereof, be presented for payment at that place.

Presentment where no exclusive place specified.

74. A promissory note or bill of exchange, not made payable as mentioned in sections 72 and 73, must be presented for payment at one of the places specified (if any), or at the place of business (if any), or at the usual residence, of the maker, drawee or acceptor thereof, as the case may be.

Presentment when maker, &c., has no known place of business or residence.

75. If the maker, drawee or acceptor of a negotiable instrument has no known place of business or fixed residence, and no place is specified in the instrument for presentment for acceptance or payment, such presentment may be made to him in person wherever he can be found.

Presentment of cheque to charge drawer.

76. A cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer.

Presentment of cheque to charge any other person.

77. A cheque must, in order to charge any person except the drawer, be presented within a reasonable time after delivery thereof by such person.

Presentment of instrument payable on demand.

78. Subject to the provisions of section 33, a negotiable instrument payable on demand must be presented for payment within a reasonable time after it is received by the holder.

Presentment by or to agent, representative of deceased, or assignee of insolvent.

79. Presentment for acceptance or payment may be made to the duly authorized agent of the drawee, maker or acceptor, as the case may be, or where the drawee, maker, or acceptor has died, to his legal representative, or where he has been declared an insolvent, to his assignee.

When presentment unnecessary.

80. No presentment for payment is necessary, and the instrument is dishonoured at the due date for presentment, in any of the following cases:—

(*a*) if the maker, drawee or acceptor intentionally prevents the presentment of the instrument,

or, if the instrument being payable at his place of business, he closes such place on a business day during the usual business-hours, or

if the instrument being payable at some other specified place, neither he nor any person authorized to pay it attends at such place during the usual business hours, or

if the instrument not being payable at any specified place, he cannot after due search be found;

(*b*) as against any party if, after maturity, with knowledge that the instrument has not been presented—

he makes a part payment on account of the amount due on the instrument,

or promises to pay the amount due thereon in whole or in part,

or otherwise waives his right to take advantage of any default in presentment for payment;

(*c*) as against the drawer, if the drawer could not suffer damage from the want of such presentment.

Liability of banker for negligently dealing with bill presented for payment.

81. When a bill of exchange, accepted payable at a specified bank, has been duly presented there for payment and dishonoured, if the banker so negligently or improperly keeps, deals with or delivers back such bill as to cause loss to the holder, he must compensate the holder for such loss.

CHAPTER VI.

OF PAYMENT AND INTEREST.

To whom payment should be made.

82. Subject to the provisions of section 86, clause (*c*), payment of the amount due on a promissory note, bill of exchange or cheque must, in order to discharge the maker or acceptor, be made to the holder of the instrument.

Interest when rate specified.

83. When interest at a specified rate is expressly made payable on a promissory note or bill of exchange, interest shall be calculated at the rate specified, on the amount and from the date of the instrument, until tender or realization of the amount due thereon, or until such date after the institution of a suit to recover such amount as the Court directs.

Interest when no rate specified.

84. When no rate of interest is specified in the instrument, interest on the amount thereof shall, except in cases provided for by the Code of Civil Procedure, section 532, be calculated at the rate of six per centum per annum, from the date at which the same ought to have been paid by the party charged, until tender or realization of the amount due thereon or until such date after the institution of a suit to recover such amount as the Court directs.

Explanation.—When the party charged is the indorser of an instrument dishonoured by non-payment, he is liable to pay interest only from the time that he receives notice of the dishonour.

Delivery of instrument on payment, or indemnity in case of loss.

85. Any person liable to pay, and called upon by the holder thereof to pay, the amount due on a promissory note, bill of exchange or cheque is before payment entitled to have it shown, and is on payment entitled to have it delivered up, to him, or, if the instrument is lost or cannot be produced, to be indemnified against any further claim thereon against him.

CHAPTER VII.

OF DISCHARGE FROM LIABILITY ON NOTES, BILLS AND CHEQUES.

Discharge from liability.

86. The maker, acceptor or indorser respectively of a negotiable instrument is discharged from liability thereon—

by cancellation,

(*a*) to a holder thereof who cancels such acceptor's or indorser's name with intent to discharge him, and to all parties claiming under such holder.

by release,

(*b*) to a holder thereof who otherwise discharges such maker, acceptor or indorser, and to all parties deriving title under such holder after notice of such discharge;

by payment.

(*c*) to all parties thereto, if the instrument is payable to bearer, or has been indorsed in blank, and such maker, acceptor or indorser makes payment in due course of the amount due thereon.

Discharge by allowing drawee more than twenty-four hours to accept.

87. If the holder of a bill of exchange allows the drawee more than twenty-four hours to consider whether he will accept the same, all previous parties not consenting to such allowance are thereby discharged from liability to such holder.

When cheque not duly presented and drawer damaged thereby.

88. When the holder of a cheque fails to present it for payment, and the drawer thereof sustains loss or damage from such failure, he is discharged from liability to the holder.

Cheque payable to order.

89. Where a cheque payable to order, purports to be indorsed by or on behalf of the payee, the drawee is discharged by payment in due course.

Parties not consenting discharged by conditional or limited acceptance.

90. If the holder of a bill of exchange acquiesces in a conditional acceptance, or one limited to part of the sum mentioned in the bill, or which substitutes a different place or time for payment, or which, where the drawers are not partners is not signed by all the drawees, all previous parties whose consent is not obtained to such acceptance are discharged as against the holder and those claiming under him.

Effect of material alteration.

91. Save as provided in sections 20, 53, 90 and 120, any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties;

Alteration by indorsee.

and any such alteration if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof.

The provisions of this section are subject to those of sections 20, 53, 90 and 120.

Acceptor or indorser bound notwithstanding previous alteration.

92. An acceptor or indorser of a negotiable instrument is bound by his acceptance or indorsement notwithstanding any previous alteration of the instrument.

Payment of instrument on which alteration is not apparent.

93. Where a promissory note, bill of exchange or cheque has been materially altered, but does not appear to have been so altered,

or where a cheque is presented for payment which does not at the time of presentation appear to be crossed or to have had a crossing which has been obliterated,

payment thereof by a person or banker liable to pay and paying the same according to the apparent tenor thereof at the time of payment and otherwise in due course, shall discharge such person or banker from all liability thereon, and such payment shall not be questioned by reason of the instrument having been altered, or the cheque crossed.

CHAPTER VIII.

OF NOTICE OF DISHONOUR.

Dishonour by non-acceptance.

94. A bill of exchange is said to be dishonoured by non-acceptance when the drawee, or one of several drawees not being partners, makes default in acceptance upon being duly required to accept the bill.

Where the drawee is incompetent to contract the bill may be treated as dishonoured.

Dishonour by non-payment.

95. A promissory note, bill of exchange or cheque is said to be dishonoured by non-payment when the maker of the note, acceptor of the bill, or drawee of the cheque makes default in payment upon being duly required to pay the same.

By and to whom notice should be given.

96. When a promissory note, bill of exchange or cheque is dishonoured by non-acceptance or non-payment, the holder thereof, or some party thereto who remains liable thereon, must give notice that the instrument has been so dishonoured to all other parties whom the holder seeks to make severally liable thereon, and to some one of several parties whom he seeks to make jointly liable thereon.

Nothing in this section renders it necessary to give notice to the maker of the dishonoured promissory note, or the drawee or acceptor of the dishonoured bill of exchange or cheque.

Mode in which notice may be given.

97. Notice of dishonour may be given to a duly authorised agent of the person to whom it is required to be given, or, where he has died, to his legal representative, or, where he has been declared an insolvent, to his assignee; may be oral or written; may, if written, be sent by post; and may be in any form; but it must inform the party to whom it is given, either in express terms or by reasonable intendment, that the instrument has been dishonoured, and in what way, and that he will be held liable thereon; and it must be given within a reasonable time after dishonour, at the place of business, or (in case such party has no place of business) at the residence of the party for whom it is intended.

If the notice is sent by post and miscarries, such miscarriage does not render the notice invalid.

Party receiving must transmit notice of dishonour.

98. Any party receiving notice of dishonour must, in order to render any prior party liable to himself, transmit it to such party within a reasonable time, unless such party otherwise receives due notice as provided by section 96.

Agent for presentment.

99. When the instrument is deposited with an agent for presentment, the agent is entitled to the same time to give notice to his principal as if he were the holder giving notice of dishonour, and the principal is entitled to a further like period to give notice of dishonour.

When party to whom notice given is dead.

100. When the party to whom notice of dishonour is despatched is dead, but the party despatching the notice is ignorant of his death, the notice is sufficient.

When notice of dishonour is unnecessary.

101. No notice of dishonour is necessary—

(*a*) when it is dispensed with by the party entitled thereto;

(*b*) in order to charge the drawer, when he has countermanded payment;

(*c*) when the party charged could not suffer damage for want of notice;

(*d*) when the party entitled to notice cannot after due search be found; or the party bound to give notice is, for any other reason, unable without any fault of his own to give it;

(*e*) to charge the drawers, when the acceptor is also a drawer;

(*f*) in the case of a promissory note which is not negotiable;

(*g*) when the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.

CHAPTER IX.

OF NOTING AND PROTEST.

Noting.

102. When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may cause such dishonour to be noted by a notary public upon the instrument, or upon a paper attached thereto, or partly upon each.

Such note must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reason, if any, assigned for such dishonour, or, if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured, and the notary's charges.

Protest.

103. When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may, within a reasonable time, cause such dishonour to be noted and certified by a notary public. Such certificate is called a protest, and in a suit upon the instrument, on proof of the protest, the Court shall presume the fact of dishonour, unless and until such fact is disproved.

Protest for better security.

When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached, before the maturity of the bill, the holder may, within a reasonable time, cause a notary public to demand better security of the acceptor, and on its being refused may, within a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security.

Contents of protest.

104. A protest under section 103 must contain—

(*a*) either the instrument itself, or a literal transcript of the instrument and of everything written or printed thereupon;

(*b*) the name of the person for whom and against whom the instrument has been protested;

(*c*) a statement that payment or acceptance, or better security, as the case may be, has been demanded of such person by the notary public; the terms of his answer, if any, or a statement that he gave no answer, or that he could not be found;

(*d*) when the note or bill has been dishonoured, the place and time of dishonour, and when better security has been refused, the place and time of refusal;

(*e*) the subscription of the notary public making the protest;

(*f*) in the event of an acceptance for honour or of a payment for honour, the name of the person by whom, of the person for whom, and the manner in which, such acceptance or payment was offered and effected.

Notice of protest.

105. When a promissory note or bill of exchange is required by law to be protested, notice of such protest must be given instead of notice of dishonour, in the same manner and subject to the same conditions; but the notice may be given by the notary public who makes the protest.

Protest for non-payment after dishonour by non-acceptance.

106. All bills of exchange drawn payable at some other place than the place mentioned as the residence of the drawee, and which are dishonoured by non-acceptance, may, without further presentment to the drawee, be protested for non-payment, in the place specified for payment, unless paid before or at maturity.

CHAPTER X.

OF REASONABLE TIME.

Reasonable time.

107. In determining what is a reasonable time for presentment for acceptance or payment, for giving notice of dishonour and for noting, regard shall be had to the nature of the instrument and the usual course of dealing with respect to similar instruments; and in calculating such time, public holidays shall be excluded.

Reasonable time for presentment.

108. Presentment is made within a reasonable time, within the meaning of sections 65, 77 and 78, if it is made on the business day next after that on which the holder received the instrument referred to, or when there is no more delay than is occasioned by the residence of the parties to the instrument in different places.

Illustration.

A draws on B, resident at Calcutta, a bill of exchange in favour of C payable at sight, and sends it to C at Benares. C, the day after he receives it, indorses it to D, and despatches it to D at Calcutta. D, the day after he receives the bill, presents it for payment. The delay which has taken place in presenting the bill is not unreasonable.

Reasonable time of giving notice of dishonour.

109. If the holder and the party to whom notice of dishonour is given carry on business or live (as the case may be) in different places, such notice is given within a reasonable time if it is despatched by the next post or on the day next after the day of dishonour.

If the said parties carry on business or live in the same place, such notice is given within a reasonable time if it is despatched in time to reach its destination on the day next after the day of dishonour.

Reasonable time for transmitting such notice.

110. A party receiving notice of dishonour, who seeks to enforce his right against a prior party, transmits the notice within a reasonable time if he transmits it within the same time after its receipt as he would have had to give notice if he had been the holder.

CHAPTER XI.

OF ACCEPTANCE AND PAYMENT FOR HONOUR.

Acceptance for honour.

111. When a bill of exchange has been noted or protested for non-acceptance or for better security, any person may, with the consent of the holder, by writing on the bill, accept the same for the honour of any party thereto.

Acceptance not specifying for whose honour it is made.

112. Where the acceptance does not express for whose honour it is made, it shall be deemed to be made for the honour of the drawer.

Liability of acceptor for honour.

113. An acceptor for honour binds himself to all parties subsequent to the party for whose honour he accepts to pay the amount of the bill if the drawee do not; and such party and all prior parties are liable in their respective capacities to compensate the acceptor for honour for all loss or damage sustained by him in consequence of such acceptance.

But an acceptor for honour is not liable to the holder of the bill unless it is presented, or (in case the address given by such acceptor on the bill is a place other than the place where the bill is made payable) forwarded for presentment, not later than the day next after the day of its maturity.

When acceptor for honour may be charged.

114. An acceptor for honour cannot be charged unless the bill has at its maturity been presented to the drawee for payment and has been dishonoured by him, and noted or protested for such dishonour.

Payment for honour.

115. When a bill of exchange has been noted or protested for non-payment, any person may pay the same for the honour of any party liable to pay the same, provided that the person so paying has previously declared before a notary public the party for whose honour he pays, and that such declaration has been recorded by such notary public.

Right of payer for honour.

116. Any person so paying is entitled to all the rights, in respect of the bill, of the holder at the time of such payment, and may recover from the party for whose honour he pays all sums so paid, with interest thereon and with all expenses properly incurred in making such payment.

CHAPTER XII.

OF COMPENSATION.

Rules as to compensation.

117. The compensation payable in case of dishonour of a promissory note, bill of exchange or cheque, by any party liable to the holder or any indorsee, shall (except in cases provided for by the Code of Civil Procedure, section 532) be determined by the following rules :—

(*a*) The holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in presenting, noting and protesting it ;

(*b*) When the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places ;

(*c*) An indorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at six per centum per annum from the date of payment until tender or realization thereof, together with all expenses caused by the dishonour and payment ;

(*d*) When the person charged and such indorser reside at different places, the indorser is entitled to receive such sum at the current rate of exchange between the two places ;

(*e*) The party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him together with all expenses properly incurred by him. Such bill must be accompanied by the instrument dishonoured and the protest thereof (if any). If such bill is dishonoured, the party dishonouring the same is liable to make compensation thereof in the same manner as in the case of the original bill.

CHAPTER XIII.

OF CROSSED CHEQUES.

Cheque crossed generally.

118. Where a cheque bears across its face an addition of the words "and company" or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words "not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally.

Cheque crossed specially.

119. Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker.

Crossing after issue.

120. Where a cheque is uncrossed, the holder may cross it generally or specially.

Where a cheque is crossed generally, the holder may cross it specially.

Where a cheque is crossed generally or specially, the holder may add the words "not negotiable."

Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection.

Payment of cheque crossed generally.

121. Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker.

Payment of cheque crossed specially.

Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or his agent for collection.

Payment of cheque crossed specially more than once.

122. Where a cheque is crossed specially to more than one banker, except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof.

Payment in due course of crossed cheque.

123. Where the banker on whom a crossed cheque is drawn has paid the same in due course, the banker paying the cheque, and (in case such cheque has come to the hands of the payee) the drawer thereof, shall respectively be entitled to the same rights, and be placed in the same position in all respects, as they would respectively be entitled to and placed in if the amount of the cheque had been paid to and received by the true owner thereof.

Payment of crossed cheque out of due course.

124. Any banker paying a cheque crossed generally otherwise than to a banker, or a cheque crossed specially otherwise than to the banker to whom the same is crossed, or his agent for collection, being a banker, shall be liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

Cheque bearing "not negotiable."

125. A person taking a cheque crossed generally or specially, bearing in either case the words "not negotiable," shall not have, and shall not be capable of giving, a better title to the cheque than that which the person from whom he took it had.

But a banker who has in good faith and without negligence received payment from a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment.

CHAPTER XIV.

OF FOREIGN BILLS.

Set of bills.

126. Foreign bills of exchange may be drawn in parts, each part being numbered and containing a provision that it shall continue payable only so long as

the others remain unpaid. All the parts together make a set; but the whole set constitutes only one bill, and is extinguished when one of the parts, if a separate bill, would be extinguished.

Exception.—When a person accepts or indorses different parts of the bill in favour of different persons, he is liable on each part as if it were a separate bill.

Holder of first acquired part entitled to all.

127. As between holders in due course of different parts of the same set, he who first acquired title to his part is entitled to the other parts and the money represented by the bill.

Drawee in case of need.

128. Where a drawee in case of need is named in a foreign bill of exchange, the bill is not dishonoured until dishonoured by such drawee.

Protest of foreign bills.

129. Foreign bills of exchange must be protested for dishonour when such protest is required by the law of the place where they are drawn.

CHAPTER XV.

OF INTERNATIONAL LAW.

Law governing liability of maker, acceptor or indorser of foreign instrument.

130. In the absence of a contract to the contrary, the liability of the maker or drawer of a foreign promissory note, bill of exchange or cheque is regulated in all essential matters by the law of the place where he made the instrument, and the respective liabilities of the acceptor and indorser by the law of the place where the instrument is made payable.

Illustrations.

A bill of exchange was drawn by A in California, where the rate of interest is 25 per cent., and accepted by B, payable in Washington, where the rate of interest is 6 per cent. The bill is endorsed in British India, and is dishonoured. An action on the bill is brought against B in British India. He is liable to pay interest at the rate of 6 per cent. only; but if A is charged as drawer, A is liable to pay interest at the rate of 25 per cent.

Law of place of payment governs dishonour.

131. Where a promissory note, bill of exchange or cheque is made payable in a different place from that in which it is made or indorsed, the law of the place where it is made payable determines what constitutes dishonour and what notice of dishonour is sufficient.

Illustration.

A bill of exchange drawn and indorsed in British India, but accepted payable in France, is dishonoured. The indorsee causes it to be protested for such dishonour, and gives notice thereof in accordance with the law of France, though not in accordance with the rules herein contained in respect of bills which are not foreign. The notice is sufficient.

Instrument made, &c., out of British India, but in accordance with its law.

132. If a negotiable instrument is made, drawn, accepted or indorsed out of British India, but in accordance with the law of British India, the circumstance that any agreement evidenced by such instrument is invalid according to the law of the country wherein it was entered into, does not invalidate any subsequent acceptance or endorsement made thereon in British India.

Presumption as to foreign law.

133. The law of any foreign country regarding promissory notes, bills of exchange and cheques shall be presumed to be the same as that of British India, unless and until the contrary is proved.

SCHEDULE.

(*a*) STATUTES.

Year and chapter.	Title.	Extent of repeal.
9 Wm. III. c. 17	An Act for the better payment of inland Bills of Exchange.	The whole.
3 & 4 Anne, c. 8.	An Act for giving like remedy upon promissory notes as is now used upon Bills of Exchange, and for the better payment of Inland Bills of Exchange.	The whole.

(*b*) ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

No. and year.	Title.	Extent of repeal.
VI of 1840 ...	An Act for the amendment of the law concerning the negotiation of Bills of Exchange.	The whole.
V of 1866 ...	An Act to amend in certain respects the Commercial Law of British India.	Sections 11, 12 and 13.
XV of 1874 ...	The Laws Local Extent Act, 1874.	The first schedule, so far as relates to Act VI of 1840 and Act V of 1866, sections 11, 12 and 13.

D. FITZPATRICK,
Secy. to the Govt. of India.

[Second publication.]

The following further Report of a Select Committee, together with the Bill as settled by them, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 19th of February, 1879:—

WE, the undersigned Members of the Select Committee to which the Bill to define and amend the law relating to the Transfer of Property was referred, have considered the Bill and the papers noted in the margin, and have the honour to present this further report.

From Secretary to Chief Commissioner, Assam, No. 532, dated 16th March, 1878.
" Acting Under Secretary to Government, Bombay, No. 3583, dated 18th June, 1878, and enclosures.
Extract from a Memorandum by Pandit Srikishen, Pleader, Judicial Commissioner's Court, Oudh.
Third Note by the Hon'ble Whitley Stokes, dated 20th July, 1878.
From Secretary to Chief Commissioner, Mysore, No. 2705-3 J, dated 9th July, 1878, and enclosure.
" Officiating Secretary to Chief Commissioner, Central Provinces, No. 3519-168, dated 24th August, 1878, and enclosure.
" Officiating Under-Secretary to Government, Bengal, No. 3678, dated 6th September, 1878, and enclosures.
" Secretary to Government, North-Western Provinces and Oudh, No. 687A, dated 11th September, 1878.
" Junior Secretary to Chief Commissioner, British Burma, No. 1438-64, dated 28th September, 1878, and enclosures.
" Secretary to Government, North-Western Provinces and Oudh, No. 721 A, dated 8th October, 1878, and enclosure.
" Hon'ble H. S. Cunningham, dated 5th November, 1878, and enclosure.
" Secretary to Government, Panjáb, No. 3925, dated 21st November, 1878, and enclosures.
Endorsement by Government of Bengal, No. 4556, dated 29th November, 1878, and enclosures.
Fourth Note by the Hon'ble Whitley Stokes, dated 9th January, 1879.
Forms of instruments taken from a Bengáli book of forms received from Mr. O'Kinealy.

2. The principal objections taken to this Bill in its second form are, first, that, as a whole, it is heterogeneous, and, secondly, that certain parts of it are neither necessary nor expedient. It is said, for instance, that, though the bulk of the Bill deals with transfer of property *inter vivos* by act of parties, it also treats, in sections 82, 83, of conditions in Wills, and, in section 129, of Succession to a deceased person. It is said, again, that the chapters dealing respectively with the rights and liabilities of owners of limited interests and with property held by several persons belong rather to the subject of the enjoyment, than to that of the transfer of property. It is urged that settlements (in the conveyancer's sense of the word) are hardly ever made in India, that what are technically called Powers are almost unknown, and that the chapters respectively dealing with those subjects are certainly not necessary and can hardly be said to be expedient. We feel the force of these objections. In fact, we have always felt them. But we were not responsible for the first draft of the Bill, whatever were its excellences or defects. The matters thus objected to, together with others, such as Registration and Trusts, still more foreign to the proper subject of the Bill, are all dealt with by the draft prepared by the late Indian Law Commission, which was sent out in 1870 by the then Secretary of State with instructions to introduce a Bill founded upon it, revised by Sir A. Hobhouse and sent home by the Government of India in January, 1877, *i.e.*, nearly six months before the Bill was introduced and referred to a Select Committee. The great deference due to the Law Commission and to Sir A. Hobhouse has hitherto prevented us from dealing freely with the Bill. Until the opinions of the Local Governments and the results of local experience had been obtained, for us to have altered it would have been to set our individual views against those of the able and learned men who were answerable for the Bill as introduced. But now that the opinions and results above referred to have been obtained, we see that, if the Bill is to go on at all, it must be strictly confined to the subject of transfer of property by act of parties, that is to say, by contract or gift.

3. We have therefore omitted chapters VII to XII both inclusive.

4. We cannot maintain that they are in accordance with one of the canons laid down in our last report, namely, that no additions should be made to the existing law "which are not either necessary or clearly expedient." The chapters dealing respectively with settlements, the rights and liabilities of owners of limited interests, and property held by several persons, are, moreover, very incomplete; and, as Natives are excluded from chapter IX, it would apply to a very limited class of persons. Chapter XI (of Powers) would also be of little use. We believe that among Natives powers are almost unknown. So far as we are aware, the only reported cases in which anything like a power was given by a Native are in 2 Calc. 474, and N.-W. P. (1869) Part II, p. 6, in each of which cases a Hindú bequeathed land to his wife and expressly empowered her to alienate it, and in 5 Beng. 181, where a Hindú testator empowered his sister to appoint a trustee of a religious endowment. Moreover, powers may be created by will and are, as often as not, exercisable by will. The subject therefore does not properly fall within a measure treating of the *transfer* of property, that is, as lawyers generally understand the expression, the conveyance of property from one living person to another.

5. As the Bill is, so far as it deals with immoveable property and debts, only a partial measure, we have made the preamble run thus:—"Whereas it is expedient to define and amend certain parts of the law relating to the transfer of property by act of parties." Compare the preamble to the Indian Contract Act, IX of 1872.

CHAPTER I.—*Preliminary.*

6. In section 2, we have expressly saved all transfers by operation of law (*e.g.*, in case of insolvency, forfeiture, sale in execution of a decree), with which the Bill is not intended to deal.

7. In section 3 we have omitted, as unnecessary, the definitions of "grantor," "grantee," and "grant;" and, for the last paragraph, we have said: "Chapters III, IV, V and VI of this Act shall be taken as part of the Indian Contract Act, 1872."

CHAPTER II.—*Of Assurances of Immoveable Property.*

8. This chapter should we think be entitled "Of Transfers of Immoveable Property," as it relates to all transfers of such property, whether or not an assurance is employed. We have omitted section 5 and the schedule to which it relates: they do not fitly form part of a Bill dealing with substantive law. Moreover, English experience shews that statutory forms of conveyances are rarely used, and they are dangerous, as tempting unskilled persons to try and be their own conveyancers.

9. Section 6 applies to transfers of immoveable property made by assurance; but it obviously ought to apply also to oral transfers of such property. We have therefore re-drawn it.

10. In section 7, we have provided for the case of a Sebáit, which has twice come before the Judicial Committee. (See 14 Beng. 450, and I. L. R. 2 Calc. 341).

11. As rents and profits of land are 'immoveable property,' we have, after this section, inserted section 1 of Act XI of 1855:—

"No person shall be chargeable with any rents or profits of any immoveable property which he has in good faith paid or delivered to any person of whom he in good faith held the same, notwithstanding it may afterwards appear that the person to whom such payment or delivery was made had no right to receive such rents or profits."

This section now applies only to cases to which the English law is applicable; but there seems no reason why so equitable and useful a rule should not be extended to every one in India.

12. Section 8 of Bill No. III applies not only to cases where land has passed *inter vivos* by act of parties, but also to cases in which it has been transferred by operation of law. It therefore seems beyond the scope of the Bill.

13. The Bill is silent as to the doctrine of *lis pendens*, which has in about a dozen reported cases been applied to Native purchasers and mortgagees (see 11 Bom. 24, 29, 30, 139; 8 Beng. 474; 1 O'Kin. 303, 309; 10 W. R. 469; Sev. 808, 951). We have inserted the following:—

"10. During the active prosecution in any Court having authority in British India or established beyond the limits of British India by the Governor General in Council, of a suit in which the right to any immoveable property is directly and specifically in question, the property cannot be transferred by any party to the suit so as to affect the rights of any other party thereto under any decree or order made therein."

14. Section 9 of Bill No. III (as to the effect of payment by one person, of consideration for which a transfer is made to another) properly belongs to the Trusts Bill, and should, we think, be omitted from the present measure.

CHAPTER III.—*Sales of Immoveable Property.*

15. In accordance with a suggestion of Mr. Justice Cunningham we have prefixed to this chapter a section founded on section 78 of the Contract Act; but we do not think with him that the section should provide for part delivery, an expression which, in the sense in which it is used in the Contract Act, section 92, would be inappropriate as applied to land, nor do we consider that, in stating the time at which delivery takes place, the effect of executing and delivering the assurance should be ignored.

The section referred to is as follows:—

Sale how effected.

"Sale of immoveable property is effected by offer and acceptance of certain immoveable property for a price, or of a price for certain immoveable property,

"together with payment of the price and delivery of the property, or with tender, part-payment or earnest; or with an agreement, express or implied, that the payment, or delivery, or both, shall be postponed.

"Where there is a contract for the sale of immoveable property, the ownership of the property passes to the buyer when the whole or part of the price, or when the earnest, is paid, or when the property is delivered.

"If the parties agree, expressly or by implication, that the payment, or delivery, or both, shall be postponed, the ownership passes as soon as the proposal for sale is accepted.

"Delivery of immoveable property takes place—

"(*a*) if the transfer is made by assurance—when the assurance is executed and delivered by the seller, and (if its registration is required by law) registered:

"(*b*) if the transfer is not made by assurance, in the case of a reversion or other intangible thing—when the parties consent to its delivery, and in the case of other immoveable property—when the buyer becomes capable of exercising physical control over it and determines to exercise such control on his own behalf or on behalf of the person whom he represents."

This will have the effect of settling a moot point of Hindú law, namely, whether change of possession is necessary to complete a sale of land, whether, in other words, the vendor must, at the time of sale, be in possession of the property sold (I. L. R. 1 Calc. 302: I. L. R. 1 Bomb. 502: N. W. P. 1871, p. 2: *contra* 7 Bomb. A. C. J. 4: 10 Bomb. 491). This question is answered in the negative by the Calcutta High Court and Mr. J. D. Mayne, a considerable authority on Hindú law.

16. We have omitted clauses (*d*) and (*i*) of section 11 (now 12). The former is, as Mr. Jacob points out, provided for by the Contract Act, section 39; the latter by section 10 of the same Act. On the other hand, we have restored clauses (*e*) and (*f*) of Bill No. I, modified as follows:—

"Till the ownership of the property passes to the buyer, the seller is entitled to the rents and profits thereof.

"When the ownership of the property has passed to the buyer, he must bear any loss arising from the destruction, injury or deterioration of the property not caused by the seller, and he is entitled to the benefit of any improvement in, or increase in value of, the property and to the rents and profits thereof."

The latter clause corresponds with the provision of the Contract Act, section 86, as to goods.

17. We have recast and abridged section 10 (now 13) as follows:—

Disclosures required from seller and buyer.

"The following omissions are fraudulent:—

"(*a*) an omission of the seller of immoveable property to disclose to the buyer any defect therein of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover:

"(*b*) an omission of the buyer of immoveable property to disclose to the seller any fact as to the nature or extent of the seller's interest therein, of which the buyer is, and the seller is not, aware, and which increases the value of such interest."

This will attract section 17, clause (5), of the Contract Act, which declares that "fraud" includes "any such omission as the law specially declares to be fraudulent."

18. As the Bill is now strictly limited to transfers by act of parties, we have omitted section 13, as to the procedure where the buyer becomes insolvent before completion. For the same reason we have also omitted section 73, as to the procedure where, during the continuance of a lease, the lessee becomes insolvent.

19. Section 17 (now 18), as to joint purchases. We have added, as Mr. Field suggests: "In the absence of evidence as to the shares so advanced, such persons shall be presumed to be equally interested in the property."

CHAPTER IV.—*Of Exchanges.*

20. As this chapter deals with moveable as well as immoveable property, we have placed it after the chapter on leases, and we have omitted the first paragraph of section 22, as the matter seems sufficiently provided for by Act IX of 1872, sections 64, 65, and Act I of 1867, sections 25, 37.

CHAPTER V.—*Of Mortgages of Immoveable Property.*

21. Section 27.—We fear that the abolition of equitable mortgages here proposed by the Law Commissioners would inconvenience the mercantile community. We have thought it better to say that a mortgage by deposit of title-deeds shall be deemed to create a charge on the property comprised therein and to insert the necessary clause in section 68 (now 63).

22. We have provided, in accordance with a suggestion of Mr. Field, that in the case of an usufructuary mortgage, the mortgagor may recover possession of the property, (1) where the mortgagee is authorized to pay himself from the rents and profits of the property the principal and interest of the mortgage-money—when such principal and interest are so paid; (2) where the mortgagee is authorized to pay himself from such rents and profits the interest of the mortgage-money—when the term (if any) of the mortgage expires and the mortgagor pays or tenders to the mortgagee, or deposits in such Court as last aforesaid, the principal of the mortgage-money."

23. Section 29 (now 24).—We have here declared the duty of a mortgagor to take all legal means to protect his rights in the mortgaged property (Macph. 112).

24. Section 31 (now 27).—This provided only for voluntary waste. We have now provided that the mortgagor is not liable for permissive waste.

25. Section 42 (now 39), clause (*c*).—We have added, in order to meet the case of patni tenures and saleable under-tenures, "and any arrears of rent in default of payment of which the property may be summarily sold."

We have provided that a mortgagee in possession ought to do such repairs as he can pay for out of the rents received after his interest is paid (see 9 W. R. 488).

We have omitted clause (*e*). The right which it gives is, as Mr. Field says, part of the mortgagee's right to take possession, which, as a general rule, finds no place in the Bill.

Where sufficient tender is made, the mortgagee in possession is thenceforth accountable for all his receipts from the mortgaged property (9 N.-W. P. 1: Macph. 159—160). We have provided for this.

26. Section 60 (now 57).—When a mortgagor obtains a decree in a redemption-suit and fails to pay the amount due, we think the mortgagee should be entitled either to a foreclosure or a sale. We have altered this section accordingly.

27. Section 61 (now 58).—We have omitted the second paragraph and the schedule to which it refers. It is hardly the function of a Bill codifying substantive law to give forms of decrees. They should, if necessary, be added to schedule IV of the Code of Civil Procedure.

CHAPTER VI.—*Of Leases.*

28. Section 70 (now 66).—We have substituted a section analogous to that above proposed as a substitute for section 10.

29. Section 71 (now 65).—We have struck out clauses (*c*) and (*g*). The former is superfluous, the latter is provided for by the Contract Act, sections 64 and 73.

Clause (*l*) now (*j*).—With reference to Couch, C. J.'s, decision in *Koegler* v. *Yule*, 5 Beng. 401, 416, we think this clause should run thus: "The lessee may use the property leased and its products (if any) as a reasonable owner would use them, but he must not use the property for a purpose other than that for which it was leased, or fell timber, open mines or quarries, or commit any other act which is destructive or permanently injurious thereto." We have added "The prohibition in this clause does not apply to mines which were open when the lease was granted."—See 8 Chan. Div. 526.

Clause (*q*) now (*o*).—We have inserted words in the proviso to shew that the lessor's transferee is not entitled to arrears of rent due before the transfer.

Clause (*r*) now (*p*).—We have made (in accordance with a suggestion of the Government of the North-Western Provinces) the second paragraph to run thus: "Nothing in this clause shall be deemed to authorize a tenant having a right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, and the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee."

30. Section 76 (now 70).—We have completed the list of events on which a lease determines.

31. We have redrawn the clause as to waiver of forfeiture and notice. It is now numbered 71, 72.

32. We have inserted a section (74) as to the effect of surrender and forfeiture of a lease, on sub-lessees.

33. We have made some other comparatively unimportant omissions, additions and alterations in wording and arrangement. We have added on the margins references to the reported decisions of the Indian Courts and the Judicial Committee, which justify the rules contained in the Bill. It will be seen that but few of these rules are devoid of this valuable support. The assertion that the Bill would introduce a mass of new law into India must therefore be

due to ignorance of the extent to which English law (under the name of justice, equity and good conscience) is actually administered to the Natives by the Anglo-Indian Courts. The object of the Bill, like that of all our Codes, is to strip our own law of all that is local and historical, and to mould the residue into a shape in which it would be suitable for an Indian population and could be easily administered by non-professional Judges. But the Bill will introduce hardly any new substantive law, and it will not (except in the case of the procedure relating to mortgages) displace any existing enactment. The rules, for instance, as to the relation of landlord and tenant contained in the local Acts, X of 1859, XVIII of 1873, XIX of 1868, XXVIII of 1868, Bengal Act VIII of 1869, and Madras Act VIII of 1865, will all remain untouched.

34. To the body of local usages and contractual incidents which in India, as in other countries, exists as to the transfer of land the tenderest care is shewn by the Bill. Not only is local usage expressly saved in sections 62, 65 and 68, but the effect of section 1, clause (*a*), will be to maintain intact the statutory force which the legislature has given to local usage in those two *pays de coutumes* the Panjáb and Oudh; and throughout India all the many incidents of a mortgage or a lease, which are not inconsistent with the provisions of the Bill, will remain wholly unaffected.

35. The Bill and preliminary report of the Select Committee have been published in English in the Presidency-towns, the Panjáb, the Central Provinces and British Burma. From the North-Western Provinces no report of publication has been received. Publication of the Bill and Report in the vernacular has been reported only by the Government of Bengal. We recommend that the Bill as now altered be published in the *Gazette of India* and sent to the various Local Governments for opinion. And we think that no further steps should be taken upon the Bill until it has been reported on by the new Indian Law Commission.

WHITLEY STOKES.
F. R. COCKERELL.

CALCUTTA;
The 19th February, 1879.

I concur in all the omissions and amendments made by the Committee and in their final recommendation; but I believe the Bill to be capable of further simplification, and regret to notice the almost entire absence of illustrations.

T. H. THORNTON.

I have not had time to consider either the provisions of the Bill or the changes now made thoroughly; but I agree that the chapters on Powers, Settlements, &c., should be omitted, and think these omissions necessitate republication with a view to elicit fresh criticism to be laid before the new Commission.

I would modify the new section 11 by requiring a written instrument in all cases where the value of the property sold is Rs. 100 or upwards. This will involve registration and get rid of the inconvenience and anomaly which would arise from oral sales of valuable land with deferred possession and no registration. Subject to the above remarks, I approve of the additions now made to the Bill.

G. H. P. EVANS.

I concur in all the omissions and agree that there should be a further publication.

G. C. PAUL.

I am opposed to the republication of this Bill at the present time. I believe that there is a great deal still left in the Bill which it will be desirable to omit, as relating to matters on which legislation is not called for; and I think that there should be no further publication until the Law Commission have reported on the measure.

A. J. ARBUTHNOT.

I am inclined to think that there can be no harm in republishing the Bill in its present form (though I must say that I believe it admits of further improvement), inasmuch as the republication will elicit public criticisms which may be of some use to the Law Commission.

JOTÍNDRA MOHAN TAGORE.

No. III.

THE TRANSFER OF PROPERTY BILL, 1879.

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SCHEDULE—Repeal of Enactments.

No. III.

A Bill to amend the law relating to the Transfer of Property by act of Parties.

Preamble.

WHEREAS it is expedient to define and amend certain parts of the law relating to the transfer of property by act of parties; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Bill s. 1: Bill II, s. 1.

Short title.

1. This Act may be called "The Transfer of Property Act, 1879:"

Extent.

It extends to the whole of British India;

Commencement.

And it shall come into force on the first day of *January*, 1880.

Bill, s. 2: Bill II, s. 1.

Repeal of Acts.

2. On and from that day the enactments specified in the schedule hereto annexed shall be repealed to the extent mentioned in the third column thereof. But nothing herein contained shall be deemed to affect—

Act IX of 1872, s. 1.

Saving of certain Acts, incidents, rights, liabilities, &c.

(*a*) the provisions of any enactment not hereby expressly repealed:

(*b*) any incidents of any contract which are not inconsistent with the provisions of this Act:

(*c*) any right or liability acquired or incurred before this Act comes into force, or any remedy in respect of any such right or liability:

(*d*) the right to anything affixed to the soil by the lessee under any lease granted before this Act comes into force:

4 Beng. A. C. 310.

(*e*) any right of pre-emption acquired after this Act comes into force:

1. L. R., 2 Bom. 541.

(*f*) any transfer by operation of law.

Bill, s. 3; Bill II, s. 3; Report, s. 3.

Interpretation-clause.

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

Act III of 1877, s. 17, cl. (*b*).

"assurance."

"assurance" means any non-testamentary instrument which purports or operates to create, transfer, or otherwise dispose of, whether in present or in future, any right, title or interest, whether vested or contingent, to or in immoveable property:

"registered."

"registered" means registered in British India under the law for the time being in force regulating the registration of documents:

"attached to the earth."

"attached to the earth" means—

(*a*) imbedded in the earth, as in the case of walls:

See ss. 18, 44, clause (*a*), 61.

(*b*) permanently resting upon it, as in the case of buildings; or

(*c*) attached to what is so imbedded or so rests, as by means of nails, bolts, screws, cement, solder or other permanent fastening.

Chapters III, IV, V and VI to be part of Act IX of 1872.

4. Chapters III, IV, V and VI of this Act shall be construed as one with the Indian Contract Act, 1872.

CHAPTER II.

OF TRANSFERS OF IMMOVEABLE PROPERTY.

Bill, s. 4: Report, s. 4.

Persons competent to make transfers of immoveable property.

5. Every person competent to contract may make a transfer of immoveable property: but subject to the law for the time being in force as to the circumstances and extent in and to which he may dispose of such property.

Bill, s. 10: Report, s. 10. v. last clause, Report, s. 6: 2 W. R. 125 (buildings): 14 W. R. 379.

Operation of transfer.

6. Unless a different intention is expressed or necessarily implied, a transfer of immoveable property vests in the transferee all the interest which the transferor is then capable of passing therein and in the legal incidents thereof.

N.-W.P. 1870, p. 251: 24 W. R. 330 (trees 'everything grown on it,' Morley, N. S. 259.

Such incidents include (where the property is land) the easements annexed thereto, the mines and minerals thereunder, and the standing trees, and all other products of the soil,

and (where the property is machinery attached to the earth) the moveable parts thereof,

and (where the property is a house) the easements annexed thereto and its locks, keys, bars, doors, windows, pankhas, half-doors, mats and blinds.

3 Moo. I. A. 203.

Title which transferor of immoveable property can give.

7. The transferor of immoveable property cannot give to another a title thereto better than his own, and where he has only a restricted power of alienating the property, he cannot give to another a title thereto valid as against third parties, except upon an alienation within the restriction:

6 Moo. I. A. 393: 2 W. R. 123: 3 W. R. 11: 8 W. R. 77: 1 Bom. 27: 8 Bom. 77: 9 Bom. 116: 12 Bom. 69: 14 Beng. 450: I. L. R. 2 Calc. 341 438: 2 Mad. 407: 3 Mad. 294: 6 Mad. 371.

Protection to innocent transferees for value.

Provided that where the transferor is (*a*) the manager of the property of a minor, an undivided family, or an endowed temple, (*b*) a sonless Hindú widow in possession of her deceased husband's property, or (*c*) a trustee, benámidár or other ostensible owner, the transferee's title shall not be impeached if the transfer has been made for a consideration and the transferee has acted in good faith and used due care and diligence to ascertain that the transferor had power to make the transfer.

Act XI of 1855, s. 1.

Rent *bonâ fide* paid to holder under defective title.

8. No person shall be chargeable with any rents or profits of any immoveable property which he has in good faith paid or delivered to any person of whom he in good faith held the same, notwithstanding it may afterwards appear that the person to whom such payment or delivery was made had no right to receive such rents or profits.

11 Bom. 72, 76: 12 Bom. 138: 8 Mad. 12: 21 W. R. P. C. 237.

9. Where undivided immoveable property is held in possession by co-owners and one of them transfers his share or any interest therein, the transferee takes the share or interest subject to the right of the other co-owners to enforce a partition of the property; and when such partition is effected, the right of the transferee as such, in the absence of a contract to the contrary by the co-owners, extends only to the share allotted to himself or to his transferor.

Transfer of share of undivided property.

8 Beng. 478: 7 Mad. 111: 11 Bom. 24, 64, 139: N. W. P. 1867, p. 301: 10 W. R. 469: 7 W. R. 225: 15 W. R. 372: 23 W. R. 382: 2 Tayl. & Bell, 113: 1 O'Kin. 303, 309: 5 W. R. P. C. 63: 8 Bom. A. C. J. 61. Consider *Berry* v. *Gibbons*, L. R. 8 Ch. 747.

10. During the active prosecution in any Court having authority in British India, or established beyond the limits of British India by the Governor General in Council, of a suit in which the right to any immoveable property is directly and specifically in question, the property cannot be transferred by any party to the suit so as to affect the rights of any other party thereto under any decree or order therein.

Transfer of property pending suit relating thereto.

CHAPTER III.

OF SALES OF IMMOVEABLE PROPERTY.

Delivery not necessary in case of Hindús, 14 Beng. 307: 1 Bom. 5, 19. Effect of part-payment, N.-W. P. 1866, p. 161: 15 W. R. 44: in Muhammadan law: Effect of earnest, W. R. 1864, 281: 1 Bom. 403. Cf. Act IX of 1872, s. 78, as to goods: postponement of payment, 7 W. R. 317. Effect of delivery before payment, 10 W. R. 194.

11. Sale of immoveable property is effected by offer and acceptance of certain immoveable property for a price, or of a price for certain immoveable property,

Sale how effected.

together with payment of the price and delivery of the property, or with tender, part-payment or earnest; or with an agreement, express or implied, that the payment, or delivery, or both, shall be postponed.

Where there is a contract for the sale of immoveable property, the ownership of the property passes to the buyer when the whole or part of the price, or when the earnest, is paid, or when the property is delivered.

If the parties agree, expressly or by implication, that the payment, or delivery, or both, shall be postponed, the ownership passes as soon as the proposal for sale is accepted.

Delivery of immoveable property takes place—

14 Beng. 307, 312: N.-W. P.-1866, p. 87. Consider 12 W. R. P. C. 6: as to delivery of assurance, W. R. 1864, p. 222: 5 W. R. 248: Morley N. S. 358. Right to redeem, N.-W. P. 1868, p. 376.

(*a*) if the transfer is made by assurance—when the assurance is executed and delivered by the seller, and (if its registration is required by law) registered:

(*b*) if the transfer is not made by assurance, in the case of a reversion or other intangible thing—when the parties consent to the delivery, and in the case of other immoveable property—when the buyer becomes capable of exercising physical control over it and determines to exercise such control on his own behalf or on behalf of the person whom he represents.

Bill, s. 11: Bill II, s. 11: Report, s. 14.

12. In the absence of a contract to the contrary, the buyer and the seller of immoveable property respectively have the rights, and are subject to the liabilities, mentioned in the ten rules next following, or such of them as are applicable to the property sold:

Rights and liabilities of buyer and seller.

(*a*). The seller must produce to the buyer, for examination, all documents of title relating to the property which are in his possession or power, and must inform the buyer of all facts not apparent thereon of which the seller is aware and which affect the seller's power to fulfil his contract, and must answer to the best of his information all relevant questions put to him by the buyer in respect to the property or the title thereto.

Devsí Ghelá v. *Jivanráj Mukundás*, 2 Bom. 432 (no right to have good title shewn). Abstract of title, 1 Bom. 78.

(*b*). Till the ownership of the property passes to the buyer, the seller is entitled to the rents and profits thereof.

Bill, 11 (*e*).

(*c*). When the ownership of the property has passed to the buyer, he must bear any loss arising from the destruction, injury or decrease in value of the property not caused by the seller, and he is entitled to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof.

Cf. Act IX of 1872, s. 86. Bill, 11 (*f*).

(*d*). When the buyer has been let into possession of the property before payment of the whole of the purchase-money, the seller has a charge upon the property for the amount of the purchase-money, or any part thereof, remaining unpaid, and for interest on such amount or part; but as soon as the assurance, if any, is registered, such charge shall cease except as against the buyer.

3 Bom. A. C. J. 102; 2 Hay 577.

(*e*). Unless the buyer has improperly declined to accept delivery of the property, he has, against the seller, a charge on the property, to the extent of the seller's interest therein, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery, and for interest on the amount of such payment; and, when the buyer properly declines to accept the delivery, also for the earnest (if any) and for his costs (if any) of a suit by himself or the seller to compel specific performance of the contract or to obtain a decree for its rescission.

3 Beng. O. C. J. 79.

(*f*). When the buyer has been let into beneficial possession of the property before payment of the price, and the price is not paid owing to defects in the seller's title, the buyer is not liable to pay for such possession.

(*g*). The seller must discharge all incumbrances on the property existing at the date of the contract. The buyer may retain, out of the unpaid purchase-money, the amount of such incumbrances, and shall pay the amount so retained to the parties entitled thereto.

(*h*). On payment or tender of the amount due in respect of the price, the seller is bound to execute a proper assurance of the property when the buyer tenders it to him for execution at a proper time and place.

(*i*). On delivery of the property, the buyer is entitled to all documents of title relating thereto which are in the seller's possession or power:

Provided that (1) where the seller retains any part of the property comprised in such documents, he is entitled to retain them all, and (2) where the whole of such property is sold to different buyers, the buyer of the lot of greatest value is entitled to such documents. But in case (1) the seller, and in case (2) the buyer of the lot of greatest value, is bound, upon every reasonable request by the buyer, or by any of the other buyers, as the case may be, or by any person claiming under him, and at the cost of the person making the request, to produce the said documents and furnish such true copies thereof as he may require; and, in the meantime, the seller or the buyer, as the case may be, of the lot of greatest value, must keep the said documents safe, uncancelled and undefaced, unless prevented from so doing by fire or other inevitable accident.

Bill, s. 41 (1) altered. N. W. P. 1867, p. 199: See 7 W. R. 196: 6 W. R. 152: 25 W. R. 46.

(*j*). Unless the sale is made by a person in a fiduciary character, the seller shall be deemed to contract with the buyer,

first, that notwithstanding anything done by the seller or any person through whom he claims, the seller has power to transfer the property to the buyer, free from incumbrances;

secondly, that the seller and all persons claiming any interest in the same through or for him, or any person through whom he claims, will on demand execute and deliver to the buyer at his expense any further assurance of the same that may reasonably be required;

further assurance, 5 W. R. P. C. 111.

and, where the property is leasehold, *thirdly*, that the lease is valid and subsisting and that the rent reserved thereby, the conditions contained therein and the contracts binding on the lessee have been paid, performed and observed down to the delivery.

When the sale is made by a person in a fiduciary character, the seller shall be deemed to contract with the buyer that the seller has done no act whereby the property is incumbered or whereby he is hindered from transferring it.

Bill II, s. 10.

Disclosures required from seller and buyer.

13. The following omissions are fraudulent:—

7 W. R., 258. Cf. Act IX of 1872, s. 17, clause (5), 19.

(*a*) an omission of the seller of immoveable property to disclose to the buyer any defect therein of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover:

(*b*) an omission of the buyer of immoveable property to disclose to the seller any fact as to the nature or extent of the seller's interest therein, of which the buyer is, and the seller is not, aware, and which increases the value of such interest.

Bill, s. 13 Bill II, s. 12: Report, s. 15: 6 W. R. 38.

14. A contract for, or relating to, the sale of immoveable property, shall not of itself have the effect of creating any interest in, or charge on, such property; but the only right of any person under the contract shall be to apply for specific performance, or for compensation, or for both, according to the rules laid down in the Indian Contract Act, 1872, and the Specific Relief Act, 1877.

Contract for sale not of itself to create interest in property.

Bill II, s. 14.

15. As between the seller and buyer of leasehold property, the buyer is, in the absence of a contract to the contrary, bound to pay the rent reserved by the lease and accruing due after delivery of the property, to perform the contracts entered into by the lessee, and to indemnify the seller against all claims arising after the delivery in respect of non-payment of such rent or breach or non-observance of such contracts.

Liability of buyer of leasehold.

Bill II, s. 15.

16. As between the seller and buyer of a right to redeem mortgaged property, the buyer is, in the absence of a contract to the contrary, bound (*a*) to pay to the mortgagee the principal sum which, on delivery of the right, is due on the mortgage, and all interest from time to time due for the same, when payment thereof, respectively, is lawfully demanded, and (*b*) to indemnify the seller against the payment thereof, and against all claims for non-payment thereof, respectively.

Liability of buyer of right to redeem.

Bill II, s. 16.

17. If at the date of the contract the property is insured against loss or damage by fire, the buyer, in case of such loss or damage, may, in the absence of a contract to the contrary, require any money which the seller actually receives under the policy, or so much thereof as may be necessary, to be applied in reinstating the property.

Money received by seller under fire-policy.

Bill II, s. 17.

18. When two or more persons purchase any immoveable property, with separate funds belonging to them respectively, they shall, in the absence of a contract to the contrary, be interested in such property in proportion to the shares of the purchase-money which they respectively advanced.

Joint purchases.

In the absence of evidence as to the shares so advanced, such persons shall be presumed to be equally interested in the property.

Bill II, s. 18: 7 W. R. 488.

19. When two properties are subject to a common charge, and one of the properties is sold, the buyer is, as against the seller, in the absence of a contract to the contrary, entitled to have the charge satisfied out of the other property, so far as such property will extend.

Right of buyer of one of two properties subject to common charge.

Bill II, s. 19: 2 Hay 549: 1 W. R. 14: XXXI of 1854, s. 1: XXVIII of 1860, s. 31.

20. When any property is sold, the proceeds of which are subject to any trust, the buyer in good faith of the property is not bound to see to the application of the purchase-money to the purposes of the trust nor is he answerable for the misapplication of such money.

Bonâ fide buyer not bound to see to application of purchase-money.

CHAPTER IV.

OF MORTGAGES OF IMMOVEABLE PROPERTY AND CHARGES.

Bill II, s. 25: Bill, s. 14: Act XXVIII of 1866, s. 19: Mortgagor need not have present ownership, N.-W. P. 1872, p. 11. Macph. 4. Fulton 36. Purchaser of right of redemption, 11 Bom. 41.

21. When, for the purpose of securing money advanced or to be advanced by way of loan or an existing or future debt, or the performance of an engagement, one person transfers to another a right over specific immoveable property, the transfer is called a mortgage of immoveable property, the transferor is called a mortgagor, the transferee a mortgagee, the money of which payment is secured is called the mortgage-money, and the assurance by which the transfer is effected is called a mortgage-deed.

Mortgage, mortgagor and mortgagee defined.

For the purposes of this chapter, any person entitled as heir, legatee, assignee, lessee or otherwise than as a mortgagee to the interest of the transferor in the property subject to the mortgage, or any part of such interest, is a mortgagor; and any person entitled as heir, legatee, assignee or otherwise to the interest of the transferee under the mortgage, or any part thereof, is a mortgagee.

5 Beng. 393: 5 W. R. 280.

Where the mortgagor transfers the property to the mortgagee with a proviso that, upon payment of the mortgage-money at a certain date, the property shall be retransferred, the transaction is called a mortgage in the English form.

English mortgage.

Macph. 8, 12, 59: R. B. Ghose, 218, 219: 2 Moo. I. A. 487.

Where the mortgagor delivers possession of the property to the mortgagee, and authorizes him to retain such possession and to pay himself from the rents and profits of the property the interest, or the mortgage-money and interest, or to take such rents and profits in lieu of interest, or of the mortgage-money and interest, the transaction is called an usufructuary mortgage.

Usufructuary mortgage.

Macph. 10, 12.

Where the mortgagor binds himself personally to repay the mortgage-money, and pledges the property as collateral security for the repayment, but does not contract that, on default of payment of the mortgage-money and interest at a certain date, the property shall pass to the mortgagee, the transaction is called a simple mortgage.

Simple mortgage.

Macph. 11, 12.

Where the mortgagor not so binding himself, contracts that, on default of payment of the mortgage-money and interest at a certain date, the property shall pass to the mortgagee, the transaction is called a mortgage by conditional sale.

Mortgage by conditional sale.

Bill II, s. 26: See Macph. 53. R. B. Ghose 64.

22. A mortgage can be effected only by assurance signed by the mortgagor and attested by at least two witnesses.

Mortgage to be by assurance.

Rights and Liabilities of Mortgagor.

Bill II, s. 28: Bill, s. 15: 5 Beng. 450: 6 Beng. 562: 2 Mad. 420: 7 Mad. 395: In Cen. Provs. 13 Beng. 205.

23. A mortgagor has the following rights as against the mortgagee:—

Right of mortgagor to redeem, tender or deposit.

N.-W. P. 1868, p. 204: Bomb. 237, no redemption before expiration of period named. Redemption after fixed time has expired, 9 Bomb. 69. see 7 Ben. 136 (P. C.). English practice followed, with necessary modifications, in case of defendant Pársí, 5 Bom. A. C. J. 109.

(*a*) at any time after the mortgage-money has become payable, or has been paid, the mortgagor has a right on payment or tender, at a proper time and place, of the mortgage-money and interest remaining due on the mortgage, to require the mortgagee to re-transfer the mortgaged property to him, or to execute an acknowledgment in writing that any right in derogation of his ownership or other interest transferred to the mortgagee has been extinguished:

Provided that the mortgagee has not obtained an order absolute foreclosing such right, or that such right has not been after the date of the mortgage released or otherwise extinguished, or that the property has not been duly sold in pursuance of a decree or under a power given by the mortgage-deed.

6 Bom. A. C. J. 265: N.-W. P. 1869, p. 128.

The right conferred by this clause is called a right to redeem and a suit to enforce it is called a suit for redemption:

Beng. Reg. I of 1798, s. 2: Macph. 171.

(*b*) at any time after the mortgage-money has become payable and before such suit is barred, the mortgagor may deposit in any Court in which he might have instituted a suit for redemption of the mortgaged property, to the account of the mortgagee, the mortgage-money and interest remaining due on the mortgage:

(*c*) in the case of an usufructuary mortgage, he may recover possession of the property (1) where the mortgagee is authorized to pay himself from the rents and profits of the property the mortgage-money and interest thereof,—when such money and interest are so paid, (2) where the mortgagee is authorized to pay himself from such rents and profits the interest of the mortgage-money,—when the term (if any) of the mortgage expires and the mortgagor pays or tenders to the mortgagee the mortgage-money, or deposits it in such Court as last aforesaid.

N.-W. P. 1867, p. 20 W. R. 387: 22 W. R. 262: 24 W. R. 24: N.-W. P. 1870, p. N.-W. P. 1872, p. N.-W. P. 1873, p. R. B. Ghose 198: Beng. 303.

Nothing in this section shall be deemed to authorize a person interested in part only of the mortgaged property to institute a suit for the redemption of his own part only, on payment of a proportionate part of the amount remaining due on the mortgage, except where there is but one mortgagee and the mortgagor's interest in part of the property becomes vested in such mortgagee, in which case the person so interested may institute such suit.

Redemption of portion of mortgaged property.

Bill II, s. 29. N.-W. P. 1867, 199.

24. In the absence of a contract to the contrary, the mortgagor shall be deemed to contract with the mortgagee,

Implied contracts by mortgagor.

first, that the mortgagor has power to grant the mortgaged property to the mortgagee, free from incumbrances;

S. D. A. 1857, p. 1195: 1853, p. 575.

secondly, that the mortgagor will take all legal means to protect his rights in the property:

thirdly, that the mortgagor and every person claiming any interest in the property will on demand (at the cost, until foreclosure or sale, of the mortgagor and afterwards of the person requiring the same) execute every such assurance of the same that may reasonably be required;

Effect of forfeiture of lease, N.-W. P. 1869, p. 128.

and, where the property is leasehold, *fourthly*, that the lease is valid and subsisting, that the rent reserved thereby, the conditions contained therein, and the contracts binding on the lessee have been paid, performed and observed down to the execution of the mortgage-deed; and that the mortgagor will, so long as the security exists, pay the rent reserved by the lease, perform the conditions contained therein and observe the contracts binding on the lessee and indemnify the mortgagee against all claims sustained by reason of the non-payment of the said rent or the non-performance or non-observance of the said conditions and contracts.

10 Bomb. 369: 11 Bomb. 32.

25. If after the date of the mortgage any accession is made to the mortgaged property, the mortgagor, upon redemption, shall, in the absence of a contract to the contrary, and subject to the law relating to alluvion for the time being in force, be entitled to such accession.

Accession to mortgaged property.

Illustration.

10 Bomb. 369, 371, and see N.-W. P. 1866, p. 281.

A mortgages to B a field the trees on which are the property of Government. B enters into possession of the field and as occupant thereof buys the trees. A redeems the field. He is entitled to the trees.

Bill II, s. 30.

26. Where the mortgaged property is a lease for a term of years, and the mortgagee, while in possession of the property, obtains a renewal of the lease, the mortgagor, upon redemption, shall, in the absence of a contract to the contrary, have the benefit of the new lease.

Renewal of mortgaged lease.

Bill II, s. 31.

27. A mortgagor in possession of the mortgaged property is not liable to the mortgagee for allowing the property to deteriorate; but he must not commit any act which is destructive or permanently injurious thereto, if the security is insufficient or will be rendered insufficient by such act.

Waste by mortgagor in possession.

Macph. 109. R. B. Ghose 147.

Explanation.—A security is insufficient within the meaning of this section unless the value of the mortgaged property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the amount for the time being due on the mortgage.

Bill II, s. 32.

28. A mortgagor proposing to make a second or other subsequent mortgage of the mortgaged property shall, before effecting the mortgage, give the second or other subsequent mortgagee notice in writing under his hand of the prior mortgage or mortgages, and a mortgagor effecting a second or other subsequent mortgage of the mortgaged property shall, as soon as may be, give the prior mortgagee or mortgagees like notice of such mortgage.

Notice to mesne incumbrancers.

W. R.

A mortgagor failing to give any notice required by this section shall, when the accounts are taken in pursuance of a decree made under this chapter, be debited with the loss, if any, occasioned by such failure, in addition to any other liability resulting therefrom.

Bill II, s. 33: Bill, s. 39: *Contra*, 6 Bomb. A. C. J. 90. But see R. B. G. 330, 331.

29. If the owner of two or more properties creates separate mortgages on them by separate assurances, each mortgage may be dealt with irrespectively of the other, though the mortgages are created in favour of the same mortgagee.

Right to redeem one of two properties separately mortgaged.

Illustration.

A, the owner of farms Z and Y, mortgages Z to B for Rs. 1,000. A afterwards mortgages Y to B for Rs. 1,000, making no stipulation as to any additional charge on Z. A may institute a suit for the redemption of the mortgage on Z alone.

Rights and Liabilities of Mortgagee.

Bill II, s. 34: 2 Mad. 289: N.-W. P. 1870, p 311: No foreclosure before expiration of period named, 2 Bomb. 242: Mortgagee's right to sale, 7 Bomb. A. C. J. 146: 9 Bomb. 12.

30. In the absence of a contract to the contrary, the mortgagee may, at any time after the mortgage-money has become payable to him, and before a decree has been made for the redemption of the mortgaged property, or the mortgage-money has been paid, institute against the mortgagor (1) a suit for a declaration that he has lost his right to redeem the property, or (2) a suit for a sale of the property.

Right to sue for foreclosure or sale.

A suit for a declaration that a mortgagor has lost his right to redeem the mortgaged property is called a suit for foreclosure.

Nothing in this section shall be deemed—

Simple mortgagee, N.-W. P. 1868, p. 184: Usufructuary, N.-W. P. 1875, p. 55.

(*a*) to authorize a simple mortgagee to institute a suit for foreclosure, or an usufructuary mortgagee to institute a suit for foreclosure or sale, or a conditional mortgagee to institute a suit for sale;

(*b*) to authorize a mortgagor who has become a trustee of the mortgaged property or legal representative of the mortgagee, to institute a suit for foreclosure;

(*c*) to authorize the mortgagee of a railway, canal or other work in the maintenance of which the public are interested, to institute a suit for foreclosure or sale; or

Cases *contra*, Macph. 195—6.

(*d*) to authorize a person interested in part only of the mortgage-money to institute a suit relating only to a corresponding part of the mortgaged property: but he may institute any suit which, under this Act, he is authorized to institute, relating to the whole of the mortgaged property, making the other mortgagees, if they cannot or will not join as plaintiffs, defendants.

Bill II, s. 35: Bill, s. 15, clause 4: Ben. Reg. I of 1798, s. 2. Macph. 171.

31. When the mortgagor deposits money in Court under section twenty-three, and pays the fee leviable for the service next hereinafter mentioned, the Court shall forthwith cause written notice of the deposit to be served on the mortgagee, and the mortgagee may, on depositing the mortgage-deed in the same Court and on filing a written statement (verified in manner prescribed by law for the verification of plaints) of the amount then due on the mortgage, apply for and receive in payment of such amount the money so deposited.

Right to money deposited by mortgagor.

Bill II, s. 36:
Bill, s. 28, usufructuary mortgage, 16 W. R. 251.

32. Where the mortgagor and mortgagee have contracted as to the payment of interest on the mortgage-money, interest shall be payable in accordance with such contract.

Right to interest.

Where no such contract has been entered into, the mortgagee is entitled to interest on such money at the rate of six per cent. per annum:

9 N.-W. P. 1. Macph. 159, 160.

Provided that, when the mortgagor has tendered or deposited in Court under section twenty-three, the amount for the time being due on the mortgage, interest on the mortgage-money shall cease from the date of the tender or from the earliest time when the mortgagee could take such amount out of Court, as the case may be.

Proviso.

Bill II, s. 37:
6 Bomb. 121:
Right to eject third persons wrongfully in possession, 9 Bomb. 275.

33. In the absence of a contract to the contrary, no mortgagee shall be entitled as such to take possession of the mortgaged property; but at any time after the expiration of one year from the time when the mortgage money has become payable according to the terms of the mortgage-deed, or after any interest thereon has been in arrear for six months, he may institute a suit for the appointment of a receiver of the rents and profits of the whole or any part of the mortgaged property.

Bar of entry by mortgagee.

Right to receiver.

In any suit for foreclosure or sale, the Court may, if it think fit, appoint such a receiver pending the proceedings in the suit, unless the mortgagee is already in possession of the mortgaged property.

Bill II, s. 38.

34. The mortgagee may sue the mortgagor for the mortgage-money in the following cases only:—

Right to sue for mortgage-money.

6 W. R. 283.

(*a*) where the mortgagor expressly binds himself to repay the same:

Macph. 233.

(*b*) where the mortgagor remains in possession of the mortgaged property and fails to pay arrears of revenue or rent due in respect thereof, and the property is consequently sold or attached:

Act XXXIII of 1871, s. 46.

7 Bomb. 116:
21 W. R. 226.

(*c*) where the property is destroyed by diluvion, fire or other superior force:

25 W. R. 7 (partial deprivation).

(*d*) where the mortgagee is deprived of his security by the wrongful act or default of the mortgagor:

4 Moo. I. A. 464:
Marsh. 209:
7 S. D. A. 47:
N.-W. P. 1860, p. 280.
So in the case of a Kánam mortgage, 2 Mad. 315.

(*e*) in the case of an usufructuary mortgage, where the rents and profits of the property are to be taken in lieu of interest only, or where the mortgagor fails to deliver to the mortgagee possession of the property or to secure the possession thereof to him without disturbance by the mortgagor or any other person.

Bill II, s. 39:
Bill, s. 24:
8 Bomb. A. C. J. 142.
6 W. R. 283 (power to usufructuary mortgagee).
Muhammadan law, Macph. 2.

35. A power conferred by the mortgage-deed on the mortgagee, or on any person on his behalf, to sell or concur in selling the mortgaged property, or any part thereof, is invalid, except where the mortgagee is the Secretary of State for India in Council, or the mortgaged property is situate within the towns of Calcutta, Madras, Bombay, Karáchí or Rangoon.

Power of sale invalid.

Act No. XXVIII of 1866, section 6, is repealed so far as it is inconsistent with this section.

Bill II, s. 40.

36. If, at the date of the mortgage, the mortgaged property is insured against loss or damage by fire, the mortgagee, in case of such loss or damage, may, in the absence of an express contract to the contrary, receive any money which the mortgagor actually receives under the policy, or so much thereof as may be necessary, to be laid out in reinstating the property.

Right as to insurance-money.

Bill II, s. 41:
11 Bomb. 32.

37. If, after the date of the mortgage, any accession is made to the mortgaged property, the mortgagee, in the absence of a contract to the contrary, and subject to the law relating to alluvion for the time being in force, shall, for the purposes of the security, be entitled to such accession.

Accession to mortgaged property.

Illustrations.

(*a*) A mortgages to B a certain field bordering on a river. The field is increased by alluvion. For the purposes of his security, B is entitled to the increase.

(*b*). A mortgages a certain plot of building-land to B and afterwards erects a house on the plot. For the purposes of his security, B is entitled to the house as well as the plot.

38. When the mortgaged property is a lease for a term of years, and the mortgagor while in possession of the property, obtains a renewal of the lease, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to the new lease.

Renewal of mortgaged lease.

Bill II, s. 42:
Bill, s. 16.

39. When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property, he has the following rights and liabilities:—

Mortgagee in possession.

2 Bomb. 222: Act IX of 1872, s. 151.

(*a*) he shall manage the property as a person of ordinary prudence would manage it if it were his own;

N.-W. P. 1875, p. 100.

(*b*) he shall use his best endeavours to collect the rents and profits thereof;

2 Bomb. 231.

(*c*) he shall, in the absence of a contract to the contrary, out of the income of the property pay the Government revenue, all other charges of a public nature accruing due in respect thereof during such possession and any arrears of rent in default of payment of which the property may be summarily sold;

Macph. 118, 119.

9 W. R. 488.

(*d*) he shall, in the absence of a contract to the contrary, make such necessary repairs of the property as he can pay for out of the rents and profits thereof after deducting from such rents and profits the payments mentioned in clause (*c*, and the interest on the mortgage-money;

Macph. 109, 113, 252; 1 Bomb. 199, 203; 5 Bomb. A. C. J. 109, 116: N.-W. P. 1867, 187: 1 W. R. 133:.

(*e*) he may spend such money as is necessary (1) for the due management of the property and the collection of the rents and profits thereof, (2) for its preservation from destruction, forfeiture or sale, (3) for supporting the mortgagor's title to the property, (4) for making his own title thereto good against the mortgagor, and (5), when the mortgaged property is a renewable leasehold, for the renewal of the lease; and may, in the absence of a contract to the contrary, add such money to the mortgage-money, at the same rate of interest;

11 Moo. I. A. 241.

23 & 24 Vic., c. 1[illegible] s. 11.

(*f*) where the property is by its nature insurable at ordinary rates, he may, in the absence of a contract to the contrary, insure and keep insured against loss or damage by fire the whole or any part of such property, and add the premiums paid for any such insurance to the mortgage-money at the same

rate of interest; and, in case of such loss or damage, shall apply any money which he may actually receive under the policy, or so much thereof as may be necessary, in reinstating the property;

2 Beng. P. C. 55:
5 W. R. 53, 271, &c.:
Macph. 119.

(*g*) he shall keep clear, full and accurate accounts of all sums received and spent by him as mortgagee and, at any time during the continuance of the mortgage, give the mortgagor, at his request and cost, true copies of such accounts and of the vouchers by which they are supported;

5 Bomb. A. C. J. 196:
12 Bomb. 88:
10 Beng. 386:
N.-W. P. 1866, p. 132:
ibid. 1868, p. 153.
when he cultivates, 7 W. R. 244; R. B. G. 262.

(*h*) his receipts from the mortgaged property, or, where such property is personally occupied by him, a fair occupation-rent in respect thereof, shall, after deducting the expenses mentioned in clauses (*c*), (*d*), (*e*) and (*f*), and interest thereon, be debited against him in reduction of the amount (if any) from time to time due to him on account of interest on the mortgage-money and, so far as such receipts exceed any interest due, in reduction or discharge of the mortgage-money. The surplus, if any, shall be paid to the mortgagor;

2 Moo. I. A. Ca. 1.

Macph. 159, 160.

(*i*) when the mortgagor tenders, or deposits in court under section twenty-three, the amount for the time being due on the mortgage, the mortgagee must, notwithstanding the provisions in the other clauses of this section, account for his gross receipts from the mortgaged property from the date of the tender or from the earliest time when he could take such amount out of court, as the case may be.

Bill II, s. 62.

If the mortgagee fail to perform any of the duties imposed upon him by this section, he may, when accounts are taken in pursuance of a decree made under this chapter, be debited with the loss, if any, occasioned by such failure.

Loss occasioned by his default.

Bill II, s. 43:
Bill, s. 17:
Sev. 383.
See 10 Moo. I. A. 340.

40. Nothing in section thirty-nine, clauses (*g*) and (*h*), applies to cases where there is a contract in writing between the mortgagee and the mortgagor that the receipts from the mortgaged property after deducting the said expenses, shall, so long as the mortgagee is in possession of the property, be taken in lieu of interest on the mortgage money.

Receipts in lieu of interest.

Bill II, s. 44:
Bill, s. 18, altered:
Macph. 118, 119, citing 7 N.-W. P. 286:
9 N.-W. P. 1:
Act I of 1877, s. 54.

41. A mortgagee in possession of the mortgaged property must not commit any act which is destructive or permanently injurious thereto.

Waste by mortgagee.

Bill II, s. 45:
Macph. 118, 252;
1 W. R. 270:
18 W. R. 222.

42. When a mortgagor in possession of the mortgaged property fails to pay arrears of revenue or rent due in respect thereof, and the property is consequently sold, the mortgagee has a charge on the surplus, if any, of the proceeds, after payment thereout of the said arrears, for the amount remaining due on the mortgage.

Charge on proceeds of revenue-sale.

Bill II, s. 49:
Bill, ss. 35, 36, 37:
Report, ss. 31, 33.

43. Any second or other subsequent mortgagee may, at any time before a sale of the mortgaged property has taken place under this chapter, tender to the next prior mortgagee the amount due to him on account of his mortgage. Such mortgagee is bound to accept such tender and to give a receipt for the sum due, and on such receipt being registered, the person making the tender shall acquire, in respect of the property, all the rights and powers of the mortgagee, as such, to whom he has made such tender.

Right to pay off mortgagee in order to prevent sale.

Priority.

Bill II, s. 46:
Evidence Act, s. 115:
N.-W. P. 1868, p. 402:
4 Mad. 373:
2 Moo. I. A. 487:
11 W. R. 286:
Hindú mortgagee in possession preferred, 8 Bom. A.C.J. 50, 55. *Secus* in Guzerat, 11 Bom. 41.

44. Where, through the fraud or gross neglect of a prior mortgagee, another person has been induced to advance money on the security of the mortgaged property, the prior mortgagee shall be postponed to the subsequent mortgagee.

Postponement of prior mortgagee.

Bill II, s. 47:
Bill, s. 34:
Report, s. 29.

45. If a mortgage made to secure the balance of a running account expresses the maximum to be secured thereby, a subsequent mortgage on the same property shall, if made with notice of the prior mortgage, or if the instrument effecting the prior mortgage is registered, be postponed to the prior mortgage in respect of all advances or debits not exceeding the maximum, though made or allowed with notice of the subsequent mortgage.

Mortgage to secure balance of account.

Illustration.

A mortgages Sultánpur to his bankers, B & Co., to secure the balance of his account with them to the extent of Rs. 10,000. A then mortgages Sultánpur to C, to secure Rs. 10,000; and C gives notice thereof to B & Co. At the date of the second mortgage, the balance due to B & Co. does not exceed Rs. 5,000. B & Co. subsequently advance to A sums making the balance of the account against him exceed the sum of Rs. 10,000. B & Co. are entitled, to the extent of Rs. 10,000, to priority over C.

Bill II, s. 48:
Bill, s. 38:
Report, s. 34:
2 Beng. App. 45:
5 Beng. 463:
11 W. R. 310.

46. No mortgagee paying off a prior mortgage, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his original security. And, except in the case provided for by section forty-five, no mortgagee making a subsequent advance to the mortgagor, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his security for such subsequent advance.

Tacking abolished.

Marshalling and Contribution.

Bill II, s. 50:
W. R. 1864, p. 374:
1 W. R. 353:
7 W. R. 483:
12 W. R. 114:
Macph. 205.

47. If the owner of two properties mortgages them both to one person and then mortgages one of the properties to another person who has not notice of the former mortgage, the second mortgagee is entitled to have the debt of the first mortgagee satisfied out of the property not mortgaged to the second mortgagee, so far as such property will extend; but not so as to prejudice the rights of the first mortgagee or of any other person having an incumbrance on either property.

Marshalling securities.

Macph. 136.

Bill II, s. 51:
12 W. R. 291:
see 22 W. R. 480.

48. Where several properties, whether of one or several owners, are mortgaged to secure one debt, the several properties shall contribute rateably to the debt secured by the mortgage, after deducting from the value of each property the amount of any other incumbrance to which it is subject.

Contribution to mortgage-debt.

Where of two properties belonging to the same owner, one is mortgaged to secure one debt, and then both are mortgaged to secure another debt, and the former debt is paid out of the former property, each property shall contribute rateably to the latter debt, after deducting the amount of the

former debt, from the value of the property out of which it has been paid.

Nothing in this section applies to a property liable under section forty-seven to the claim of the second mortgagee.

Suits for Redemption, Foreclosure or Sale.

Bill II, sec. 52: 14 Moo. I. A. 101: 1 W. R. 176: 21 W. R. 428: explained by Macph. 146. Seton i, 442, see Act X of 1877, sec. 32. 5 Bomb. O. C. J. 76, (legal representative of deceased mortgagor): 8 Beng. 104 (purchaser from mortgagor): Marshall 292, claimants of right of redemption, N.-W. P. 1868, p. 144.

49. Subject to the provisions of the Code of Civil Procedure, section 437, all persons having an interest either in the right of redemption or in the security ought to be joined as parties to any suit under this chapter, and the first or any subsequent mortgagee who institutes a suit for foreclosure or sale ought to make every mortgagee and other incumbrancer whose security is subsequent to his own, a party to the suit.

Parties to suits for redemption, foreclosure and sale.

Bill II, sec. 53: Bill, s. 19.

Foreclosure and Sale.

50. In a suit for foreclosure, if the plaintiff succeed, the Court shall pass a decree, ordering that an account be taken of what will be due to the plaintiff for principal and interest on the mortgage and for his costs of the suit, on the day next hereinafter referred to, or declaring the amount so due at the date of such decree,

Decree in foreclosure-suit.

and ordering that, upon the defendant paying to the plaintiff or into court the amount so due, on a day within six months from the date of declaring in court the amount so due, to be fixed by the Court, the plaintiff shall deliver up to the defendant, or to such person as he appoints, all documents in his possession or power relating to the mortgaged property, and shall transfer the mortgaged property to the defendant free from all incumbrances created by the plaintiff or any person claiming under him, or, where the plaintiff claims by derived title, by those under whom he claims; and shall, if necessary, put the defendant into possession of the mortgaged property; but

that, if such payment is not made on or before such day, the defendant shall be absolutely foreclosed of all right to redeem such property.

Bill II, sec. 54.

51. If payment is so made of such amount and of such subsequent costs as are mentioned in section fifty-nine, the defendant shall (if necessary) be put into possession of the mortgaged property.

Procedure in case of payment of amount due and subsequent costs.

If such payment is not so made, the plaintiff may apply to the Court for an order absolute for the foreclosure of the said mortgage, and the Court shall then pass an order absolute that the defendant be foreclosed of all right to redeem the mortgaged property, and may, if necessary, deliver possession of the property to the plaintiff; and thereupon the defendant's right to redeem and the security shall both be extinguished:

Order absolute for foreclosure.

W. R. 91.

Provided that the Court may, upon good cause shewn, from time to time postpone the day appointed for such payment.

Power to enlarge time.

In the Code of Civil Procedure, schedule IV, No. 129, for the words "Final Decree," the words "Order absolute" shall be substituted.

Bill II, s. 55.

52. In a suit for a sale under this chapter, if the plaintiff succeed, the Court shall, and in any other suit by the mortgagee under this chapter, if the plaintiff succeed, the Court may, at his instance, pass a decree ordering as provided in the first and second paragraphs of section fifty and also ordering that, in default of the defendant making payment as therein mentioned, the mortgaged property or a sufficient part thereof be sold, and that the proceeds of the sale (after defraying thereout the expenses of the sale) be paid into Court and applied in payment of what is so found due to the plaintiff and that the balance, if any, be paid to the defendant or other persons entitled to receive the same.

Decree for sale.

Power to decree sale at instance of mortgagee.

Bill, s. 21: 15 & 16 Vic., c. 8 s. 48.

When the mortgagee sues only for a foreclosure, if the Court considers that he will not be damnified by such sale and if the defendant furnishes such security, if any, as the Court thinks sufficient for the payment of the balance due for the time being by him on the mortgage, the Court may, at the instance of the defendant, pass a like decree.

Power to decree sale in foreclosure-suit at instance of mortgagor.

Any decree under this section may also direct the defendant to pay any balance remaining due to the plaintiff upon the mortgage after the proceeds of sale have been dealt with as above provided.

Bill II, s 56.

53. If in any case under section fifty-two, the defendant makes payment as mentioned in section fifty-one, he shall (if necessary) be put in possession of the mortgaged property: but if such payment is not so made, the plaintiff or the defendant, as the case may be, may apply to the Court for an order absolute for sale of the mortgaged property, and the Court shall then pass an order that such property, or a sufficient part thereof, be sold, and that the proceeds of the sale be dealt with as is mentioned in section fifty-two; and thereupon the defendant's right to redeem and the security shall both be extinguished.

Procedure when defendant pays amount due and subsequent costs.

Order absolute for sale.

Bill II, sec. 57: Bill, s. 23.

54. When the nett proceeds of any such sale are insufficient to pay the amount due for the time being on the mortgage, the balance, if payable according to the contract between the parties by the defendant otherwise than out of the property sold, may be recovered either (if the Court thinks fit) in the same suit in the same manner as under a decree for money, or by any other legal process open to the mortgagee.

Recovery of balance due on mortgage.

Redemption.

Bill II, s. 58.

55. Besides the mortgagor, any of the following persons may institute a suit for redemption of the mortgaged property:—

Who may sue for redemption.

(*a*) any person (other than the mortgagee) having any interest in or charge upon the property;

(*b*) any person having any interest in or charge upon the right to redeem the property;

3 W. R. 230: R. 230, &c. But see 17 W. R. 272.

(*c*) any surety for the payment of the mortgage-debt or any part thereof;

(*d*) the guardian of the property of a minor mortgagor;

(*e*) the committee or other legal curator of a lunatic or idiot mortgagor;

(*f*) the judgment-creditor of the mortgagor, when he has obtained execution;

(*g*) a creditor of the mortgagor who has in a suit for the administration of his estate obtained a decree for sale of the mortgaged property.

Bill II. s. 59: Bill, s. 25: See Code, C. P., section 461: N.-W. P. 1870, p. 207.

56. In a suit for redemption, if the plaintiff succeed, the Court shall pass a decree

Decree in redemption-suit.

ordering that an account be taken of what will be due to the defendant for principal and interest on the mortgage, and for his costs of the suit, on the day next hereinafter referred to, or declaring the amount so due at the date of such decree; and

ordering that upon the plaintiff paying to the defendant or into court the amount so due on a day within six months from the date of declaring in court the amount so due, to be fixed by the Court, the defendant shall deliver up to the plaintiff, or to such person as he appoints, all documents in his possession or power relating to the mortgaged property, and shall (if such property has been transferred to the defendant) retransfer it to the plaintiff free from the mortgage and from all incumbrances created by the defendant or any person claiming under him, or, when the defendant claims by derived title, by those under whom he claims, and shall, if necessary, put the plaintiff into possession of the mortgaged property; but

that if such payment is not made on or before such day, the plaintiff shall be absolutely foreclosed of all right to redeem such property.

Bill II, s 60.

57. If payment is made of such amount and of such subsequent costs as are mentioned in section fifty-nine, the plaintiff shall, if necessary, be put into possession of the mortgaged property.

In case of redemption, possession:

If such payment is not so made, the defendant may apply to the Court for an order absolute either for the foreclosure of the said right to redeem, or for a sale of the mortgaged property.

In default, foreclosure or sale.

If he apply for an order for foreclosure, the Court shall pass an order absolute ordering the plaintiff to be foreclosed of all right to redeem the mortgaged property, and may, if necessary, deliver possession of the property to the defendant.

If he apply for an order for sale, the Court shall pass an order that such property or a sufficient part thereof be sold, and that the proceeds of the sale (after defraying thereout the expenses of the sale) be paid into Court and applied in payment of what is found due to the defendant and that the balance be paid to the plaintiff or other persons entitled to receive the same.

On the passing of any order under this section the plaintiff's right to redeem and the security shall both be extinguished:

Provided that the Court may upon good cause shewn, from time to time, postpone the day fixed under section fifty-six for payment of the amount due.

Power to enlarge time.

Redemption and Foreclosure.

Bill II, s. 61: *Mulook Chund* v. *Aghooree*, 2 Sev. 573: *Sheopal* v. *Deen Dyal* N.-W. P. 1873, p. 148: Macph. 139, 140.

58. When property is mortgaged for successive debts to successive mortgagees, any mesne mortgagee may institute a suit to redeem the interests of the prior mortgagees and to foreclose the rights of those that are posterior to himself and of the mortgagor.

Right of mesne mortgagee to redeem and foreclose.

Costs.

Bill II, s. 64: Bill, s. 30.

59. In finally adjusting the amount to be paid to a mortgagee in case of a redemption or a sale by the Court under this chapter, the Court shall, unless the conduct of the mortgagee has been such as to disentitle him to costs, add to the mortgage-money such costs of suit as have been properly incurred by him since the decree for foreclosure, redemption or sale up to the time of actual payment.

Costs of mortgagee subsequent to decree.

Sale of Property subject to prior mortgage.

Bill II, s. 65: Bill, s. 32: Report, s. 25, altered: Act X of 1877, s. 295.

60. If any property the sale of which is directed under this chapter is subject to a prior mortgage, the Court may, with the consent of the prior mortgagee, order that the property be sold free from the same, giving to such prior mortgagee the same interest in the proceeds of the sale as he had in the property sold.

Sale of property subject to prior mortgage.

Bill II, s. 66: Bill, s. 33: See Act X of 1877, s. 295.

61. Such proceeds shall be brought into court and applied as follows:—

Application of proceeds.

first, in payment of all expenses incident to the sale or properly incurred in any attempted sale;

secondly, if the property has been sold free from any prior mortgage, in payment of whatever is due on account of such mortgage;

thirdly, in payment of all interest due on account of the mortgage in consequence whereof the sale was directed, and of the costs of the suit in which the decree directing the sale was made;

fourthly, in payment of the principal money due on account of that mortgage; and

fifthly, the residue (if any) shall be paid to the person proving himself to be interested in the property sold, or if there be more such persons than one, then to such persons according to their respective interests therein or upon their joint receipt.

Anomalous Mortgages.

Bombay Reg. V of 1827, s. 15.

62. In the case of a mortgage not coming within any of the definitions contained in section twenty-one, the rights and liabilities of the parties shall be determined by their contract as evidenced in the mortgage-deed, and, so far as such contract does not extend, by local usage: Provided that, in the absence of an express contract to the contrary, the mortgaged property shall be deemed to be the only security for payment of the mortgage money.

Mortgages not described in section 21.

Charges.

Bill II, s. 68: Bill, s. 41.

63. If by any assurance other than a mortgage-deed, or by any will, or under the provisions of this or any other Act, or by operation of law, certain immoveable property of one person is made security for the payment of certain money to another, the latter person is said to have a charge on the

Charges.

property; and all the provisions hereinbefore applied to a mortgagor shall, so far as may be, apply to the owner of such property, and all the provisions hereinbefore applied to a mortgagee instituting a suit for the sale of the mortgaged property shall, so far as may be, apply to the person having such charge.

3 Beng. Appendix 140: N.-W. P. 1869, p. 184: N.-W. P. 1871, p. 207.

Bill, s. 31: Bill II, s. 27:

The delivery by a debtor to the creditor or his agent, of documents of title relating to property, with intent to create a security thereon, shall be deemed to create a charge on such property in favour of the creditor for the amount of the debt.

Effect of deposit of title-deeds.

7 Beng. 653: 11 Beng. 405: N.-W. P. 1869, p. 74: 7 Bom. O. C. J. 45: I. L. R. 1 Bom. 237: 9 Moo. I. A. 303: Macph. 53, 54.

Nothing in this section applies to the charge of a trustee on the trust-property for expenses properly incurred in the execution of his trust.

Bill II, s. 69: 7 Mad. 231: 14 W. R. 491: 3 O'Kin. 184: 5 Beng. 463: 11 Bom. 41.

64. Where a person is or becomes absolutely entitled to immoveable property, of a charge or other incumbrance on which he is also the owner, the charge or incumbrance shall be extinguished, unless he declares, by express words or necessary implication, that it shall continue to subsist, or unless such continuance would be for his benefit.

Extinguishment of charges.

CHAPTER V.

OF LEASES OF IMMOVEABLE PROPERTY.

Bill II, s. 71.

65. In the absence of a contract or local usage to the contrary, the lessor and the lessee of immoveable property, as against one another, respectively possess the rights and are subject to the liabilities mentioned in the sixteen rules next following, or such of them as are applicable to the property leased:—

Rights and liabilities of lessor and lessee.

39 (2) altered: cf. IX of 1872, s. 93: 11 W. R. 278: 12 W. R. 149: 6 Beng. Appendix 44, 39 (3): 15 W. R. 230: 23 W. R. 121.

(*a*.) The lessor is bound on the lessee's request to put him in possession of the property leased:

(*b*.) The lessor shall be deemed to contract with the lessee that the latter paying the rent reserved by the lease and performing the contracts binding on the lessee may hold the property leased during the time limited by the lease without interruption by the lessor or his transferees, or any person lawfully claiming through him or them:

6 W. R. 314.

(*c*.) The lessee is entitled to the enjoyment of all easements annexed to the property leased at the time when the lease was made until the lease determines or such easements are extinguished, whichever event first happens:

See 23 W. R. 34.

(*d*.) The lessee is bound to keep, and on the termination of the lease to restore, the property leased in as good condition as it was in at the time when he was put in possession, subject only to reasonable wear and tear, and to allow the lessor and his agents, at all reasonable times during the term, to enter into the property leased and inspect the condition thereof, and to give or leave notice of any defect in such condition and to make good all such defects within three months after such notice has been given or left:

8 Beng. 73.

(*e*.) If during the continuance of the lease any accession is made to the property leased, such accession (subject to the law relating to alluvion for the time being in force) shall be deemed to be comprised in the lease:

(*f*.) If by fire, tempest or flood, or violence of an army or of a mob, or other superior force, any part of the property leased be wholly destroyed or rendered substantially unfit for the purposes for which it was let, the lease shall be void as to that part, and any rent or fine payable under the lease shall proportionately abate, and a proportionate part of any fine paid by the lessee shall be returned by the lessor:

If the injury be occasioned by the wrongful act or default of either party, such party shall not be entitled to avail himself of the benefit of this provision:

(*g*.) If the lessor neglects to make, within a reasonable time after notice, repairs which he is bound to make to the property leased, the lessee may make the same himself, and deduct the expense of such repairs with interest from the rent, or otherwise recover it from the lessor:

(*h*.) If the lessor neglects to make any payment which he is bound to make, and which, if not made by him, is recoverable from the lessee or against the property leased, the lessee may make such payment himself, and deduct it from his rent, or otherwise recover it from the lessor:

(*i*.) Every lessee who becomes aware of any proceeding to recover the property leased or any part thereof, or of any encroachment made upon, or any interference with, the lessor's rights concerning such property, is bound to give notice thereof to the lessor with reasonable diligence; and, in default of so doing, he is liable to make compensation to the lessor for any loss or expenses occasioned by such omission:

(*j*.) The lessee may use the property leased and its products (if any) as a reasonable owner would use them; but he must not use the property for a purpose other than that for which it was leased, or fell timber, pull down or damage houses, open mines or quarries, or commit any other act which is destructive or permanently injurious thereto.

5 Beng. 401, 416: 8 Beng. Appendix 70: 10 Beng. Appx. 41, sed. v. 5 S. D. A. 205: 15 W. R. 360: 17 W. R. 416: 21 W. R. 298: W. R. Sp. (1864) 36.

The prohibition in this clause does not apply to mines which were open when the lease was granted:

(*k*.) No lessee shall, without the lessor's consent, erect on the property leased any permanent structure, except for agricultural purposes; and no such lessee who erects thereon any building, engine or machinery for agricultural purposes shall remove the same without first giving to the lessor or his agent one month's previous notice in writing of his intention so to do, and thereupon the lessor or his agent may elect to purchase the thing so proposed to be removed, and the lessee's right to remove the same shall thereby cease, and the same shall belong to the lessor, and the value thereof shall in case of dispute be ascertained and determined by two referees, one to be chosen by each party, or by an umpire to be named by such referees, and shall be paid or allowed in account by the lessor:

8 Beng. 242: 14 & 15 Vic., c. 25, s. 3.

(*l*.) Subject to the provisions of clause (*k*), the lessee has a right to remove, at any time during his possession of the property leased, all things which he has affixed to the soil: but he is liable to make compensation to the lessor for all damage caused to the property by such removal:

Re Thakoor Chunder Paramanick, 22 F. B. Rulings (Cr.) 8 Beng. 287: 11 Beng. 201, 204.

(*m*.) On the determination of the lease, the lessee is bound to put the lessor into possession of the property leased:

cf. Act XIX of 1868, s. 46. Act XVIII of 1873, s. 42.

(*n*.) When a lease of uncertain duration determines by any means except the fault of the lessee, he or his legal representative is entitled to all the crops planted or sown by the lessee and growing upon the property leased for the season current when the lease determines, and to free ingress and egress to reap and carry them:

14 W. R. 83: 24 W. R. 68.

(*o*.) If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee shall possess all the rights and, if the lessee so elects, be subject to all the liabilities, of the lessor as to the property or part transferred so long as he is the owner of it; but the lessor shall not by reason only of such transfer cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him: Provided that the transferee is not entitled to arrears of rent due before the transfer, and that if the lessee pay rent to the lessor without having reason to believe that such transfer has been made, the lessee shall not be liable to pay such rent over again to the transferee:

Act XI of 1855, s. 1: 4 Anne, c. 16, s. 10.

Where only a part of the property leased is transferred by the lessor, he may determine what proportion of the rent reserved by the lease is payable in respect of the part so transferred:

5 S. D. A. 205: 5 Mad. 120, 227: 7 Beng. 152: N.-W. P. 1875, p. 181: 12 W. R. 451: 16 W. R. 112: 6 S. D. A. 67.

(*p*.) The lessee may transfer, absolutely or by way of mortgage, the whole or any part of his interest in the property leased, and any transferee of such interest or part may again transfer it. The lessee shall not, by reason of such transfer, cease to be subject to any of the liabilities attaching to the lease, unless the lessor elects to treat the transferee as the person subject to such liabilities. Subject as aforesaid, each successive transferee, so long as he is entitled to the property leased, possesses all the rights, and is subject to all the liabilities, of the lessee as such.

15 W. R. 449.

Nothing in this section shall be deemed to authorize a tenant having a right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee.

8 Beng. 239: 12 Beng. 82.

Bill II, s. 70, altered.

66. The following omissions are fraudulent:—

Disclosures required from lessor and lessee.

3 Beng. A. C. J. 277.

(*a*) an omission of the lessor of immoveable property to disclose to the lessee any defect therein of which the former is, and the latter is not, aware, and which the latter could not with ordinary care discover;

(*b*) an omission of the lessee of immoveable property to disclose to the lessor any fact as to the nature or extent of the lessor's interest therein, of which the lessee is, and the lessor is not, aware, and which increases the value of such interest.

Bill II, s. 72.

67. A tenancy begins when the lessee enters, under the lease, into possession of the property leased, and until he so enters, he cannot sue for compensation for an unlawful entry thereon.

Lessee before entry.

68. In the absence of a contract in writing or local usage to the contrary, a lease of immoveable property for purposes of cultivation shall be a lease from year to year terminable on the part of either lessor or lessee, by six months' notice expiring with the end of a year of the tenancy; and a lease of immoveable property for any other purpose shall be a lease from month to month, terminable on the part of either lessor or lessee, by fifteen days' notice expiring with the end of a month of the tenancy.

Duration of certain leases in absence of written contract or local usage.

Bill II, s. 74: Bill, s. 46: Report, s. 40. 5 Bom. A. C. J. 179. 6 *ibid.*, 31: 7 *ibid.*, 111, and see 1 Beng. F. B. 25: 13 W. R. 190: I. L. R. 2 Calc. 146. 4 Beng. Appendix 86. 12 Beng. 263: N.-W. P. 1873, p. 9: Perry 480.

Every notice under this section must be in writing signed by or on behalf of the party giving it and tendered or delivered to the party who is intended to be bound by it, or affixed on a conspicuous part of the property.

69. Where the time limited by a lease of immoveable property is expressed as commencing from a particular day, in computing that time such day shall be excluded. Where no day of commencement is named, the time so limited begins from the making of the lease.

Bill II, s. 75: Bill, s. 43.

Exclusion of day on which term commences.

Where the time so limited is a year or a number of years, in the absence of an express agreement to the contrary, the lease shall last during the whole anniversary of the day from which such time commences.

Duration of lease for a year.

Where the time so limited is expressed to be determinable before its expiration at the option of the parties or one of them, the lessee, in the absence of an express agreement to the contrary, shall have such option.

Option to determine lease.

70. A lease of immoveable property determines—

Determination of lease.

Bill II, s. 76: 7 W. R. 283.

(*a*) by efflux of the time limited thereby:

3 Moo. I. A. 261: 16 W. R. 147.

(*b*) where such time is limited conditionally on the happening of some event—by the happening of such event:

(*c*) where the lessor can only alienate for his own life the property leased—by the death of the lessor:

Lease by Hindú widow, Marshall 166.

(*d*) where the lessor holds the property leased for the term of the life of another person—by the death of such person:

(*e*) on the expiration of a notice to determine the lease duly given in pursuance of a power therein contained:

(*f*) in case the interests of the lessee and the lessor in the whole of the property leased become vested at the same time in one person in the same right:

3 O'Kin. 159. But see per Peacock, C. J. 10 W. R. 15.

(*g*) by express surrender, that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them:

Surrender of right to redeem mortgaged lease, N.-W. P., 1869, p. 45. Surrender by one of several joint lessees, 9 W. R. 147.

(*h*) by implied surrender, that is to say, in case the lessee accepts from the lessor a new lease of the property leased, to take effect during the continuance of the existing lease:

(*i*) by forfeiture, that is to say, (1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter, or the lease shall become void; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself, and in either case the lessor or his transferee does some act evidencing his intention to determine the lease:

Marshall 250: 16 W. R. 103: 25 W. R. 227.

18 W. R. 465: But see 22 W. R. 448: 25 W. R. 147.

23 W. R. 238, 271.

(*j*) on the expiration of a notice to quit or of intention to quit the property leased duly given by one party to the other.

Bill II, s. 77, cl. 1: W. R. F. B. 10: Marshall 25.

71. A forfeiture under section seventy, clause (*i*), is waived by acceptance of rent which has become due since the forfeiture, or by distress for such rent, or by any other act on the part of the lessor showing an intention to treat the lease as subsisting:

Waiver of forfeiture.

Provided that the lessor is aware that the forfeiture has been incurred:

2 Bom. 73.

Provided also that, where rent is accepted after the institution of a suit to eject the lessee on the ground of forfeiture, such acceptance is not a waiver.

72. A notice given by the lessor under section seventy, clause (*j*), is waived, with the express or implied consent of the lessee, by acceptance of rent which has become due since the expiration of the notice, or by distress for such rent, or by duly giving to the lessee a second notice to quit, or by any other act on the part of the lessor shewing an intention to treat the lease as subsisting.

Waiver of notice to quit.

Bill II, s. 77, cl. 2: N.-W. P. 1867, Ex. o. c. j. 1. *Timmarsá Puranik* v. *Babiyá Kuppagondá*, 2 Bom. 70. 8 W. R. 225, per Peacock, C. J.

73. Where a lease of immoveable property has determined by forfeiture for non-payment of rent and the lessor sues to eject the lessee, if, at the hearing of the suit, the lessee pays or tenders to the lessor the rent in arrear, together with interest thereon and his full costs of the suit, or gives such security as the Court thinks sufficient for making such payment within fifteen days, the Court may, in lieu of making a decree for ejectment, pass an order relieving the lessee against the forfeiture; and thereupon the lessee shall hold the property leased as if the forfeiture had not occurred.

Relief against forfeiture for non-payment of rent.

Nothing in this section applies to suits under Act No. X of 1859, or Bengal Act No. VIII of 1869.

10 W. R. 384: 13 W. R. 281: N.-W. P. 1871, p. 63.

74. The surrender, express or implied, of a lease of immoveable property does not prejudice an under-lease of the property or any part thereof previously granted by the lessee: but, unless the surrender is made for the purpose of obtaining a new lease, the rent payable by, and the contracts binding on, the under-lessee shall be respectively payable to, and enforceable by, the lessor.

Effect of surrender and forfeiture on under-leases.

The forfeiture of such a lease annuls all such under-leases.

Bill II, s. 78: Bill, s. 47: Report, s. 41: 3 Bom. A. C. J. 27: 12 Beng. 263: N.-W. P. 1870, p. 204.

7 W. R. 152: 16 W. R. 185: 22 W. R. 394, 548: 23 W. R. 271: 25 W. R. 234.

75. If a lessee or under-lessee of property remains in possession thereof after the determination of the lease, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year or from month to month, according to the purpose for which the property is leased, as specified in section sixty-eight.

Effect of holding over.

Illustrations.

(*a*.) A lets a house to B for five years. B under-lets the house to C at a monthly rent of Rs. 100. The five years expire, but C continues in possession of the house and pays the rent to A. C's lease is renewed from month to month.

(*b*.) A lets a farm to B for the life of C. C dies, but B continues in possession with A's assent. B's lease is renewed from year to year.

CHAPTER VI.

OF EXCHANGES.

Bill II, s. 21: Bill, s. 48: N. Y. Code, ss. 903, 906: 1 Mad. 100.

76. When two persons contract to mutually give one thing for another, neither thing or both things being money only, the contract is called a contract of exchange.

"Exchange" defined.

Bill II, s. 22, clause 2.

77. The party deprived of the thing he has received in exchange by reason of anything done by the other party or any person through whom the latter claims, may, at his option, sue for compensation or sue for the thing given by him.

Right of party evicted from thing received in exchange.

Bill II, s. 23: Bill, s. 48, para. 2.

78. Save as otherwise provided in this chapter, each party has the rights and is subject to the liabilities of a seller as to that which he gives, and has the rights and is subject to the liabilities of a buyer as to that which he takes.

Rights and liabilities of parties.

Bill II, s. 24: Bill, s. 48, para. 3: delivery must be immediate. 1 Morl. 105.

79. On an exchange of money, each party thereby warrants the genuineness of the money given by him.

Exchange of money.

CHAPTER VII.

OF TRANSFERS OF DEBTS.

Bill II, s. 136: Bill, s. 99: Report, s. 99: 36 & 37 Vic., c. s. 25 (*b*): 1 Mad. 150.

80. No transfer of, or charge on, any debt, or any beneficial interest in moveable property, shall have any operation against the debtor or against the person in whom the property is vested, until express notice of the transfer or charge is given to him, unless he is a party to such transfer or charge; and every dealing by such debtor or person, not being a party to, and not having received express notice of, a transfer or charge, with the debt or property shall be valid as against such transfer or charge.

Transfer of debts.

See 5 W. R. 230. But see 10 N. 474, cited M 122.

Illustrations.

(*a*) A owes money to B, who transfers the debt to C. B then demands the debt from A, who, having no notice of the transfer, pays B. The payment is valid, and C cannot sue A for the debt.

(*b*) A has jewels deposited with B, a jeweller. A mortgages them to C. A then executes an instrument transferring them to D, who takes it to B and gets the jewels from him before he, B, has received any notice of C's mortgage. B is justified in handing the jewels to D, and C has no remedy against D.

Bill II, s. 137. Report, s. 100.

81. Every such notice must be in writing signed by the person making the transfer or charge, or by his agent duly authorized in this behalf.

Notice to be in writing signed.

Bill II, s. 138.

82. On receiving such notice, the debtor or person in whom the property is vested shall give effect to the transfer or charge, unless where the debtor resides, or the property is situate, in a foreign country and the title of the person in whose favour the transfer or charge is made is not complete according to the law of such country.

Debtor to give effect to transfer.

Bill II, s. 139.

83. The person to whom a debt or charge is transferred shall take it subject to all the liabilities to which the transferor was subject in respect thereof at the date of the transfer.

Liability of transferee of debt.

Illustration.

A debenture is issued in fraud of a public company to A. A sells and transfers the debenture to B, who has no notice of the fraud. The debenture is invalid in the hands of B.

Bill II, s. 67, para. 2.

84. Where a debt is transferred for the purpose of securing money advanced or to be advanced by way of loan, or an existing or future debt, the original debt, if recovered by either the transferor or transferee, is applicable, first, in payment of the costs of such recovery, secondly, in or towards satisfaction of the amount for the time being secured by the transfer; and the residue, if any, belongs to the transferor.

Mortgaged debt.

Bill II, s. 140.

85. Nothing in this chapter applies to debts secured by negotiable instruments.

Saving of negotiable instruments.

CHAPTER VIII.

OF APPORTIONMENT.

Bill II, s. 140: Bill, s. 60.

86. All rents, annuities, pensions, dividends and other periodical payments shall, upon the determination by death or otherwise, of the interest of the person entitled to receive such payment, be apportioned as if they had been made to accrue due from day to day, but to be payable on the days appointed for the payment thereof.

Apportionment of periodical payments on determination of interest of person entitled.

Nothing in this section shall affect any express provision in any instrument binding on such person.

THE SCHEDULE.

(*a*). STATUTE.

Year and chapter.	Subject.	Extent of repeal.
4 Wm. & Mary, c. 16 ...	Clandestine Mortgages.	The whole.

(*b*). ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

Number and year.	Subject.	Extent of repeal.
XXIX of 1842	Lease and release ...	The whole.
XXXI of 1854	Modes of conveying land.	Section 17.
XI of 1855 ...	Mesne profits and improvements.	Section 1, and in the title and preamble, the words "to mesne profits and" and "to limit the liability for mesne profits and."
XXVII of 1866	Indian Trustee Act	Section 31.
IV of 1872 ...	Panjáb Laws Act...	So far as it relates to Bengal Regulations I of 1798 and XVII of 1806.
XX of 1875 ...	Central Provinces Laws Act.	So far as it relates to Bengal Regulations I of 1798 and XVII of 1806.
XVIII of 1876	Oudh Laws Act ...	So far as it relates to Bengal Regulation XVII of 1806.
I of 1877	Specific Relief ...	In sections 35 and 36, the words "in writing."

(*c*). REGULATIONS.

Number and year.	Subject.	Extent of repeal.
Bengal Regulation I of 1798.	Conditional sales ...	The whole Regulation.
Bengal Regulation XVII of 1806.	Redemption ...	The whole Regulation.
Bombay Regulation V of 1827.	Mortgagees in possession.	Section 15.

D. FITZPATRICK,
Secy. to the Govt. of India.

[First Publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 5th March, 1879, and was referred to a Select Committee :—

No. 4 OF 1879.

A Bill to amend the Presidency Banks Act, 1876.

Preamble.

WHEREAS it is expedient to amend the Presidency Banks Act, 1876, in manner hereinafter appearing; It is hereby enacted as follows :—

Short title. Commencement.

1. This Act may be called "The Presidency Banks Act, 1879;" and it shall come into force on the first day of May, 1879.

Amendment of Act XI of 1876, section 28.

2. To the first clause of section 28 of the Presidency Banks Act, 1876, the following proviso shall be added, that is to say :

"Provided that no person shall be chosen to be President or Vice-President twice in succession."

Amendment of section 34 of same Act.

3. In the same Act, section 34, before the words "no Khazánchi," the words "without the previous sanction of the Board" shall be inserted.

Amendments of section 36.

4. In the same Act, section 36, clause (*a*), sub-clause (4), after the words "municipal body," the words "or any body of Commissioners for making improvements in any port or of trustees of any port" shall be inserted.

In the same section, the words "in the case of the Bank of Madras" shall be omitted in both the places in which they occur.

In the same section, after clause (*m*), the following clause shall be inserted, that is to say, "(*m m*) the borrowing of money in India for the purposes of the Bank's business and the giving of security for money so borrowed by pledging assets or otherwise."

Amendment of section 37.

5. In section 37 of the same Act, for clause (*d*), the following shall be substituted, that is to say,

"(*d*) Nor shall they (except upon the security mentioned in section 36, paragraph *a*, Nos. 1 to 5 inclusive)

discount bills for any individual or partnership-firm for an amount exceeding in the whole at any one time such sum as may be prescribed by the bye-laws for the time being in force, or

lend or advance in any way to any individual or partnership-firm an amount exceeding in the whole at any one time such sum as may be so prescribed."

Amendment of section 63.

6. In section 63 of the same Act, clause (*a*), for the words "lent by discount of bills or otherwise to," the words "lent to or for which bills may be discounted for" shall be substituted.

STATEMENT OF OBJECTS AND REASONS.

1. THE necessity for this Bill has arisen chiefly from a doubt which has been expressed as to whether the Presidency-banks have power under the Presidency Banks Act, 1876, to borrow money for the purposes of their business by pledging assets or otherwise. The need of such a power is obvious.

As observed in a memorial recently submitted to the Governor General in Council by the banks, "it is an ordinary incident of banking-business to obtain funds for temporary purposes by pledging assets. If banks are prohibited from raising money by pledge of assets when occasion arises, they may, on a sudden requisition for cash, be obliged to make forced sales of property at a disadvantage; and this applies with great force to the Presidency-banks of India whose action in forcing Government or other securities on the market might cause a public panic."

The power required will be conferred by a new clause which the Bill (in the last clause of section 4) proposes to add to section 36 of the Act; but it is limited to borrowing in India, because so long as the Government balances are in the custody of the Presidency-banks, it is not considered expedient that the banks should engage in foreign exchanges or have the power of creating a foreign agency in England, which would be the necessary results of conceding a power to borrow out of India.

2. The other sections of the Bill provide for certain minor amendments of the Act which it has been thought desirable to take this opportunity of making.

Section 2 provides that no person shall be, in two successive years, chosen as President or Vice-President of a Presidency-bank.

3. Section 3, which admits of a khazánchi, cashier or shroff at the principal office of a bank engaging in business with the previous sanction of the Board, has been introduced at the instance of the Bank of Bengal, who represent that the absolute prohibition contained in the present law makes it difficult to secure the services of a suitable person, and that the necessity for any such absolute prohibition has ceased to exist, now that the khazánchi has no longer any concern with the discount business in Native Bills, and is, in fact, a mere cashier.

4. Lastly, clauses have been added to clear up an ambiguity which, in the opinion of Counsel, attaches to section 37, clause (*d*), and section 63, clause (*a*), of the Act; to include in the securities on which loans may be made, and in which the banks may invest, debentures and other securities issued by the Port Trusts under Acts of the Indian legislatures, and to concede to the Banks of Bengal and Bombay the power already possessed by the Bank of Madras of drawing and dealing in negotiable instruments, and issuing bank-post-bills and letters of credit, payable in Ceylon.

CALCUTTA,
The 4th March, 1879.

J. STRACHEY.

D. FITZPATRICK,
Secy. to the Govt. of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, MARCH 15, 1879.

☞ Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third publication.]

The following further Report of a Select Committee, together with the Bill as settled by them, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 19th of February, 1879 :—

From Secretary to Chief Commissioner, Assam, No. 582, dated 16th March, 1878.
„ Acting Under Secretary to Government, Bombay, No. 3588, dated 18th June, 1878, and enclosures.
Extract from a Memorandum by Pandit Srikishen, Pleader, Judicial Commissioner's Court, Oudh.
Third Note by the Hon'ble Whitley Stokes, dated 20th July, 1878.
From Secretary to Chief Commissioner, Mysore, No. 2705-3 J, dated 9th July, 1878, and enclosure.
„ Officiating Secretary to Chief Commissioner, Central Provinces, No. 3519-168, dated 24th August, 1878, and enclosure.
„ Officiating Under-Secretary to Government, Bengal, No. 3678, dated 6th September, 1878, and enclosures.
„ Secretary to Government, North-Western Provinces and Oudh, No. 687A, dated 11th September, 1878.
„ Junior Secretary to Chief Commissioner, British Burma, No. 1488-64, dated 28th September, 1878, and enclosures.
„ Secretary to Government, North-Western Provinces and Oudh, No. 721 A, dated 8th October, 1878, and enclosure.
„ Hon'ble H. S. Cunningham, dated 5th November, 1878, and enclosure.
„ Secretary to Government, Panjáb, No. 3925, dated 21st November, 1878, and enclosures.
Endorsement by Government of Bengal, No. 4556, dated 29th November, 1878, and enclosures.
Fourth Note by the Hon'ble Whitley Stokes, dated 9th January, 1879.
Forms of instruments taken from a Bengálí book of forms received from Mr. Kinealy.

WE, the undersigned Members of the Select Committee to which the Bill to define and amend the law relating to the Transfer of Property was referred, have considered the Bill and the papers noted in the margin, and have the honour to present this further report.

2. The principal objections taken to this Bill in its second form are, first, that, as a whole, it is heterogeneous, and, secondly, that certain parts of it are neither necessary nor expedient. It is said, for instance, that, though the bulk of the Bill deals with transfer of property *inter vivos* by act of parties, it also treats, in sections 82, 83, of conditions in Wills, and, in section 129, of Succession to a deceased person. It is said, again, that the chapters dealing respectively with the rights and liabilities of owners of limited interests and with property held by several persons belong rather to the subject of the enjoyment, than to that of the transfer of property. It is urged that settlements (in the conveyancer's sense of the word) are hardly ever made in India, that what are technically called Powers are almost unknown, and that the chapters respectively dealing with those subjects are certainly not necessary and can hardly be said to be expedient. We feel the force of these objections. In fact, we have always felt them. But we were not responsible for the first draft of the Bill, whatever were its excellences or defects. The matters thus objected to, together with others, such as Registration and Trusts, still more foreign to the proper subject of the Bill, are all dealt with by the draft

prepared by the late Indian Law Commission, which was sent out in 1870 by the then Secretary of State with instructions to introduce a Bill founded upon it, revised by Sir A. Hobhouse and sent home by the Government of India in January, 1877, *i.e.*, nearly six months before the Bill was introduced and referred to a Select Committee. The great deference due to the Law Commission and to Sir A. Hobhouse has hitherto prevented us from dealing freely with the Bill. Until the opinions of the Local Governments and the results of local experience had been obtained, for us to have altered it would have been to set our individual views against those of the able and learned men who were answerable for the Bill as introduced. But now that the opinions and results above referred to have been obtained, we see that, if the Bill is to go on at all, it must be strictly confined to the subject of transfer of property by act of parties, that is to say, by contract or gift.

3. We have therefore omitted chapters VII to XII both inclusive.

4. We cannot maintain that they are in accordance with one of the canons laid down in our last report, namely, that no additions should be made to the existing law "which are not either necessary or clearly expedient." The chapters dealing respectively with settlements, the rights and liabilities of owners of limited interests, and property held by several persons, are, moreover, very incomplete; and, as Natives are excluded from chapter IX, it would apply to a very limited class of persons. Chapter XI (of Powers) would also be of little use. We believe that among Natives powers are almost unknown. So far as we are aware, the only reported cases in which anything like a power was given by a Native are in 2 Calc. 474, and N.-W. P. (1869) Part II, p. 6, in each of which cases a Hindú bequeathed land to his wife and expressly empowered her to alienate it, and in 5 Beng. 181, where a Hindú testator empowered his sister to appoint a trustee of a religious endowment. Moreover, powers may be created by will and are, as often as not, exerciseable by will. The subject therefore does not properly fall within a measure treating of the *transfer* of property, that is, as lawyers generally understand the expression, the conveyance of property from one living person to another.

5. As the Bill is, so far as it deals with immoveable property and debts, only a partial measure, we have made the preamble run thus:—"Whereas it is expedient to define and amend certain parts of the law relating to the transfer of property by act of parties." Compare the preamble to the Indian Contract Act, IX of 1872.

CHAPTER I.—*Preliminary.*

6. In section 2, we have expressly saved all transfers by operation of law (*e.g.*, in case of insolvency, forfeiture, sale in execution of a decree), with which the Bill is not intended to deal.

7. In section 3 we have omitted, as unnecessary, the definitions of "grantor," "grantee," and "grant;" and, for the last paragraph, we have said: "Chapters III, IV, V and VI of this Act shall be taken as part of the Indian Contract Act, 1872."

CHAPTER II.—*Of Assurances of Immoveable Property.*

8. This chapter should we think be entitled "Of Transfers of Immoveable Property," as it relates to all transfers of such property, whether or not an assurance is employed. We have omitted section 5 and the schedule to which it relates: they do not fitly form part of a Bill dealing with substantive law. Moreover, English experience shews that statutory forms of conveyances are rarely used, and they are dangerous, as tempting unskilled persons to try and be their own conveyancers.

9. Section 6 applies to transfers of immoveable property made by assurance; but it obviously ought to apply also to oral transfers of such property. We have therefore re-drawn it.

10. In section 7, we have provided for the case of a Sebáit, which has twice come before the Judicial Committee. (See 14 Beng. 450, and I. L. R. 2 Calc. 341).

11. As rents and profits of land are 'immoveable property,' we have, after this section, inserted section 1 of Act XI of 1855:—

"No person shall be chargeable with any rents or profits of any immoveable property which he has in good faith paid or delivered to any person of whom he in good faith held the same, notwithstanding it may afterwards appear that the person to whom such payment or delivery was made had no right to receive such rents or profits."

This section now applies only to cases to which the English law is applicable; but there seems no reason why so equitable and useful a rule should not be extended to every one in India.

12. Section 8 of Bill No. III applies not only to cases where land has passed *inter vivos* by act of parties, but also to cases in which it has been transferred by operation of law. It therefore seems beyond the scope of the Bill.

13. The Bill is silent as to the doctrine of *lis pendens*, which has in about a dozen reported cases been applied to Native purchasers and mortgagees (see 11 Bom. 24, 29, 30, 139; 8 Beng. 474; 1 O'Kin. 303, 309; 10 W. R. 469; Sev. 808, 951). We have inserted the following:—

"10. During the active prosecution in any Court having authority in British India or established beyond the limits of British India by the Governor General in Council, of a suit in which the right to any immoveable property is directly and specifically in question, the property cannot be transferred by any party to the suit so as to affect the rights of any other party thereto under any decree or order made therein."

14. Section 9 of Bill No. III (as to the effect of payment by one person, of consideration for which a transfer is made to another) properly belongs to the Trusts Bill, and should, we think, be omitted from the present measure.

CHAPTER III.—*Sales of Immoveable Property.*

15. In accordance with a suggestion of Mr. Justice Cunningham we have prefixed to this chapter a section founded on section 78 of the Contract Act; but we do not think with him that the section should provide for part delivery, an expression which, in the sense in which it is used in the Contract Act, section 92, would be inappropriate as applied to land, nor do we consider that, in stating the time at which delivery takes place, the effect of executing and delivering the assurance should be ignored.

The section referred to is as follows:—

Sale how effected.

"Sale of immoveable property is effected by offer and acceptance of certain immoveable property for a price, or of a price for certain immoveable property,

"together with payment of the price and delivery of the property, or with tender, part-payment or earnest; or with an agreement, express or implied, that the payment, or delivery, or both, shall be postponed.

"Where there is a contract for the sale of immoveable property, the ownership of the property passes to the buyer when the whole or part of the price, or when the earnest, is paid, or when the property is delivered.

"If the parties agree, expressly or by implication, that the payment, or delivery, or both, shall be postponed, the ownership passes as soon as the proposal for sale is accepted.

"Delivery of immoveable property takes place—

"(*a*) if the transfer is made by assurance—when the assurance is executed and delivered by the seller, and (if its registration is required by law) registered:

"(*b*) if the transfer is not made by assurance, in the case of a reversion or other intangible thing—when the parties consent to its delivery, and in the case of other immoveable property—when the buyer becomes capable of exercising physical control over it and determines to exercise such control on his own behalf or on behalf of the person whom he represents."

This will have the effect of settling a moot point of Hindú law, namely, whether change of possession is necessary to complete a sale of land, whether, in other words, the vendor must, at the time of sale, be in possession of the property sold (I. L. R. 1 Calc. 302: I. L. R. 1 Bomb. 502: N. W. P. 1871, p. 2: *contra* 7 Bomb. A. C. J. 4: 10 Bomb. 491). This question is answered in the negative by the Calcutta High Court and Mr. J. D. Mayne, a considerable authority on Hindú law.

16. We have omitted clauses (*d*) and (*e*) of section 11 (now 12). The former is, as Mr. Jacob points out, provided for by the Contract Act, section 39; the latter by section 10 of the same Act. On the other hand, we have restored clauses (*c*) and (*f*) of Bill No. I, modified as follows:—

"Till the ownership of the property passes to the buyer, the seller is entitled to the rents and profits thereof.

"When the ownership of the property has passed to the buyer, he must bear any loss arising from the destruction, injury or deterioration of the property not caused by the seller, and he is entitled to the benefit of any improvement in, or increase in value of, the property and to the rents and profits thereof."

The latter clause corresponds with the provision of the Contract Act, section 86, as to goods.

17. We have recast and abridged section 10 (now 13) as follows:—

Disclosures required from seller and buyer.

"The following omissions are fraudulent:—

"(*a*) an omission of the seller of immoveable property to disclose to the buyer any defect therein of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover:

"(*b*) an omission of the buyer of immoveable property to disclose to the seller any fact as to the nature or extent of the seller's interest therein, of which the buyer is, and the seller is not, aware, and which increases the value of such interest."

This will attract section 17, clause (5), of the Contract Act, which declares that "fraud" includes "any such omission as the law specially declares to be fraudulent."

18. As the Bill is now strictly limited to transfers by act of parties, we have omitted section 13, as to the procedure where the buyer becomes insolvent before completion. For the same reason we have also omitted section 73, as to the procedure where, during the continuance of a lease, the lessee becomes insolvent.

19. Section 17 (now 18), as to joint purchases. We have added, as Mr. Field suggests: "In the absence of evidence as to the shares so advanced, such persons shall be presumed to be equally interested in the property."

CHAPTER IV.—*Of Exchanges.*

20. As this chapter deals with moveable as well as immoveable property, we have placed it after the chapter on leases, and we have omitted the first paragraph of section 22, as the matter seems sufficiently provided for by Act IX of 1872, sections 64, 65, and Act I of 1867, sections 25, 37.

CHAPTER V.—*Of Mortgages of Immoveable Property.*

21. Section 27.—We fear that the abolition of equitable mortgages here proposed by the Law Commissioners would inconvenience the mercantile community. We have thought it better to say that a mortgage by deposit of title-deeds shall be deemed to create a charge on the property comprised therein and to insert the necessary clause in section 68 (now 63).

22. We have provided, in accordance with a suggestion of Mr. Field, that in the case of an usufructuary mortgage, the mortgagor may recover possession of the property, (1) where the mortgagee is authorized to pay himself from the rents and profits of the property the principal and interest of the mortgage-money—when such principal and interest are so paid; (2) where the mortgagee is authorized to pay himself from such rents and profits the interest of the mortgage-money—when the term (if any) of the mortgage expires and the mortgagor pays or tenders to the mortgagee, or deposits in such Court as last aforesaid, the principal of the mortgage-money."

23. Section 29 (now 24).—We have here declared the duty of a mortgagor to take all legal means to protect his rights in the mortgaged property (Macph. 112).

24. Section 31 (now 27).—This provided only for voluntary waste. We have now provided that the mortgagor is not liable for permissive waste.

25. Section 42 (now 39), clause (*c*).—We have added, in order to meet the case of patni tenures and saleable under-tenures, "and any arrears of rent in default of payment of which the property may be summarily sold."

We have provided that a mortgagee in possession ought to do such repairs as he can pay for out of the rents received after his interest is paid (see 9 W. R. 488).

We have omitted clause (*e*). The right which it gives is, as Mr. Field says, part of the mortgagee's right to take possession, which, as a general rule, finds no place in the Bill.

Where sufficient tender is made, the mortgagee in possession is thenceforth accountable for all his receipts from the mortgaged property (9 N.-W. P. 1: Macph. 159—160). We have provided for this.

26. Section 60 (now 57).—When a mortgagor obtains a decree in a redemption-suit and fails to pay the amount due, we think the mortgagee should be entitled either to a foreclosure or a sale. We have altered this section accordingly.

27. Section 61 (now 58).—We have omitted the second paragraph and the schedule to which it refers. It is hardly the function of a Bill codifying substantive law to give forms of decrees. They should, if necessary, be added to schedule IV of the Code of Civil Procedure.

CHAPTER VI.—*Of Leases.*

28. Section 70 (now 66).—We have substituted a section analogous to that above proposed as a substitute for section 10.

29. Section 71 (now 65).—We have struck out clauses (*c*) and (*g*). The former is superfluous, the latter is provided for by the Contract Act, sections 64 and 73.

Clause (*l*) now (*j*).—With reference to Couch, C. J.'s, decision in *Koegler* v. *Yule*, 5 Beng. 401, 416, we think this clause should run thus: "The lessee may use the property leased and its products (if any) as a reasonable owner would use them, but he must not use the property for a purpose other than that for which it was leased, or fell timber, open mines or quarries, or commit any other act which is destructive or permanently injurious thereto." We have added "The prohibition in this clause does not apply to mines which were open when the lease was granted."—See 8 Chan. Div. 526.

Clause (*q*) now (*o*).—We have inserted words in the proviso to shew that the lessor's transferee is not entitled to arrears of rent due before the transfer.

Clause (*r*) now (*p*).—We have made (in accordance with a suggestion of the Government of the North-Western Provinces) the second paragraph to run thus: "Nothing in this clause shall be deemed to authorize a tenant having a right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, and the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee."

30. Section 76 (now 70).—We have completed the list of events on which a lease determines.

31. We have redrawn the clause as to waiver of forfeiture and notice. It is now numbered 71, 72.

32. We have inserted a section (74) as to the effect of surrender and forfeiture of a lease, on sub-lessees.

33. We have made some other comparatively unimportant omissions, additions and alterations in wording and arrangement. We have added on the margins references to the reported decisions of the Indian Courts and the Judicial Committee, which justify the rules contained in the Bill. It will be seen that but few of these rules are devoid of this valuable support. The assertion that the Bill would introduce a mass of new law into India must therefore be due to ignorance of the extent to which English law (under the name of justice, equity and good conscience) is actually administered to the Natives by the Anglo-Indian Courts. The object of the Bill, like that of all our Codes, is to strip our own law of all that is local and historical, and to mould the residue into a shape in which it would be suitable for an Indian population and could be easily administered by non-professional Judges. But the Bill will introduce hardly any new substantive law, and it will not (except in the case of the procedure relating to mortgages) displace any existing enactment. The rules, for instance, as to the relation of landlord and tenant contained in the local Acts, X of 1859, XVIII of 1873, XIX of 1868, XXVIII of 1868, Bengal Act VIII of 1869, and Madras Act VIII of 1865, will all remain untouched.

34. To the body of local usages and contractual incidents which in India, as in other countries, exists as to the transfer of land the tenderest care is shewn by the Bill. Not only is local usage expressly saved in sections 62, 65 and 68, but the effect of section 1, clause (*a*), will be to maintain intact the statutory force which the legislature has given to local usage in those two *pays de coutumes* the Panjáb and Oudh; and throughout India all the many incidents of a mortgage or a lease, which are not inconsistent with the provisions of the Bill, will remain wholly unaffected.

35. The Bill and preliminary report of the Select Committee have been published in English in the Presidency-towns, the Panjáb, the Central Provinces and British Burma. From the North-Western Provinces no report of publication has been received. Publication of the Bill and Report in the vernacular has been reported only by the Government of Bengal. We recommend that the Bill as now altered be published in the *Gazette of India* and sent to the various Local Governments for opinion. And we think that no further steps should be taken upon the Bill until it has been reported on by the new Indian Law Commission.

WHITLEY STOKES.

F. R. COCKERELL.

CALCUTTA;
The 19th February, 1879.

I concur in all the omissions and amendments made by the Committee and in their final recommendation; but I believe the Bill to be capable of further simplification, and regret to notice the almost entire absence of illustrations.

T. H. THORNTON.

I have not had time to consider either the provisions of the Bill or the changes now made thoroughly; but I agree that the chapters on Powers, Settlements, &c., should be omitted, and think these omissions necessitate republication with a view to elicit fresh criticism to be laid before the new Commission.

I would modify the new section 11 by requiring a written instrument in all cases where the value of the property sold is Rs. 100 or upwards. This will involve registration and get rid of the inconvenience and anomaly which would arise from oral sales of valuable land with deferred possession and no registration. Subject to the above remarks, I approve of the additions now made to the Bill.

G. H. P. EVANS.

I concur in all the omissions and agree that there should be a further publication.

G. C. PAUL.

I am opposed to the republication of this Bill at the present time. I believe that there is a great deal still left in the Bill which it will be desirable to omit, as relating to matters on which legislation is not called for; and I think that there should be no further publication until the Law Commission have reported on the measure.

A. J. ARBUTHNOT.

I am inclined to think that there can be no harm in republishing the Bill in its present form (though I must say that I believe it admits of further improvement), inasmuch as the republication will elicit public criticisms which may be of some use to the Law Commission.

JOTÍNDRA MOHAN TAGORE.

No. III.

THE TRANSFER OF PROPERTY BILL, 1879.

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No. III.

A Bill to amend the law relating to the Transfer of Property by act of Parties.

WHEREAS it is expedient to define and amend certain parts of the law relating to the transfer of property by act of parties; It is hereby enacted as follows:— Preamble.

CHAPTER I.

PRELIMINARY.

Bill, s. 1: Bill II, s. 1.

1. This Act may be called "The Transfer of Property Act, 1879:" Short title.

It extends to the whole of British India; Extent.

And it shall come into force on the first day of *January*, 1880. Commencement.

Bill, s. 2: Bill II, s. 1.

2. On and from that day the enactments specified in the schedule hereto annexed shall be repealed to the extent mentioned in the third column thereof. But nothing herein contained shall be deemed to affect— Repeal of Acts.

Act IX of 1872, s. 1.

(*a*) the provisions of any enactment not hereby expressly repealed: Saving of certain Acts, incidents, rights, liabilities, &c.

(*b*) any incidents of any contract which are not inconsistent with the provisions of this Act:

(*c*) any right or liability acquired or incurred before this Act comes into force, or any remedy in respect of any such right or liability:

(*d*) the right to anything affixed to the soil by the lessee under any lease granted before this Act comes into force:

4 Beng. A. C. 219.

(*e*) any right of pre-emption acquired after this Act comes into force:

1 L. R., 2 Bom. 541.

(*f*) any transfer by operation of law.

Bill, s. 3: Bill II, s. 1: Report, s. 2:

3. In this Act, unless there be something repugnant in the subject or context— Interpretation-clause.

Act III of 1877, s. 17, cl. (*b*).

"assurance" means any non-testamentary instrument which purports or operates to create, transfer, or otherwise dispose of, whether in present or in future, any right, title or interest, whether vested or contingent, to or in immoveable property: "assurance."

"registered" means registered in British India under the law for the time being in force regulating the registration of documents: "registered."

"attached to the earth" means— "attached to the earth."

(*a*) imbedded in the earth, as in the case of walls:

See ss. 18, 44, clause (*z*), 61.

(*b*) permanently resting upon it, as in the case of buildings; or

(*c*) attached to what is so imbedded or so rests, as by means of nails, bolts, screws, cement, solder or other permanent fastening.

4. Chapters III, IV, V and VI of this Act shall be construed as one with the Indian Contract Act, 1872. Chapters III, IV, V and VI to be part of Act IX of 1872.

CHAPTER II.

OF TRANSFERS OF IMMOVEABLE PROPERTY.

5. Every person competent to contract may make a transfer of immoveable property: but subject to the law for the time being in force as to the circumstances and extent in and to which he may dispose of such property. Persons competent to make transfers of immoveable property.

Bill, s. 4: Report, s. 4.

6. Unless a different intention is expressed or necessarily implied, a transfer of immoveable property vests in the transferee all the interest which the transferor is then capable of passing therein and in the legal incidents thereof. Operation of transfer.

Bill, s. 10: Report, s. 10. v. last clause, Report, s. 6: 2 W. R. 125 (buildings): 14 W. R. 379.

Such incidents include (where the property is land) the easements annexed thereto, the mines and minerals thereunder, and the standing trees, and all other products of the soil,

N.-W.P. 1870, p. 251: 24 W. R. 330 (trees 'everything grown on it,' Morley, N. S. 259.

and (where the property is a house) the easements annexed thereto and its locks, keys, bars, doors, windows, pankhas, halfdoors, mats and blinds.

7. The transferor of immoveable property cannot give to another a title thereto better than his own, and where he has only a restricted power of alienating the property, he cannot give to another a title thereto valid as against third parties, except upon an alienation within the restriction: Title which transferor of immoveable property can give.

9 Moo. I. A. 303.

Provided that where the transferor is (*a*) the manager of the property of a minor, an undivided family, or an endowed temple, (*b*) a sonless Hindú widow in possession of her deceased husband's property, or (*c*) a trustee, benámídár or other ostensible owner, the transferee's title shall not be impeached if the transfer has been made for a consideration and the transferee has acted in good faith and used due care and diligence to ascertain that the transferor had power to make the transfer. Protection to innocent transferees for value.

6 Moo. I. A. 393: 2 W. R. 123: 3 W. R. 11: 8 W. R. 77: 1 Bom. 27: 8 Bom. 77: 9 Bom. 1: 12 Bom. 69: 14 Beng. 450: I. L. R. 2 Calc. 438: 2 Mad. 407: 3 Mad. 294: 6 Mad. 371.

8. No person shall be chargeable with any rents or profits of any immoveable property which he has in good faith paid or delivered to any person of whom he in good faith held the same, notwithstanding it may afterwards appear that the person to whom such payment or delivery was made had no right to receive such rents or profits. Rent *bonâ fide* paid to holder under defective title.

Act XI of 1855, s.

11 Bom. 72, 76: 12 Bom. 138: 8 Mad. 12: 21 W. R. P. C. 237.

9. Where undivided immoveable property is held in possession by co-owners and one of them transfers his share or any interest therein, the transferee takes the share or interest subject to the right of the other co-owners to enforce a partition of the property; and when such partition is effected, the right of the transferee as such, in the absence of a contract to the contrary by the co-owners, extends only to the share allotted to himself or to his transferor. Transfer of share of undivided property.

8 Beng. 478: 7 Mad. 1[illegible]: 11 Bom. 24, 64, 139: N. W. P. 1867, p. 301: 10 W. R. 469: 7 W. R. 225: 15 W. R. 372: 23 W. R. 382: 2 Tayl. & Bell, 113: 1 O'Kin. 303, 309: 5 W. R. P. C. 63: 6 Bom. A. C. J. 61. Consider *Berry* v. *Gibbons*, L. R. 8 Ch. 747.

10. During the active prosecution in any Court having authority in British India, or established beyond the limits of British India by the Governor General in Council, of a suit in which the right to any immoveable property is directly and specifically in question, the property cannot be transferred by any party to the suit so as to affect the rights of any other party thereto under any decree or order therein. Transfer of property pending suit relating thereto.

CHAPTER III.

OF SALES OF IMMOVEABLE PROPERTY.

Delivery not necessary in case of Hindús, 14 Beng. 307: 1 Bom. 5, 19.

11. Sale of immoveable property is effected by offer and acceptance of certain immoveable property for a price, or of a price for certain immoveable property, Sale how effected.

Effect of part-payment, N.-W. P. 1866, p. 161: 15 W. R. 44: in Muhammadan law: Effect of earnest, W. R. 1864, 281: 1 Bom. 403.

together with payment of the price and delivery of the property, or with tender, part-payment or earnest; or with an agreement, express or implied, that the payment, or delivery, or both, shall be postponed.

Cf. Act IX of 1872, s. 78, as to goods: postponement of payment, 7 W. R. 317. Effect of delivery before payment, 10 W. R. 194.

Where there is a contract for the sale of immoveable property, the ownership of the property passes to the buyer when the whole or part of the price, or when the earnest, is paid, or when the property is delivered.

If the parties agree, expressly or by implication, that the payment, or delivery, or both, shall be postponed, the ownership passes as soon as the proposal for sale is accepted.

Delivery of immoveable property takes place—

4 Beng. 307, 312: N.-W. P. 1866, p. 87. Consider 12 W. R. P. C. 6: as to delivery of assurance, W. R. 1864, p. 222: 5 W. R. 248: Money N. S. 358. Right to redeem, N.-W. P. 1868, p. 376.

(*a*) if the transfer is made by assurance—when the assurance is executed and delivered by the seller, and (if its registration is required by law) registered:

(*b*) if the transfer is not made by assurance, in the case of a reversion or other intangible thing—when the parties consent to the delivery, and in the case of other immoveable property—when the buyer becomes capable of exercising physical control over it and determines to exercise such control on his own behalf or on behalf of the person whom he represents.

11: 11: 14.

12. In the absence of a contract to the contrary, the buyer and the seller of immoveable property respectively have the rights, and are subject to the liabilities, mentioned in the ten rules next following, or such of them as are applicable to the property sold: Rights and liabilities of buyer and seller.

(*a*). The seller must produce to the buyer, for examination, all documents of title relating to the property which are in his possession or power, and must inform the buyer of all facts not apparent thereon of which the seller is aware and which affect the seller's power to fulfil his contract, and must answer to the best of his information all relevant questions put to him by the buyer in respect to the property or the title thereto. *Devsí Ghelá* v. *Jivaráj Mukundás*, 2 Bom. 432 (no right to have good title shewn). Abstract of title, 1 Bom. 78.

(*b*). Till the ownership of the property passes to the buyer, the seller is entitled to the rents and profits thereof. Bill, 11 (*c*).

(*c*). When the ownership of the property has passed to the buyer, he must bear any loss arising from the destruction, injury or decrease in value of the property not caused by the seller, and he is entitled to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof. Cf. Act IX of 1872, s. 86. Bill, 11 (*f*).

(*d*). When the buyer has been let into possession of the property before payment of the whole of the purchase-money, the seller has a charge upon the property for the amount of the purchase-money, or any part thereof, remaining unpaid, and for interest on such amount or part; but as soon as the assurance, if any, is registered, such charge shall cease except as against the buyer. 3 Bom. A. C. J. 102: 2 Hay 577.

(*e*). Unless the buyer has improperly declined to accept delivery of the property, he has, against the seller, a charge on the property, to the extent of the seller's interest therein, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery, and for interest on the amount of such payment; and, when the buyer properly declines to accept the delivery, also for the earnest (if any) and for his costs (if any) of a suit by himself or the seller to compel specific performance of the contract or to obtain a decree for its rescission. 3 Beng. O. C. J. 79.

(*f*). When the buyer has been let into beneficial possession of the property before payment of the price, and the price is not paid owing to defects in the seller's title, the buyer is not liable to pay for such possession.

(*g*). The seller must discharge all incumbrances on the property existing at the date of the contract. The buyer may retain, out of the unpaid purchase-money, the amount of such incumbrances, and shall pay the amount so retained to the parties entitled thereto.

(*h*). On payment or tender of the amount due in respect of the price, the seller is bound to execute a proper assurance of the property when the buyer tenders it to him for execution at a proper time and place.

(*i*). On delivery of the property, the buyer is entitled to all documents of title relating thereto which are in the seller's possession or power:

Provided that (1) where the seller retains any part of the property comprised in such documents, he is entitled to retain them all, and (2) where the whole of such property is sold to different buyers, the buyer of the lot of greatest value is entitled to such documents. But in case (1) the seller, and in case (2) the buyer of the lot of greatest value, is bound, upon every reasonable request by the buyer, or by any of the other buyers, as the case may be, or by any person claiming under him, and at the cost of the person making the request, to produce the said documents and furnish such true copies thereof as he may require; and, in the meantime, the seller or the buyer, as the case may be, of the lot of greatest value, must keep the said documents safe, uncancelled and undefaced, unless prevented from so doing by fire or other inevitable accident.

Bill, s. 41 (1) altered. N. W. P. 1867, p. 199: See 7 W. R. 196: 6 W. R. 152: 25 W. R. 46.

(*j*). Unless the sale is made by a person in a fiduciary character, the seller shall be deemed to contract with the buyer,

first, that notwithstanding anything done by the seller or any person through whom he claims, the seller has power to transfer the property to the buyer, free from incumbrances;

secondly, that the seller and all persons claiming any interest in the same through or for him, or any person through whom he claims, will on demand execute and deliver to the buyer at his expense any further assurance of the same that may reasonably be required;

further assurance, 5 W. R. P. C. 111.

and, where the property is leasehold, *thirdly*, that the lease is valid and subsisting and that the rent reserved thereby, the conditions contained therein and the contracts binding on the lessee have been paid, performed and observed down to the delivery.

When the sale is made by a person in a fiduciary character, the seller shall be deemed to contract with the buyer that the seller has done no act whereby the property is incumbered or whereby he is hindered from transferring it.

Bill II, s. 10.

Disclosures required from seller and buyer.

13. The following omissions are fraudulent:—

7 W. R., 258. Cf. Act IX of 1872, ss. 17, clause (5), 19.

(*a*) an omission of the seller of immoveable property to disclose to the buyer any defect therein of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover:

(*b*) an omission of the buyer of immoveable property to disclose to the seller any fact as to the nature or extent of the seller's interest therein, of which the buyer is, and the seller is not, aware, and which increases the value of such interest.

Bill, s. 12: Bill II, s. 12: Report, s. 15: 7 W. R. 38.

Contract for sale not of itself to create interest in property.

14. A contract for, or relating to, the sale of immoveable property, shall not of itself have the effect of creating any interest in, or charge on, such property; but the only right of any person under the contract shall be to apply for specific performance, or for compensation, or for both, according to the rules laid down in the Indian Contract Act, 1872, and the Specific Relief Act, 1877.

Bill II, s. 14.

Liability of buyer of leasehold.

15. As between the seller and buyer of leasehold property, the buyer is, in the absence of a contract to the contrary, bound to pay the rent reserved by the lease and accruing due after delivery of the property, to perform the contracts entered into by the lessee, and to indemnify the seller against all claims arising after the delivery in respect of non-payment of such rent or breach or non-observance of such contracts.

Bill II, s. 15.

Liability of buyer of right to redeem.

16. As between the seller and buyer of a right to redeem mortgaged property, the buyer is, in the absence of a contract to the contrary, bound (*a*) to pay to the mortgagee the principal sum which, on delivery of the right, is due on the mortgage, and all interest from time to time due for the same, when payment thereof, respectively, is lawfully demanded, and (*b*) to indemnify the seller against the payment thereof, and against all claims for non-payment thereof, respectively.

Bill II, s. 16.

Money received by seller under fire-policy.

17. If at the date of the contract the property is insured against loss or damage by fire, the buyer, in case of such loss or damage, may, in the absence of a contract to the contrary, require any money which the seller actually receives under the policy, or so much thereof as may be necessary, to be applied in reinstating the property.

Bill II, s. 17.

Joint purchases.

18. When two or more persons purchase any immoveable property, with separate funds belonging to them respectively, they shall, in the absence of a contract to the contrary, be interested in such property in proportion to the shares of the purchase-money which they respectively advanced.

In the absence of evidence as to the shares so advanced, such persons shall be presumed to be equally interested in the property.

Bill II, s. 18; 7 W. R. 488.

Right of buyer of one of two properties subject to common charge.

19. When two properties are subject to a common charge, and one of the properties is sold, the buyer is, as against the seller, in the absence of a contract to the contrary, entitled to have the charge satisfied out of the other property, so far as such property will extend.

Bill II, s. 19: 2 Hay 549: 1 W. R. 14: XXXI of 1854, & XXVIII of 18[illegible] 31.

Bonâ fide buyer not bound to see to application of purchase-money.

20. When any property is sold, the proceeds of which are subject to any trust, the buyer in good faith of the property is not bound to see to the application of the purchase-money to the purposes of the trust nor is he answerable for the misapplication of such money.

CHAPTER IV.

OF MORTGAGES OF IMMOVEABLE PROPERTY AND CHARGES.

Bill II, s. 25: Bill, s. 14: Act XXVIII of 1866, s. 19: Mortgagor need not have present ownership, N.-W. P. 1872, p. 11. Macph. 4. Fulton 36. Purchaser of right of redemption, 11 Bom. 41.

Mortgage, mortgagor and mortgagee defined.

21. When, for the purpose of securing money advanced or to be advanced by way of loan or an existing or future debt, or the performance of an engagement, one person transfers to another a right over specific immoveable property, the transfer is called a mortgage of immoveable property, the transferor is called a mortgagor, the transferee a mortgagee, the money of which payment is secured is called the mortgage-money, and the assurance by which the transfer is effected is called a mortgage-deed.

For the purposes of this chapter, any person entitled as heir, legatee, assignee, lessee or otherwise than as a mortgagee to the interest of the transferor in the property subject to the mortgage, or any part of such interest, is a mortgagor; and any person entitled as heir, legatee, assignee or otherwise to the interest of the transferee under the mortgage, or any part thereof, is a mortgagee.

5 Beng. 393: 5 W. R. 230.

English mortgage.

Where the mortgagor transfers the property to the mortgagee with a proviso that, upon payment of the mortgage-money at a certain date, the property shall be retransferred, the transaction is called a mortgage in the English form.

Macph. 8, 12, 59: R. B. Ghose, 218, 219: 2 Moo. I. A. 487.

Usufructuary mortgage.

Where the mortgagor delivers possession of the property to the mortgagee, and authorizes him to retain such possession and to pay himself from the rents and profits of the property the interest, or the mortgage-money and interest, or to take such rents and profits in lieu of interest, or of the mortgage-money and interest, the transaction is called an usufructuary mortgage.

Macph. 10, 12.

Simple mortgage.

Where the mortgagor binds himself personally to repay the mortgage-money, and pledges the property as collateral security for the repayment, but does not contract that, on default of payment of the mortgage-money and interest at a certain date, the property shall pass to the mortgagee, the transaction is called a simple mortgage.

Macph. 11, [illegible]

Mortgage by conditional sale.

Where the mortgagor not so binding himself, contracts that, on default of payment of the mortgage-money and interest at a certain date, the property shall pass to the mortgagee, the transaction is called a mortgage by conditional sale.

[illegible] II, s. 26: [illegible]acph. 53: [illegible] Ghose 64.

Mortgage to be by assurance.

22. A mortgage can be effected only by assurance signed by the mortgagor and attested by at least two witnesses.

Rights and Liabilities of Mortgagor.

Right of mortgagor to redeem, tender or deposit.

23. A mortgagor has the following rights as against the mortgagee:— Bill II, s. 28: Bill, s. 15: 5 Beng. 450: 6 Beng. 562: 2 Mad. 420: 7 Mad. 395: In Cen. Provs. 13 Beng. 205.

(*a*) at any time after the mortgage-money has become payable, or has been paid, the mortgagor has a right on payment or tender, at a proper time and place, of the mortgage-money and interest remaining due on the mortgage, to require the mortgagee to re-transfer the mortgaged property to him, or to execute an acknowledgment in writing that any right in derogation of his ownership or other interest transferred to the mortgagee has been extinguished: N.-W.P. 1868, p. 204: Bomb. 237, no redemption before expiration of period named. Redemption after fixed time has expired, 9 Bomb. 69. see 7 Ben. 136 (P. C.). English practice followed, with necessary modifications, in case of defendant Pársí, 5 Bom. A. C. J. 109.

Provided that the mortgagee has not obtained an order absolute foreclosing such right, or that such right has not been after the date of the mortgage released or otherwise extinguished, or that the property has not been duly sold in pursuance of a decree or under a power given by the mortgage-deed. 6 Bom. A. C. J. 265: N.-W. P. 1869, p. 128.

The right conferred by this clause is called a right to redeem and a suit to enforce it is called a suit for redemption:

(*b*) at any time after the mortgage-money has become payable and before such suit is barred, the mortgagor may deposit in any Court in which he might have instituted a suit for redemption of the mortgaged property, to the account of the mortgagee, the mortgage-money and interest remaining due on the mortgage: Beng. Reg. I of 1798 s. 2: Macph. 171.

(*c*) in the case of an usufructuary mortgage, he may recover possession of the property (1) where the mortgagee is authorized to pay himself from the rents and profits of the property the mortgage-money and interest thereof,—when such money and interest are so paid, (2) where the mortgagee is authorized to pay himself from such rents and profits the interest of the mortgage-money,—when the term (if any) of the mortgage expires and the mortgagor pays or tenders to the mortgagee the mortgage-money, or deposits it in such Court as last aforesaid.

Redemption of portion of mortgaged property.

Nothing in this section shall be deemed to authorize a person interested in part only of the mortgaged property to institute a suit for the redemption of his own part only, on payment of a proportionate part of the amount remaining due on the mortgage, except where there is but one mortgagee and the mortgagor's interest in part of the property becomes vested in such mortgagee, in which case the person so interested may institute such suit. N.-W. P. 1867, p. 86: 20 W. R. 387: 22 W. R. 262: 24 W. R. 24: N.-W. P. 1870, p. 4: N.-W. P. 1872, p. 92: N.-W. P. 1873, p. 148: R. B. Ghose 198: 15 Beng. 303.

Implied contracts by mortgagor.

24. In the absence of a contract to the contrary, the mortgagor shall be deemed to contract with the mortgagee, Bill II, s. 29. N.-W. P. 1867, p. 199.

first, that the mortgagor has power to grant the mortgaged property to the mortgagee, free from incumbrances;

S. D. A. 1857, p. 1195; 1853, p. 575.

secondly, that the mortgagor will take all legal means to protect his rights in the property:

thirdly, that the mortgagor and every person claiming any interest in the property will on demand (at the cost, until foreclosure or sale, of the mortgagor and afterwards of the person requiring the same) execute every such assurance of the same that may reasonably be required;

Effect of forfeiture of lease, N.-W. P. 1869, p. 128.

and, where the property is leasehold, *fourthly*, that the lease is valid and subsisting, that the rent reserved thereby, the conditions contained therein, and the contracts binding on the lessee have been paid, performed and observed down to the execution of the mortgage-deed; and that the mortgagor will, so long as the security exists, pay the rent reserved by the lease, perform the conditions contained therein and observe the contracts binding on the lessee and indemnify the mortgagee against all claims sustained by reason of the non-payment of the said rent or the non-performance or non-observance of the said conditions and contracts.

10 Bomb. 369; 11 Bomb. 32.

25. If after the date of the mortgage any accession is made to the mortgaged property, the mortgagor, upon redemption, shall, in the absence of a contract to the contrary, and subject to the law relating to alluvion for the time being in force, be entitled to such accession.

Accession to mortgaged property.

Illustration.

10 Bomb. 369, 371, and see N.-W. P. 1866, p. 281.

A mortgages to B a field the trees on which are the property of Government. B enters into possession of the field and as occupant thereof buys the trees. A redeems the field. He is entitled to the trees.

Bill II, s. 30.

26. Where the mortgaged property is a lease for a term of years, and the mortgagee, while in possession of the property, obtains a renewal of the lease, the mortgagor, upon redemption, shall, in the absence of a contract to the contrary, have the benefit of the new lease.

Renewal of mortgaged lease.

Bill II, s. 31.

27. A mortgagor in possession of the mortgaged property is not liable to the mortgagee for allowing the property to deteriorate; but he must not commit any act which is destructive or permanently injurious thereto, if the security is insufficient or will be rendered insufficient by such act.

Waste by mortgagor in possession.

Macph. 109. R. B. Ghose 147.

Explanation.—A security is insufficient within the meaning of this section unless the value of the mortgaged property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the amount for the time being due on the mortgage.

Bill II, s. 32.

28. A mortgagor proposing to make a second or other subsequent mortgage of the mortgaged property shall, before effecting the mortgage, give the second or other subsequent mortgagee notice in writing under his hand of the prior mortgage or mortgages, and a mortgagor effecting a second or other subsequent mortgage of the mortgaged property shall, as soon as may be, give the prior mortgagee or mortgagees like notice of such mortgage.

Notice to mesne incumbrancers.

Contra, 12 W. R. 105.

A mortgagor failing to give any notice required by this section shall, when the accounts are taken in pursuance of a decree made under this chapter, be debited with the loss, if any, occasioned by such failure, in addition to any other liability resulting therefrom.

Bill II, s. 33: Bill, s. 39: *Contra*, 6 Bomb. A. C. J. 90. But see R. B. G. 330, 331.

29. If the owner of two or more properties creates separate mortgages on them by separate assurances, each mortgage may be dealt with irrespectively of the other, though the mortgages are created in favour of the same mortgagee.

Right to redeem one of two properties separately mortgaged.

Illustration.

A, the owner of farms Z and Y, mortgages Z to B for Rs. 1,000. A afterwards mortgages Y to B for Rs. 1,000, making no stipulation as to any additional charge on Z. A may institute a suit for the redemption of the mortgage on Z alone.

Rights and Liabilities of Mortgagee.

Bill II, s. 34: 2 Mad. 289: N.-W. P. 1870, p. 311: No foreclosure before expiration of period named, 2 Bomb. 242: Mortgagee's right to sale, 7 Bomb. A. C. J. 146: 9 Bomb. 12.

30. In the absence of a contract to the contrary, the mortgagee may, at any time after the mortgage-money has become payable to him, and before a decree has been made for the redemption of the mortgaged property, or the mortgage-money has been paid, institute against the mortgagor (1) a suit for a declaration that he has lost his right to redeem the property, or (2) a suit for a sale of the property.

Right to sue for foreclosure or sale.

A suit for a declaration that a mortgagor has lost his right to redeem the mortgaged property is called a suit for foreclosure.

Nothing in this section shall be deemed—

(*a*) to authorize a simple mortgagee to institute a suit for foreclosure, or an usufructuary mortgagee to institute a suit for foreclosure or sale, or a conditional mortgagee to institute a suit for sale;

Simple mortgagee N.-W. P. 1869, p. 184: Usufructuary, N.-W. P. 1875, p. 55.

(*b*) to authorize a mortgagor who has become a trustee of the mortgaged property or legal representative of the mortgagee, to institute a suit for foreclosure;

(*c*) to authorize the mortgagee of a railway, canal or other work in the maintenance of which the public are interested, to institute a suit for foreclosure or sale; or

Cases *contra*, Macph. 195—6.

(*d*) to authorize a person interested in part only of the mortgage-money to institute a suit relating only to a corresponding part of the mortgaged property: but he may institute any suit which, under this Act, he is authorized to institute, relating to the whole of the mortgaged property, making the other mortgagees, if they cannot or will not join as plaintiffs, defendants.

Bill II, s. 35: Bill, s. 15, clause (Ben. Reg. I of 17 s. 2. Macph. 171.

31. When the mortgagor deposits money in Court under section twenty-three, and pays the fee leviable for the service next hereinafter mentioned, the Court shall forthwith cause written notice of the deposit to be served on the mortgagee, and the mortgagee may, on depositing the mortgage-deed in the same Court and on filing a written statement (verified in manner prescribed by law for the verification of plaints) of the amount then due on the mortgage, apply for and receive in payment of such amount the money so deposited.

Right to money deposited by mortgagor.

Bill II, s. 36: Bill, s. 28, usufructuary mortgage, 16 W. R. 251.

32. Where the mortgagor and mortgagee have contracted as to the payment of interest on the mortgage-money, interest shall be payable in accordance with such contract.

Right to interest.

Where no such contract has been entered into, the mortgagee is entitled to interest on such money at the rate of six per cent. per annum:

9 N.-W. P. 1. Macph. 159, 160.

Provided that, when the mortgagor has tendered or deposited in Court under section twenty-three, the amount for the time being due on the mortgage, interest on the mortgage-money shall cease from the date of the tender or from the earliest time when the mortgagee could take such amount out of Court, as the case may be.

Proviso.

Bill II, s. 37: 6 Bomb. 121: Right to eject third persons wrongfully in possession, 9 Bomb. 275.

33. In the absence of a contract to the contrary, no mortgagee shall be entitled as such to take possession of the mortgaged property; but at any time after the expiration of one year from the time when the mortgage money has become payable according to the terms of the mortgage-deed, or after any interest thereon has been in arrear for six months, he may institute a suit for the appointment of a receiver of the rents and profits of the whole or any part of the mortgaged property.

Bar of entry by mortgagee.

Right to receiver.

In any suit for foreclosure or sale, the Court may, if it think fit, appoint such a receiver pending the proceedings in the suit, unless the mortgagee is already in possession of the mortgaged property.

Bill II, s. 38.

34. The mortgagee may sue the mortgagor for the mortgage-money in the following cases only:—

Right to sue for mortgage-money.

6 W. R. 283.

(*a*) where the mortgagor expressly binds himself to repay the same:

Macph. 233.

(*b*) where the mortgagor remains in possession of the mortgaged property and fails to pay arrears of revenue or rent due in respect thereof, and the property is consequently sold or attached:

Act XXXIII of 1871, s. 46.

(*c*) where the property is destroyed by diluvion, fire or other superior force:

7 Bomb. 116: 11 W. R. 226.

(*d*) where the mortgagee is deprived of his security by the wrongful act or default of the mortgagor:

15 W. R. 7 (partial deprivation).

(*e*) in the case of an usufructuary mortgage, where the rents and profits of the property are to be taken in lieu of interest only, or where the mortgagor fails to deliver to the mortgagee possession of the property or to secure the possession thereof to him without disturbance by the mortgagor or any other person.

6 Moo. I. A. 464: 1 Marsh. 209: 2 S. D. A. 47: N.-W. P. 1860, p. 280. So in the case of a Kánam mortgage, 2 Mad. 315.

Bill II, s. 39: Bill, s. 24: 3 Bomb. A. C. J. 142.

35. A power conferred by the mortgage-deed on the mortgagee, or on any person on his behalf, to sell or concur in selling the mortgaged property, or any part thereof, is invalid, except where the mortgagee is the Secretary of State for India in Council, or the mortgaged property is situate within the towns of Calcutta, Madras, Bombay, Karáchí or Rangoon.

Power of sale invalid.

6 W. R. 283 (power to usufructuary mortgagee). Muhammadan law, Macph. 2.

Act No. XXVIII of 1866, section 6, is repealed so far as it is inconsistent with this section.

s. 40.

36. If, at the date of the mortgage, the mortgaged property is insured against loss or damage by fire, the mortgagee, in case of such loss or damage, may, in the absence of an express contract to the contrary, require any money which the mortgagor actually receives under the policy, or so much thereof as may be necessary, to be laid out in reinstating the property.

Right as to insurance-money.

Bill II, s. 41: 11 Bomb. 32.

37. If, after the date of the mortgage, any accession is made to the mortgaged property, the mortgagee, in the absence of a contract to the contrary, and subject to the law relating to alluvion for the time being in force, shall, for the purposes of the security, be entitled to such accession.

Accession to mortgaged property.

Illustrations.

(*a*) A mortgages to B a certain field bordering on a river. The field is increased by alluvion. For the purposes of his security, B is entitled to the increase.

(*b*). A mortgages a certain plot of building-land to B and afterwards erects a house on the plot. For the purposes of his security, B is entitled to the house as well as the plot.

38. When the mortgaged property is a lease for a term of years, and the mortgagor while in possession of the property, obtains a renewal of the lease, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to the new lease.

Renewal of mortgaged lease.

Bill II, s. 42: Bill, s. 16.

39. When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property, he has the following rights and liabilities:—

Mortgagee in possession.

2 Bomb. 222: Act IX of 1872, s. 151.

(*a*) he shall manage the property as a person of ordinary prudence would manage it if it were his own;

N.-W. P. 1875, p. 100.

(*b*) he shall use his best endeavours to collect the rents and profits thereof;

2 Bomb. 231.

(*c*) he shall, in the absence of a contract to the contrary, out of the income of the property pay the Government revenue, all other charges of a public nature accruing due in respect thereof during such possession and any arrears of rent in default of payment of which the property may be summarily sold;

Macph. 113, 119.

(*d*) he shall, in the absence of a contract to the contrary, make such necessary repairs of the property as he can pay for out of the rents and profits thereof after deducting from such rents and profits the payments mentioned in clause (*c*) and the interest on the mortgage-money;

9 W. R. 488.

(*e*) he may spend such money as is necessary (1) for the due management of the property and the collection of the rents and profits thereof, (2) for its preservation from destruction, forfeiture or sale, (3) for supporting the mortgagor's title to the property, (4) for making his own title thereto good against the mortgagor, and (5), when the mortgaged property is a renewable leasehold, for the renewal of the lease; and may, in the absence of a contract to the contrary, add such money to the mortgage-money, at the same rate of interest;

Macph. 109, 113, 252: 1 Bomb. 199 203: 5 Bomb. A. C. J. 109, 116: N.-W. P. 1867, p. 187: 1 W. R. 133: 11 Moo. I. A. 241.

(*f*) where the property is by its nature insurable at ordinary rates, he may, in the absence of a contract to the contrary, insure and keep insured against loss or damage by fire the whole or any part of such property, and add the premiums paid for any such insurance to the mortgage-money at the same

23 & 24 Vic., c. 145, s. 11.

rate of interest; and, in case of such loss or damage, shall apply any money which he may actually receive under the policy, or so much thereof as may be necessary, in reinstating the property;

2 Beng. P. C. 55: 5 W. R. 53, 271, &c.: Macph. 119.

(*g*) he shall keep clear, full and accurate accounts of all sums received and spent by him as mortgagee and, at any time during the continuance of the mortgage, give the mortgagor, at his request and cost, true copies of such accounts and of the vouchers by which they are supported;

5 Bomb. A. C. J. 196: 12 Bomb. 88: 10 Beng. 386: N.-W. P. 1866, p. 132: *ibid.* 1868, p. 153, when he cultivates, 7 W. R. 244; R. B. G. 262.

(*h*) his receipts from the mortgaged property, or, where such property is personally occupied by him, a fair occupation-rent in respect thereof, shall, after deducting the expenses mentioned in clauses (*c*), (*d*), (*e*) and (*f*), and interest thereon, be debited against him in reduction of the amount (if any) from time to time due to him on account of interest on the mortgage-money and, so far as such receipts exceed any interest due, in reduction or discharge of the mortgage money. The surplus, if any, shall be paid to the mortgagor;

2 Moo. I. Ca.

Macph. 159, 160.

(*i*) when the mortgagor tenders, or deposits in court under section twenty-three, the amount for the time being due on the mortgage, the mortgagee must, notwithstanding the provisions in the other clauses of this section, account for his gross receipts from the mortgaged property from the date of the tender or from the earliest time when he could take such amount out of court, as the case may be.

Bill II, s. 62.

Loss occasioned by his default.

If the mortgagee fail to perform any of the duties imposed upon him by this section, he may, when accounts are taken in pursuance of a decree made under this chapter, be debited with the loss, if any, occasioned by such failure.

Bill II, s 43: Bill, s. 17: Sev. 333. See 10 Moo. I. A. 340.

Receipts in lieu of interest.

40. Nothing in section thirty-nine, clauses (*g*) and (*h*), applies to cases where there is a contract in writing between the mortgagee and the mortgagor that the receipts from the mortgaged property after deducting the said expenses, shall, so long as the mortgagee is in possession of the property, be taken in lieu of interest on the mortgage money.

Bill II, s. 44: Bill, s. 18, altered: Macph. 118, 119, citing 7 N.-W. P. 486: 9 N.-W. P. 1: Act I of 1877, s. 54.

Waste by mortgagee.

41. A mortgagee in possession of the mortgaged property must not commit any act which is destructive or permanently injurious thereto.

Bill II, s. 45: Macph. 113, 234: 1 W. R. 270: 16 W. R. 222.

Charge on proceeds of revenue-sale.

42. When a mortgagor in possession of the mortgaged property fails to pay arrears of revenue or rent due in respect thereof, and the property is consequently sold, the mortgagee has a charge on the surplus, if any, of the proceeds, after payment thereout of the said arrears, for the amount remaining due on the mortgage.

Bill II, s. 49: Bill, ss. 35, 36, 37: Report, ss. 31, 33.

Right to pay off mortgagee in order to prevent sale

43. Any second or other subsequent mortgagee may, at any time before a sale of the mortgaged property has taken place under this chapter, tender to the next prior mortgagee the amount due to him on account of his mortgage. Such mortgagee is bound to accept such tender and to give a receipt for the sum due, and on such receipt being registered, the person making the tender shall acquire, in respect of the property, all the rights and powers of the mortgagee, as such, to whom he has made such tender.

Priority.

Bill II, s. 46: Evidence Act, s. 115: N.-W. P. 1868, p. 402: 4 Mad. 373: 2 Moo. I. A. 487: 11 W. R. 286: Hindú mortgagee in possession preferred, 8 Bom. A.C.J. 50, 55. *Secus* in Guzerat, 11 Bom. 41.

Postponement of prior mortgagee.

44. Where, through the fraud or gross neglect of a prior mortgagee, another person has been induced to advance money on the security of the mortgaged property, the prior mortgagee shall be postponed to the subsequent mortgagee.

Bill II, s. 47: Bill, s. 34: Report, s. 29.

Mortgage to secure balance of account.

45. If a mortgage made to secure the balance of a running account expresses the maximum to be secured thereby, a subsequent mortgage on the same property shall, if made with notice of the prior mortgage, or if the instrument effecting the prior mortgage is registered, be postponed to the prior mortgage in respect of all advances or debits not exceeding the maximum, though made or allowed with notice of the subsequent mortgage.

Illustration.

A mortgages Sultánpur to his bankers, B & Co., to secure the balance of his account with them to the extent of Rs. 10,000. A then mortgages Sultánpur to C. to secure Rs. 10,000; and C gives notice thereof to B & Co. At the date of the second mortgage, the balance due to B & Co. does not exceed Rs. 5,000. B & Co. subsequently advance to A sums making the balance of the account against him exceed the sum of Rs. 10,000. B & Co. are entitled, to the extent of Rs. 10,000, to priority over C.

Bill II, s. 48: Bill, s. 38: Report, s. 34: 2 Beng. App. 45: 5 Beng. 463: 11 W. R. 310.

Tacking abolished.

46. No mortgagee paying off a prior mortgage, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his original security. And, except in the case provided for by section forty-five, no mortgagee making a subsequent advance to the mortgagor, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his security for such subsequent advance.

Marshalling and Contribution.

Bill II, s. 50: W. R. 1864, p. 374: 1 W. R. 353: 7 W. R. 483: 12 W. R. 114: Macph. 205.

Marshalling securities.

47. If the owner of two properties mortgages them both to one person and then mortgages one of the properties to another person who has not notice of the former mortgage, the second mortgagee is entitled to have the debt of the first mortgagee satisfied out of the property not mortgaged to the second mortgagee, so far as such property will extend; but not so as to prejudice the rights of the first mortgagee or of any other person having an incumbrance on either property.

Macph. 186.

Bill II, s. 51: 12 W. R. 291: see 22 W. R. 480

Contribution to mortgage-debt.

48. Where several properties, whether of one or several owners, are mortgaged to secure one debt, the several properties shall contribute rateably to the debt secured by the mortgage, after deducting from the value of each property the amount of any other incumbrance to which it is subject.

Where of two properties belonging to the same owner, one is mortgaged to secure one debt, and then both are mortgaged to secure another debt, and the former debt is paid out of the former property, each property shall contribute rateably to the latter debt, after deducting the amount of the

former debt from the value of the property out of which it has been paid.

Nothing in this section applies to a property liable under section forty-seven to the claim of the second mortgagee.

Suits for Redemption, Foreclosure or Sale.

Bill II, sec. 52: 14 Moo. I. A. 101: 1 W. R. 176: 21 W. R. 428: explained by Macph. 146. Seton i, 442, see Act X of 1877, sec. 32. 5 Bomb. O. C. J. 76, (legal representative of deceased mortgagor): 8 Beng. 104 (purchaser from mortgagor): Marshall 292, claimants of right of redemption, N.-W. P. 1868, p. 144.

Parties to suits for redemption, foreclosure and sale.

49. Subject to the provisions of the Code of Civil Procedure, section 437, all persons having an interest either in the right of redemption or in the security ought to be joined as parties to any suit under this chapter, and the first or any subsequent mortgagee who institutes a suit for foreclosure or sale ought to make every mortgagee and other incumbrancer whose security is subsequent to his own, a party to the suit.

Foreclosure and Sale.

Bill II, sec. 53: Bill, s. 19.

Decree in foreclosure-suit.

50. In a suit for foreclosure, if the plaintiff succeed, the Court shall pass a decree, ordering that an account be taken of what will be due to the plaintiff for principal and interest on the mortgage and for his costs of the suit, on the day next hereinafter referred to, or declaring the amount so due at the date of such decree,

and ordering that, upon the defendant paying to the plaintiff or into court the amount so due, on a day within six months from the date of declaring in court the amount so due, to be fixed by the Court, the plaintiff shall deliver up to the defendant, or to such person as he appoints, all documents in his possession or power relating to the mortgaged property, and shall transfer the mortgaged property to the defendant free from all incumbrances created by the plaintiff or any person claiming under him, or, where the plaintiff claims by derived title, by those under whom he claims; and shall, if necessary, put the defendant into possession of the mortgaged property; but

that, if such payment is not made on or before such day, the defendant shall be absolutely foreclosed of all right to redeem such property.

II, sec. 54.

Procedure in case of payment of amount due and subsequent costs.

51. If payment is so made of such amount and of such subsequent costs as are mentioned in section fifty-nine, the defendant shall (if necessary) be put into possession of the mortgaged property.

Order absolute for foreclosure.

If such payment is not so made, the plaintiff may apply to the Court for an order absolute for the foreclosure of the said mortgage, and the Court shall then pass an order absolute that the defendant be foreclosed of all right to redeem the mortgaged property, and may, if necessary, deliver possession of the property to the plaintiff; and thereupon the defendant's right to redeem and the security shall both be extinguished:

W. R. 91.

Power to enlarge time.

Provided that the Court may, upon good cause shewn, from time to time postpone the day appointed for such payment.

In the Code of Civil Procedure, schedule IV, No. 129, for the words "Final Decree," the words "Order absolute" shall be substituted.

Bill II, s. 56.

Decree for sale.

52. In a suit for a sale under this chapter, if the plaintiff succeed, the Court shall, and in any other suit by the mortgagee under this chapter, if the plaintiff succeed, the Court may, at his instance, pass a decree ordering as provided in the first and second paragraphs of section fifty and also ordering that, in default of the defendant making payment as therein mentioned, the mortgaged property or a sufficient part thereof be sold, and that the proceeds of the sale (after defraying thereout the expenses of the sale) be paid into Court and applied in payment of what is so found due to the plaintiff and that the balance, if any, be paid to the defendant or other persons entitled to receive the same.

Power to decree sale at instance of mortgagee.

When the mortgagee sues only for a foreclosure, if the Court considers that he will not be damnified by such sale and if the defendant furnishes such security, if any, as the Court thinks sufficient for the payment of the balance due for the time being by him on the mortgage, the Court may, at the instance of the defendant, pass a like decree.

Bill, s. 21. 15 & 16 Vic., c. 86, s. 48.

Any decree under this section may also direct the defendant to pay any balance remaining due to the plaintiff upon the mortgage after the proceeds of sale have been dealt with as above provided.

Bill II, s. 56.

Procedure when defendant pays amount due and subsequent costs.

53. If in any case under section fifty-two, the defendant makes payment as mentioned in section fifty-one, he shall (if necessary) be put in possession of the mortgaged property: but if such payment is not so made, the plaintiff or the defendant, as the case may be, may apply to the Court for an order absolute for sale of

Order absolute for sale.

the mortgaged property, and the Court shall then pass an order that such property, or a sufficient part thereof, be sold, and that the proceeds of the sale be dealt with as is mentioned in section fifty-two; and thereupon the defendant's right to redeem and the security shall both be extinguished.

Bill II, sec. 57: Bill, s. 23.

Recovery of balance due on mortgage.

54. When the nett proceeds of any such sale are insufficient to pay the amount due for the time being on the mortgage, the balance, if payable according to the contract between the parties by the defendant otherwise than out of the property sold, may be recovered either (if the Court thinks fit) in the same suit in the same manner as under a decree for money, or by any other legal process open to the mortgagee.

Redemption.

Bill II, s. 58.

Who may sue for redemption.

55. Besides the mortgagor, any of the following persons may institute a suit for redemption of the mortgaged property:—

(*a*) any person (other than the mortgagee) having any interest in or charge upon the property;

(*b*) any person having any interest in or charge upon the right to redeem the property; 3 W. R. 230: 6 W. R. 230, &c. But see 17 W. R. 272.

(*c*) any surety for the payment of the mortgage-debt or any part thereof;

(*d*) the guardian of the property of a minor mortgagor;

(*e*) the committee or other legal curator of a lunatic or idiot mortgagor;

(*f*) the judgment-creditor of the mortgagor, when he has obtained execution;

(*g*) a creditor of the mortgagor who has in a suit for the administration of his estate obtained a decree for sale of the mortgaged property.

Bill II, s. 59: Bill, s. 25: See Code, C. P., section 461: N.-W. P. 1870, p. 207.

56. In a suit for redemption, if the plaintiff succeed, the Court shall pass a decree

Decree in redemption-suit.

ordering that an account be taken of what will be due to the defendant for principal and interest on the mortgage, and for his costs of the suit, on the day next hereinafter referred to, or declaring the amount so due at the date of such decree; and

ordering that upon the plaintiff paying to the defendant or into court the amount so due on a day within six months from the date of declaring in court the amount so due, to be fixed by the Court, the defendant shall deliver up to the plaintiff, or to such person as he appoints, all documents in his possession or power relating to the mortgaged property, and shall (if such property has been transferred to the defendant) retransfer it to the plaintiff free from the mortgage and from all incumbrances created by the defendant or any person claiming under him, or, when the defendant claims by derived title, by those under whom he claims, and shall, if necessary, put the plaintiff into possession of the mortgaged property; but

that if such payment is not made on or before such day, the plaintiff shall be absolutely foreclosed of all right to redeem such property.

Bill II, s 60.

57. If payment is made of such amount and of such subsequent costs as are mentioned in section fifty-nine, the plaintiff shall, if necessary, be put into possession of the mortgaged property.

In case of redemption, possession:

If such payment is not so made, the defendant may apply to the Court for an order absolute either for the foreclosure of the said right to redeem, or for a sale of the mortgaged property.

In default, foreclosure or sale.

If he apply for an order for foreclosure, the Court shall pass an order absolute ordering the plaintiff to be foreclosed of all right to redeem the mortgaged property, and may, if necessary, deliver possession of the property to the defendant.

If he apply for an order for sale, the Court shall pass an order that such property or a sufficient part thereof be sold, and that the proceeds of the sale (after defraying thereout the expenses of the sale) be paid into Court and applied in payment of what is found due to the defendant and that the balance be paid to the plaintiff or other persons entitled to receive the same.

On the passing of any order under this section the plaintiff's right to redeem and the security shall both be extinguished:

Provided that the Court may upon good cause shewn, from time to time, postpone the day fixed under section fifty-six for payment of the amount due.

Power to enlarge time.

Redemption and Foreclosure.

58. When property is mortgaged for successive debts to successive mortgagees, any mesne mortgagee may institute a suit to redeem the interests of the prior mortgagees and to foreclose the rights of those that are posterior to himself and of the mortgagor.

Bill II, s. 61: *Mulook Chund* v. *Aghooree*, 2 Sev. 573: *Sheopal* v. *Deen Dyal* N.-W. P. 1873, p. 148: Macph. 139, 140.

Right of mesne mortgagee to redeem and foreclose.

Costs.

59. In finally adjusting the amount to be paid to a mortgagee in case of a redemption or a sale by the Court under this chapter, the Court shall, unless the conduct of the mortgagee has been such as to disentitle him to costs, add to the mortgage-money such costs of suit as have been properly incurred by him since the decree for foreclosure, redemption or sale up to the time of actual payment.

Bill II, s. 64: Bill, s. 30.

Costs of mortgagee subsequent to decree.

Sale of Property subject to prior mortgage.

60. If any property the sale of which is directed under this chapter is subject to a prior mortgage, the Court may, with the consent of the prior mortgagee, order that the property be sold free from the same, giving to such prior mortgagee the same interest in the proceeds of the sale as he had in the property sold.

Bill II, s. 65: Bill, s. 32: Report, s. 25, altered: Act X of 1877, s. 295.

Sale of property subject to prior mortgage.

61. Such proceeds shall be brought into court and applied as follows:—

Bill II, s. 66: Bill, s. 33: See Act X of 1877, s. 295.

Application of proceeds.

first, in payment of all expenses incident to the sale or properly incurred in any attempted sale;

secondly, if the property has been sold free from any prior mortgage, in payment of whatever is due on account of such mortgage;

thirdly, in payment of all interest due on account of the mortgage in consequence whereof the sale was directed, and of the costs of the suit in which the decree directing the sale was made;

fourthly, in payment of the principal money due on account of that mortgage; and

fifthly, the residue (if any) shall be paid to the person proving himself to be interested in the property sold, or if there be more such persons than one, then to such persons according to their respective interests therein or upon their joint receipt.

Anomalous Mortgages.

62. In the case of a mortgage not coming within any of the definitions contained in section twenty-one, the rights and liabilities of the parties shall be determined by their contract as evidenced in the mortgage-deed, and, so far as such contract does not extend, by local usage: Provided that, in the absence of an express contract to the contrary, the mortgaged property shall be deemed to be the only security for payment of the mortgage money.

Bom. R. Reg. 1827, s. 15.

Mortgages not described in section 21.

Charges.

63. If by any assurance other than a mortgage-deed, or by any will, or under the provisions of this or any other Act, or by operation of law, certain immoveable property of one person is made security for the payment of certain money to another, the latter person is said to have a charge on the

Bill II, s. 68: Bill, s. 41.

Charges.

property; and all the provisions hereinbefore applied to a mortgagor shall, so far as may be, apply to the owner of such property, and all the provisions hereinbefore applied to a mortgagee instituting a suit for the sale of the mortgaged property shall, so far as may be, apply to the person having such charge.

5 Beng. Appendix 40: N.-W. P. 1869, p. 184: N.-W. P. 1871, p. 207. Bill, s. 31: Bill II, s. 27: 7 Beng. 653: 11 Beng. 405: N.-W. P. 1869, p. 74: 7 Bom. O. C. J. 45: I. L. R. 1 Bom. 287: 9 Moo. I. A. 308: Macph. 53, 54.

Effect of deposit of title-deeds.

The delivery by a debtor to the creditor or his agent, of documents of title relating to property, with intent to create a security thereon, shall be deemed to create a charge on such property in favour of the creditor for the amount of the debt.

Nothing in this section applies to the charge of a trustee on the trust-property for expenses properly incurred in the execution of his trust.

Bill II, s. 69: 7 Mad. 231: 14 W. R. 491: 3 O'Kin. 184: 4 Beng. 463: 11 Bom. 41.

Extinguishment of charges.

64. Where a person is or becomes absolutely entitled to immoveable property, of a charge or other incumbrance on which he is also the owner, the charge or incumbrance shall be extinguished, unless he declares, by express words or necessary implication, that it shall continue to subsist, or unless such continuance would be for his benefit.

CHAPTER V.

OF LEASES OF IMMOVEABLE PROPERTY.

Bill II, s. 71.

65. In the absence of a contract or local usage to the contrary, the lessor and the lessee of immoveable property, as against one another, respectively possess the rights and are subject to the liabilities mentioned in the sixteen rules next following, or such of them as are applicable to the property leased:—

Rights and liabilities of lessor and lessee.

(*a*.) The lessor is bound on the lessee's request to put him in possession of the property leased:

(*b*.) The lessor shall be deemed to contract with the lessee that the latter paying the rent reserved by the lease and performing the contracts binding on the lessee may hold the property leased during the time limited by the lease without interruption by the lessor or his transferees, or any person lawfully claiming through him or them:

(*c*.) The lessee is entitled to the enjoyment of all easements annexed to the property leased at the time when the lease was made until the lease determines or such easements are extinguished, whichever event first happens:

(*d*.) The lessee is bound to keep, and on the termination of the lease to restore, the property leased in as good condition as it was in at the time when he was put in possession, subject only to reasonable wear and tear, and to allow the lessor and his agents, at all reasonable times during the term, to enter into the property leased and inspect the condition thereof, and to give or leave notice of any defect in such condition and to make good all such defects within three months after such notice has been given or left:

(*e*.) If during the continuance of the lease any accession is made to the property leased, such accession (subject to the law relating to alluvion for the time being in force) shall be deemed to be comprised in the lease:

(*f*.) If by fire, tempest or flood, or violence of an army or of a mob, or other supe-

rior force, any part of the property leased be wholly destroyed or rendered substantially unfit for the purposes for which it was let, the lease shall be void as to that part, and any rent or fine payable under the lease shall proportionately abate, and a proportionate part of any fine paid by the lessee shall be returned by the lessor:

If the injury be occasioned by the wrongful act or default of either party, such party shall not be entitled to avail himself of the benefit of this provision:

(*g*.) If the lessor neglects to make, within a reasonable time after notice, repairs which he is bound to make to the property leased, the lessee may make the same himself, and deduct the expense of such repairs with interest from the rent, or otherwise recover it from the lessor:

(*h*.) If the lessor neglects to make any payment which he is bound to make, and which, if not made by him, is recoverable from the lessee or against the property leased, the lessee may make such payment himself, and deduct it from his rent, or otherwise recover it from the lessor:

(*i*.) Every lessee who becomes aware of any proceeding to recover the property leased or any part thereof, or of any encroachment made upon, or any interference with, the lessor's rights concerning such property, is bound to give notice thereof to the lessor with reasonable diligence; and, in default of so doing, he is liable to make compensation to the lessor for any loss or expenses occasioned by such omission:

(*j*.) The lessee may use the property leased and its products (if any) as a reasonable owner would use them; but he must not use the property for a purpose other than that for which it was leased, or fell timber, pull down or damage houses, open mines or quarries, or commit any other act which is destructive or permanently injurious thereto.

5 Beng. 401, 416: 8 Beng. Appendix 70 10 Beng. Appx. 41 sed. v. 5 S. D. A. 20 15 W. R. 360: 17 W. R. 416: 28 W. R. 298: W. R. Sp. (1864) 36

The prohibition in this clause does not apply to mines which were open when the lease was granted:

(*k*.) No lessee shall, without the lessor's consent, erect on the property leased any permanent structure, except for agricultural purposes; and no such lessee who erects thereon any building, engine or machinery for agricultural purposes shall remove the same without first giving to the lessor or his agent one month's previous notice in writing of his intention so to do, and thereupon the lessor or his agent may elect to purchase the thing so proposed to be removed, and the lessee's right to remove the same shall thereby cease, and the same shall belong to the lessor, and the value thereof shall in case of dispute be ascertained and determined by two referees, one to be chosen by each party, or by an umpire to be named by such referees, and shall be paid or allowed in account by the lessor:

8 Beng. 242: 14 & 15 Vic., c. 35, s. 3.

(*l*.) Subject to the provisions of clause (*k*), the lessee has a right to remove, at any time during his possession of the property leased, all things which he has affixed to the soil: but he is liable to make compensation to the lessor for all damage caused to the property by such removal:

Re Thakoor Chunder Paramanick, Beng. F. B. Rulings 596: 8 Beng. 237: 14 Beng. 201, 205.

(*m*.) On the determination of the lease, the lessee is bound to put the lessor into possession of the property leased:

cf. Act XIX of 1868, s. 46. Act XVIII of 1873, s. 42.

(*n*.) When a lease of uncertain duration determines by any means except the fault of the lessee, he or his legal representative is entitled to all the crops planted or sown by the lessee and growing upon the property leased for the season current when the lease determines, and to free ingress and egress to reap and carry them:

14 W. R. 83: 24 W. R. 68.

(*o*.) If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee shall possess all the rights and, if the lessee so elects, be subject to all the liabilities, of the lessor as to the property or part transferred so long as he is the owner of it; but the lessor shall not by reason only of such transfer cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him: Provided that the transferee is not entitled to arrears of rent due before the transfer, and that if the lessee pay rent to the lessor without having reason to believe that such transfer has been made, the lessee shall not be liable to pay such rent over again to the transferee:

Act XI of 1855, s. 1: 4 Anne, c. 16, s. 10.

Where only a part of the property leased is transferred by the lessor, he may determine what proportion of the rent reserved by the lease is payable in respect of the part so transferred:

5 S. D. A. 205: 5 Mad. 120, 227: 7 Beng. 152: N.-W. P. 1875, p. 181: 12 W. R. 451: 16 W. R. 112: 6 S. D. A. 67.

(*p*.) The lessee may transfer, absolutely or by way of mortgage, the whole or any part of his interest in the property leased, and any transferee of such interest or part may again transfer it. The lessee shall not, by reason of such transfer, cease to be subject to any of the liabilities attaching to the lease, unless the lessor elects to treat the transferee as the person subject to such liabilities. Subject as aforesaid, each successive transferee, so long as he is entitled to the property leased, possesses all the rights, and is subject to all the liabilities, of the lessee as such.

15 W. R. 449.

8 Beng. 239: 12 Beng. 82.

Nothing in this section shall be deemed to authorize a tenant having a right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee.

Bill II, s. 70, altered.

Disclosures required from lessor and lessee.

66. The following omissions are fraudulent:—

3 Beng. A. C. J. 277.

(*a*) an omission of the lessor of immoveable property to disclose to the lessee any defect therein of which the former is, and the latter is not, aware, and which the latter could not with ordinary care discover;

(*b*) an omission of the lessee of immoveable property to disclose to the lessor any fact as to the nature or extent of the lessor's interest therein, of which the lessee is, and the lessor is not, aware, and which increases the value of such interest.

Bill II, s. 72.

Lessee before entry.

67. A tenancy begins when the lessee enters, under the lease, into possession of the property leased, and until he so enters, he cannot sue for compensation for an unlawful entry thereon.

Bill II, s. 74: Bill, s. 46: Report, s. 40. 5 Bom. A. C. J. 179, 6 *ibid.*, 31: 7 *ibid.*, 111, and see 1 Beng. F. B. 25: 13 W. R. 190: I. L. R. 2 Calc. 146: 4 Beng. Appendix 86, 12 Beng. 263: N.-W. P. 1873, p. 9: Perry 480.

Duration of certain leases in absence of written contract or local usage.

68. In the absence of a contract in writing or local usage to the contrary, a lease of immoveable property for purposes of cultivation shall be a lease from year to year terminable on the part of either lessor or lessee, by six months' notice expiring with the end of a year of the tenancy; and a lease of immoveable property for any other purpose shall be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice expiring with the end of a month of the tenancy.

Every notice under this section must be in writing signed by or on behalf of the party giving it and tendered or delivered to the party who is intended to be bound by it, or affixed on a conspicuous part of the property.

Bill II, s. 75: Bill, s. 43.

Exclusion of day on which term commences.

69. Where the time limited by a lease of immoveable property is expressed as commencing from a particular day, in computing that time such day shall be excluded. Where no day of commencement is named, the time so limited begins from the making of the lease.

Duration of lease for a year.

Where the time so limited is a year or a number of years, in the absence of an express agreement to the contrary, the lease shall last during the whole anniversary of the day from which such time commences.

Option to determine lease.

Where the time so limited is expressed to be determinable before its expiration at the option of the parties or one of them, the lessee, in the absence of an express agreement to the contrary, shall have such option.

Bill II, s. 76: 7 W. R. 288.

Determination of lease.

70. A lease of immoveable property determines—

3 Moo. I. A. 261: 16 W. R. 147.

(*a*) by efflux of the time limited thereby:

(*b*) where such time is limited conditionally on the happening of some event—by the happening of such event:

Lease by Hindú widow, Marshall 189.

(*c*) where the lessor can only alienate for his own life the property leased—by the death of the lessor:

(*d*) where the lessor holds the property leased for the term of the life of another person—by the death of such person:

(*e*) on the expiration of a notice to determine the lease duly given in pursuance of a power therein contained:

3 O'Kin. 159. But see per cock, C. J. 10 R. 15.

(*f*) in case the interests of the lessee and the lessor in the whole of the property leased become vested at the same time in one person in the same right:

Surrender of right redeem mortgage lease, N.-W. 1869, p. 45. render by one several joint 9 W. R. 147.

(*g*) by express surrender, that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them:

(*h*) by implied surrender, that is to say, in case the lessee accepts from the lessor a new lease of the property leased, to take effect during the continuance of the existing lease:

Marshall 250: 16 W. R. 108: 25 W. R. 227.

(*i*) by forfeiture, that is to say, (1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter, or the lease shall become void; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself, and in either case the lessor or his transferee does some act evidencing his intention to determine the lease:

18 W. R. 465: But see 23 448: 25 W. R. 147.

W. R. 288, 271.

(*j*) on the expiration of a notice to quit or of intention to quit the property leased duly given by one party to the other.

II, s. 77, cl. 1: R. F. B. 10: rshall 25.

71. A forfeiture under section seventy, clause (*i*), is waived by acceptance of rent which has become due since the forfeiture, or by distress for such rent, or by any other act on the part of the lessor showing an intention to treat the lease as subsisting:

Waiver of forfeiture.

Provided that the lessor is aware that the forfeiture has been incurred:

Bom. 78.

Provided also that, where rent is accepted after the institution of a suit to eject the lessee on the ground of forfeiture, such acceptance is not a waiver.

72. A notice given by the lessor under section seventy, clause (*j*), is waived, with the express or implied consent of the lessee, by acceptance of rent which has become due since the expiration of the notice, or by distress for such rent, or by duly giving to the lessee a second notice to quit, or by any other act on the part of the lessor shewing an intention to treat the lease as subsisting.

Waiver of notice to quit.

Bill II, s. 77, cl. 2: N.-W. P. 1867, Ex. o. c. j. 1. *Tiumarsd Puranik* v. *Babiyá Kuppagoudá*, 2 Bom. 70. 8 W. R. 225, per Peacock, C. J.

73. Where a lease of immoveable property has determined by forfeiture for non-payment of rent and the lessor sues to eject the lessee, if, at the hearing of the suit, the lessee pays or tenders to the lessor the rent in arrear, together with interest thereon and his full costs of the suit, or gives such security as the Court thinks sufficient for making such payment within fifteen days, the Court may, in lieu of making a decree for ejectment, pass an order relieving the lessee against the forfeiture; and thereupon the lessee shall hold the property leased as if the forfeiture had not occurred.

Relief against forfeiture for non-payment of rent.

Nothing in this section applies to suits under Act No. X of 1859, or Bengal Act No. VIII of 1869.

R. 384: R. 281: W. P. 1871, p. 68.

74. The surrender, express or implied, of a lease of immoveable property does not prejudice an under-lease of the property or any part thereof previously granted by the lessee: but, unless the surrender is made for the purpose of obtaining a new lease, the rent payable by, and the contracts binding on, the under-lessee shall be respectively payable to, and enforceable by, the lessor.

Effect of surrender and forfeiture on under-leases.

The forfeiture of such a lease annuls all such under-leases.

s. 78: 97: p. 41: A. C. J. 97, 368: P. 1870, p. 152: 185: 284, 348: 271: 284.

75. If a lessee or under-lessee of property remains in possession thereof after the determination of the lease, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year or from month to month, according to the purpose for which the property is leased, as specified in section sixty-eight.

Effect of holding over.

Illustrations.

(*a*.) A lets a house to B for five years. B underlets the house to C at a monthly rent of Rs. 100. The five years expire, but C continues in possession of the house and pays the rent to A. C's lease is renewed from month to month.

(*b*.) A lets a farm to B for the life of C. C dies, but B continues in possession with A's assent. B's lease is renewed from year to year.

CHAPTER VI.

OF EXCHANGES.

Bill II, s. 21: Bill, s. 48: N. Y. Code, ss. 908, 906: 1 Mad. 100.

"Exchange" defined.

76. When two persons contract to mutually give one thing for another, neither thing or both things being money only, the contract is called a contract of exchange.

Bill II, s. 23, clause 2.

Right of party evicted from thing received in exchange.

77. The party deprived of the thing he has received in exchange by reason of anything done by the other party or any person through whom the latter claims, may, at his option, sue for compensation or sue for the thing given by him.

Bill II, s. 23: Bill, s. 48, para. 2.

Rights and liabilities of parties.

78. Save as otherwise provided in this chapter, each party has the rights and is subject to the liabilities of a seller as to that which he gives, and has the rights and is subject to the liabilities of a buyer as to that which he takes.

Bill II, s. 24: Bill, s. 48, para. 3: delivery must be immediate. 1 Morl. 105.

Exchange of money.

79. On an exchange of money, each party thereby warrants the genuineness of the money given by him.

CHAPTER VII.

OF TRANSFERS OF DEBTS.

Bill II, s. 136: Bill, s. 99: Report, s. 99: 36 & 37 Vic., c. 66, s. 25 (*b*): 1 Mad. 150.

Transfer of debts.

80. No transfer of, or charge on, any debt, or any beneficial interest in moveable property, shall have any operation against the debtor or against the person in whom the property is vested, until express notice of the transfer or charge is given to him, unless he is a party to such transfer or charge; and every dealing by such debtor or person, not being a party to, and not having received express notice of, a transfer or charge, with the debt or property shall be valid as against such transfer or charge.

See 5 W. R. 230. But see 10 N.-W. P. 474, cited Macph. 122.

Illustrations.

(*a*) A owes money to B, who transfers the debt to C. B then demands the debt from A, who, having no notice of the transfer, pays B. The payment is valid, and C cannot sue A for the debt.

(*b*) A has jewels deposited with B, a jeweller. A mortgages them to C. A then executes an instrument transferring them to D, who takes it to B and gets the jewels from him before he, B, has received any notice of C's mortgage. B is justified in handing the jewels to D, and C has no remedy against D.

Bill II, s. 137: Report, s. 100.

Notice to be in writing signed.

81. Every such notice must be in writing signed by the person making the transfer or charge, or by his agent duly authorized in this behalf.

Bill II, s. 138.

82. On receiving such notice, the debtor or person in whom the property is vested shall give effect to the transfer or charge, unless where the debtor resides, or the property is situate, in a foreign country and the title of the person in whose favour the transfer or charge is made is not complete according to the law of such country.

Debtor to give effect to transfer.

Bill II, s. 139.

83. The person to whom a debt or charge is transferred shall take it subject to all the liabilities to which the transferor was subject in respect thereof at the date of the transfer.

Liability of transferee of debt.

Illustration.

A debenture is issued in fraud of a public company to A. A sells and transfers the debenture to B, who has no notice of the fraud. The debenture is invalid in the hands of B.

Bill II, s. 67, para. 2.

84. Where a debt is transferred for the purpose of securing money advanced or to be advanced by way of loan, or an existing or future debt, the original debt, if recovered by either the transferor or transferee, is applicable, first, in payment of the costs of such recovery, secondly, in or towards satisfaction of the amount for the time being secured by the transfer; and the residue, if any, belongs to the transferor.

Mortgaged debt.

Bill II, s. 140.

85. Nothing in this chapter applies to debts secured by negotiable instruments.

Saving of negotiable instruments.

CHAPTER VIII.

OF APPORTIONMENT.

Bill II, s. 140: Bill, s. 60.

86. All rents, annuities, pensions, dividends and other periodical payments shall, upon the determination by death or otherwise, of the interest of the person entitled to receive such payment, be apportioned as if they had been made to accrue due from day to day, but to be payable on the days appointed for the payment thereof.

Apportionment of periodical payments on determination of interest of person entitled.

Nothing in this section shall affect any express provision in any instrument binding on such person.

THE SCHEDULE.

(*a*). STATUTE.

Year and chapter.	Subject.	Extent of repeal.
4 Wm. & Mary, c. 16 ...	Clandestine Mortgages.	The whole.

(*b*). ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

Number and year.	Subject.	Extent of repeal.
XXIX of 1842	Lease and release ...	The whole.
XXXI of 1854	Modes of conveying land.	Section 17.
XI of 1855 ...	Mesne profits and improvements.	Section 1, and in the title and preamble, the words "to mesne profits and" and "to limit the liability for mesne profits and."
XXVII of 1866	Indian Trustee Act	Section 31.
IV of 1872 ...	Panjáb Laws Act...	So far as it relates to Bengal Regulations I of 1798 and XVII of 1806.
XX of 1875 ...	Central Provinces Laws Act.	So far as it relates to Bengal Regulations I of 1798 and XVII of 1806.
XVIII of 1876	Oudh Laws Act ...	So far as it relates to Bengal Regulation XVII of 1806.
I of 1877	Specific Relief ...	In sections 35 and 36, the words "in writing."

(*c*). REGULATIONS.

Number and year.	Subject.	Extent of repeal.
Bengal Regulation I of 1798.	Conditional sales ...	The whole Regulation.
Bengal Regulation XVII of 1806.	Redemption ...	The whole Regulation.
Bombay Regulation V of 1827.	Mortgagees in possession.	Section 15.

D. FITZPATRICK,
Secy. to the Govt. of India.

[Second Publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 5th March, 1879, and was referred to a Select Committee:—

No. 4 OF 1879.

A Bill to amend the Presidency Banks Act, 1876.

Preamble.

WHEREAS it is expedient to amend the Presidency Banks Act, 1876, in manner hereinafter appearing; It is hereby enacted as follows:—

Short title. Commencement.

1. This Act may be called "The Presidency Banks Act, 1879;" and it shall come into force on the first day of May, 1879.

Amendment of Act XI of 1876, section 28.

2. To the first clause of section 28 of the Presidency Banks Act, 1876, the following proviso shall be added, that is to say:

"Provided that no person shall be chosen to be President or Vice-President twice in succession."

Amendment of section 34 of same Act.

3. In the same Act, section 34, before the words "no Khazánchi," the words "without the previous sanction of the Board" shall be inserted.

Amendments of section 36.

4. In the same Act, section 36, clause (*a*), sub-clause (4), after the words "municipal body," the words "or any body of Commissioners for making improvements in any port or of trustees of any port" shall be inserted.

In the same section, the words "in the case of the Bank of Madras" shall be omitted in both the places in which they occur.

In the same section, after clause (*m*), the following clause shall be inserted, that is to say, "(*m m*) the borrowing of money in India for the purposes of the Bank's business and the giving of security for money so borrowed by pledging assets or otherwise."

Amendment of section 37.

5. In section 37 of the same Act, for clause (*d*), the following shall be substituted, that is to say,

"(*d*) Nor shall they (except upon the security mentioned in section 36, paragraph *a*, Nos. 1 to 5 inclusive)

discount bills for any individual or partnership-firm for an amount exceeding in the whole at any one time such sum as may be prescribed by the bye-laws for the time being in force, or

lend or advance in any way to any individual or partnership-firm an amount exceeding in the whole at any one time such sum as may be so prescribed."

Amendment of section 63.

6. In section 63 of the same Act, clause (*a*), for the words "lent by discount of bills or otherwise to," the words "lent to or for which bills may be discounted for" shall be substituted.

STATEMENT OF OBJECTS AND REASONS.

1. THE necessity for this Bill has arisen chiefly from a doubt which has been expressed as to whether the Presidency-banks have power under the Presidency Banks Act, 1876, to borrow money for the purposes of their business by pledging assets or otherwise. The need of such a power is obvious.

As observed in a memorial recently submitted to the Governor General in Council by the banks, "it is an ordinary incident of banking-business to obtain funds for temporary purposes by pledging assets. If banks are prohibited from raising money by pledge of assets when occasion arises, they may, on a sudden requisition for cash, be obliged to make forced sales of property at a disadvantage; and this applies with great force to the Presidency-banks of India whose action in forcing Government or other securities on the market might cause a public panic."

The power required will be conferred by a new clause which the Bill (in the last clause of section 4) proposes to add to section 36 of the Act; but it is limited to borrowing in India, because so long as the Government balances are in the custody of the Presidency-banks, it is not considered expedient that the banks should engage in foreign exchanges or have the power of creating a foreign agency in England, which would be the necessary results of conceding a power to borrow out of India.

2. The other sections of the Bill provide for certain minor amendments of the Act which it has been thought desirable to take this opportunity of making.

Section 2 provides that no person shall be, in two successive years, chosen as President or Vice-President of a Presidency-bank.

3. Section 3, which admits of a khazánchi, cashier or shroff at the principal office of a bank engaging in business with the previous sanction of the Board, has been introduced at the instance of the Bank of Bengal, who represent that the absolute prohibition contained in the present law makes it difficult to secure the services of a suitable person, and that the necessity for any such absolute prohibition has ceased to exist, now that the khazánchi has no longer any concern with the discount business in Native Bills, and is, in fact, a mere cashier.

4. Lastly, clauses have been added to clear up an ambiguity which, in the opinion of Counsel, attaches to section 37, clause (*d*), and section 63, clause (*a*), of the Act; to include in the securities on which loans may be made, and in which the banks may invest, debentures and other securities issued by the Port Trusts under Acts of the Indian legislatures, and to concede to the Banks of Bengal and Bombay the power already possessed by the Bank of Madras of drawing and dealing in negotiable instruments, and issuing bank-post-bills and letters of credit, payable in Ceylon.

CALCUTTA,
The 6th March, 1879.

J. STRACHEY.

D. FITZPATRICK,
Secy. to the Govt. of India.

The following Report of the Select Committee on the Bill to consolidate and amend the law relating to Railways in India was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 26th February, 1879:—

REPORT.

"WE, the undersigned Members of the Select Committee to which the Bill to consolidate and amend the law relating to Railways in India was referred, have considered the papers noted in the annexed list; we have also had the advantage of receiving through our Hon'ble colleague Sir Andrew Clarke, many valuable suggestions from the members of the Railway Conference recently assembled at Calcutta, and we now submit our final report.

2. We have re-distributed the sections contained in the first chapters of the Bill No. II in what appears to us a more convenient way; and in the remarks which we are about to submit, we shall follow the order of the new arrangement.

3. The definition of "Railway," it will be observed, has been to some extent recast, but the only substantial changes made in it are—

1st.—That, by the omission of all reference to the Government or Companies, it is now made to comprise railways owned and worked by private persons or Native States;

2ndly.—That, by the substitution of the words "vessels and rafts" for "ferry-boats," the flotillas worked in connection with Railways will be treated as a part of such Railways;

3rdly.—That section 4 (giving the right to run locomotives) has been extended to Railways under construction, and section 52 (empowering the Government to require a line to be fenced) has been included in the provisions of the Bill applicable to Railways under construction and to Railways not used for the public conveyance of passengers and goods.

4. We have enlarged the definition of "Railway-servant," so as to include in certain sections the employés of Railway-contractors.

5. We have substituted for the definition of "Magistrate" a section (50) directly providing that offences against the Act shall not be tried by any Magistrate inferior to a Magistrate of the second class.

6. We have introduced a section (5) providing that no Railway shall be opened for traffic until it has been inspected and passed by a Government officer. This is in accordance with the law in England and with the practice that has hitherto prevailed in this country.

7. In section 6 we propose to maintain the time allowed by the present law for reporting accidents, and have somewhat enlarged the class of cases in which a report of an accident is required.

8. We have, at the suggestion of the members of the Railway Conference, omitted certain headings from the list of subjects on which the Railway-Administration was by Bill No. II empowered to make general rules, and so altered the wording of the section (now section 8) as to render it obligatory on the Railway-Administration to make rules on the remaining subjects.

9. On further considering the question of the liability of carriers by Railway for loss or damage to ordinary goods, as distinguished from goods for which a special insurance-rate, as it is sometimes called, is chargeable, we are of opinion that no mere adaptation of section 7 of the Railway and Canal Traffic Act, 1854, such as is proposed in paragraph 7 of our former report, will suffice to put the law into as clear and simple a form as is desirable. The amendment we propose in section 10 will be found when the entire law bearing on the point is looked to, to be, except in one particular to which we shall presently advert, an amendment in point of form only; but it is nevertheless desirable that we should explain it in some detail.

10. The law now governing the liability of Railway Companies in India in such cases has recently come under the consideration of the High Court at Bombay in the case of *Kuvarji Toolsee Dass* v. *The Great Indian Peninsula Railway Company*. It has to be collected with some pains from sections 151, 152 and 161 of the Indian Contract Act, which treat of the responsibility of bailees in general, the Carriers Act of 1865, which treats of the responsibility of common carriers, and section 11 of the Railway Act of 1854.

By these enactments it was intended to provide* that a Railway Company should be liable for loss of, or damage to, ordinary goods only when such loss or damage arose from the neglect or misconduct of its servants; and, further, that no Company should by any special contract be able to relieve itself of liability in such cases. But, though the Bombay High Court, in the case just referred to, held that the effect of these enactments when taken together was, at all events as regards the main point, in accordance with the intention of the framers, it arrived at this conclusion only after a discussion which makes it clear that some simplification in point of form is desirable.

* See as regards the Railway Act, the Statement of Objects and Reasons of the Carriers Act, 1865.

11. What we now propose is to remove contracts to carry by Railway altogether from the operation of the Carriers Act of 1865 and to frame the section of this Bill regarding them in such a manner that the whole law will be found in that section and the provisions of the Contract Act relating to bailments.

Under sections 151 and 152 of the Contract Act, carriers by Railway will be bound to take the same care of the goods entrusted to them as a prudent man would take of his own; and where they take such care, they will not be liable for any loss or damage that may occur.

Under section 10 of the Bill, they will be prohibited, as a rule, from freeing themselves by any special contract from the obligation thus imposed upon them.

12. So far the law will be in strict accordance with the existing law or what the existing law was intended to be; but here we have introduced an alteration of some, though not of very great, importance by excepting from the general rule prohibiting special contracts such contracts in writing as may be in a form approved of by the Governor General in Council, and may be signed by the consignor.

It will be observed that this exception corresponds to the proviso regarding special contracts in section 7 of the Railway and Canal Traffic Act, 1854, with this difference that, while the latter Act provides that the special contract shall be effectual and relieve the Company only, if it is held by the Court to be reasonable, thus leaving the validity of the contract to be determined *ex post facto*, our exception makes the contract good, if in a form to be approved beforehand, and thus avoids the uncertainty which, owing to the different views that may be taken by different Judges as to the reasonableness of a contract, frequently attaches to such transactions in England.

13. It need hardly be said that contracts going to relieve absolutely from liability for neglect or misconduct would usually be held unreasonable in England; but there are cases in which it has been held that a carrier by Railway may reasonably exempt himself, at least conditionally or partially, from such liability as, *e. g.*, where he stipulates that he shall not be liable unless a claim is made within a certain time after the loss or damage has occurred,[1] or where he is willing to carry subject to the ordinary liability at a fair rate, but offers as an alternative to carry free from all liability at a lower rate,[2] or where he exempts himself only from liability for damage arising from loss of market caused by delay.[3] It is to meet cases of this sort that the exception has been introduced.

14. Our attention having been directed since the submission of our previous report to the danger to which carriers by Railway in this country are exposed of having fraudulent claims brought against them in respect of valuable property of small bulk alleged to have been lost in transit (a point dwelt on at some length by the Select Committee in the Act of 1854), we have deemed it well to omit the limitation of Rs. 100, which we introduced into Bill No. II, and to require (section 11) that such property shall (as at present) be declared in all cases, whatever be its value.

15. The only other points which it is necessary to mention in connection with this portion of the Bill are that we have struck out the second sentence of section 5 of the Bill No. II, which was intended to relieve the Government or the Company in certain cases from liability for loss or damage to luggage occasioned otherwise than by the neglect or default of a Railway-officer, but which is obviously unnecessary now that it is made clear that the carrier is in all cases so relieved; and that we have embodied in section 13 the provision of the Carriers Act of 1865, by which the onus of showing in what way the loss or damage was occasioned is thrown upon the carrier.

16. We have (section 14) enlarged the power of selling property left in the hands of the Railway-Administration with charges for conveyance, demurrage, &c., due upon it by empowering the Administration—

(*a*) to sell such property at once if it is perishable, and

(*b*) to sell the whole of it if they think fit instead of only such portion as may be sufficient to defray their charges.

This last power is, we understand, indispensable, as otherwise the Railway-Administration will be liable in certain states of the market to have its premises incumbered with unclaimed goods.

17. We have added to chapter IV a section (20) empowering Railway-servants to remove from railway-carriages and from the railway-premises persons suffering from infectious diseases.

18. We have, chiefly at the instance of the members of the Railway Conference, enhanced or reduced several of the penalties imposed by chapter V.

19. We have modified the restrictions on smoking by omitting in section 32 of the present Bill the words of section 6 of Act XVIII of 1854 which made it an offence to smoke on the Railway-premises.

20. We have, in section 40, imposed a penalty for needlessly interfering with the means of communication between the guard and the engine-driver or passengers.

21. We have, at the instance of many of the authorities consulted, extended to girls section 44, which provides for the case of children throwing stones at a train or tampering with the permanent-way. There being, however, no legal penalty suitable for the case of girls under seven years of age, we have been compelled to content ourselves with holding their parents or guardians liable. As regards the liability of the parent or guardian, we have, on further consideration, deemed it better to require him to enter into a bond binding himself to prevent his child repeating the offence, instead of subjecting him in the first instance to a penalty for an act of misconduct on the part of the child which he might have had no reason to foresee.

22. We have, in section 50, provided that a person committing an offence against the Act or the rules made under it may be tried in any place which the Local Government may appoint, as well as in any place in which he may now be tried for such offence. This, it has been repre-

[1] *Simons* v. *The Great W. Railway Co.*, 18 C. B. 805.

[2] *Simons* v. *The Great W. Railway Co.*, 18 C. B. 805. *Per* Blackburn and Crompton, JJ., in *Peek* v. *The N. Staffordshire Railway Co.*, 32 L. J. Q. B. at pages 251 and 257. *Per* Cockburn, C. J., and Crompton, J., in *Allday* *Great W. Railway Co.*, 34 L. J. Q. B. at page 6. *Per* Kelly, C. B., in *Booth* v. *N. E. Railway Co.*, Law Rep. 2 Ex. at p. 178.

[3] *Lord* v. *Midland Railway Co.*, Law Rep. 2 C. P. 339.

sented to us, is necessary to meet cases where the Court which would ordinarily have jurisdiction is at a distance from the line, and there is another Court on the line which can be more easily reached.

23. We have added a section (54) to the Bill empowering the Governor General in Council to extend the whole or any portion of it to tramways worked by steam.

24. We have added in the second schedule :—

in clause (*g*), "Government-stamps :"
in clause (*j*), "other works of art :"
in clause (*k*), "marble :"
in clause (*p*), "sandalwood-oil :"
in clause (*q*), "scientific instruments."

25. We have made numerous other additions and amendments, but they are of so trifling a description that we deem it unnecessary to specify them.

26. The Bill No. II and report of Select Committee thereon have been published in English in all the local Gazettes except those for Bengal, Assam and Rájputána. Publication of the Bill and report in the vernacular has been reported only by the Governments of the North-Western Provinces and Oudh and of the Panjáb; we do not consider that the changes now made are such as to render republication necessary, especially as most of these changes have met with the approval of the Members of the Railway Conference; and we accordingly recommend that the Bill as amended be passed.

A. CLARKE.
WHITLEY STOKES.
F. R. COCKERELL.

The 26th February, 1879.

LIST OF PAPERS.

From J. G. W. Sykes, Esq., Advocate, High Court, North-Western Provinces, dated 9th August, 1878.
Memorandum by Public Works Department, No. 3870R, dated 20th September, 1878, and enclosure.
From Secretary to Chief Commissioner, Mysore, No. 5091—8J, dated 3rd October, 1878.
" Secretary for Birár, to Resident, Haidarábád, No. 7B, dated 7th October, 1878.
" Ditto, ditto, No. 8B, dated 9th October, 1878, and enclosures.
" Officiating Secretary to Chief Commissioner, Central Provinces, No. 4315—195, dated 12th October, 1878.
" Secretary to Chief Commissioner, Assam, No. 1965, dated 29th October, 1878.
" Secretary, Bombay Association, dated 16th November, 1878, and enclosure.
" Under Secretary to Government, Bombay, No. 6606, dated 18th November, 1878, and enclosure.
" Secretary to Chief Commissioner, British Burma, No. 3576-593, dated 28th December, 1878, and enclosure.
" Chief Commissioner, Ajmer and Merwára, No. 17, dated 3rd January, 1879.
" Under Secretary to Government, Bombay, No. 188, dated 11th January, 1879, and enclosure.
" Acting Chief Secretary to Government, Madras, No. 2590, dated 21st December, 1878, and enclosures.
" Secretary to Government, North-Western Provinces and Oudh, No. 114, dated 15th January, 1879, and enclosures.
" Ditto, ditto, No. 170, dated 22nd January, 1879, and enclosures.

D. FITZPATRICK,
Secy. to the Govt. of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, MARCH 22, 1879.

☞ Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First publication.]

The following Report of the Select Committee on the Bill to amend the Code of Civil Procedure was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 5th March, 1879:—

REPORT.

We, the undersigned Members of the Select Committee to which the Bill to amend the Code of Civil Procedure was referred, have the honour to report that we have considered the Bill and the papers specified in the annexed list.

2. In the interpretation-clause, we have expressly declared that an order finally disposing of an application for execution falls within the definition of 'decree.' This will remove a doubt which we understand has been felt in two of the High Courts. We have also provided that 'signed' shall include stamped. The use of a seal capable of producing an impression of the name and title of the person using it is common among Natives of rank.

3. To section 13 we have added an explanation declaring in effect, that a decision in a suit for arrears of rent under any local law relating to landlord and tenant, shall not be deemed to be *res judicata* in case of suits relating to the title to the property in respect of which the rent is claimed.

4. In section 44, we have provided for joining, with claims by and against a legal representative as such, claims which he was personally entitled to, or liable for, jointly with the deceased person whom he represents, *e.g.*, on a promissory note jointly executed by the deceased and the person who becomes his executor.

5. We have altered the last paragraph of section 52, so as to require the examination of the witness to the verification of the plaint only when the Court entertains doubt as to the fact of the signature.

6. We have extended section 108 to all cases in which decrees have been set-aside *ex parte*, and provided for cases in which the summons was not duly served, as well as for those in which the defendant was prevented from appearing.

7. Section 131 does not as Act VIII of 1859, section 107, did, empower parties to give notice to produce documents generally. We have therefore made section 131 apply to the production of all documents in the possession or power of a party, whether they are or are not referred to in the plaint, written statement or affidavit of the latter.

8. We have struck out from section 230 the words as to granting subsequent applications for execution, when the Court is satisfied that on the preceding application due diligence had been used to procure complete satisfaction. The effect of these words appears to us to discourage leniency and to invite litigation. We have altered the same section, so as to provide (in accordance with the new Limitation Act, schedule II, Art. 179, paragraph 6) for a decree

awarding maintenance, which has been held not to be a decree directing "the payment of money or the delivery of property by instalments."

9. We have amended section 245, so as to provide for non-compliance with the requirements not only of sections 235 and 236, but also of sections 236 and 237.

10. We have altered the first explanation to section 216, so as to bring within its scope decrees made over to a Court for execution.

11. We have amended sections 259 and 260, so as to make it clear that, when an attachment under either section has remained in force for the specified time, if the judgment-debtor has not obeyed the decree and the decree-holder has, within that time, applied for a sale, the property may be sold; but that, if the judgment-debtor has obeyed, and the decree-holder has not made such application, the attachment shall cease.

12. We have provided, in section 268, that, where a moiety of the salary of a public officer or railway-servant is attached, the attachment shall be made by an order requiring the officer whose duty it is to disburse the salary to withhold every month such portion as the Court may direct until the amount of the portions so withheld is equal to the amount of the decree; and we have authorized him to pay into Court every portion so withheld, and declared that such payment shall discharge the Government or the Railway Company. We have struck out the last paragraph of the same section.

13. We have altered section 291, so as to empower the Court directing an execution-sale, as well as the officer conducting one, to adjourn it.

14. Where the holder of a decree in execution of which property is sold purchases the property without the Court's permission, we have provided in section 294, that the Court may, if it thinks fit, set-aside the sale, and that any deficiency of price which may happen on a re-sale shall be paid by the decree-holder.

15. We think that mortgages, leases and sales made under section 305 by the judgment-debtor should not become absolute until they are confirmed by the Court; and we have added a provision to this effect.

16. We think that, besides the decree-holder and the owner of land sold in execution, any other person interested in the sale should have power to apply to set it aside on the ground of material irregularity; and we have amended section 311 of the Code accordingly.

17. Much doubt exists as to where the title to land sold at an execution-sale vests in the purchaser. We think it should vest from the date of the certificate, which is granted as soon as the sale becomes absolute; and we have added to section 316 a sentence to this effect.

18. We have recast sections 322 and 323 of the Code, so as to make them express clearly what we believe to have been the intention of their author, namely, that, where a money-decree in satisfaction of which the Court has ordered a sale of land has been transferred to the Collector, he should ascertain the amount of *all* existing decrees against the judgment-debtor and raise the amount necessary to discharge all his judgment-debts with interest, by dealing with such land, and such land only, in any of the modes prescribed by section 322.

19. We have altered section 331, paragraph two, so as to express the provisions of the corresponding section (229) of Act VIII of 1859, and we have redrawn the latter half of section 332, so as to avoid the reference to the Specific Relief Act, section 9, whilst maintaining the procedure required by that enactment and the effect of an order passed thereunder.

20. We think that the first payment of a judgment-debtor's monthly subsistence-money should be made to the proper officer of the Court, and that the subsequent payments should be made to the officer in charge of the jail; and we have altered section 339 accordingly.

21. When an applicant for the benefit of the insolvency-chapter (XX) furnishes sufficient security that he will appear when called upon, we have empowered the Court to release him. The Recorder of Rangoon exercises under the Burma Courts Act insolvency-jurisdiction in the towns of Rangoon, Maulmain, Akyab and Bassein. We do not think it expedient that any other Courts should exercise such jurisdiction concurrently with him. We have therefore expressly excluded all Courts situate in such towns from the operation of chapter XX.

22. Where a pauper's suit is dismissed for non-appearance of either party, we have empowered the Court to order him to pay the fees which would have been paid by him if he had not been permitted to sue as a pauper.

23. We have amended section 456 of the Code so as to provide for obtaining an order for the appointment of a guardian *ad litem* upon application by the plaintiff; and where there is no other person fit and willing to act as such guardian, we have authorized the Court to appoint any of its officers.

24. We have substituted for section 555 a section providing that in all cases the appellant shall begin.

25. We have made section 560 of the Code provide for the cases when notice is not served on the respondent, as well as for those in which he was prevented from appearing.

26. We have amended section 582 of the Code, so as to preclude the doubt whether the Appellate Court is bound (so far as may be) to perform the duties, as well as authorized to exercise the powers, of the Court of first instance.

27. In section 584, clause (*a*), we have omitted the words "some specified," which have been held by some to limit the 'law' there mentioned to a statutory enactment, and by others to require the appellant to express in formal terms the rule which he alleges to have been contravened.

28. We think that appeals should lie from orders under section 57, clause (*a*), returning a plaint on the ground that the suit has been instituted in the wrong Court; and from orders under section 313 refusing an application to set-aside a sale of immoveable property; and we have amended section 588 accordingly. We have also amended the last clause of the same section, so as to give a second appeal from all orders under section 244, as to mesne profits or relating to the execution, discharge or satisfaction of a decree.

29. We have extended section 642, so as to exempt from arrest under the Code the parties to any matter pending before a tribunal having, or believing *bonâ fide* that it has, jurisdiction, their pleaders, mukhtárs, revenue-agents and witnesses while going to, attending or returning from, such tribunal. This will include not only civil Courts, but criminal Courts, Courts-martial and arbitrators, and accords with the existing law of England.

30. Sections 223—229 seem to provide sufficiently for the execution of decrees. We have therefore limited section 648 to arrests and attachments made otherwise than in execution, and provided for the release of any person arrested under that section who furnishes security for his appearance before the Court that issued the warrant.

31. We have added to section 649 a paragraph providing for the execution of the decrees of Courts which have ceased to exist, as for example, where a Court of Small Causes is abolished by the Local Government under Act XI of 1865, section 3, or where a Munsif invested with Small Cause jurisdiction, having passed a considerable number of decrees, is transferred to another Munsifí, and his successor at the particular Munsifí at which this jurisdiction was exercised has not been invested with similar jurisdiction.

32. We have inserted after section 650, a section providing for the service of foreign summonses when issued either by Courts established by the Governor General in Council, or by Courts to which the Governor General in Council has applied this provision.

33. We have amended the second schedule, so as to extend to the Small Cause Courts in the Mufassal

sections 223—229, as to execution of decrees;

section 360, enabling the Local Government to invest any Court with insolvency-jurisdiction;

chapter XXXVI, as to Receivers; and

sections 523, 524, as to filing in Court agreements to refer to arbitration, and sections 525, 526, as to filing awards made on reference without the intervention of a Court.

34. We have made several corrections of clerical and typographical errors which need not be specified.

35. Lastly, we have amended the Registration Act, by inserting a clause providing that a copy of every certificate of sale of land granted under section 316 of the Code shall be sent to the local registering officer, who will file it in his Book No. 1. We have also taken the opportunity to amend three trifling errors in this Act, one of which is a misprint. And we have amended the Limitation Act, by inserting in its second schedule articles providing respectively for applications under sections 368 and 371 of the Code.

36. We recommend that the Bill thus amended be passed. The Bill and Statement of Objects and Reasons have been published in English in all the local Gazettes except those for Assam and Ajmer. They have been published in the vernacular in all the Gazettes except those for the Central Provinces, British Burma, Assam and Ajmer. We do not think that the Bill has been so altered as to require republication.

WHITLEY STOKES.
A. J. ARBUTHNOT.
T. H. THORNTON.
G. H. P. EVANS.
G. C. PAUL.
F. R. COCKERELL.

The 5th March, 1879.

LIST OF PAPERS.

From Secretary to Government, North-Western Provinces and Oudh, No. 527A, dated 19th July, 1878, and enclosures.
„ Secretary, Calcutta Trades Association, dated 29th July, 1878.
„ Secretary to Government, North-Western Provinces and Oudh, No. 577A, dated 1st August, 1878.
„ Secretary, Rajsháhái Association, dated 28th July, 1878, and enclosure.
„ Acting Under Secretary to Government, Bombay, No. 4426, dated 31st July, 1878, and enclosures.
„ Officiating Secretary to Chief Commissioner, Central Provinces, No. 3211-152, dated 8th August, 1878, and enclosure.
„ Secretary to Chief Commissioner, Mysore, No. 3477-6J, dated 7th August, 1878.
„ Secretary for Birár to Resident, Haidarábád, No. 6B, dated 12th August, 1878.
Notes by the Munsif of Khair.
Extract from Report on Administration of Civil Justice in Lower Provinces of Bengal and in Assam in 1877.
Note by C. D. Field, Esq., District and Sessions Judge, Burdwan, dated 13th August, 1878.
From Judicial Commissioner, Mysore, to Hon'ble Whitley Stokes, dated 19th August, 1878.
Office Memorandum from Home Department, No. 1144, dated 28th August 1878, and enclosures.

From Under Secretary to Government, Bombay, No. 7812, dated 29th December, 1877, and enclosures.
" Officiating Chief Commissioner, Ajmer and Merwára, No. 589, dated 30th August, 1878, and enclosures.
" Acting Under Secretary to Government, Bombay, No. 5040, dated 30th August, 1878, and enclosure.
" Officiating Secretary to Government, Panjáb, No. 685C, dated 9th September, 1878, and enclosures.
" Ditto, ditto, No. 691C, dated 10th September, 1878, and enclosure.
" Secretary to Government of Bengal, No. 128R.T, dated 2nd September, 1878, and enclosures.
" Secretary to Government, North-Western Provinces and Oudh, No. 675A, dated 9th September, 1878, and enclosures.
" Bábu R. C. Banarjí, Noakhálí, dated 10th September, 1878.
Office Memorandum from Home Department, No. 1260, dated 17th September, 1878, and enclosures.
From Secretary to Chief Commissioner, Assam, No. 1582, dated 13th September, 1878, and enclosures.
Notes by Pandit Bishambar Náth, Pleader, High Court, North-Western Provinces.
From K. Krishna Ráo, dated 23rd September, 1878.
" District Judge, South Canara, to Hon'ble Whitley Stokes, No. 62, dated 27th September, 1878, and enclosure.
" Officiating Registrar, High Court, Calcutta, No. 1425, dated 8th June, 1878, and enclosures.
" Junior Secretary to Chief Commissioner, British Burma, No. 1439-371, dated 28th September, 1878, and enclosures.
" Vinayekráo Haríchand, Attorney, High Court, Bombay, to Hon'ble Whitley Stokes, dated 5th October, 1878.
" Srí Báládisha Dámodára Ráo, Mangalore, to Hon'ble Whitley Stokes, dated 5th October, 1878.
" Hon'ble L. C. Innes, Judge, High Court, Madras, to Hon'ble Whitley Stokes, dated 9th October, 1878.
" Pandit Suraj Bháu, Lahore, dated 1st October, 1878.
" Officiating Secretary to Government, Panjáb, No. 964C, dated 17th October, 1878, and enclosures.
" Officiating Secretary to Government, Panjáb, No. 1053C, dated 30th October, 1878, and enclosure.
" S. Aiyyasami Aiyyar, Pleader, High Court, Madras, dated 21st October, 1878.
" J. G. W. Sykes, Esq., Advocate, High Court, North-Western Provinces, dated 25th October, 1878.
" Hon'ble M. Melvill, Judge, High Court, Bombay, dated 5th November, 1878.
" Acting Chief Secretary to Government, Madras, No. 2229, dated 31st October, 1878, and enclosures.
" C. Rámachandra Ráo Sahib, Vakíl, High Court, Madras, dated 5th November, 1878.
Memorandum by Pandit Rádhá Kishn, Lucknow, dated 16th December, 1878.
" in Legislative Department.
From Acting Chief Secretary to Government, Madras, No. 2491, dated 10th December, 1878, and enclosure.
Note by Hon'ble Mr. Justice Turner, dated 1st February, 1879.
From Honorary Secretary, British Indian Association, dated 20th February, 1879, and enclosure.

D. FITZPATRICK,
Secy. to the Govt. of India.

[First publication.]

The following supplementary Report of a Select Committee, together with the Bill as settled by them, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 19th March, 1879:—

WE, the undersigned Members of the Select Committee to which the Bill to amend the Code of Civil Procedure was referred, have the honour to submit the following supplementary Report.

2. Since our Report of the 5th March was presented, our colleague Mr. Stokes has received from Mr. Justice Ainslie a note on the Bill which has led us to make certain further changes therein.

3. It seems to us that the definition of "decree," even when made to include orders finally disposing of applications for execution, is not wide enough. It does not, for instance, comprise an order made on settlement of issues overruling pleas of law (such as that the suit is barred by the Limitation Act), and directing a trial of complicated questions of fact or the investigation of complicated accounts; for this does not "decide the suit," as the defendant may have a defence on the facts. Again, it does not include a decretal order for an account, for this does not "decide the suit;" inasmuch as, on taking the account, it may turn out that nothing is due, in which case the plaintiff's suit would in the end be dismissed. Yet a defendant, ought not, if he has a good defence, to be put to the possibly enormous expense and inconvenience of an account for (say) twenty years. He should clearly have a right of appeal. The fact is that there may be more than one decree in a suit and that the various points arising may be decided at different hearings and the results embodied in different "formal orders." We have therefore widened the first sentence of the definition of "decree" as follows: "decree means the formal expression of a final adjudication upon any right claimed, or defence set up, in a Court of justice."

4. We have not overlooked the fact that some of the orders under section 244 of the Code, from which we propose to give two appeals by section 588 as now amended, may be held to be decrees within the meaning of this first sentence of the definition; but we deem it safer, in order to prevent all mistake, to give the appeals from these orders in express terms by section 588, and formally to exclude them from the definition of decree. We have also defined "order" as meaning the formal expression of any decision of a Court of justice which is not a decree, and we have defined "judgment" as the statement given by the Judge of the grounds of a decree or order.

5. There is much evidence to shew that the examination of a witness as to the fact of signature of the verification of the plaint by the person whose name it purports to bear is a useless form. We have therefore, instead of amending section 52 of the Code as proposed by the Bill as last settled, repealed the part of that section requiring such examination.

6. We think that the Court should fix a period within which the sum required to defray the costs of service of a process must be paid into Court by the party concerned. In the absence of such a provision (which was contained in Act XXIII of 1861, section 2), there is no rule by which the Court is to be guided in determining when a party is in default. We have therefore amended section 93 of the Code so as to require a period to be fixed for the payment of the Court-fee, and we have made a similar amendment in section 95, as to payment of postage.

7. It is strongly urged by Mr. Justice Ainslie that our proposed change in section 168 of the word "may" to "shall" would assist litigants to obstruct justice by obtaining unnecessary adjournments. We have accordingly omitted the section of the Bill by which it was proposed to make that change.

8. We have provided in section 289 for fixing up in the Court-house a copy of the proclamation of sale, and we have made a corresponding amendment in section 290.

9. The question is constantly arising whether a fresh proclamation is required when a sale is adjourned. We have provided in section 291 that, in case of such adjournment for a longer period than seven days, a fresh proclamation shall be made, unless the judgment-debtor consents to waive it.

10. In section 220 we have provided for the execution of orders as to costs.

11. In our report of the 5th of March we proposed to alter section 311 of the Code so as admit of other persons in an execution-sale besides the decree-holder and the owner applying to set-aside the sale. We have, at the suggestion of the High Court at Fort William, struck out this amendment of section 311 of the Code. The High Court urges that it would be of little practical benefit and that it might sometimes be misused to delay the completion of proceedings in execution by persons put forward by the judgment-debtor to dispute the regularity of the sale.

12. We have repealed the last nineteen words of section 13 of Act XI of 1865. They are, in the opinion of the same High Court, unnecessary and occasionally mischievous.

13. The importance of the change now made in the definitions of "decree" and "judgment," make it desirable in our opinion that the Bill should be republished, so as to afford an opportunity for the correction of any oversight into which we may have fallen; but the substance of the amendment has now been so fully discussed that we think that, unless some serious objection is brought to light, there can be no objection to the Bill being passed as it stands; and, looking to the urgency of some of its provisions, we think its passing should not be delayed more than two months.

WHITLEY STOKES.
A. J. ARBUTHNOT.
T. H. THORNTON.
G. H. P. EVANS.
F. R. COCKERELL.

No. III.

A Bill to amend the Code of Civil Procedure, the Registration Act, 1877, and the Limitation Act, 1877.

WHEREAS it is expedient to amend the Code of Civil Procedure; It is hereby enacted as follows :— Preamble.

1. The following portions of the said Code shall be repealed (namely) :— Repeal of certain portions of Act X of 1877.

In section 4, the words and figures "The Panjáb Courts Act, 1865," and "The Panjáb Appeals Act, 1873 :"

In section 5, the third sentence :

In section 51, the words "with the permission of the Court :"

In section 52, from and including the words "and when he makes it out of Court" to the end :

In section 61, the words "bill of exchange or other :"

In section 64, the words "or as soon thereafter as may be practicable :"

In section 80, the words "or to receive the copy of the summons :"

In section 131, the words "in whose plaint, written statement or affidavits reference is made to any document :"

In section 199, the words from and including "and in" to the end :

In section 224, the word "therewith :"

In section 230, paragraphs three and four, the words "unless the Court is satisfied that on the last preceding application due diligence was used to procure complete satisfaction of the decree; and the order of the Court granting any such subsequent application shall be conclusive evidence that due diligence was used to procure such satisfaction. And no such subsequent application shall be granted :"

In section 246, clause (*e*) and the letters (*f*) and (*g*) :

In section 259, the words "and keeping the same under attachment until the further order of the Court :"

In section 339, paragraph three, the words "to the proper officer of the Court :"

In section 341, the word "third :"

In section 353, the words "within three months from its publication," and "within three months from the publication of the schedule :"

In sections 407 and 408, the words "upon such examination :"

In section 584, clause (*a*), the words "some specified :"

In section 588, clause (*j*), the words "of the same nature with appealable orders made in the course of a suit :" in the same section, clause (*r*), the figures "481 :"

In section 638, the figures "261 :"

In the second schedule, the words and figures "section 648 (so far as relates to arrest)."

2. In section 2, for the definitions of "judgment" and "decree," the following shall be substituted (namely) : Amendment of section 2.

"decree" means the formal expression of a final adjudication upon any right claimed, or defence set up, in a Court of justice. An order rejecting a plaint under section 53, clause (*d*), or under section 54, clause (*c*), is within this definition. An order on appeal remanding a suit for retrial is not within this definition, nor is any order specified in section 588 :

"order" means the formal expression of any decision of a Court of justice, which is not a decree :

"judgment" means the statement given by the Judge of the grounds of a decree or order."

In the same section, to the definition of "signed," the following words shall be added (namely), "it also includes stamped with the name of the person referred to."

3. In section 13, Explanation I, for the word "confessed," the word "admitted" shall be substituted ; and to the same section, the following shall be added (namely) :—"*Explanation VII.*—A Court trying a suit under any law for the time being in force regulating the procedure in suits between land-holders and their tenants or agents, shall not be deemed, as regards the title to the immoveable property in respect of which the suit is brought, a Court of competent jurisdiction within the meaning of the first paragraph of this section." Amendment of section 13.

4. In section 43, paragraph one, for the words "arising out of," the words "which the plaintiff is entitled to make in respect of" shall be substituted : in the same section, paragraph two, for the word "for" (in each of the places where it occurs) the words "in respect of" shall be substituted ; and in the same section, paragraph three, for the word "claim," the words "cause of action" shall be substituted. Amendment of section 43.

5. To section 44, the following words shall be added (namely), "or are such as he was entitled to, or liable for, jointly with the deceased person whom he represents." Amendment of section 44.

6. In section 45, for paragraph one, the following shall be substituted (namely), "Subject to the rules contained in section 44, the plaintiff may unite in the same suit several causes of action against the same defendant or the same defendants jointly, and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit :" Amendment of section 45.

in the same section, paragraph two, after the word "defendant," the words "or at any subsequent stage of the suit, if the parties agree" shall be inserted.

7. In section 50, for the word "abode" in each of the places where it occurs, the word "residence" shall be substituted. Amendment of section 50.

8. To section 51 the following proviso shall be added (namely) :— Amendment of section 51.

"Provided that, if the plaintiff, by reason of absence or for other good cause, is unable to sign the plaint, it may be signed on his behalf by his duly authorized agent."

9. In sections 51, 53, 115, 346, 393 and 403, for the word "subscribed" (wherever it occurs), the word "signed" shall be substituted : in sections 115 and 346, for the word "subscribing," the word "signing" shall be substituted ; and in section 403, for the word "subscription," the word "signing" shall be substituted. Amendment of sundry sections.

10. In section 58, for the word "filed," the word "produced" shall be substituted. Amendment of section 58.

11. In section 93, after the word "levied," and in section 95, after the word "paid," the words "within a time to be fixed by the Court" shall be inserted. Amendment of sections 93 and 95.

12. In section 108, paragraph one, the words and figures "under section 100" shall be omitted ; and in the same section, paragraph two, for the words "it be proved to the satisfaction of the Court that the defendant," the words "he satisfies the Court that the summons was not duly served, or that he" shall be substituted. Amendment of section 108.

13. In section 131, paragraph one, for the words "such document," the words "any specified document" shall be substituted. Amendment of section 131.

14. In section 136, after the word "discovery" (in each of the places in which it occurs), the word "production" shall be inserted. Amendment of section 136.

15. In section 139, for the words "the production of which has been called for under section 138 and which has not been produced," the words "which should have been, but has not been, produced in accordance with the requirements of section 138" shall be substituted. Amendment of section 139.

16. In section 207, for the word "suit," the word "decree" shall be substituted ; and for the words "or numbers" to the end, the following words shall be substituted (namely), "or by numbers in a record of settlement or survey, the decree shall specify such boundaries or numbers." Amendment of section 207.

17. In section 211, for the words "land or other," the words "the recovery of possession of immoveable" shall be substituted ; and in section 212, before the word "immoveable," the words "the recovery of possession of" shall be inserted. Amendment of sections 211 and 212.

18. To section 220 the following words shall be added (namely) : "Every order relating to costs made under this Code and not forming part of a decree may be executed as if it were a decree for money." Amendment of section 220

19. In section 229, for the words "Native Prince or State in India," the words "Foreign Prince or State" shall be substituted. Amendment of section 229.

20. In section 230, clause (*b*), for the words "the payment of money or the delivery of property by instalments—the date of the default in paying or delivering the instalment," the following words shall be substituted (namely), "any payment of money, or the delivery of any property, to be made at a specified date—the date of the default in making the payment or delivering the property." Amendment of section 230.

21. In section 235, for the words "in manner hereinbefore provided for the verification of plaints," the following words shall be substituted (namely), "by the applicant or, with the permission of the Court, by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case." Amendment of section 235.

22. In sections 236 and 237, for the words "If the application be," the words "Whenever an application is made" shall be substituted. Amendment of sections 236 and 237.

23. In section 244, clause (*c*), after the word "execution," the words "discharge or satisfaction" shall be inserted. Amendment of section 244.

24. In section 245, for the first sentence, the following shall be substituted (namely), "The Court on receiving an application for the execution of a decree shall ascertain whether such of the requirements of sections 235, 236, 237 and 238 as may be applicable to the case have been complied with, and if they have not been complied with, the Court shall reject the application, or return it for such compliance, or allow it to be amended then and there." Amendment of section 245.

25. In section 246, for Explanation I, the following shall be substituted (namely) :— Amendment of section 246.

"*Explanation I.*—The decrees contemplated by this section are decrees capable of execution at the same time and by the same Court."

In Explanation II, after the words "assignor as," the words "in respect of judgment-debts due" shall be inserted.

26. For the second paragraph of section 259, the following shall be substituted :— Amendment of section 259.

"When any attachment under this section has remained in force for six months, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold, and out of the proceeds the Court may award to the decree-holder, in cases where any amount has been fixed under section 208, such amount, and, in other cases, such compensation as it thinks fit, and shall pay the balance, if any, to the judgment-debtor on his application.

"If the judgment-debtor has obeyed the decree, and paid all costs of executing the same which he is bound to pay, or if, at the end of six months from the date of the attachment, no application to have the property sold has been made and granted, the attachment shall cease to exist."

27. In section 260 in the first paragraph, after the words "the performance of," the words "or abstention from" shall be inserted ; and for the second paragraph the following paragraphs shall be substituted (namely) :— Amendment of section 260.

"When any attachment under this section has remained in force for one year, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, the property may be sold, and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and may pay the balance, if any, to the judgment-debtor on his application.

"If the judgment-debtor has obeyed the decree, and paid all costs of executing the same which he is bound to pay, or if, at the end of one year from

the date of the attachment, no application to have the property sold has been made and granted, the attachment shall cease to exist."

28. In section 264, after the words "the same," the words "and not bound by the decree to relinquish such occupancy" shall be inserted.

Amendment of section 264.

29. To section 265 the following words shall be added (namely), "and according to the rules for the time being in force for the partition, or the separate possession of shares, of such estates."

Amendment of section 265.

30. For the last paragraph of section 268, the following shall be substituted (namely):—

Amendment of section 268.

"In the case of the salary of a public officer or the servant of a Railway Company, the attachment shall be made by a written order requiring the officer whose duty it is to disburse the salary to withhold every month such portion as the Court may direct, until the amount of the portions so withheld is equal to the amount remaining due under the decree.

"A copy of every such order shall be fixed up in a conspicuous part of the court-house and shall be served on the officer so required.

"Every such officer may from time to time pay into Court any portion so withheld, and such payment shall discharge the Government or the Railway Company, as the case may be, as effectually as payment to the judgment-debtor."

31. To section 289, paragraph one, the following words shall be added, namely: "and a copy thereof shall be fixed up in the Court-house;" and in section 290, for the words "notification has been affixed" the words "copy of the proclamation has been fixed up" shall be substituted.

Amendment of section 289.

32. In section 291, for the first eight words, the following shall be substituted (namely): "The Court may in its discretion adjourn any sale under this chapter, and the officer conducting any such sale;" and in the same section, after the proviso, the following sentence shall be inserted namely: "whenever a sale is adjourned under this section for a longer period than seven days, a fresh proclamation under section 289 shall be made, unless the judgment-debtor consents to waive it.

Amendment of section 291.

33. To section 294 the following paragraph shall be added (namely):—

Amendment of section 294.

"When a decree-holder purchases, by himself or through another person, without such permission, the Court may, if it thinks fit, on the application of the judgment-debtor or any other person interested in the sale, by order set-aside the sale; and the costs of such application and order, and any deficiency of price which may happen on the re-sale, and all expenses attending it, shall be paid by the decree-holder."

34. In section 295, first proviso, after the words "shall not," the words "as such" shall be inserted.

Amendment of section 295.

35. In section 305, paragraph two, after the word "therein," the words and figures "and notwithstanding anything contained in section 276," shall be inserted; and for the last paragraph, the following shall be substituted (namely):—

Amendment of section 305.

"Provided also that no mortgage, lease or sale under this section shall become absolute until it has been confirmed by the Court."

36. In section 314, after the word "property," the words "in execution of a decree" shall be inserted.

Amendment of section 314.

37. To section 316 the following sentence shall be added (namely): "And the title to the property sold shall be deemed to vest in him from the date of such certificate."

Amendment of section 316.

38. For sections 322 and 323 the following sections shall be substituted (namely):—

Substitution of sections for sections 322 and 323.

"322. Whenever the execution of a decree, not being a decree ordering the sale of immoveable property in pursuance of a contract specifically affecting the same, but being a decree for money in satisfaction of which the Court has ordered the sale of immoveable property, has been so transferred, the Collector may either proceed as the Court would proceed under section 305, or, if he has reason to believe that all the judgment-debts of the judgment-debtor can be discharged without a sale of the whole of such property, he may publish a notice in the language of the district, calling upon all persons holding decrees against the judgment-debtor to notify in writing to the Collector, within sixty days from the date of such publication, the existence of such decrees, the respective dates thereof and the sums remaining due thereon, respectively.

Procedure of Collector when execution of decree so transferred.

"Such notice shall be published by being posted in the court-house of the Court which made the order under section 304, and at such other places (if any) as the Collector thinks fit.

"323. The Collector shall ascertain the sums remaining due on such decrees respectively, and may then (notwithstanding any order under section 304, but subject to such rules as may from time to time be made in this behalf by the Chief Controlling Revenue-Authority) raise the amount necessary to discharge each of such sums, with interest thereon according to the decree under which it is due, or, if the decree makes no provision as to interest, then with interest (if any) at such rate as he thinks fit—

Powers of Collector in such cases.

"(*a*) by letting in perpetuity, or for a term, on payment of a premium equivalent to such amount, the whole or any part of the property of which the sale has been ordered: or

"(*b*) by mortgaging the whole or any part of such property: or

"(*c*) by selling part of such property: or

"(*d*) by letting on farm, or managing by himself or another, the whole or any part of such property for any term not exceeding twenty years from the date of the order of sale: or

"(*e*) partly by one of the modes mentioned in clauses (*b*), (*c*) and (*d*), and partly by another or others of such modes.

"For the purpose of managing under this section the whole or any part of such property, the Collector may exercise all the powers of its owner.

"So long as any letting or management under clause (*d*) or clause (*e*) continues, the judgment-debtor and his representative in interest shall be incompetent to mortgage, charge, lease or alienate the property let or managed or any part thereof."

39. In section 331, paragraph two, for the words and figures "the Specific Relief Act, 1877, section 9," the word and figure "Chapter V" shall be substituted; and to the same section the following paragraph shall be added (namely), "Every such order shall have the same force as a decree and shall be subject to the same conditions as to appeal or otherwise."

Amendment of section 331.

40. In section 332, first paragraph, for the word "defendant," the word "judgment-debtor" shall be substituted; and for the other paragraphs, the following shall be substituted (namely), "If after examining the applicant it appears to the Court that there is probable cause for making the application, the Court shall proceed to investigate the matter in dispute, and if it finds that the ground mentioned in the first paragraph of this section exists, it shall make an order that the applicant recover possession of the property, and if it does not find as aforesaid, it shall dismiss the application.

Amendment of section 332.

"In hearing applications under this section, the Court shall confine itself to the grounds of dispute above specified.

"The party against whom an order is passed under this section may institute a suit to establish the right which he claims to the present possession of the property; but subject to the result of such suit, if any, the order shall be final."

41. For section 333 the following shall be substituted (namely), "Nothing in section 331 or 332 applies to a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree is made."

Amendment of section 333.

42. In section 335, for the first paragraph, the following shall be substituted (namely):—

Amendment of section 335.

"If the purchaser of any such property is resisted or obstructed by any person, other than the judgment-debtor, claiming in good faith a right to the present possession thereof, or, if in delivering possession thereof any such person is dispossessed, the Court, on the complaint of the purchaser or the person so dispossessed, shall enquire into the matter of the resistance, obstruction or dispossession, as the case may be, and pass such order thereon as it thinks fit;"

and in the second paragraph of the same section, for the word "conclusive," the word "final" shall be substituted.

43. In section 339, paragraph four, after the word "made," the words "to the proper officer of the Court" shall be inserted; and to the same paragraph, the following words shall be added (namely), "and the subsequent payments (if any) shall be made to the officer in charge of the jail."

Amendment of section 339.

44. To section 349 the following words shall be added (namely), "or release him on his furnishing sufficient security that he will appear when called upon."

Amendment of section 349.

45. In section 357, line one, for the figures "355," the figures and word "351 or 355" shall be substituted.

Amendment of section 357.

46. To section 360 the following paragraph shall be added (namely): "Nothing in this chapter shall apply to any Court having jurisdiction in the towns of Rangoon, Maulmain, Akyab and Bassein."

Amendment of section 360.

47. In sections 361, 362, 363, 365 and 368, for the words "cause of action" wherever they occur, the words "right to sue" shall be substituted.

Amendment of sections 361, 362, 363, 365 and 368.

48. In section 364, paragraph one, and section 366, paragraph one, after the word "If," the words "within the time limited by law" shall be inserted; and in the latter section, paragraph one, for the words "Court may," the words "Court shall, on the application of the defendant," shall be substituted.

Amendment of sections 364 and 366.

49. In section 373, paragraph one, for the words "for the part," the words "in respect of the part" shall be substituted; and to paragraph two, the words "or in respect of the same part" shall be added.

Amendment of section 373.

50. In section 377, for the first seven words, the following shall be substituted (namely), "Notice in writing of the deposit shall be given through the Court."

Amendment of section 377.

51. In sections 384, 477 and 483, after the word "affidavit," the words "or otherwise" shall be inserted.

Amendment of sections 384, 477 and 483.

52. In section 406, for the word "shall," the words "may if he thinks fit" shall be substituted.

Amendment of section 406.

53. In section 412, after the word "dispaupered," the words and figures "or if the suit is dismissed under section 97 or 98" shall be inserted.

Amendment of section 412.

54. In section 413, for the word "Refusal," the words and figures "An order of refusal made under section 409" shall be substituted.

Amendment of section 413.

55. In section 424, after the words "against a public officer," the words "in respect of an act purporting to be done by him in his official capacity" shall be inserted; and in sections 428 and 429, after the words "public officer," the words "in respect of such act as aforesaid" shall be inserted.

Amendment of sections 424, 428 and 429.

56. In section 437, for the first sentence, the following shall be substituted (namely), "In all suits concerning property vested in a trustee, executor or administrator, when the contention is between the persons beneficially interested in such property and a third person, the trustee, executor or administrator shall represent the persons so interested, and it shall not ordinarily be necessary to make them parties to the suit."

Amendment of section 437.

57. In section 456, for the words "in the name of the minor," the words "in the name and on behalf of the minor or by the plaintiff" shall be substituted; and to the same section the following paragraph shall be added (namely): "Where there is no other person fit and willing to act as guardian for the suit, the Court may appoint any of its officers to be such guardian, provided that he has no interest adverse to that of the minor."

Amendment of section 456.

58. In section 481, after the word "decree," the following words shall be inserted (namely), "or if, pending the suit, he becomes able to give security for his appearance as aforesaid, until he gives such security."

Amendment of section 481.

59. In section 483, after the words "portion of his property," the words "within the jurisdiction" shall be inserted.

Amendment of section 483.

60. In section 484, after the word "suit," the words "or that he has with such intent quitted the jurisdiction of the Court, leaving therein property belonging to him" shall be inserted.

Amendment of section 484.

61. In section 497, clause one, for the words "the injunction," the words "an injunction which it has granted" shall be substituted.

Amendment of section 497.

62. In section 523, paragraph three, for the words "any of," the word "all" shall be substituted.

Amendment of section 523.

63. In section 544, for the words "decree and," the words "decree, and thereupon" shall be substituted.

Amendment of section 544.

64. For section 555 the following shall be substituted (namely):—

Amendment of section 555.

"555. On the day so fixed, or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal. The Court shall then, if it does not dismiss the appeal at once, hear the respondent against the appeal, and in such case the appellant shall be entitled to reply."

Right to begin.

65. In section 560, for the words "it be proved that the respondent," the words "he satisfies the Court that the notice was not duly served, or that he" shall be substituted.

Amendment of section 560.

66. In section 561, after the word "notice," the words "in writing" shall be inserted.

Amendment of section 561.

67. In section 566, paragraph two, for the word "issue," the word "issues" shall be substituted.

Amendment of section 566.

68. For the first paragraph of section 582, the following shall be substituted (namely): "The Appellate Court shall have, in appeals under this chapter, the same powers, and shall perform as nearly as may be the same duties, as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted under chapter V."

Amendment of section 582.

69. In section 584, clause (*c*), after the word "may," the word "possibly" shall be inserted.

Amendment of section 584.

70. In section 588, for clause (*c*), the following shall be substituted (namely): "(*c*) orders returning plaints under section 53, clause (*d*), or section 54, clause (*b*), or section 57:"

Amendment of section 588.

after clause (*f*), the following clause shall be inserted (namely):—

"(*ff*) orders rejecting applications under section 108 for an order to set-aside a decree *ex parte*:"

to clause (*h*) the following words shall be added (namely), "and orders under section 170 for the sale of attached property:"

in clause (*j*) for the word and figures "section 244," the following words and figures shall be substituted (namely), "sections 230, 231, 232, 234 and 244,:"

to clause (*m*) the following words shall be added (namely), "and orders under section 313 refusing an application to set aside a sale of immoveable property:"

And to section 588 the following words shall be added (namely):

"except in the case of appeals against orders under sections 230, 231, 232, 234 and 244, in which case a second appeal shall lie, and shall, in the case of appeals now pending, be deemed to have lain, on any of the grounds mentioned in section 584 and on no other grounds.

"The provisions contained in chapter XLI shall apply, so far as may be, to all second appeals under this section, and to the execution of orders passed therein. But save as aforesaid, no order mentioned in this section shall be deemed to be a decree within the meaning of that chapter."

71. In section 638, for the figures and word "16 and 17," the figures and word "16, 17 and 19" shall be substituted; and in the last paragraph after the word "any," the words "Judge of a" shall be inserted; and the word "its" shall be omitted.

Amendment of section 638.

72. In section 642, for the second paragraph, the following shall be substituted (namely):—

Amendment of section 642.

"And except as provided in sections 256 and 643, where any matter is pending before a tribunal having jurisdiction therein, or believing in good faith that it has such jurisdiction, the parties thereto, their pleaders, mukhtárs, revenue-agents and recognized agents, and their witnesses acting in obedience to a summons, shall

be exempt from arrest under this Code while going to or attending such tribunal for the purpose of such matter, and while returning from such tribunal."

73. In section 648, for the first forty-two words, the following shall be substituted (namely), "Where any Court desires that any person shall be arrested, or any property shall be attached, under any provision of this Code not relating to the execution of decrees, and such person resides or property is situate outside the local limits of its jurisdiction, the Court may, in its discretion, issue a warrant of arrest or make an order of attachment, and:"

Amendment of section 648.

and to the same section, the following words shall be added (namely), "unless the person arrested furnish sufficient security for his appearance before that Court, or (where the case is one under chapter XXXIV) for satisfying any decree that may be passed against him by such Court, in either of which cases the Court making the arrest shall release him."

74. To section 649 the following paragraph shall be added (namely):—

Amendment of section 649.

"In the same chapter, the expression 'Court which passed a decree' or words to that effect, shall, unless there be something repugnant in the context, be deemed to include, where the decree to be executed is passed in appeal, the Court which passed the decree against which the appeal was preferred, and, where the Court which passed the decree to be executed has ceased to exist, the Court which, if the suit wherein the decree was passed were instituted at the time of making application for execution of the decree, would have jurisdiction to try such suit."

75. After section 650 the following shall be inserted (namely):—

Service of foreign summonses.

"650A. Summonses issued by any Court situate beyond the limits of British India may be sent to the Courts in British India and served as if they had been issued by such Courts; provided that the Courts issuing such summonses have been established by the authority of the Governor General in Council, or that the Governor General in Council has, by notification in the *Gazette of India*, declared the provisions of this section to apply to such Courts."

76. In section 652, after the words "connected with," the words "its own procedure or" shall be inserted.

Amendment of section 652.

77. In the first schedule, column third, opposite "XI of 1865," for the figures and word "11, paragraph 2," the figures and words "11, the last nineteen words of section 13, sections 19," shall be substituted; and opposite "V of 1866," after the word "inclusive," the words "and the schedule" shall be inserted.

Amendment of schedule I.

78. In the second schedule—

Amendment of schedule II.

for the figures "230," the figures "223" shall be substituted:

before the words and figures "Chapter XXI," the words and figures "Chapter XX, section 360—Power to invest certain Courts with insolvency-jurisdiction" shall be inserted:

after the words and figures "Chapter XXXIV—Of arrest and attachment before judgment," the words and figures "except as regards immoveable property, Chapter XXXVI—Appointment of receivers" shall be inserted:

for the figures "522," the figures "526" shall be substituted.

79. In the fourth schedule, in form No. 172, for the word "seven" in each of the places where it occurs, the word "ten" shall be substituted.

Amendment of schedule IV.

80. In the preceding sections of this Act, the words "section" and "schedule" respectively mean section of, and schedule annexed to, the said Code.

Interpretation-clause.

And whereas it is also expedient to amend the Indian Registration Act, 1877, in manner hereinafter appearing; It is hereby further enacted as follows:—

81. In section 35 of the same Act, after the words "person appears," the words "to the registering officer" shall be inserted; and after the words "refuse to register the document," the words "as to the person so denying, appearing or dead" shall be inserted.

Amendment of Act III of 1877, section 35.

82. In section 51 of the same Act, for the figures "87," the figures "89" shall be substituted.

Amendment of section 51.

83. In section 83 of the same Act, for the words "Subordinate Magistrate of the first," the words "Magistrate of the second" shall be substituted.

Amendment of section 83.

84. To section 89 of the same Act, the following clause shall be added (namely):—

Addition to section 89.

"Every Court granting a certificate under section 316 of the Code of Civil Procedure shall send a copy of such certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the immoveable property comprised in such certificate is situate, and such officer shall file the copy in his Book No. 1."

And whereas it is also expedient to amend the Indian Limitation Act, 1877, in manner hereinafter appearing; It is hereby further enacted as follows:—

85. In the second schedule to the said Indian Limitation Act, 1877, after clause 171, the following clauses shall be inserted (namely):—

Amendment of Act XV of 1877, schedule II.

"171A.—Under section 368 of the same Code, to have the representative of a deceased defendant made a defendant.	Sixty days ...	The date of the defendant's death.
"171B.—Under section 371 of the same Code, for an order to set aside an order for abatement or dismissal.	Ditto ...	The date of the order for abatement or dismissal."

D. FITZPATRICK,
Secy. to the Govt. of India.

[First publication.]

The following preliminary Report of a Select Committee, together with the Bill as settled by them, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 19th March, 1879 :—

WE, the undersigned Members of the Select Committee to which the Bill to define and amend the law relating to alluvion, islands and abandoned river-beds was referred, have the honour to report that we have considered the Bill and the papers noted in the margin.

From the Hon'ble H. S. Cunningham, dated 7th October, 1878 (Paper No. 1).
„ B. H. Baden-Powell, Esq., to Hon'ble T. H. Thornton, dated 26th October, 1878 (Paper No. 2).
„ Secretary to Government, North-Western Provinces and Oudh, No. 3193 A, dated 23rd October, 1878, and enclosures (Papers No. 3).
„ Officiating Collector, Dháká, No. 835, dated 12th October, 1878 (Paper No. 4).
„ Chief Commissioner, Ajmér and Merwára, No. 795, dated 20th November, 1878 (Paper No. 5).
„ Secretary to Chief Commissioner, Mysore, No. 6653J-12, dated 18th November, 1878 (Paper No. 6).
„ Secretary to Government, North-Western Provinces and Oudh, No. 3475A, dated 29th November, 1878, and enclosures (Papers No. 7).
„ Secretary for Birár to Resident, Haidarábád, No. 11 B, dated 13th December, 1878 (Paper No. 8).
„ Assistant Secretary, British Indian Association, dated 19th December, 1878, and enclosure (Papers No. 9).
„ Assistant Secretary to Chief Commissioner, British Burma, No. 2582-245, dated 21st December, 1878, and enclosure (Papers No. 10).
„ J. G. W. Sykes, Esq., Advocate, High Court, North-Western Provinces, dated 22nd October, 1878 (Paper No. 11).
„ Secretary to Government, Bengal, No. 55, dated 7th January, 1879, and enclosures (Papers No. 12).
„ Secretary to Government, Panjáb, No. 320, dated 20th January, 1879, and enclosures (Papers No. 13).
„ Assistant Secretary to Chief Commissioner, Central Provinces, No. 399-15, dated 23rd January, 1879, and enclosure (Papers No. 14).
„ Secretary to Chief Commissioner, Assam, No. 104T, dated 27th January, 1879, and enclosure (Papers No. 15).
„ Rájá Harbalab Náráyana Singh, dated 10th January, 1879 (Papers No. 16).
„ Secretary to Government, North-Western Provinces and Oudh, No. 267, dated 4th February, 1879, and enclosures (Papers No. 17).
„ Secretary to Government, Panjáb, No. 469, dated 3rd February, 1879, and enclosures (Papers No. 18).
„ ditto ditto, No. 633, dated 18th February, 1879, and enclosure (Papers No. 19).
Despatch from Secretary of State for India, No. 3, dated 6th February, 1879, and enclosure (Papers No. 20).
From Registrar, High Court, Calcutta, No. 400, dated 10th March, 1879 (Paper No. 21).

2. The Bill as introduced proposed that the division of the whole area of an island formed opposite several holdings should be made rateably among the owners in proportion to their respective frontages, and was framed so as merely to indicate those holders. If, for example, there were three such owners, A, B and C, whose respective frontages were 100 yards, 200 yards and 300 yards, it was intended that A should take one-sixth of the whole area of the island, B one-third and C one-half, and this division was to have been effected either by private arrangement or in default thereof by a suit for partition. It has, however, been strongly urged that, to preclude litigation and discrepancy of practice, the Bill should, at least in the case of land forming in rivers, contain rules not only for giving the areas, but for defining the plots, to which the several riparian owners are entitled. For this purpose rules have been suggested both by the Board of Revenue of the Lower Provinces and the High Court at Fort William, the former proposing that the alluvion should be divided by right lines perpendicular to the extremities of the frontages, the latter proposing a division by right lines bisecting the angles made by perpendiculars drawn from the extremities of adjacent frontages. But it will be seen on examination that, under either of these plans, alluvial lands formed in the bend of a river would sometimes fall to more than one estate, and further provision would then be required for a rateable division of those lands between the owners of the estates concerned. The subject is one of no small difficulty; but it seems to us that the following rule, which is said by a distinguished Settlement-officer (Mr. Ibbetson) to be practically the rule now in force in the Panjáb, and which is recommended for adoption by the Government of that Province, solves the problem satisfactorily and completely :—

"Where from natural causes an island or other land is formed in or on the bank of a river, either by accumulation of material or by recession of the river, each owner having a frontage on the river is entitled to so much of the land as is included by his frontage, the thread of the stream and lines drawn riverwards from the ends of such frontage to meet the thread of the stream in a direction normal to such thread.

[The term "normal," we may observe, is here used instead of "perpendicular," as the thread of the stream may be a curve. It is obvious that in such case several normals may possibly be drawn from the same point, and that these normals may be either of different or of the same length. The rule, therefore, proceeds as follows :—]

"Where more than one such normal can be drawn from one and the same end of any frontage and each of such normals is of different length, the shortest of such normals shall be deemed to be the including line; and where more than one such normal can be so drawn, and each of such normals is of the same length, the line bisecting the angle between the two extreme positions of the shortest normal shall be deemed to be the including line."

It will be seen that the above rule applies not only to alluvion deposited on the banks of two contiguous holdings, but also to islands. Incidentally, this will have the effect of rendering immaterial the often difficult question whether a new deposit is an island or not.

3. The above is the chief substantial alteration which we have made in the Bill. We now proceed to specify the minor changes which we deem desirable.

4. In the tidal portion of rivers like the Hugli are many islands which are flooded by ordinary tides in the rainy season, but only by extraordinary springs, or not at all, in the dry season. These chars are cultivable in the dry season and should be included in the definition of "island." We have therefore added to that definition the words "throughout the year."

5. To fix with more precision the time at which, for the purposes of the Bill, an alluvial island is first formed, we have provided that it must be capable of being employed for cultivation, pasture or other useful purpose, such, for example, as the supply of reeds or brush-wood. The question of fordability will thus be decided after an island newly formed becomes, as the Privy Council puts it, "valuable and usable."

6. Where any formation takes place on a site of which the Government is proved to be the owner, we have declared that the Government is entitled to such formation.

7. In the case of land formed on the shore of the sea or of a lake and in that of an island formed in the sea or a lake, we have provided that the distribution in proportion to the frontage of the riparian owners shall be effected by such officer as the Local Government may appoint and in accordance with such rules (consistent with the proposed Act) as the Local Government may from time to time prescribe.

8. We think that, to entitle the Crown to alluvial islands, the channel between the island and each bank or shore should not be fordable during the dry season next after the formation.

9. In determining the right to abandoned river-beds, we think we should have regard to the thread of the stream in the preceding dry season, and not to what it was immediately before the abandonment—a matter which cannot be always ascertained. In other respects, the rule for the division of such beds among the riparian owners will be the same as that which we have provided in the case of alluvial lands.

10. We have empowered the Local Government to declare, with reference to any tidal river, where, for the purposes of the proposed Act, the river shall be deemed to end and the sea to begin; and we have provided that no declaration under the Act shall be cancelled or altered, save with the previous sanction of the Governor General in Council.

11. In the Panjáb the ownership of lands subject to the action of rivers is mainly regulated by local usage. We have accordingly retained the section of the Bill as introduced, which provided that such usages should be respected and, in certain cases, presumed to be in force. But such provisions do not appear to be required in Madras, Bombay, Oudh or the North-Western Provinces, and though local usage is saved in the Lower Provinces and Assam by the Bengal Regulation XI of 1825, there seems to be only one instance in which there has been any attempt to establish it. We have, therefore, confined to the Panjáb the section saving usage. But there is ground for the belief that even in that Province some of the local usages referred to,—including the usage known as "the deep-stream rule"—besides being objectionable on economic grounds and adverse to imperial interests are more or less unsuited to the time and distasteful to the communities affected by them. In these circumstances we have deemed it right, on the recommendation of experienced officers, to provide a procedure whereby such usages may, if thought expedient, be discontinued, and fixed boundaries substituted for varying boundaries in riparian estates.

12. As the rights of mortgagees and tenants to alluvial lands are saved by the Transfer of Property Bill, No. III, sections 37 and 65, clause (*e*), we have not thought it necessary to provide for such rights.

13. The Bill in its present form is not to be taken as expressing our final views as to all the difficult and important subjects with which it deals. But we think that the changes which it has undergone are such as to render republication desirable, for the purpose of eliciting criticism from the public and from the judicial and executive officers by whom its provisions will be carried into effect. We also think that its further consideration should be stayed until the new Law Commission has reported thereon. We therefore recommend that the Bill as now amended be republished with this Report in the *Gazette of India*, and sent to the Local Governments for opinion and for publication in the local Gazettes.

14. The Bill and Statement of Objects and Reasons have been published in English in the local Gazettes for Madras, Bengal, the North-Western Provinces and Oudh, the Panjáb, the Central Provinces and British Burma. Publication in English has not been reported from Bombay and Assam. Publication in the vernacular has been reported only from Madras, Bengal, the North-Western Provinces and Oudh, the Panjáb and the Central Provinces.

WHITLEY STOKES.
RIVERS THOMPSON.
T. H. THORNTON.
G. H. P. EVANS.
F. R. COCKERELL.

CALCUTTA;
The 19th March, 1879.

No. II.

A Bill to Define and amend the law relating to alluvion, islands and abandoned river-beds.

WHEREAS it is expedient to define and amend the law relating to alluvion, islands and abandoned river-beds; It is hereby enacted as follows:—

Preamble.

I.—Preliminary.

Short title. **1.** This Act may be called "The Indian Alluvion Act, 1879:"

Local extent. It extends to the whole of British India;

Commencement. And it shall come into force at once.

Repeal of enactments. **2.** The Acts, Regulation and Rules mentioned in the schedule hereto annexed shall be repealed to the extent specified in the third column. References to the Regulation and Rules so repealed, in enactments passed subsequently thereto, shall be read as if made to this Act.

Interpretation-clause. **3.** In this Act—

"island" means land surrounded by water and capable of being employed for cultivation, pasture or other useful purpose. It includes such land arising in a river or lake, submerged in the wet season and visible only in the dry season; but it excludes land arising in tidal rivers, tidal lakes or the sea, submerged by the flow of ordinary tides throughout the year:

"owner" means, in the case of a bank or shore held on raiyatwárí tenure, the Government: in the case of a bank or shore forming part of land situate in the Presidency of Bombay and wholly or partially exempt from the payment of land-revenue, or held under a grant or lease fixing the Government demand in respect thereof in perpetuity, the holder of such land; and in the case of a bank or shore held by a village-community, or by one or more members of it, such community:

"sea" includes bay, inlet, creek and arm of the sea:

"frontage" means the right line connecting the corners of each holding where they strike the sea, lake or river:

"Thread of the stream" means (*a*) the middle line of the main-stream during the dry season, or, where there are two streams of equal depth and width, the line equidistant during such season from the outermost shores of the two streams; (*b*) the middle line of the river between what are the shores on each side when the water is at its average height, neither swollen by flood, nor shrunk by drought; or (*c*) the middle line or the particular channel in which the formation of ancient river-bed referred to occurs or is situate;

and a channel is said to be "fordable" when it does not exceed five feet in depth in the dry season next after the formation referred to and throughout the twenty-four hours.

II.—Alluvial Land and Islands.

Right to land formed on shore of sea or lake. **4.** Where, from natural causes, land forms gradually on the shore of the sea or of a lake, either by accumulation of material or by recession of the sea or lake, the owners of the shore are severally entitled to the land so formed in proportion to the frontage which they respectively had on the sea or lake immediately before the formation; and the partition of the land so formed shall be made by such officer as the Local Government appoints in this behalf, and in accordance with such rules, consistent with this Act, as the Local Government may from time to time prescribe:

Provided that, where the land or any portion thereof forms on a site which is proved to belong to the Government or a private owner, the Government or such owner, as the case may be, is entitled to the land or portion so formed.

Right to islands where channel is not fordable. **5.** Where an island is formed, from natural causes, in a river, the sea or a lake, either by accumulation of material or by recession of the sea or lake, if the island is separated from each bank or shore by a channel not fordable at any point, the Government is entitled to such island:

Provided that, where the island or any portion thereof is formed on a site which is proved to belong to a private owner, such owner is entitled to the island or portion so formed.

Right to other islands in sea or lake. **6.** If, where an island is formed as aforesaid in the sea or a lake, the channels between it and either shore are fordable at any point, the owners of the nearest shore are severally entitled to the island in proportion to the frontage which they respectively have on the sea or lake; and the partition of the island so formed shall be made by such officer as the Local Government appoints in this behalf and in accordance with such rules, consistent with this Act, as the Local Government may from time to time prescribe.

Right to land formed in, or on bank of, river. **7.** Where, from natural causes, an island or other land is formed in, or on the bank of, a river, either by accumulation of material or by recession of the river, and the Government is not entitled thereto under section five, each owner having a frontage on the river is entitled to so much of the land as is included by his frontage, the thread of the stream during the dry season next after the formation and lines drawn riverwards from the ends of such frontage to meet the thread of the stream in a direction normal to such thread:

Where more than one such normal can be drawn from one and the same end of any frontage and each of such normals is of different length, the shortest of such normals shall be deemed to be the including line, and where more than one such normal can be so drawn and each of such normals is of the same length, the line bisecting the angle between the two extreme positions of the shortest normal shall be deemed to be the including line.

Provided that, where the land or any portion thereof is formed on a site which is proved to belong to the Government or a private owner, the Government or such owner, as the case may be, is entitled to the land or portion so formed.

Islands formed by division of rivers. **8.** If a river freshly divides and surrounds, or, by changing its course, cuts off, lands belonging to the owner of the bank, such owner is entitled to the lands so surrounded or cut off.

III.—Abandoned River-beds.

Right to abandoned river-beds. **9.** Where a river suddenly abandons the bed which it occupies during the season of flood, each owner having a frontage on such bed is entitled to so much of the bed as is included by his frontage, the thread of the stream during the dry season next before the abandonment and lines drawn towards the bed from the ends of such frontage to meet such thread in a direction normal thereto.

Where more than one such normal can be drawn from one and the same end of any frontage, the rules contained in the second paragraph of section seven shall apply:

Provided that, when the ancient bed is proved to have belonged immediately before the abandonment to the Government or a private owner, it shall continue to be the property of the Government or of such owner, as the case may be.

IV.—Miscellaneous.

Power to declare "main-stream," "dry season" and "thread of the stream." **10.** The Local Government may, from time to time, declare, with reference to any river, or any part of any river,—

(*a*) what shall be deemed to be, for the purposes of this Act, the "main-stream" and the "dry season"; and

(*b*) which of the said definitions of "thread of the stream" shall be deemed to be in force.

The Local Government may also declare, with reference to any tidal river, where, for the purposes of this Act, the river shall be deemed to end and the sea to begin.

Every declaration made under this section, and all rules made under section four or section six, shall be published in the official Gazette, and shall thereupon have the force of law. And no such declaration shall be cancelled or altered save with the previous sanction of the Governor General in Council.

In the absence of a declaration made under clause (*b*) as to any river or part thereof, and having the force of law, the first of the said definitions of "thread of the stream" shall be deemed to be in force with reference to such river or part.

Savings. **11.** Nothing herein contained shall—

(*a*) affect any law relating to the assessment of land-revenue or to the enhancement or abatement of rent; or

(*b*) confer on any owner of a bank or shore in respect of which he is hereby declared to be entitled to alluvial land, to an island, or to an abandoned river-bed, any title to such land, island or river-bed, better than that which he has to the bank or shore; or

(*c*) enlarge any holding granted by Government, the area of which has been fixed by any sanad or other document executed under the authority of Government; or

(*d*) authorize any acts of private persons done in order to divert currents or cause accretions; or

(*e*) authorize any encroachments by private persons on the banks, beds or channels of navigable rivers; or

(*f*) prevent any officer duly empowered by the Local Government in this behalf from removing obstacles which appear to him to interfere with the safe and customary navigation of such rivers, or which obstruct the passage of boats by tracking on the banks of such rivers or otherwise; or

(*g*) prevent any officer duly empowered by the Local Government in this behalf from regulating the direction and flow of such rivers and the preservation and distribution of their waters.

Local usage in Panjáb. **12.** In the territories administered by the Lieutenant-Governor of the Panjáb, nothing herein contained shall affect any definite and well-established local usage respecting the right to alluvial land, islands or abandoned river-beds; but (except in the cases provided for by the Panjáb Land-Revenue Act, 1871, section 16) the burden of proving such usage shall lie on the person alleging it:

Provided that the Local Government may from time to time (*a*) cause the bed of any river or part of a river, together with the islands and alluvial lands situate therein or adjacent thereto, to be surveyed and mapped, (*b*) appoint an officer to enquire into, determine and record the rights of private persons and the Government, in, to or over the said bed, islands and lands, and (*c*) declare that rights so recorded shall not be affected by any local usage. And the provisions of the Panjáb Land Revenue Act, 1871, chapter II, shall apply, so far as may be, to proceedings under this section, and the determination of the said rights shall be made after consideration of the gain and loss (if any) caused by changes in the course of the river for a period of twelve years next before the date of the survey-notification.

Right of Crown to alluvial lands, &c., not hereinbefore provided for. **13.** All land and islands formed, and all river-beds abandoned, as mentioned respectively in sections four, five and nine, and not vesting under any of the provisions hereinbefore contained, shall vest in the Government.

THE SCHEDULE.

(*a*). ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

Number and year.	Subject.	Extent of repeal.
IV of 1872...	Panjáb Laws Act ...	So much as relates to Bengal Regulation XI of 1825.
XX of 1875...	Central Provinces Laws Act	Ditto.
XVIII of 1876	Oudh Laws Act ...	Ditto.

(*b*). BENGAL REGULATION.

Number and year.	Subject.	Extent of repeal.
XI of 1825...	Alluvion	The whole.

(*c*). BENGAL ACT.

Number and year.	Subject.	Extent of repeal.
IV of 1868...	Amending Act IX of 1847	Sections 2 and 4.

(*d*). RULES.

Date.	Subject.	Extent of repeal.
22nd May 1852.	Alluvion and Diluvion in Sindh.	Paragraphs 1, 2, 3, 4, 5 and 20.

D. FITZPATRICK,
Secy. to the Govt. of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, MARCH 29, 1879.

☞ Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second publication.]

The following Report of the Select Committee on the Bill to amend the Code of Civil Procedure was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 5th March, 1879:—

REPORT.

We, the undersigned Members of the Select Committee to which the Bill to amend the Code of Civil Procedure was referred, have the honour to report that we have considered the Bill and the papers specified in the annexed list.

2. In the interpretation-clause, we have expressly declared that an order finally disposing of an application for execution falls within the definition of 'decree.' This will remove a doubt which we understand has been felt in two of the High Courts. We have also provided that 'signed' shall include stamped. The use of a seal capable of producing an impression of the name and title of the person using it is common among Natives of rank.

3. To section 13 we have added an explanation declaring in effect, that a decision in a suit for arrears of rent under any local law relating to landlord and tenant, shall not be deemed to be *res judicata* in case of suits relating to the title to the property in respect of which the rent is claimed.

4. In section 44, we have provided for joining, with claims by and against a legal representative as such, claims which he was personally entitled to, or liable for, jointly with the deceased person whom he represents, *e. g.*, on a promissory note jointly executed by the deceased and the person who becomes his executor.

5. We have altered the last paragraph of section 52, so as to require the examination of the witness to the verification of the plaint only when the Court entertains doubt as to the fact of the signature.

6. We have extended section 108 to all cases in which decrees have been set-aside *ex parte*, and provided for cases in which the summons was not duly served, as well as for those in which the defendant was prevented from appearing.

7. Section 131 does not as Act VIII of 1859, section 107, did, empower parties to give notice to produce documents generally. We have therefore made section 131 apply to the production of all documents in the possession or power of a party, whether they are or are not referred to in the plaint, written statement or affidavit of the latter.

8. We have struck out from section 230 the words as to granting subsequent applications for execution, when the Court is satisfied that on the preceding application due diligence had been used to procure complete satisfaction. The effect of these words appears to us to discourage leniency and to invite litigation. We have altered the same section, so as to provide (in accordance with the new Limitation Act, schedule II, Art. 179, paragraph 6) for a decree

awarding maintenance, which has been held not to be a decree directing "the payment of money or the delivery of property by instalments."

9. We have amended section 245, so as to provide for non-compliance with the requirements not only of sections 235 and 236, but also of sections 236 and 237.

10. We have altered the first explanation to section 246, so as to bring within its scope decrees made over to a Court for execution.

11. We have amended sections 259 and 260, so as to make it clear that, when an attachment under either section has remained in force for the specified time, if the judgment-debtor has not obeyed the decree and the decree-holder has, within that time, applied for a sale, the property may be sold; but that, if the judgment-debtor has obeyed, and the decree-holder has not made such application, the attachment shall cease.

12. We have provided, in section 268, that, where a moiety of the salary of a public officer or railway-servant is attached, the attachment shall be made by an order requiring the officer whose duty it is to disburse the salary to withhold every month such portion as the Court may direct until the amount of the portions so withheld is equal to the amount of the decree; and we have authorized him to pay into Court every portion so withheld, and declared that such payment shall discharge the Government or the Railway Company. We have struck out the last paragraph of the same section.

13. We have altered section 291, so as to empower the Court directing an execution-sale, as well as the officer conducting one, to adjourn it.

14. Where the holder of a decree in execution of which property is sold purchases the property without the Court's permission, we have provided in section 294, that the Court may, if it thinks fit, set-aside the sale, and that any deficiency of price which may happen on a re-sale shall be paid by the decree-holder.

15. We think that mortgages, leases and sales made under section 305 by the judgment-debtor should not become absolute until they are confirmed by the Court; and we have added a provision to this effect.

16. We think that, besides the decree-holder and the owner of land sold in execution, any other person interested in the sale should have power to apply to set it aside on the ground of material irregularity; and we have amended section 311 of the Code accordingly.

17. Much doubt exists as to where the title to land sold at an execution-sale vests in the purchaser. We think it should vest from the date of the certificate, which is granted as soon as the sale becomes absolute; and we have added to section 316 a sentence to this effect.

18. We have recast sections 322 and 323 of the Code, so as to make them express clearly what we believe to have been the intention of their author, namely, that, where a money-decree in satisfaction of which the Court has ordered a sale of land has been transferred to the Collector, he should ascertain the amount of *all* existing decrees against the judgment-debtor and raise the amount necessary to discharge all his judgment-debts with interest, by dealing with such land, and such land only, in any of the modes prescribed by section 322.

19. We have altered section 331, paragraph two, so as to express the provisions of the corresponding section (229) of Act VIII of 1859, and we have redrawn the latter half of section 332, so as to avoid the reference to the Specific Relief Act, section 9, whilst maintaining the procedure required by that enactment and the effect of an order passed thereunder.

20. We think that the first payment of a judgment-debtor's monthly subsistence-money should be made to the proper officer of the Court, and that the subsequent payments should be made to the officer in charge of the jail; and we have altered section 339 accordingly.

21. When an applicant for the benefit of the insolvency-chapter (XX) furnishes sufficient security that he will appear when called upon; we have empowered the Court to release him. The Recorder of Rangoon exercises under the Burma Courts Act insolvency-jurisdiction in the towns of Rangoon, Maulmain, Akyab and Bassein. We do not think it expedient that any other Courts should exercise such jurisdiction concurrently with him. We have therefore expressly excluded all Courts situate in such towns from the operation of chapter XX.

22. Where a pauper's suit is dismissed for non-appearance of either party, we have empowered the Court to order him to pay the fees which would have been paid by him if he had not been permitted to sue as a pauper.

23. We have amended section 456 of the Code so as to provide for obtaining an order for the appointment of a guardian *ad litem* upon application by the plaintiff; and where there is no other person fit and willing to act as such guardian, we have authorized the Court to appoint any of its officers.

24. We have substituted for section 555 a section providing that in all cases the appellant shall begin.

25. We have made section 560 of the Code provide for the cases when notice is not served on the respondent, as well as for those in which he was prevented from appearing.

26. We have amended section 582 of the Code, so as to preclude the doubt whether the Appellate Court is bound (so far as may be) to perform the duties, as well as authorized to exercise the powers, of the Court of first instance.

27. In section 584, clause (*a*), we have omitted the words "some specified," which have been held by some to limit the 'law' there mentioned to a statutory enactment, and by others to require the appellant to express in formal terms the rule which he alleges to have been contravened.

28. We think that appeals should lie from orders under section 57, clause (*a*), returning a plaint on the ground that the suit has been instituted in the wrong Court; and from orders under section 313 refusing an application to set-aside a sale of immoveable property; and

we have amended section 588 accordingly. We have also amended the last clause of the same section, so as to give a second appeal from all orders under section 244, as to mesne profits or relating to the execution, discharge or satisfaction of a decree.

29. We have extended section 642, so as to exempt from arrest under the Code the parties to any matter pending before a tribunal having, or believing *bonâ fide* that it has, jurisdiction, their pleaders, mukhtárs, revenue-agents and witnesses while going to, attending or returning from, such tribunal. This will include not only civil Courts, but criminal Courts, Courts-martial and arbitrators, and accords with the existing law of England.

30. Sections 223—229 seem to provide sufficiently for the execution of decrees. We have therefore limited section 648 to arrests and attachments made otherwise than in execution, and provided for the release of any person arrested under that section who furnishes security for his appearance before the Court that issued the warrant.

31. We have added to section 649 a paragraph providing for the execution of the decrees of Courts which have ceased to exist, as for example, where a Court of Small Causes is abolished by the Local Government under Act XI of 1865, section 3, or where a Munsif invested with Small Cause jurisdiction, having passed a considerable number of decrees, is transferred to another Munsifí, and his successor at the particular Munsifí at which this jurisdiction was exercised has not been invested with similar jurisdiction.

32. We have inserted after section 650, a section providing for the service of foreign summonses when issued either by Courts established by the Governor General in Council, or by Courts to which the Governor General in Council has applied this provision.

33. We have amended the second schedule, so as to extend to the Small Cause Courts in the Mufassal

sections 223—229, as to execution of decrees;

section 360, enabling the Local Government to invest any Court with insolvency-jurisdiction;

chapter XXXVI, as to Receivers; and

sections 523, 524, as to filing in Court agreements to refer to arbitration, and sections 525, 526, as to filing awards made on reference without the intervention of a Court.

34. We have made several corrections of clerical and typographical errors which need not be specified.

35. Lastly, we have amended the Registration Act, by inserting a clause providing that a copy of every certificate of sale of land granted under section 316 of the Code shall be sent to the local registering officer, who will file it in his Book No. 1. We have also taken the opportunity to amend three trifling errors in this Act, one of which is a misprint. And we have amended the Limitation Act, by inserting in its second schedule articles providing respectively for applications under sections 368 and 371 of the Code.

36. We recommend that the Bill thus amended be passed. The Bill and Statement of Objects and Reasons have been published in English in all the local Gazettes except those for Assam and Ajmer. They have been published in the vernacular in all the Gazettes except those for the Central Provinces, British Burma, Assam and Ajmer. We do not think that the Bill has been so altered as to require republication.

WHITLEY STOKES.
A. J. ARBUTHNOT.
T. H. THORNTON.
G. H. P. EVANS.
G. C. PAUL.
F. R. COCKERELL.

The 5th March, 1879.

LIST OF PAPERS.

From Secretary to Government, North-Western Provinces and Oudh, No. 527A, dated 19th July, 1878, and enclosures.
" Secretary, Calcutta Trades Association, dated 29th July, 1878.
" Secretary to Government, North-Western Provinces and Oudh, No. 577A, dated 1st August, 1878.
" Secretary, Rajsháhái Association, dated 28th July, 1878, and enclosure.
" Acting Under Secretary to Government, Bombay, No. 4426, dated 31st July, 1878, and enclosures.
" Officiating Secretary to Chief Commissioner, Central Provinces, No. 3211-152, dated 8th August, 1878, and enclosure.
" Secretary to Chief Commissioner, Mysore, No. 3477-6J, dated 7th August, 1878.
" Secretary for Birár to Resident, Haidarábád, No. 6B, dated 12th August, 1878.
Notes by the Munsif of Khair.
Extract from Report on Administration of Civil Justice in Lower Provinces of Bengal and in Assam in 1877.
Note by C. D. Field, Esq., District and Sessions Judge, Burdwan, dated 13th August, 1878.
From Judicial Commissioner, Mysore, to Hon'ble Whitley Stokes, dated 19th August, 1878.
Office Memorandum from Home Department, No. 1144, dated 28th August 1878, and enclosures.

From Under Secretary to Government, Bombay, No. 7812, dated 29th December, 1877, and enclosures.
„ Officiating Chief Commissioner, Ajmer and Merwára, No. 589, dated 30th August, 1878, and enclosures.
„ Acting Under Secretary to Government, Bombay, No. 5040, dated 30th August, 1878, and enclosure.
„ Officiating Secretary to Government, Panjáb, No. 685C, dated 9th September, 1878, and enclosures.
„ Ditto, ditto, No. 691C, dated 10th September, 1878, and enclosure.
„ Secretary to Government of Bengal, No. 128R.T, dated 2nd September, 1878, and enclosures.
„ Secretary to Government, North-Western Provinces and Oudh, No. 675A, dated 9th September, 1878, and enclosures.
„ Bábu R. C. Banarjí, Noakhálí, dated 10th September, 1878.
Office Memorandum from Home Department, No. 1260, dated 17th September, 1878, and enclosures.
From Secretary to Chief Commissioner, Assam, No. 1582, dated 13th September, 1878, and enclosures.
Notes by Pandit Bishambar Náth, Pleader, High Court, North-Western Provinces.
From K. Krishna Ráo, dated 23rd September, 1878.
„ District Judge, South Canara, to Hon'ble Whitley Stokes, No. 62, dated 27th September, 1878, and enclosure.
„ Officiating Registrar, High Court, Calcutta, No. 1425, dated 8th June, 1878, and enclosures.
„ Junior Secretary to Chief Commissioner, British Burma, No. 1439-371, dated 28th September, 1878, and enclosures.
„ Vinayekráo Harichand, Attorney, High Court, Bombay, to Hon'ble Whitley Stokes, dated 5th October, 1878.
„ Srí Báládisha Dámodára Ráo, Mangalore, to Hon'ble Whitley Stokes, dated 5th October, 1878.
„ Hon'ble L. C. Innes, Judge, High Court, Madras, to Hon'ble Whitley Stokes, dated 9th October, 1878.
„ Pandit Suraj Bháu, Lahore, dated 1st October, 1878.
„ Officiating Secretary to Government, Panjáb, No. 964C, dated 17th October, 1878, and enclosures.
„ Officiating Secretary to Government, Panjáb, No. 1053C, dated 30th October, 1878, and enclosure.
„ S. Aiyyasami Aiyyar, Pleader, High Court, Madras, dated 21st October, 1878.
„ J. G. W. Sykes, Esq., Advocate, High Court, North-Western Provinces, dated 25th October, 1878.
„ Hon'ble M. Melvill, Judge, High Court, Bombay, dated 5th November, 1878.
„ Acting Chief Secretary to Government, Madras, No. 2229, dated 31st October, 1878, and enclosures.
„ C. Rámachandra Ráo Sahib, Vakíl, High Court, Madras, dated 5th November, 1878.
Memorandum by Pandit Rádhá Kishn, Lucknow, dated 16th December, 1878.
„ in Legislative Department.
From Acting Chief Secretary to Government, Madras, No. 2491, dated 10th December, 1878, and enclosure.
Note by Hon'ble Mr. Justice Turner, dated 1st February, 1879.
From Honorary Secretary, British Indian Association, dated 20th February, 1879, and enclosure.

D. FITZPATRICK,
Secy. to the Govt. of India.

[Second publication.]

The following supplementary Report of a Select Committee, together with the Bill as settled by them, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 19th March, 1879:—

WE, the undersigned Members of the Select Committee to which the Bill to amend the Code of Civil Procedure was referred, have the honour to submit the following supplementary Report.

2. Since our Report of the 5th March was presented, our colleague Mr. Stokes has received from Mr. Justice Ainslie a note on the Bill which has led us to make certain further changes therein.

3. It seems to us that the definition of "decree," even when made to include orders finally disposing of applications for execution, is not wide enough. It does not, for instance, comprise an order made on settlement of issues overruling pleas of law (such as that the suit is barred by the Limitation Act), and directing a trial of complicated questions of fact or the investigation of complicated accounts; for this does not "decide the suit," as the defendant may have a defence on the facts. Again, it does not include a decretal order for an account, for this does not "decide the suit;" inasmuch as, on taking the account, it may turn out that nothing is due, in which case the plaintiff's suit would in the end be dismissed. Yet a defendant ought not, if he has a good defence, to be put to the possibly enormous expense and inconvenience of an account for (say) twenty years. He should clearly have a right of appeal. The fact is that there may be more than one decree in a suit and that the various points arising may be decided at different hearings and the results embodied in different "formal orders." We have therefore widened the first sentence of the definition of "decree" as follows: "decree means the formal expression of a final adjudication upon any right claimed, or defence set up, in a Court of justice."

4. We have not overlooked the fact that some of the orders under section 244 of the Code, from which we propose to give two appeals by section 588 as now amended, may be held to be decrees within the meaning of this first sentence of the definition; but we deem it safer, in order to prevent all mistake, to give the appeals from these orders in express terms by section 588, and formally to exclude them from the definition of decree. We have also defined "order" as meaning the formal expression of any decision of a Court of justice which is not a decree, and we have defined "judgment" as the statement given by the Judge of the grounds of a decree or order.

5. There is much evidence to shew that the examination of a witness as to the fact of signature of the verification of the plaint by the person whose name it purports to bear is a useless form. We have therefore, instead of amending section 52 of the Code as proposed by the Bill as last settled, repealed the part of that section requiring such examination.

6. We think that the Court should fix a period within which the sum required to defray the costs of service of a process must be paid into Court by the party concerned. In the absence of such a provision (which was contained in Act XXIII of 1861, section 2), there is no rule by which the Court is to be guided in determining when a party is in default. We have therefore amended section 93 of the Code so as to require a period to be fixed for the payment of the Court-fee, and we have made a similar amendment in section 95, as to payment of postage.

7. It is strongly urged by Mr. Justice Ainslie that our proposed change in section 168 of the word "may" to "shall" would assist litigants to obstruct justice by obtaining unnecessary adjournments. We have accordingly omitted the section of the Bill by which it was proposed to make that change.

8. We have provided in section 289 for fixing up in the Court-house a copy of the proclamation of sale, and we have made a corresponding amendment in section 290.

9. The question is constantly arising whether a fresh proclamation is required when a sale is adjourned. We have provided in section 291 that, in case of such adjournment for a longer period than seven days, a fresh proclamation shall be made, unless the judgment-debtor consents to waive it.

10. In section 220 we have provided for the execution of orders as to costs.

11. In our report of the 5th of March we proposed to alter section 311 of the Code so as admit of other persons in an execution-sale besides the decree-holder and the owner applying to set-aside the sale. We have, at the suggestion of the High Court at Fort William, struck out this amendment of section 311 of the Code. The High Court urges that it would be of little practical benefit and that it might sometimes be misused to delay the completion of proceedings in execution by persons put forward by the judgment-debtor to dispute the regularity of the sale.

12. We have repealed the last nineteen words of section 13 of Act XI of 1865. They are, in the opinion of the same High Court, unnecessary and occasionally mischievous.

13. The importance of the change now made in the definitions of "decree" and "judgment," make it desirable in our opinion that the Bill should be republished, so as to afford an opportunity for the correction of any oversight into which we may have fallen; but the substance of the amendment has now been so fully discussed that we think that, unless some serious objection is brought to light, there can be no objection to the Bill being passed as it stands; and, looking to the urgency of some of its provisions, we think its passing should not be delayed more than two months.

WHITLEY STOKES.
A. J. ARBUTHNOT.
T. H. THORNTON.
G. H. P. EVANS.
F. R. COCKERELL.

No. III.

A Bill to amend the Code of Civil Procedure, the Registration Act, 1877, and the Limitation Act, 1877.

Preamble.

WHEREAS it is expedient to amend the Code of Civil Procedure; It is hereby enacted as follows:—

Repeal of certain portions of Act X of 1877.

1. The following portions of the said Code shall be repealed (namely):—

In section 4, the words and figures "The Panjáb Courts Act, 1865," and "The Panjáb Appeals Act, 1873:"

In section 5, the third sentence:

In section 51, the words "with the permission of the Court:"

In section 52, from and including the words "and when he makes it out of Court" to the end:

In section 61, the words "bill of exchange or other:"

In section 64, the words "or as soon thereafter as may be practicable:"

In section 80, the words "or to receive the copy of the summons:"

In section 131, the words "in whose plaint, written statement or affidavits reference is made to any document:"

In section 199, the words from and including "and in" to the end:

In section 224, the word "therewith:"

In section 230, paragraphs three and four, the words "unless the Court is satisfied that on the last preceding application due diligence was used to procure complete satisfaction of the decree; and the order of the Court granting any such subsequent application shall be conclusive evidence that due diligence was used to procure such satisfaction. And no such subsequent application shall be granted:"

In section 246, clause (*e*) and the letters (*f*) and (*g*):

In section 259, the words "and keeping the same under attachment until the further order of the Court:"

In section 339, paragraph three, the words "to the proper officer of the Court:"

In section 341, the word "third:"

In section 353, the words "within three months from its publication," and "within three months from the publication of the schedule:"

In sections 407 and 408, the words "upon such examination:"

In section 584, clause (*a*), the words "some specified:"

In section 588, clause (*j*), the words "of the same nature with appealable orders made in the course of a suit:" in the same section, clause (*r*), the figures "481:"

In section 638, the figures "261:"

In the second schedule, the words and figures "section 648 (so far as relates to arrest)."

Amendment of section 2.

2. In section 2, for the definitions of "judgment" and "decree," the following shall be substituted (namely):

"decree" means the formal expression of a final adjudication upon any right claimed, or defence set up, in a Court of justice. An order rejecting a plaint under section 53, clause (*d*), or under section 54, clause (*c*), is within this definition. An order on appeal remanding a suit for retrial is not within this definition, nor is any order specified in section 588:

"order" means the formal expression of any decision of a Court of justice, which is not a decree:

"judgment" means the statement given by the Judge of the grounds of a decree or order."

In the same section, to the definition of "signed," the following words shall be added (namely), "it also includes stamped with the name of the person referred to."

Amendment of section 13.

3. In section 13, Explanation I, for the word "confessed," the word "admitted" shall be substituted; and to the same section, the following shall be added (namely):—"*Explanation VII.*—A Court trying a suit under any law for the time being in force regulating the procedure in suits between land-holders and their tenants or agents, shall not be deemed, as regards the title to the immoveable property in respect of which the suit is brought, a Court of competent jurisdiction within the meaning of the first paragraph of this section."

Amendment of section 43.

4. In section 43, paragraph one, for the words "arising out of," the words "which the plaintiff is entitled to make in respect of" shall be substituted: in the same section, paragraph two, for the word "for" (in each of the places where it occurs) the words "in respect of" shall be substituted; and in the same section, paragraph three, for the word "claim," the words "cause of action" shall be substituted.

Amendment of section 44.

5. To section 44, the following words shall be added (namely), "or are such as he was entitled to, or liable for, jointly with the deceased person whom he represents."

Amendment of section 45.

6. In section 45, for paragraph one, the following shall be substituted (namely), "Subject to the rules contained in section 44, the plaintiff may unite in the same suit several causes of action against the same defendant or the same defendants jointly, and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit:"

in the same section, paragraph two, after the word "defendant," the words "or at any subsequent stage of the suit, if the parties agree" shall be inserted.

Amendment of section 50.

7. In section 50, for the word "abode" in each of the places where it occurs, the word "residence" shall be substituted.

Amendment of section 51.

8. To section 51 the following proviso shall be added (namely):—

"Provided that, if the plaintiff, by reason of absence or for other good cause, is unable to sign the plaint, it may be signed on his behalf by his duly authorized agent."

Amendment of sundry sections.

9. In sections 51, 53, 115, 346, 393 and 403, for the word "subscribed" (wherever it occurs), the word "signed" shall be substituted: in sections 115 and 346, for the word "subscribing," the word "signing" shall be substituted; and in section 403, for the word "subscription," the word "signing" shall be substituted.

Amendment of section 58.

10. In section 58, for the word "filed," the word "produced" shall be substituted.

Amendment of sections 93 and 95.

11. In section 93, after the word "levied," and in section 95, after the word "paid," the words "within a time to be fixed by the Court" shall be inserted.

Amendment of section 108.

12. In section 108, paragraph one, the words and figures "under section 100" shall be omitted; and in the same section, paragraph two, for the words "it be proved to the satisfaction of the Court that the defendant," the words "he satisfies the Court that the summons was not duly served, or that he" shall be substituted.

Amendment of section 131.

13. In section 131, paragraph one, for the words "such document," the words "any specified document" shall be substituted.

Amendment of section 136.

14. In section 136, after the word "discovery" (in each of the places in which it occurs), the word "production" shall be inserted.

Amendment of section 139.

15. In section 139, for the words "the production of which has been called for under section 138 and which has not been produced," the words "which should have been, but has not been, produced in accordance with the requirements of section 138" shall be substituted.

Amendment of section 207.

16. In section 207, for the word "suit," the word "decree" shall be substituted; and for the words "or numbers" to the end, the following words shall be substituted (namely), "or by numbers in a record of settlement or survey, the decree shall specify such boundaries or numbers."

Amendment of sections 211 and 212.

17. In section 211, for the words "land or other," the words "the recovery of possession of immoveable" shall be substituted; and in section 212, before the word "immoveable," the words "the recovery of possession of" shall be inserted.

Amendment of section 220.

18. To section 220 the following words shall be added (namely): "Every order relating to costs made under this Code and not forming part of a decree may be executed as if it were a decree for money."

Amendment of section 229.

19. In section 229, for the words "Native Prince or State in India," the words "Foreign Prince or State" shall be substituted.

Amendment of section 230.

20. In section 230, clause (*b*), for the words "the payment of money or the delivery of property by instalments—the date of the default in paying or delivering the instalment," the following words shall be substituted (namely), "any payment of money, or the delivery of any property, to be made at a specified date—the date of the default in making the payment or delivering the property."

Amendment of section 235.

21. In section 235, for the words "in manner hereinbefore provided for the verification of plaints," the following words shall be substituted (namely), "by the applicant or, with the permission of the Court, by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case."

Amendment of sections 236 and 237.

22. In sections 236 and 237, for the words "If the application be," the words "Whenever an application is made" shall be substituted.

Amendment of section 244.

23. In section 244, clause (*c*), after the word "execution," the words "discharge or satisfaction" shall be inserted.

Amendment of section 245.

24. In section 245, for the first sentence, the following shall be substituted (namely), "The Court on receiving an application for the execution of a decree shall ascertain whether such of the requirements of sections 235, 236, 237 and 238 as may be applicable to the case have been complied with, and if they have not been complied with, the Court shall reject the application, or return it for such compliance, or allow it to be amended then and there."

Amendment of section 246.

25. In section 246, for Explanation I, the following shall be substituted (namely):—

"*Explanation I.*—The decrees contemplated by this section are decrees capable of execution at the same time and by the same Court."

In Explanation II, after the words "assignor as," the words "in respect of judgment-debts due" shall be inserted.

Amendment of section 259.

26. For the second paragraph of section 259, the following shall be substituted:—

"When any attachment under this section has remained in force for six months, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold, and out of the proceeds the Court may award to the decree-holder, in cases where any amount has been fixed under section 208, such amount, and, in other cases, such compensation as it thinks fit, and shall pay the balance, if any, to the judgment-debtor on his application.

"If the judgment-debtor has obeyed the decree, and paid all costs of executing the same which he is bound to pay, or if, at the end of six months from the date of the attachment, no application to have the property sold has been made and granted, the attachment shall cease to exist."

Amendment of section 260.

27. In section 260 in the first paragraph, after the words "the performance of," the words "or abstention from" shall be inserted; and for the second paragraph the following paragraphs shall be substituted (namely):—

"When any attachment under this section has remained in force for one year, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, the property may be sold, and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and may pay the balance, if any, to the judgment-debtor on his application.

"If the judgment-debtor has obeyed the decree, and paid all costs of executing the same which he is bound to pay, or if, at the end of one year from

the date of the attachment, no application to have the property sold has been made and granted, the attachment shall cease to exist."

28. In section 264, after the words "the same," the words "and not bound by the decree to relinquish such occupancy" shall be inserted.

Amendment of section 264.

29. To section 265 the following words shall be added (namely), "and according to the rules for the time being in force for the partition, or the separate possession of shares, of such estates."

Amendment of section 265.

30. For the last paragraph of section 268, the following shall be substituted (namely):—

Amendment of section 268.

"In the case of the salary of a public officer or the servant of a Railway Company, the attachment shall be made by a written order requiring the officer whose duty it is to disburse the salary to withhold every month such portion as the Court may direct, until the amount of the portions so withheld is equal to the amount remaining due under the decree.

"A copy of every such order shall be fixed up in a conspicuous part of the court-house and shall be served on the officer so required.

"Every such officer may from time to time pay into Court any portion so withheld, and such payment shall discharge the Government or the Railway Company, as the case may be, as effectually as payment to the judgment-debtor."

31. To section 289, paragraph one, the following words shall be added, namely: "and a copy thereof shall be fixed up in the Court-house;" and in section 290, for the words "notification has been affixed" the words "copy of the proclamation has been fixed up" shall be substituted.

Amendment of section 289.

32. In section 291, for the first eight words, the following shall be substituted (namely): "The Court may in its discretion adjourn any sale under this chapter, and the officer conducting any such sale;" and in the same section, after the proviso, the following sentence shall be inserted namely: "whenever a sale is adjourned under this section for a longer period than seven days, a fresh proclamation under section 289 shall be made, unless the judgment-debtor consents to waive it.

Amendment of section 291.

33. To section 294 the following paragraph shall be added (namely):—

Amendment of section 294.

"When a decree-holder purchases, by himself or through another person, without such permission, the Court may, if it thinks fit, on the application of the judgment-debtor or any other person interested in the sale, by order set-aside the sale; and the costs of such application and order, and any deficiency of price which may happen on the re-sale, and all expenses attending it, shall be paid by the decree-holder."

34. In section 295, first proviso, after the words "shall not," the words "as such" shall be inserted.

Amendment of section 295.

35. In section 305, paragraph two, after the word "therein," the words and figures "and notwithstanding anything contained in section 276," shall be inserted; and for the last paragraph, the following shall be substituted (namely):—

Amendment of section 305.

"Provided also that no mortgage, lease or sale under this section shall become absolute until it has been confirmed by the Court."

36. In section 314, after the word "property," the words "in execution of a decree" shall be inserted.

Amendment of section 314.

37. To section 316 the following sentence shall be added (namely): "And the title to the property sold shall be deemed to vest in him from the date of such certificate."

Amendment of section 316.

38. For sections 322 and 323 the following sections shall be substituted (namely):—

Substitution of sections for sections 322 and 323.

"322. Whenever the execution of a decree, not being a decree ordering the sale of immoveable property in pursuance of a contract specifically affecting the same, but being a decree for money in satisfaction of which the Court has ordered the sale of immoveable property, has been so transferred, the Collector may either proceed as the Court would proceed under section 305, or, if he has reason to believe that all the judgment-debts of the judgment-debtor can be discharged without a sale of the whole of such property, he may publish a notice in the language of the district, calling upon all persons holding decrees against the judgment-debtor to notify in writing to the Collector, within sixty days from the date of such publication, the existence of such decrees, the respective dates thereof and the sums remaining due thereon, respectively.

Procedure of Collector when execution of decree so transferred.

"Such notice shall be published by being posted in the court-house of the Court which made the order under section 304, and at such other places (if any) as the Collector thinks fit.

"323. The Collector shall ascertain the sums remaining due on such decrees respectively, and may then (notwithstanding any order under section 304, but subject to such rules as may from time to time be made in this behalf by the Chief Controlling Revenue-Authority) raise the amount necessary to discharge each of such sums, with interest thereon according to the decree under which it is due, or, if the decree makes no provision as to interest, then with interest (if any) at such rate as he thinks fit—

Powers of Collector in such cases.

"(*a*) by letting in perpetuity, or for a term, on payment of a premium equivalent to such amount, the whole or any part of the property of which the sale has been ordered: or

"(*b*) by mortgaging the whole or any part of such property: or

"(*c*) by selling part of such property: or

"(*d*) by letting on farm, or managing by himself or another, the whole or any part of such property for any term not exceeding twenty years from the date of the order of sale: or

"(*e*) partly by one of the modes mentioned in clauses (*b*), (*c*) and (*d*), and partly by another or others of such modes.

"For the purpose of managing under this section the whole or any part of such property, the Collector may exercise all the powers of its owner.

"So long as any letting or management under clause (*d*) or clause (*e*) continues, the judgment-debtor and his representative in interest shall be incompetent to mortgage, charge, lease or alienate the property let or managed or any part thereof."

39. In section 331, paragraph two, for the words and figures "the Specific Relief Act, 1877, section 9," the word and figure "Chapter V" shall be substituted; and to the same section the following paragraph shall be added (namely), "Every such order shall have the same force as a decree and shall be subject to the same conditions as to appeal or otherwise."

Amendment of section 331.

40. In section 332, first paragraph, for the word "defendant," the word "judgment-debtor" shall be substituted; and for the other paragraphs, the following shall be substituted (namely), "If after examining the applicant it appears to the Court that there is probable cause for making the application, the Court shall proceed to investigate the matter in dispute, and if it finds that the ground mentioned in the first paragraph of this section exists, it shall make an order that the applicant recover possession of the property, and if it does not find as aforesaid, it shall dismiss the application.

Amendment of section 332.

"In hearing applications under this section, the Court shall confine itself to the grounds of dispute above specified.

"The party against whom an order is passed under this section may institute a suit to establish the right which he claims to the present possession of the property; but subject to the result of such suit, if any, the order shall be final."

41. For section 333 the following shall be substituted (namely), "Nothing in section 331 or 332 applies to a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree is made."

Amendment of section 333.

42. In section 335, for the first paragraph, the following shall be substituted (namely):—

Amendment of section 335.

"If the purchaser of any such property is resisted or obstructed by any person, other than the judgment-debtor, claiming in good faith a right to the present possession thereof, or, if in delivering possession thereof any such person is dispossessed, the Court, on the complaint of the purchaser or the person so dispossessed, shall enquire into the matter of the resistance, obstruction or dispossession, as the case may be, and pass such order thereon as it thinks fit;"

and in the second paragraph of the same section, for the word "conclusive," the word "final" shall be substituted.

43. In section 339, paragraph four, after the word "made," the words "to the proper officer of the Court" shall be inserted; and to the same paragraph, the following words shall be added (namely), "and the subsequent payments (if any) shall be made to the officer in charge of the jail."

Amendment of section 339.

44. To section 349 the following words shall be added (namely), "or release him on his furnishing sufficient security that he will appear when called upon."

Amendment of section 349.

45. In section 357, line one, for the figures "355," the figures and word "351 or 355" shall be substituted.

Amendment of section 357.

46. To section 360 the following paragraph shall be added (namely): "Nothing in this chapter shall apply to any Court having jurisdiction in the towns of Rangoon, Maulmain, Akyab and Bassein."

Amendment of section 360.

47. In sections 361, 362, 363, 365 and 368, for the words "cause of action" wherever they occur, the words "right to sue" shall be substituted.

Amendment of sections 361, 362, 363, 365 and 368.

48. In section 364, paragraph one, and section 366, paragraph one, after the word "If," the words "within the time limited by law" shall be inserted; and in the latter section, paragraph one, for the words "Court may," the words "Court shall, on the application of the defendant," shall be substituted.

Amendment of sections 364 and 366.

49. In section 373, paragraph one, for the words "for the part," the words "in respect of the part" shall be substituted; and to paragraph two, the words "or in respect of the same part" shall be added.

Amendment of section 373.

50. In section 377, for the first seven words, the following shall be substituted (namely), "Notice in writing of the deposit shall be given through the Court."

Amendment of section 377.

51. In sections 384, 477 and 483, after the word "affidavit," the words "or otherwise" shall be inserted.

Amendment of sections 384, 477 and 483.

52. In section 406, for the word "shall," the words "may if he thinks fit" shall be substituted.

Amendment of section 406.

53. In section 412, after the word "dispaupered," the words and figures "or if the suit is dismissed under section 97 or 98" shall be inserted.

Amendment of section 412.

54. In section 413, for the word "Refusal," the words and figures "An order of refusal made under section 409" shall be substituted.

Amendment of section 413.

55. In section 424, after the words "against a public officer," the words "in respect of an act purporting to be done by him in his official capacity" shall be inserted; and in sections 428 and 429, after the words "public officer," the words "in respect of such act as aforesaid" shall be inserted.

Amendment of sections 424, 428 and 429.

56. In section 437, for the first sentence, the following shall be substituted (namely), "In all suits concerning property vested in a trustee, executor or administrator, when the contention is between the persons beneficially interested in such property and a third person, the trustee, executor or administrator shall represent the persons so interested, and it shall not ordinarily be necessary to make them parties to the suit."

Amendment of section 437.

57. In section 456, for the words "in the name of the minor," the words "in the name and on behalf of the minor or by the plaintiff" shall be substituted; and to the same section the following paragraph shall be added (namely): "Where there is no other person fit and willing to act as guardian for the suit, the Court may appoint any of its officers to be such guardian, provided that he has no interest adverse to that of the minor."

Amendment of section 456.

58. In section 481, after the word "decree," the following words shall be inserted (namely), "or if, pending the suit, he becomes able to give security for his appearance as aforesaid, until he gives such security."

Amendment of section 481.

59. In section 483, after the words "portion of his property," the words "within the jurisdiction" shall be inserted.

Amendment of section 483.

60. In section 484, after the word "suit," the words "or that he has with such intent quitted the jurisdiction of the Court, leaving therein property belonging to him" shall be inserted.

Amendment of section 484.

61. In section 497, clause one, for the words "the injunction," the words "an injunction which it has granted" shall be substituted.

Amendment of section 497.

62. In section 523, paragraph three, for the words "any of," the word "all" shall be substituted.

Amendment of section 523.

63. In section 544, for the words "decree and," the words "decree, and thereupon" shall be substituted.

Amendment of section 544.

64. For section 555 the following shall be substituted (namely):—

Amendment of section 555.

"**555.** On the day so fixed, or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal. The Court shall then, if it does not dismiss the appeal at once, hear the respondent against the appeal, and in such case the appellant shall be entitled to reply."

Right to begin.

65. In section 560, for the words "it be proved that the respondent," the words "he satisfies the Court that the notice was not duly served, or that he" shall be substituted.

Amendment of section 560.

66. In section 561, after the word "notice," the words "in writing" shall be inserted.

Amendment of section 561.

67. In section 566, paragraph two, for the word "issue," the word "issues" shall be substituted.

Amendment of section 566.

68. For the first paragraph of section 582, the following shall be substituted (namely): "The Appellate Court shall have, in appeals under this chapter, the same powers, and shall perform as nearly as may be the same duties, as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted under chapter V."

Amendment of section 582.

69. In section 584, clause (*c*), after the word "may," the word "possibly" shall be inserted.

Amendment of section 584.

70. In section 588, for clause (*e*), the following shall be substituted (namely): "(*e*) orders returning plaints under section 53, clause (*d*), or section 54, clause (*b*), or section 57:"

Amendment of section 588.

after clause (*f*), the following clause shall be inserted (namely):—

"(*ff*) orders rejecting applications under section 108 for an order to set-aside a decree *ex parte*:"

to clause (*h*) the following words shall be added (namely), "and orders under section 170 for the sale of attached property:"

in clause (*j*) for the word and figures "section 244," the following words and figures shall be substituted (namely), "sections 230, 231, 232, 234 and 244,:"

to clause (*m*) the following words shall be added (namely), "and orders under section 313 refusing an application to set-aside a sale of immoveable property:"

And to section 588 the following words shall be added (namely):

"except in the case of appeals against orders under sections 230, 231, 232, 234 and 244, in which case a second appeal shall lie, and shall, in the case of appeals now pending, be deemed to have lain, on any of the grounds mentioned in section 584 and on no other grounds.

"The provisions contained in chapter XLI shall apply, so far as may be, to all second appeals under this section, and to the execution of orders passed therein. But save as aforesaid, no order mentioned in this section shall be deemed to be a decree within the meaning of that chapter."

71. In section 638, for the figures and word "16 and 17," the figures and word "16, 17 and 19" shall be substituted: and in the last paragraph after the word "any," the words "Judge of a" shall be inserted; and the word "its" shall be omitted.

Amendment of section 638.

72. In section 642, for the second paragraph, the following shall be substituted (namely):—

Amendment of section 642.

"And except as provided in sections 256 and 643, where any matter is pending before a tribunal having jurisdiction therein, or believing in good faith that it has such jurisdiction, the parties thereto, their pleaders, mukhtárs, revenue-agents and recognized agents, and their witnesses acting in obedience to a summons, shall

be exempt from arrest under this Code while going to or attending such tribunal for the purpose of such matter, and while returning from such tribunal."

73. In section 648, for the first forty-two words, the following shall be substituted (namely), "Where any Court desires that any person shall be arrested, or any property shall be attached, under any provision of this Code not relating to the execution of decrees, and such person resides or property is situate outside the local limits of its jurisdiction, the Court may, in its discretion, issue a warrant of arrest or make an order of attachment, and:"

Amendment of section 648.

and to the same section, the following words shall be added (namely), "unless the person arrested furnish sufficient security for his appearance before that Court, or (where the case is one under chapter XXXIV) for satisfying any decree that may be passed against him by such Court, in either of which cases the Court making the arrest shall release him."

74. To section 649 the following paragraph shall be added (namely):—

Amendment of section 649.

"In the same chapter, the expression 'Court which passed a decree' or words to that effect, shall, unless there be something repugnant in the context, be deemed to include, where the decree to be executed is passed in appeal, the Court which passed the decree against which the appeal was preferred, and, where the Court which passed the decree to be executed has ceased to exist, the Court which, if the suit wherein the decree was passed were instituted at the time of making application for execution of the decree, would have jurisdiction to try such suit."

75. After section 650 the following shall be inserted (namely):—

Service of foreign summonses.

"**650A.** Summonses issued by any Court situate beyond the limits of British India may be sent to the Courts in British India and served as if they had been issued by such Courts; provided that the Courts issuing such summonses have been established by the authority of the Governor General in Council, or that the Governor General in Council has, by notification in the *Gazette of India*, declared the provisions of this section to apply to such Courts."

76. In section 652, after the words "connected with," the words "its own procedure or" shall be inserted.

Amendment of section 652.

77. In the first schedule, column third, opposite "XI of 1865," for the figures and word "11, paragraph 2," the figures and words "11, the last nineteen words of section 13, sections 19," shall be substituted; and opposite "V of 1866," after the word "inclusive," the words "and the schedule" shall be inserted.

Amendment of schedule I.

78. In the second schedule—

Amendment of schedule II.

for the figures "230," the figures "223" shall be substituted:

before the words and figures "Chapter XXI," the words and figures "Chapter XX, section 360—Power to invest certain Courts with insolvency-jurisdiction" shall be inserted:

after the words and figures "Chapter XXXIV—Of arrest and attachment before judgment," the words and figures "except as regards immoveable property, Chapter XXXVI—Appointment of receivers" shall be inserted:

for the figures "522," the figures "526" shall be substituted.

79. In the fourth schedule, in form No. 172, for the word "seven" in each of the places where it occurs, the word "ten" shall be substituted.

Amendment of schedule IV.

80. In the preceding sections of this Act, the words "section" and "schedule" respectively mean section of, and schedule annexed to, the said Code.

Interpretation-clause.

And whereas it is also expedient to amend the Indian Registration Act, 1877, in manner hereinafter appearing; It is hereby further enacted as follows:—

81. In section 35 of the same Act, after the words "person appears," the words "to the registering officer" shall be inserted; and after the words "refuse to register the document," the words "as to the person so denying, appearing or dead" shall be inserted.

Amendment of Act III of 1877, section 35.

82. In section 51 of the same Act, for the figures "87," the figures "89" shall be substituted.

Amendment of section 51.

83. In section 83 of the same Act, for the words "Subordinate Magistrate of the first," the words "Magistrate of the second" shall be substituted.

Amendment of section 83.

84. To section 89 of the same Act, the following clause shall be added (namely):—

Addition to section 89.

"Every Court granting a certificate under section 316 of the Code of Civil Procedure shall send a copy of such certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the immoveable property comprised in such certificate is situate, and such officer shall file the copy in his Book No. 1."

And whereas it is also expedient to amend the Indian Limitation Act, 1877, in manner hereinafter appearing; It is hereby further enacted as follows:—

85. In the second schedule to the said Indian Limitation Act, 1877, after clause 171, the following clauses shall be inserted (namely):—

Amendment of Act XV of 1877, schedule II.

"171A.—Under section 368 of the same Code, to have the representative of a deceased defendant made a defendant.	Sixty days ...	The date of the defendant's death.
"171B.—Under section 371 of the same Code, for an order to set aside an order for abatement or dismissal.	Ditto ...	The date of the order for abatement or dismissal."

D. FITZPATRICK,
Secy. to the Govt. of India.

[Second publication.]

The following preliminary Report of a Select Committee, together with the Bill as settled by them, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 19th March, 1879:—

WE, the undersigned Members of the Select Committee to which the Bill to define and amend the law relating to alluvion, islands and abandoned river-beds was referred, have the honour to report that we have considered the Bill and the papers noted in the margin.

From the Hon'ble H. S. Cunningham, dated 7th October, 1878 (Paper No. 1).
„ B. H. Baden-Powell, Esq., to Hon'ble T. H. Thornton, dated 26th October, 1878 (Paper No. 2).
„ Secretary to Government, North-Western Provinces and Oudh, No. 3193 A, dated 23rd October, 1878, and enclosures (Papers No. 3).
„ Officiating Collector, Dháká, No. 835, dated 12th October, 1878 (Paper No. 4).
„ Chief Commissioner, Ajmér and Merwára, No. 795, dated 20th November, 1878 (Paper No. 5).
„ Secretary to Chief Commissioner, Mysore, No. 6653J-12, dated 18th November, 1878 (Paper No. 6).
„ Secretary to Government, North-Western Provinces and Oudh, No. 3475A, dated 29th November, 1878, and enclosures (Papers No. 7).
„ Secretary for Birár to Resident, Haidarábád, No. 11 B, dated 13th December, 1878 (Paper No. 8).
„ Assistant Secretary, British Indian Association, dated 19th December, 1878, and enclosure (Papers No. 9).
„ Assistant Secretary to Chief Commissioner, British Burma, No. 2582-245, dated 21st December, 1878, and enclosure (Papers No. 10).
„ J. G. W. Sykes, Esq., Advocate, High Court, North-Western Provinces, dated 22nd October, 1878 (Paper No. 11).
„ Secretary to Government, Bengal, No. 55, dated 7th January, 1879, and enclosures (Papers No. 12).
„ Secretary to Government, Panjáb, No. 320, dated 20th January, 1879, and enclosures (Papers No. 13).
„ Assistant Secretary to Chief Commissioner, Central Provinces, No. 399-15, dated 23rd January, 1879, and enclosure (Papers No. 14).
„ Secretary to Chief Commissioner, Assam, No. 104T, dated 27th January, 1879, and enclosure (Papers No. 15).
„ Rájá Harbalab Náráyana Singh, dated 10th January, 1879 (Papers No. 16).
„ Secretary to Government, North-Western Provinces and Oudh, No. 267, dated 4th February, 1879, and enclosures (Papers No. 17).
„ Secretary to Government, Panjáb, No. 469, dated 3rd February, 1879, and enclosures (Papers No. 18).
„ ditto ditto, No. 633, dated 18th February, 1879, and enclosure (Papers No. 19).
Despatch from Secretary of State for India, No. 3, dated 6th February, 1879, and enclosure (Papers No. 20).
From Registrar, High Court, Calcutta, No. 400, dated 10th March, 1879 (Paper No. 21).

2. The Bill as introduced proposed that the division of the whole area of an island formed opposite several holdings should be made rateably among the owners in proportion to their respective frontages, and was framed so as merely to indicate those holders. If, for example, there were three such owners, A, B and C, whose respective frontages were 100 yards, 200 yards and 300 yards, it was intended that A should take one-sixth of the whole area of the island, B one-third and C one-half, and this division was to have been effected either by private arrangement or in default thereof by a suit for partition. It has, however, been strongly urged that, to preclude litigation and discrepancy of practice, the Bill should, at least in the case of land forming in rivers, contain rules not only for giving the areas, but for defining the plots, to which the several riparian owners are entitled. For this purpose rules have been suggested both by the Board of Revenue of the Lower Provinces and the High Court at Fort William, the former proposing that the alluvion should be divided by right lines perpendicular to the extremities of the frontages, the latter proposing a division by right lines bisecting the angles made by perpendiculars drawn from the extremities of adjacent frontages. But it will be seen on examination that, under either of these plans, alluvial lands formed in the bend of a river would sometimes fall to more than one estate, and further provision would then be required for a rateable division of those lands between the owners of the estates concerned. The subject is one of no small difficulty; but it seems to us that the following rule, which is said by a distinguished Settlement-officer (Mr. Ibbetson) to be practically the rule now in force in the Panjáb, and which is recommended for adoption by the Government of that Province, solves the problem satisfactorily and completely:—

"Where from natural causes an island or other land is formed in or on the bank of a river, either by accumulation of material or by recession of the river, each owner having a frontage on the river is entitled to so much of the land as is included by his frontage, the thread of the stream and lines drawn riverwards from the ends of such frontage to meet the thread of the stream in a direction normal to such thread.

[The term "normal," we may observe, is here used instead of "perpendicular," as the thread of the stream may be a curve. It is obvious that in such case several normals may possibly be drawn from the same point, and that these normals may be either of different or of the same length. The rule, therefore, proceeds as follows:—]

"Where more than one such normal can be drawn from one and the same end of any frontage and each of such normals is of different length, the shortest of such normals shall be deemed to be the including line; and where more than one such normal can be so drawn, and each of such normals is of the same length, the line bisecting the angle between the two extreme positions of the shortest normal shall be deemed to be the including line."

It will be seen that the above rule applies not only to alluvion deposited on the banks of two contiguous holdings, but also to islands. Incidentally, this will have the effect of rendering immaterial the often difficult question whether a new deposit is an island or not.

3. The above is the chief substantial alteration which we have made in the Bill. We now proceed to specify the minor changes which we deem desirable.

4. In the tidal portion of rivers like the Huglí are many islands which are flooded by ordinary tides in the rainy season, but only by extraordinary springs, or not at all, in the dry season. These chars are cultivable in the dry season and should be included in the definition of "island." We have therefore added to that definition the words "throughout the year."

5. To fix with more precision the time at which, for the purposes of the Bill, an alluvial island is first formed, we have provided that it must be capable of being employed for cultivation, pasture or other useful purpose, such, for example, as the supply of reeds or brush-wood. The question of fordability will thus be decided after an island newly formed becomes, as the Privy Council puts it, "valuable and usable."

6. Where any formation takes place on a site of which the Government is proved to be the owner, we have declared that the Government is entitled to such formation.

7. In the case of land formed on the shore of the sea or of a lake and in that of an island formed in the sea or a lake, we have provided that the distribution in proportion to the frontage of the riparian owners shall be effected by such officer as the Local Government may appoint and in accordance with such rules (consistent with the proposed Act) as the Local Government may from time to time prescribe.

8. We think that, to entitle the Crown to alluvial islands, the channel between the island and each bank or shore should not be fordable during the dry season next after the formation.

9. In determining the right to abandoned river-beds, we think we should have regard to the thread of the stream in the preceding dry season, and not to what it was immediately before the abandonment—a matter which cannot be always ascertained. In other respects, the rule for the division of such beds among the riparian owners will be the same as that which we have provided in the case of alluvial lands.

10. We have empowered the Local Government to declare, with reference to any tidal river, where, for the purposes of the proposed Act, the river shall be deemed to end and the sea to begin; and we have provided that no declaration under the Act shall be cancelled or altered, save with the previous sanction of the Governor General in Council.

11. In the Panjáb the ownership of lands subject to the action of rivers is mainly regulated by local usage. We have accordingly retained the section of the Bill as introduced, which provided that such usages should be respected and, in certain cases, presumed to be in force. But such provisions do not appear to be required in Madras, Bombay, Oudh or the North-Western Provinces, and though local usage is saved in the Lower Provinces and Assam by the Bengal Regulation XI of 1825, there seems to be only one instance in which there has been any attempt to establish it. We have, therefore, confined to the Panjáb the section saving usage. But there is ground for the belief that even in that Province some of the local usages referred to,—including the usage known as "the deep-stream rule"—besides being objectionable on economic grounds and adverse to imperial interests are more or less unsuited to the time and distasteful to the communities affected by them. In these circumstances we have deemed it right, on the recommendation of experienced officers, to provide a procedure whereby such usages may, if thought expedient, be discontinued, and fixed boundaries substituted for varying boundaries in riparian estates.

12. As the rights of mortgagees and tenants to alluvial lands are saved by the Transfer of Property Bill, No. III, sections 37 and 65, clause (*e*), we have not thought it necessary to provide for such rights.

13. The Bill in its present form is not to be taken as expressing our final views as to all the difficult and important subjects with which it deals. But we think that the changes which it has undergone are such as to render republication desirable, for the purpose of eliciting criticism from the public and from the judicial and executive officers by whom its provisions will be carried into effect. We also think that its further consideration should be stayed until the new Law Commission has reported thereon. We therefore recommend that the Bill as now amended be republished with this Report in the *Gazette of India*, and sent to the Local Governments for opinion and for publication in the local Gazettes.

14. The Bill and Statement of Objects and Reasons have been published in English in the local Gazettes for Madras, Bengal, the North-Western Provinces and Oudh, the Panjáb, the Central Provinces and British Burma. Publication in English has not been reported from Bombay and Assam. Publication in the vernacular has been reported only from Madras, Bengal, the North-Western Provinces and Oudh, the Panjáb and the Central Provinces.

WHITLEY STOKES.
RIVERS THOMPSON.
T. H. THORNTON.
G. H. P. EVANS.
F. R. COCKERELL.

CALCUTTA;
The 19th March, 1879.

No. II.

A Bill to define and amend the law relating to alluvion, islands and abandoned river-beds.

WHEREAS it is expedient to define and amend the law relating to alluvion, islands and abandoned river-beds; It is hereby enacted as follows:—

Preamble.

I.—Preliminary.

Short title. **1.** This Act may be called "The Indian Alluvion Act, 1879:"

Local extent. It extends to the whole of British India;

Commencement. And it shall come into force at once.

Repeal of enactments. **2.** The Acts, Regulation and Rules mentioned in the schedule hereto annexed shall be repealed to the extent specified in the third column. References to the Regulation and Rules so repealed, in enactments passed subsequently thereto, shall be read as if made to this Act.

Interpretation-clause. **3.** In this Act—

"island" means land surrounded by water and capable of being employed for cultivation, pasture or other useful purpose. It includes such land arising in a river or lake, submerged in the wet season and visible only in the dry season; but it excludes land arising in tidal rivers, tidal lakes or the sea, submerged by the flow of ordinary tides throughout the year:

"owner" means, in the case of a bank or shore held on raiyatwárí tenure, the Government: in the case of a bank or shore forming part of land situate in the Presidency of Bombay and wholly or partially exempt from the payment of land-revenue, or held under a grant or lease fixing the Government demand in respect thereof in perpetuity, the holder of such land; and in the case of a bank or shore held by a village-community, or by one or more members of it, such community:

"sea" includes bay, inlet, creek and arm of the sea:

"frontage" means the right line connecting the corners of each holding where they strike the sea, lake or river:

"Thread of the stream" means (*a*) the middle line of the main-stream during the dry season, or, where there are two streams of equal depth and width, the line equidistant during such season from the outermost shores of the two streams; (*b*) the middle line of the river between what are the shores on each side when the water is at its average height, neither swollen by flood, nor shrunk by drought; or (*c*) the middle line of the particular channel in which the formation or ancient river-bed referred to occurs or is situate;

and a channel is said to be "fordable" when it does not exceed five feet in depth in the dry season next after the formation referred to and throughout the twenty-four hours.

II.—Alluvial Land and Islands.

Right to land formed on shore of sea or lake. **4.** Where, from natural causes, land forms gradually on the shore of the sea or of a lake, either by accumulation of material or by recession of the sea or lake, the owners of the shore are severally entitled to the land so formed in proportion to the frontage which they respectively had on the sea or lake immediately before the formation; and the partition of the land so formed shall be made by such officer as the Local Government appoints in this behalf, and in accordance with such rules, consistent with this Act, as the Local Government may from time to time prescribe:

Provided that, where the land or any portion thereof forms on a site which is proved to belong to the Government or a private owner, the Government or such owner, as the case may be, is entitled to the land or portion so formed.

Right to islands where channel is not fordable. **5.** Where an island is formed, from natural causes, in a river, the sea or a lake, either by accumulation of material or by recession of the river, sea or lake, if the island is separated from each bank or shore by a channel not fordable at any point, the Government is entitled to such island:

Provided that, where the island or any portion thereof is formed on a site which is proved to belong to a private owner, such owner is entitled to the island or portion so formed.

Right to other islands in sea or lake. **6.** If, where an island is formed as aforesaid in the sea or a lake, the channels between it and either shore are fordable at any point, the owners of the nearest shore are severally entitled to the island in proportion to the frontage which they respectively have on the sea or lake; and the partition of the island so formed shall be made by such officer as the Local Government appoints in this behalf and in accordance with such rules, consistent with this Act, as the Local Government may from time to time prescribe.

Right to land formed in, or on bank of, river. **7.** Where, from natural causes, an island or other land is formed in, or on the bank of, a river, either by accumulation of material or by recession of the river, and the Government is not entitled thereto under section five, each owner having a frontage on the river is entitled to so much of the land as is included by his frontage, the thread of the stream during the dry season next after the formation and lines drawn riverwards from the ends of such frontage to meet the thread of the stream in a direction normal to such thread:

Where more than one such normal can be drawn from one and the same end of any frontage and each of such normals is of different length, the shortest of such normals shall be deemed to be the including line, and where more than one such normal can be so drawn and each of such normals is of the same length, the line bisecting the angle between the two extreme positions of the shortest normal shall be deemed to be the including line.

Provided that, where the land or any portion thereof is formed on a site which is proved to belong to the Government or a private owner, the Government or such owner, as the case may be, is entitled to the land or portion so formed.

Islands formed by division of rivers. **8.** If a river freshly divides and surrounds, or, by changing its course, cuts off, lands belonging to the owner of the bank, such owner is entitled to the lands so surrounded or cut off.

III.—Abandoned River-beds.

Right to abandoned river-beds. **9.** Where a river suddenly abandons the bed which it occupies during the season of flood, each owner having a frontage on such bed is entitled to so much of the bed as is included by his frontage, the thread of the stream during the dry season next before the abandonment and lines drawn towards the bed from the ends of such frontage to meet such thread in a direction normal thereto.

Where more than one such normal can be drawn from one and the same end of any frontage, the rules contained in the second paragraph of section seven shall apply:

Provided that, when the ancient bed is proved to have belonged immediately before the abandonment to the Government or a private owner, it shall continue to be the property of the Government or of such owner, as the case may be.

IV.—Miscellaneous.

Power to declare "main-stream," "dry season" and "thread of the stream." **10.** The Local Government may, from time to time, declare, with reference to any river, or any part of any river,—

(*a*) what shall be deemed to be, for the purposes of this Act, the "main-stream" and the "dry season"; and

(*b*) which of the said definitions of "thread of the stream" shall be deemed to be in force.

The Local Government may also declare, with reference to any tidal river, where, for the purposes of this Act, the river shall be deemed to end and the sea to begin.

Every declaration made under this section, and all rules made under section four or section six, shall be published in the official Gazette, and shall thereupon have the force of law. And no such declaration shall be cancelled or altered save with the previous sanction of the Governor General in Council.

In the absence of a declaration made under clause (*b*) as to any river or part thereof, and having the force of law, the first of the said definitions of "thread of the stream" shall be deemed to be in force with reference to such river or part.

Savings. **11.** Nothing herein contained shall—

(*a*) affect any law relating to the assessment of land-revenue or to the enhancement or abatement of rent; or

(*b*) confer on any owner of a bank or shore in respect of which he is hereby declared to be entitled to alluvial land, to an island, or to an abandoned river-bed, any title to such land, island or river-bed, better than that which he has to the bank or shore; or

(*c*) enlarge any holding granted by Government, the area of which has been fixed by any sanad or other document executed under the authority of Government; or

(*d*) authorize any acts of private persons done in order to divert currents or cause accretions; or

(*e*) authorize any encroachments by private persons on the banks, beds or channels of navigable rivers; or

(*f*) prevent any officer duly empowered by the Local Government in this behalf from removing obstacles which appear to him to interfere with the safe and customary navigation of such rivers, or which obstruct the passage of boats by tracking on the banks of such rivers or otherwise; or

(*g*) prevent any officer duly empowered by the Local Government in this behalf from regulating the direction and flow of such rivers and the preservation and distribution of their waters.

Local usage in Panjáb. **12.** In the territories administered by the Lieutenant-Governor of the Panjáb, nothing herein contained shall affect any definite and well-established local usage respecting the right to alluvial land, islands or abandoned river-beds; but (except in the cases provided for by the Panjáb Land-Revenue Act, 1871, section 16) the burden of proving such usage shall lie on the person alleging it:

Provided that the Local Government may from time to time (*a*) cause the bed of any river or part of a river, together with the islands and alluvial lands situate therein or adjacent thereto, to be surveyed and mapped, (*b*) appoint an officer to enquire into, determine and record the rights of private persons and the Government, in, to or over the said bed, islands and lands, and (*c*) declare that rights so recorded shall not be affected by any local usage. And the provisions of the Panjáb Land Revenue Act, 1871, chapter II, shall apply, so far as may be, to proceedings under this section, and the determination of the said rights shall be made after consideration of the gain and loss (if any) caused by changes in the course of the river for a period of twelve years next before the date of the survey-notification.

Right of Crown to alluvial lands, &c., not hereinbefore provided for. **13.** All land and islands formed, and all river-beds abandoned, as mentioned respectively in sections four, five and nine, and not vesting under any of the provisions hereinbefore contained, shall vest in the Government.

THE SCHEDULE.

(*a*). ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

Number and year.	Subject.	Extent of repeal.
IV of 1872...	Panjáb Laws Act ...	So much as relates to Bengal Regulation XI of 1825.
XX of 1875...	Central Provinces Laws Act	Ditto.
XVIII of 1876	Oudh Laws Act ...	Ditto.

(*b*). BENGAL REGULATION.

Number and year.	Subject.	Extent of repeal.
XI of 1825...	Alluvion	The whole.

(*c*). BENGAL ACT.

Number and year.	Subject.	Extent of repeal.
IV of 1868...	Amending Act IX of 1847	Sections 2 and 4.

(*d*). RULES.

Date.	Subject.	Extent of repeal.
22nd May 1852.	Alluvion and Diluvion in Sindh.	Paragraphs 1, 2, 3, 4, 5 and 20.

D. FITZPATRICK,
Secy. to the Govt. of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, APRIL 5, 1879.

☞ Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Report of the Select Committee on the Bill to amend the Code of Civil Procedure was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 5th March, 1879:—

REPORT.

We, the undersigned Members of the Select Committee to which the Bill to amend the Code of Civil Procedure was referred, have the honour to report that we have considered the Bill and the papers specified in the annexed list.

2. In the interpretation-clause, we have expressly declared that an order finally disposing of an application for execution falls within the definition of 'decree.' This will remove a doubt which we understand has been felt in two of the High Courts. We have also provided that 'signed' shall include stamped. The use of a seal capable of producing an impression of the name and title of the person using it is common among Natives of rank.

3. To section 13 we have added an explanation declaring in effect, that a decision in a suit for arrears of rent under any local law relating to landlord and tenant, shall not be deemed to be *res judicata* in case of suits relating to the title to the property in respect of which the rent is claimed.

4. In section 44, we have provided for joining, with claims by and against a legal representative as such, claims which he was personally entitled to, or liable for, jointly with the deceased person whom he represents, *e.g.*, on a promissory note jointly executed by the deceased and the person who becomes his executor.

5. We have altered the last paragraph of section 52, so as to require the examination of the witness to the verification of the plaint only when the Court entertains doubt as to the fact of the signature.

6. We have extended section 108 to all cases in which decrees have been set-aside *ex parte*, and provided for cases in which the summons was not duly served, as well as for those in which the defendant was prevented from appearing.

7. Section 131 does not as Act VIII of 1859, section 107, did, empower parties to give notice to produce documents generally. We have therefore made section 131 apply to the production of all documents in the possession or power of a party, whether they are or are not referred to in the plaint, written statement or affidavit of the latter.

8. We have struck out from section 230 the words as to granting subsequent applications for execution, when the Court is satisfied that on the preceding application due diligence had been used to procure complete satisfaction. The effect of these words appears to us to discourage leniency and to invite litigation. We have altered the same section, so as to provide (in accordance with the new Limitation Act, schedule II, Art. 179, paragraph 6) for a decree

awarding maintenance, which has been held not to be a decree directing "the payment of money or the delivery of property by instalments."

9. We have amended section 245, so as to provide for non-compliance with the requirements not only of sections 235 and 236, but also of sections 236 and 237.

10. We have altered the first explanation to section 246, so as to bring within its scope decrees made over to a Court for execution.

11. We have amended sections 259 and 260, so as to make it clear that, when an attachment under either section has remained in force for the specified time, if the judgment-debtor has not obeyed the decree and the decree-holder has, within that time, applied for a sale, the property may be sold; but that, if the judgment-debtor has obeyed, and the decree-holder has not made such application, the attachment shall cease.

12. We have provided, in section 268, that, where a moiety of the salary of a public officer or railway-servant is attached, the attachment shall be made by an order requiring the officer whose duty it is to disburse the salary to withhold every month such portion as the Court may direct until the amount of the portions so withheld is equal to the amount of the decree; and we have authorized him to pay into Court every portion so withheld, and declared that such payment shall discharge the Government or the Railway Company. We have struck out the last paragraph of the same section.

13. We have altered section 291, so as to empower the Court directing an execution-sale, as well as the officer conducting one, to adjourn it.

14. Where the holder of a decree in execution of which property is sold purchases the property without the Court's permission, we have provided in section 294, that the Court may, if it thinks fit, set-aside the sale, and that any deficiency of price which may happen on a re-sale shall be paid by the decree-holder.

15. We think that mortgages, leases and sales made under section 305 by the judgment-debtor should not become absolute until they are confirmed by the Court; and we have added a provision to this effect.

16. We think that, besides the decree-holder and the owner of land sold in execution, any other person interested in the sale should have power to apply to set it aside on the ground of material irregularity; and we have amended section 311 of the Code accordingly.

17. Much doubt exists as to where the title to land sold at an execution-sale vests in the purchaser. We think it should vest from the date of the certificate, which is granted as soon as the sale becomes absolute; and we have added to section 316 a sentence to this effect.

18. We have recast sections 322 and 323 of the Code, so as to make them express clearly what we believe to have been the intention of their author, namely, that, where a money-decree in satisfaction of which the Court has ordered a sale of land has been transferred to the Collector, he should ascertain the amount of *all* existing decrees against the judgment-debtor and raise the amount necessary to discharge all his judgment-debts with interest, by dealing with such land, and such land only, in any of the modes prescribed by section 322.

19. We have altered section 331, paragraph two, so as to express the provisions of the corresponding section (229) of Act VIII of 1859, and we have redrawn the latter half of section 332, so as to avoid the reference to the Specific Relief Act, section 9, whilst maintaining the procedure required by that enactment and the effect of an order passed thereunder.

20. We think that the first payment of a judgment-debtor's monthly subsistence-money should be made to the proper officer of the Court, and that the subsequent payments should be made to the officer in charge of the jail; and we have altered section 339 accordingly.

21. When an applicant for the benefit of the insolvency-chapter (XX) furnishes sufficient security that he will appear when called upon, we have empowered the Court to release him. The Recorder of Rangoon exercises under the Burma Courts Act insolvency-jurisdiction in the towns of Rangoon, Maulmain, Akyab and Bassein. We do not think it expedient that any other Courts should exercise such jurisdiction concurrently with him. We have therefore expressly excluded all Courts situate in such towns from the operation of chapter XX.

22. Where a pauper's suit is dismissed for non-appearance of either party, we have empowered the Court to order him to pay the fees which would have been paid by him if he had not been permitted to sue as a pauper.

23. We have amended section 456 of the Code so as to provide for obtaining an order for the appointment of a guardian *ad litem* upon application by the plaintiff; and where there is no other person fit and willing to act as such guardian, we have authorized the Court to appoint any of its officers.

24. We have substituted for section 555 a section providing that in all cases the appellant shall begin.

25. We have made section 560 of the Code provide for the cases when notice is not served on the respondent, as well as for those in which he was prevented from appearing.

26. We have amended section 582 of the Code, so as to preclude the doubt whether the Appellate Court is bound (so far as may be) to perform the duties, as well as authorized to exercise the powers, of the Court of first instance.

27. In section 584, clause (*a*), we have omitted the words "some specified," which have been held by some to limit the 'law' there mentioned to a statutory enactment, and by others to require the appellant to express in formal terms the rule which he alleges to have been contravened.

28. We think that appeals should lie from orders under section 57, clause (*a*), returning a plaint on the ground that the suit has been instituted in the wrong Court; and from orders under section 313 refusing an application to set-aside a sale of immoveable property; and

we have amended section 588 accordingly. We have also amended the last clause of the same section, so as to give a second appeal from all orders under section 244, as to mesne profits or relating to the execution, discharge or satisfaction of a decree.

29. We have extended section 642, so as to exempt from arrest under the Code the parties to any matter pending before a tribunal having, or believing *bonâ fide* that it has, jurisdiction, their pleaders, mukhtárs, revenue-agents and witnesses while going to, attending or returning from, such tribunal. This will include not only civil Courts, but criminal Courts, Courts-martial and arbitrators, and accords with the existing law of England.

30. Sections 223—229 seem to provide sufficiently for the execution of decrees. We have therefore limited section 648 to arrests and attachments made otherwise than in execution, and provided for the release of any person arrested under that section who furnishes security for his appearance before the Court that issued the warrant.

31. We have added to section 649 a paragraph providing for the execution of the decrees of Courts which have ceased to exist, as for example, where a Court of Small Causes is abolished by the Local Government under Act XI of 1865, section 3, or where a Munsif invested with Small Cause jurisdiction, having passed a considerable number of decrees, is transferred to another Munsifí, and his successor at the particular Munsifí at which this jurisdiction was exercised has not been invested with similar jurisdiction.

32. We have inserted after section 650, a section providing for the service of foreign summonses when issued either by Courts established by the Governor General in Council, or by Courts to which the Governor General in Council has applied this provision.

33. We have amended the second schedule, so as to extend to the Small Cause Courts in the Mufassal

sections 223—229, as to execution of decrees;

section 360, enabling the Local Government to invest any Court with insolvency-jurisdiction;

chapter XXXVI, as to Receivers; and

sections 523, 524, as to filing in Court agreements to refer to arbitration, and sections 525, 526, as to filing awards made on reference without the intervention of a Court.

34. We have made several corrections of clerical and typographical errors which need not be specified.

35. Lastly, we have amended the Registration Act, by inserting a clause providing that a copy of every certificate of sale of land granted under section 316 of the Code shall be sent to the local registering officer, who will file it in his Book No. 1. We have also taken the opportunity to amend three trifling errors in this Act, one of which is a misprint. And we have amended the Limitation Act, by inserting in its second schedule articles providing respectively for applications under sections 368 and 371 of the Code.

36. We recommend that the Bill thus amended be passed. The Bill and Statement of Objects and Reasons have been published in English in all the local Gazettes except those for Assam and Ajmer. They have been published in the vernacular in all the Gazettes except those for the Central Provinces, British Burma, Assam and Ajmer. We do not think that the Bill has been so altered as to require republication.

WHITLEY STOKES.
A. J. ARBUTHNOT.
T. H. THORNTON.
G. H. P. EVANS.
G. C. PAUL.
F. R. COCKERELL.

The 5th March, 1879.

LIST OF PAPERS.

From Secretary to Government, North-Western Provinces and Oudh, No. 527A, dated 19th July, 1878, and enclosures.
„ Secretary, Calcutta Trades Association, dated 29th July, 1878.
„ Secretary to Government, North-Western Provinces and Oudh, No. 577A, dated 1st August, 1878.
„ Secretary, Rajsháhsi Association, dated 28th July, 1878, and enclosure.
„ Acting Under Secretary to Government, Bombay, No. 4126, dated 31st July, 1878, and enclosures.
„ Officiating Secretary to Chief Commissioner, Central Provinces, No. 3211-152, dated 8th August, 1878, and enclosure.
„ Secretary to Chief Commissioner, Mysore, No. 3477-6J, dated 7th August, 1878.
„ Secretary for Birár to Resident, Haidarábád, No. 6B, dated 12th August, 1878.
Notes by the Munsif of Khair.
Extract from Report on Administration of Civil Justice in Lower Provinces of Bengal and in Assam in 1877.
Note by C. D. Field, Esq., District and Sessions Judge, Burdwan, dated 13th August, 1878.
From Judicial Commissioner, Mysore, to Hon'ble Whitley Stokes, dated 19th August, 1878.
Office Memorandum from Home Department, No. 1144, dated 28th August, 1878, and enclosures.

From Under Secretary to Government, Bombay, No. 7812, dated 29th December, 1877, and enclosures.
„ Officiating Chief Commissioner, Ajmer and Merwára, No. 589, dated 30th August, 1878, and enclosures.
„ Acting Under Secretary to Government, Bombay, No. 5040, dated 30th August, 1878, and enclosure.
„ Officiating Secretary to Government, Panjáb, No. 685C, dated 9th September, 1878, and enclosures.
„ Ditto, ditto, No. 691C, dated 10th September, 1878, and enclosure.
„ Secretary to Government of Bengal, No. 128R.T, dated 2nd September, 1878, and enclosures.
„ Secretary to Government, North-Western Provinces and Oudh, No. 675A, dated 9th September, 1878, and enclosures.
„ Bábu R. C. Banarjí, Noakhálí, dated 10th September, 1878.
Office Memorandum from Home Department, No. 1260, dated 17th September, 1878, and enclosures.
From Secretary to Chief Commissioner, Assam, No. 1582, dated 13th September, 1878, and enclosures.
Notes by Pandit Bishambar Náth, Pleader, High Court, North-Western Provinces.
From K. Krishna Ráo, dated 23rd September, 1878.
„ District Judge, South Canara, to Hon'ble Whitley Stokes, No. 62, dated 27th September, 1878, and enclosure.
„ Officiating Registrar, High Court, Calcutta, No. 1425, dated 8th June, 1878, and enclosures.
„ Junior Secretary to Chief Commissioner, British Burma, No. 1439-371, dated 28th September, 1878, and enclosures.
„ Vinayekráo Haríchand, Attorney, High Court, Bombay, to Hon'ble Whitley Stokes, dated 5th October, 1878.
„ Srí Báládisha Dámodára Ráo, Mangalore, to Hon'ble Whitley Stokes, dated 5th October, 1878.
„ Hon'ble L. C. Innes, Judge, High Court, Madras, to Hon'ble Whitley Stokes, dated 9th October, 1878.
„ Pandit Suraj Bháu, Lahore, dated 1st October, 1878.
„ Officiating Secretary to Government, Panjáb, No. 964C, dated 17th October, 1878, and enclosures.
„ Officiating Secretary to Government, Panjáb, No. 1053C, dated 30th October, 1878, and enclosure.
„ S. Aiyyasami Aiyyar, Pleader, High Court, Madras, dated 21st October, 1878.
„ J. G. W. Sykes, Esq., Advocate, High Court, North-Western Provinces, dated 25th October, 1878.
„ Hon'ble M. Melvill, Judge, High Court, Bombay, dated 5th November, 1878.
„ Acting Chief Secretary to Government, Madras, No. 2229, dated 31st October, 1878, and enclosures.
„ C. Rámachandra Ráo Sahib, Vakíl, High Court, Madras, dated 5th November, 1878.
Memorandum by Pandit Rádhá Kishn, Lucknow, dated 16th December, 1878.
„ in Legislative Department.
From Acting Chief Secretary to Government, Madras, No. 2491, dated 10th December, 1878, and enclosure.
Note by Hon'ble Mr. Justice Turner, dated 1st February, 1879.
From Honorary Secretary, British Indian Association, dated 20th February, 1879, and enclosure.

D. FITZPATRICK,
Secy. to the Govt. of India.

[Third publication.]

The following supplementary Report of a Select Committee, together with the Bill as settled by them, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 19th March, 1879:—

WE, the undersigned Members of the Select Committee to which the Bill to amend the Code of Civil Procedure was referred, have the honour to submit the following supplementary Report.

2. Since our Report of the 5th March was presented, our colleague Mr. Stokes has received from Mr. Justice Ainslie a note on the Bill which has led us to make certain further changes therein.

3. It seems to us that the definition of "decree," even when made to include orders finally disposing of applications for execution, is not wide enough. It does not, for instance, comprise an order made on settlement of issues overruling pleas of law (such as that the suit is barred by the Limitation Act), and directing a trial of complicated questions of fact or the investigation of complicated accounts; for this does not "decide the suit," as the defendant may have a defence on the facts. Again, it does not include a decretal order for an account, for this does not "decide the suit;" inasmuch as, on taking the account, it may turn out that nothing is due, in which case the plaintiff's suit would in the end be dismissed. Yet a defendant ought not, if he has a good defence, to be put to the possibly enormous expense and inconvenience of an account for (say) twenty years. He should clearly have a right of appeal. The fact is that there may be more than one decree in a suit and that the various points arising may be decided at different hearings and the results embodied in different "formal orders." We have therefore widened the first sentence of the definition of "decree" as follows: "decree means the formal expression of a final adjudication upon any right claimed, or defence set up, in a Court of justice."

4. We have not overlooked the fact that some of the orders under section 244 of the Code, from which we propose to give two appeals by section 588 as now amended, may be held to be decrees within the meaning of this first sentence of the definition; but we deem it safer, in order to prevent all mistake, to give the appeals from these orders in express terms by section 588, and formally to exclude them from the definition of decree. We have also defined "order" as meaning the formal expression of any decision of a Court of justice which is not a decree, and we have defined "judgment" as the statement given by the Judge of the grounds of a decree or order.

5. There is much evidence to shew that the examination of a witness as to the fact of signature of the verification of the plaint by the person whose name it purports to bear is a useless form. We have therefore, instead of amending section 52 of the Code as proposed by the Bill as last settled, repealed the part of that section requiring such examination.

6. We think that the Court should fix a period within which the sum required to defray the costs of service of a process must be paid into Court by the party concerned. In the absence of such a provision (which was contained in Act XXIII of 1861, section 2), there is no rule by which the Court is to be guided in determining when a party is in default. We have therefore amended section 93 of the Code so as to require a period to be fixed for the payment of the Court-fee, and we have made a similar amendment in section 95, as to payment of postage.

7. It is strongly urged by Mr. Justice Ainslie that our proposed change in section 168 of the word "may" to "shall" would assist litigants to obstruct justice by obtaining unnecessary adjournments. We have accordingly omitted the section of the Bill by which it was proposed to make that change.

8. We have provided in section 289 for fixing up in the Court-house a copy of the proclamation of sale, and we have made a corresponding amendment in section 290.

9. The question is constantly arising whether a fresh proclamation is required when a sale is adjourned. We have provided in section 291 that, in case of such adjournment for a longer period than seven days, a fresh proclamation shall be made, unless the judgment-debtor consents to waive it.

10. In section 220 we have provided for the execution of orders as to costs.

11. In our report of the 5th of March we proposed to alter section 311 of the Code so as to admit of other persons in an execution-sale besides the decree-holder and the owner applying to set-aside the sale. We have, at the suggestion of the High Court at Fort William, struck out this amendment of section 311 of the Code. The High Court urges that it would be of little practical benefit and that it might sometimes be misused to delay the completion of proceedings in execution by persons put forward by the judgment-debtor to dispute the regularity of the sale.

12. We have repealed the last nineteen words of section 13 of Act XI of 1865. They are, in the opinion of the same High Court, unnecessary and occasionally mischievous.

13. The importance of the change now made in the definitions of "decree" and "judgment," make it desirable in our opinion that the Bill should be republished, so as to afford an opportunity for the correction of any oversight into which we may have fallen; but the substance of the amendment has now been so fully discussed that we think that, unless some serious objection is brought to light, there can be no objection to the Bill being passed as it stands; and, looking to the urgency of some of its provisions, we think its passing should not be delayed more than two months.

WHITLEY STOKES.
A. J. ARBUTHNOT.
T. H. THORNTON.
G. H. P. EVANS.
F. R. COCKERELL.

No. III.

A Bill to amend the Code of Civil Procedure, the Registration Act, 1877, and the Limitation Act, 1877.

WHEREAS it is expedient to amend the Code of Civil Procedure; It is hereby enacted as follows :— Preamble.

1. The following portions of the said Code shall be repealed (namely) :— Repeal of certain portions of Act X of 1877.

In section 4, the words and figures "The Panjáb Courts Act, 1865," and "The Panjáb Appeals Act, 1873 :"

In section 5, the third sentence :

In section 51, the words "with the permission of the Court :"

In section 52, from and including the words "and when he makes it out of Court" to the end :

In section 61, the words "bill of exchange or other :"

In section 64, the words "or as soon thereafter as may be practicable :"

In section 80, the words "or to receive the copy of the summons :"

In section 131, the words "in whose plaint, written statement or affidavits reference is made to any document :"

In section 199, the words from and including "and in" to the end :

In section 224, the word "therewith :"

In section 230, paragraphs three and four, the words "unless the Court is satisfied that on the last preceding application due diligence was used to procure complete satisfaction of the decree; and the order of the Court granting any such subsequent application shall be conclusive evidence that due diligence was used to procure such satisfaction. And no such subsequent application shall be granted :"

In section 246, clause (*e*) and the letters (*f*) and (*g*) :

In section 259, the words "and keeping the same under attachment until the further order of the Court :"

In section 339, paragraph three, the words "to the proper officer of the Court :"

In section 341, the word "third :"

In section 353, the words "within three months from its publication," and "within three months from the publication of the schedule :"

In sections 407 and 408, the words "upon such examination :"

In section 584, clause (*a*), the words "some specified :"

In section 588, clause (*j*), the words "of the same nature with appealable orders made in the course of a suit :" in the same section, clause (*r*), the figures "481 :"

In section 638, the figures "261 :"

In the second schedule, the words and figures "section 648 (so far as relates to arrest)."

2. In section 2, for the definitions of "judgment" and "decree," the following shall be substituted (namely) : Amendment of section 2.

"decree" means the formal expression of a final adjudication upon any right claimed, or defence set up, in a Court of justice. An order rejecting a plaint under section 53, clause (*d*), or under section 54, clause (*c*), is within this definition. An order on appeal remanding a suit for retrial is not within this definition, nor is any order specified in section 588 :

"order" means the formal expression of any decision of a Court of justice, which is not a decree :

"judgment" means the statement given by the Judge of the grounds of a decree or order."

In the same section, to the definition of "signed," the following words shall be added (namely), "it also includes stamped with the name of the person referred to."

3. In section 13, Explanation I, for the word "confessed," the word "admitted" shall be substituted ; and to the same section, the following shall be added (namely) :—"*Explanation VII.*—A Court trying a suit under any law for the time being in force regulating the procedure in suits between land-holders and their tenants or agents, shall not be deemed, as regards the title to the immoveable property in respect of which the suit is brought, a Court of competent jurisdiction within the meaning of the first paragraph of this section." Amendment of section 13.

4. In section 43, paragraph one, for the words "arising out of," the words "which the plaintiff is entitled to make in respect of" shall be substituted : in the same section, paragraph two, for the word "for" (in each of the places where it occurs) the words "in respect of" shall be substituted ; and in the same section, paragraph three, for the word "claim," the words "cause of action" shall be substituted. Amendment of section 43.

5. To section 44, the following words shall be added (namely), "or are such as he was entitled to, or liable for, jointly with the deceased person whom he represents." Amendment of section 44.

6. In section 45, for paragraph one, the following shall be substituted (namely), "Subject to the rules contained in section 44, the plaintiff may unite in the same suit several causes of action against the same defendant or the same defendants jointly, and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit :" Amendment of section 45.

in the same section, paragraph two, after the word "defendant," the words "or at any subsequent stage of the suit, if the parties agree" shall be inserted.

7. In section 50, for the word "abode" in each of the places where it occurs, the word "residence" shall be substituted. Amendment of section 50.

8. To section 51 the following proviso shall be added (namely) :— Amendment of section 51.

"Provided that, if the plaintiff, by reason of absence or for other good cause, is unable to sign the plaint, it may be signed on his behalf by his duly authorized agent."

9. In sections 51, 53, 115, 346, 393 and 403, for the word "subscribed" (wherever it occurs), the word "signed" shall be substituted : in sections 115 and 346, for the word "subscribing," the word "signing" shall be substituted ; and in section 403, for the word "subscription," the word "signing" shall be substituted. Amendment of sundry sections.

10. In section 58, for the word "filed," the word "produced" shall be substituted. Amendment of section 58.

11. In section 93, after the word "levied," and in section 95, after the word "paid," the words "within a time to be fixed by the Court" shall be inserted. Amendment of sections 93 and 95.

12. In section 108, paragraph one, the words and figures "under section 100" shall be omitted ; and in the same section, paragraph two, for the words "it be proved to the satisfaction of the Court that the defendant," the words "he satisfies the Court that the summons was not duly served, or that he" shall be substituted. Amendment of section 108.

13. In section 131, paragraph one, for the words "such document," the words "any specified document" shall be substituted. Amendment of section 131.

14. In section 136, after the word "discovery" (in each of the places in which it occurs), the word "production" shall be inserted. Amendment of section 136.

15. In section 139, for the words "the production of which has been called for under section 138 and which has not been produced," the words "which should have been, but has not been, produced in accordance with the requirements of section 138" shall be substituted. Amendment of section 139.

16. In section 207, for the word "suit," the word "decree" shall be substituted ; and for the words "or numbers" to the end, the following words shall be substituted (namely), "or by numbers in a record of settlement or survey, the decree shall specify such boundaries or numbers." Amendment of section 207.

17. In section 211, for the words "land or other," the words "the recovery of possession of immoveable" shall be substituted ; and in section 212, before the word "immoveable," the words "the recovery of possession of" shall be inserted. Amendment of sections 211 and 212.

18. To section 220 the following words shall be added (namely) : "Every order relating to costs made under this Code and not forming part of a decree may be executed as if it were a decree for money." Amendment of section 220.

19. In section 229, for the words "Native Prince or State in India," the words "Foreign Prince or State" shall be substituted. Amendment of section 229.

20. In section 230, clause (*b*), for the words "the payment of money or the delivery of property by instalments—the date of the default in paying or delivering the instalment," the following words shall be substituted (namely), "any payment of money, or the delivery of any property, to be made at a specified date—the date of the default in making the payment or delivering the property." Amendment of section 230.

21. In section 235, for the words "in manner hereinbefore provided for the verification of plaints," the following words shall be substituted (namely), "by the applicant or, with the permission of the Court, by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case." Amendment of section 235.

22. In sections 236 and 237, for the words "If the application be," the words "Whenever an application is made" shall be substituted. Amendment of sections 236 and 237.

23. In section 244, clause (*c*), after the word "execution," the words "discharge or satisfaction" shall be inserted. Amendment of section 244.

24. In section 245, for the first sentence, the following shall be substituted (namely), "The Court on receiving an application for the execution of a decree shall ascertain whether such of the requirements of sections 235, 236, 237 and 238 as may be applicable to the case have been complied with, and if they have not been complied with, the Court shall reject the application, or return it for such compliance, or allow it to be amended then and there." Amendment of section 245.

25. In section 246, for Explanation I, the following shall be substituted (namely) :— Amendment of section 246.

"*Explanation I.*—The decrees contemplated by this section are decrees capable of execution at the same time and by the same Court."

In Explanation II, after the words "assignor as," the words "in respect of judgment-debts due" shall be inserted.

26. For the second paragraph of section 259, the following shall be substituted :— Amendment of section 259.

"When any attachment under this section has remained in force for six months, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold, and out of the proceeds the Court may award to the decree-holder, in cases where any amount has been fixed under section 208, such amount, and, in other cases, such compensation as it thinks fit, and shall pay the balance, if any, to the judgment-debtor on his application.

"If the judgment-debtor has obeyed the decree, and paid all costs of executing the same which he is bound to pay, or if, at the end of six months from the date of the attachment, no application to have the property sold has been made and granted, the attachment shall cease to exist."

27. In section 260 in the first paragraph, after the words "the performance of," the words "or abstention from" shall be inserted ; and for the second paragraph the following paragraphs shall be substituted (namely) :— Amendment of section 260.

"When any attachment under this section has remained in force for one year, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, the property may be sold, and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and may pay the balance, if any, to the judgment-debtor on his application.

"If the judgment-debtor has obeyed the decree, and paid all costs of executing the same which he is bound to pay, or if, at the end of one year from

the date of the attachment, no application to have the property sold has been made and granted, the attachment shall cease to exist."

28. In section 264, after the words "the same," the words "and not bound by the decree to relinquish such occupancy" shall be inserted.

Amendment of section 264.

29. To section 265 the following words shall be added (namely), "and according to the rules for the time being in force for the partition, or the separate possession of shares, of such estates."

Amendment of section 265.

30. For the last paragraph of section 268, the following shall be substituted (namely):—

Amendment of section 268.

"In the case of the salary of a public officer or the servant of a Railway Company, the attachment shall be made by a written order requiring the officer whose duty it is to disburse the salary to withhold every month such portion as the Court may direct, until the amount of the portions so withheld is equal to the amount remaining due under the decree.

"A copy of every such order shall be fixed up in a conspicuous part of the court-house and shall be served on the officer so required.

"Every such officer may from time to time pay into Court any portion so withheld, and such payment shall discharge the Government or the Railway Company, as the case may be, as effectually as payment to the judgment-debtor."

31. To section 289, paragraph one, the following words shall be added, namely: "and a copy thereof shall be fixed up in the Court-house;" and in section 290, for the words "notification has been affixed" the words "copy of the proclamation has been fixed up" shall be substituted.

Amendment of section 289.

32. In section 291, for the first eight words, the following shall be substituted (namely): "The Court may in its discretion adjourn any sale under this chapter, and the officer conducting any such sale;" and in the same section, after the proviso, the following sentence shall be inserted, namely: "whenever a sale is adjourned under this section for a longer period than seven days, a fresh proclamation under section 289 shall be made, unless the judgment-debtor consents to waive it.

Amendment of section 291.

33. To section 294 the following paragraph shall be added (namely):—

Amendment of section 294.

"When a decree-holder purchases, by himself or through another person, without such permission, the Court may, if it thinks fit, on the application of the judgment-debtor or any other person interested in the sale, by order set-aside the sale; and the costs of such application and order, and any deficiency of price which may happen on the re-sale, and all expenses attending it, shall be paid by the decree-holder."

34. In section 295, first proviso, after the words "shall not," the words "as such" shall be inserted.

Amendment of section 295.

35. In section 305, paragraph two, after the word "therein," the words and figures "and notwithstanding anything contained in section 276," shall be inserted; and for the last paragraph, the following shall be substituted (namely):—

Amendment of section 305.

"Provided also that no mortgage, lease or sale under this section shall become absolute until it has been confirmed by the Court."

36. In section 314, after the word "property," the words "in execution of a decree" shall be inserted.

Amendment of section 314.

37. To section 316 the following sentence shall be added (namely): "And the title to the property sold shall be deemed to vest in him from the date of such certificate."

Amendment of section 316.

38. For sections 322 and 323 the following sections shall be substituted (namely):—

Substitution of sections for sections 322 and 323.

"322. Whenever the execution of a decree, not being a decree ordering the sale of immoveable property in pursuance of a contract specifically affecting the same, but being a decree for money in satisfaction of which the Court has ordered the sale of immoveable property, has been so transferred, the Collector may either proceed as the Court would proceed under section 305, or, if he has reason to believe that all the judgment-debts of the judgment-debtor can be discharged without a sale of the whole of such property, he may publish a notice in the language of the district, calling upon all persons holding decrees against the judgment-debtor to notify in writing to the Collector, within sixty days from the date of such publication, the existence of such decrees, the respective dates thereof and the sums remaining due thereon, respectively.

Procedure of Collector when execution of decree so transferred.

"Such notice shall be published by being posted in the court-house of the Court which made the order under section 304, and at such other places (if any) as the Collector thinks fit.

"323. The Collector shall ascertain the sums remaining due on such decrees respectively, and may then (notwithstanding any order under section 304, but subject to such rules as may from time to time be made in this behalf by the Chief Controlling Revenue-Authority) raise the amount necessary to discharge each of such sums, with interest thereon according to the decree under which it is due, or, if the decree makes no provision as to interest, then with interest (if any) at such rate as he thinks fit—

Powers of Collector in such cases.

"(*a*) by letting in perpetuity, or for a term, on payment of a premium equivalent to such amount, the whole or any part of the property of which the sale has been ordered: or

"(*b*) by mortgaging the whole or any part of such property: or

"(*c*) by selling part of such property: or

"(*d*) by letting on farm, or managing by himself or another, the whole or any part of such property for any term not exceeding twenty years from the date of the order of sale: or

"(*e*) partly by one of the modes mentioned in clauses (*b*), (*c*) and (*d*), and partly by another or others of such modes.

"For the purpose of managing under this section the whole or any part of such property, the Collector may exercise all the powers of its owner.

"So long as any letting or management under clause (*d*) or clause (*e*) continues, the judgment-debtor and his representative in interest shall be incompetent to mortgage, charge, lease or alienate the property let or managed or any part thereof."

39. In section 331, paragraph two, for the words and figures "the Specific Relief Act, 1877, section 9," the word and figure "Chapter V" shall be substituted; and to the same section the following paragraph shall be added (namely), "Every such order shall have the same force as a decree and shall be subject to the same conditions as to appeal or otherwise."

Amendment of section 331.

40. In section 332, first paragraph, for the word "defendant," the word "judgment-debtor" shall be substituted; and for the other paragraphs, the following shall be substituted (namely), "If after examining the applicant it appears to the Court that there is probable cause for making the application, the Court shall proceed to investigate the matter in dispute, and if it finds that the ground mentioned in the first paragraph of this section exists, it shall make an order that the applicant recover possession of the property, and if it does not find as aforesaid, it shall dismiss the application.

Amendment of section 332.

"In hearing applications under this section, the Court shall confine itself to the grounds of dispute above specified.

"The party against whom an order is passed under this section may institute a suit to establish the right which he claims to the present possession of the property; but subject to the result of such suit, if any, the order shall be final."

41. For section 333 the following shall be substituted (namely), "Nothing in section 331 or 332 applies to a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree is made."

Amendment of section 333.

42. In section 335, for the first paragraph, the following shall be substituted (namely):—

Amendment of section 335.

"If the purchaser of any such property is resisted or obstructed by any person, other than the judgment-debtor, claiming in good faith a right to the present possession thereof, or, if in delivering possession thereof any such person is dispossessed, the Court, on the complaint of the purchaser or the person so dispossessed, shall enquire into the matter of the resistance, obstruction or dispossession, as the case may be, and pass such order thereon as it thinks fit;"

and in the second paragraph of the same section, for the word "conclusive," the word "final" shall be substituted.

43. In section 339, paragraph four, after the word "made," the words "to the proper officer of the Court" shall be inserted; and to the same paragraph, the following words shall be added (namely), "and the subsequent payments (if any) shall be made to the officer in charge of the jail."

Amendment of section 339.

44. To section 349 the following words shall be added (namely), "or release him on his furnishing sufficient security that he will appear when called upon."

Amendment of section 349.

45. In section 357, line one, for the figures "355," the figures and word "351 or 355" shall be substituted.

Amendment of section 357.

46. To section 360 the following paragraph shall be added (namely): "Nothing in this chapter shall apply to any Court having jurisdiction in the towns of Rangoon, Maulmain, Akyab and Bassein."

Amendment of section 360.

47. In sections 361, 362, 363, 365 and 368, for the words "cause of action" wherever they occur, the words "right to sue" shall be substituted.

Amendment of sections 361, 362, 363, 365 and 368.

48. In section 364, paragraph one, and section 366, paragraph one, after the word "If," the words "within the time limited by law" shall be inserted; and in the latter section, paragraph one, for the words "Court may," the words "Court shall, on the application of the defendant," shall be substituted.

Amendment of sections 364 and 366.

49. In section 373, paragraph one, for the words "for the part," the words "in respect of the part" shall be substituted; and to paragraph two, the words "or in respect of the same part" shall be added.

Amendment of section 373.

50. In section 377, for the first seven words, the following shall be substituted (namely), "Notice in writing of the deposit shall be given through the Court."

Amendment of section 377.

51. In sections 384, 477 and 483, after the word "affidavit," the words "or otherwise" shall be inserted.

Amendment of sections 384, 477 and 483.

52. In section 406, for the word "shall," the words "may if he thinks fit" shall be substituted.

Amendment of section 406.

53. In section 412, after the word "dispaupered," the words and figures "or if the suit is dismissed under section 97 or 98" shall be inserted.

Amendment of section 412.

54. In section 413, for the word "Refusal," the words and figures "An order of refusal made under section 409" shall be substituted.

Amendment of section 413.

55. In section 424, after the words "against a public officer," the words "in respect of an act purporting to be done by him in his official capacity" shall be inserted; and in sections 428 and 429, after the words "public officer," the words "in respect of such act as aforesaid" shall be inserted.

Amendment of sections 424, 428 and 429.

56. In section 437, for the first sentence, the following shall be substituted (namely), "In all suits concerning property vested in a trustee, executor or administrator, when the contention is between the persons beneficially interested in such property and a third person, the trustee, executor or administrator shall represent the persons so interested, and it shall not ordinarily be necessary to make them parties to the suit."

Amendment of section 437.

57. In section 456, for the words "in the name of the minor," the words "in the name and on behalf of the minor or by the plaintiff" shall be substituted; and to the same section the following paragraph shall be added (namely): "Where there is no other person fit and willing to act as guardian for the suit, the Court may appoint any of its officers to be such guardian, provided that he has no interest adverse to that of the minor."

Amendment of section 456.

58. In section 481, after the word "decree," the following words shall be inserted (namely), "or if, pending the suit, he becomes able to give security for his appearance as aforesaid, until he gives such security."

Amendment of section 481.

59. In section 483, after the words "portion of his property," the words "within the jurisdiction" shall be inserted.

Amendment of section 483.

60. In section 484, after the word "suit," the words "or that he has with such intent quitted the jurisdiction of the Court, leaving therein property belonging to him" shall be inserted.

Amendment of section 484.

61. In section 497, clause one, for the words "the injunction," the words "an injunction which it has granted" shall be substituted.

Amendment of section 497.

62. In section 523, paragraph three, for the words "any of," the word "all" shall be substituted.

Amendment of section 523.

63. In section 544, for the words "decree and," the words "decree, and thereupon" shall be substituted.

Amendment of section 544.

64. For section 555 the following shall be substituted (namely):—

Amendment of section 555.

"555. On the day so fixed, or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal. The Court shall then, if it does not dismiss the appeal at once, hear the respondent against the appeal, and in such case the appellant shall be entitled to reply."

Right to begin.

65. In section 560, for the words "it be proved that the respondent," the words "he satisfies the Court that the notice was not duly served, or that he" shall be substituted.

Amendment of section 560.

66. In section 561, after the word "notice," the words "in writing" shall be inserted.

Amendment of section 561.

67. In section 566, paragraph two, for the word "issue," the word "issues" shall be substituted.

Amendment of section 566.

68. For the first paragraph of section 582, the following shall be substituted (namely): "The Appellate Court shall have, in appeals under this chapter, the same powers, and shall perform as nearly as may be the same duties, as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted under chapter V."

Amendment of section 582.

69. In section 584, clause (*c*), after the word "may," the word "possibly" shall be inserted.

Amendment of section 584.

70. In section 588, for clause (*e*), the following shall be substituted (namely):

Amendment of section 588.

"(*e*) orders returning plaints under section 53, clause (*d*), or section 54, clause (*b*), or section 57:"

after clause (*f*), the following clause shall be inserted (namely):—

"(*ff*) orders rejecting applications under section 108 for an order to set-aside a decree *ex parte*:"

to clause (*h*) the following words shall be added (namely), "and orders under section 170 for the sale of attached property:"

in clause (*j*) for the word and figures "section 244," the following words and figures shall be substituted (namely), "sections 230, 231, 232, 234 and 244,:"

to clause (*m*) the following words shall be added (namely), "and orders under section 313 refusing an application to set-aside a sale of immoveable property:"

And to section 588 the following words shall be added (namely):

"except in the case of appeals against orders under sections 230, 231, 232, 234 and 244, in which case a second appeal shall lie, and shall, in the case of appeals now pending, be deemed to have lain, on any of the grounds mentioned in section 584 and on no other grounds.

"The provisions contained in chapter XLI shall apply, so far as may be, to all second appeals under this section, and to the execution of orders passed therein. But save as aforesaid, no order mentioned in this section shall be deemed to be a decree within the meaning of that chapter."

71. In section 638, for the figures and word "16 and 17," the figures and word "16, 17 and 19" shall be substituted: and in the last paragraph after the word "any," the words "Judge of a" shall be inserted; and the word "its" shall be omitted.

Amendment of section 638.

72. In section 642, for the second paragraph, the following shall be substituted (namely):—

Amendment of section 642.

"And except as provided in sections 256 and 643, where any matter is pending before a tribunal having jurisdiction therein, or believing in good faith that it has such jurisdiction, the parties thereto, their pleaders, mukhtárs, revenue-agents and recognized agents, and their witnesses acting in obedience to a summons, shall be exempt from arrest under this Code while going to or attending such tribunal for the purpose of such matter, and while returning from such tribunal."

73. In section 648, for the first forty-two words, the following shall be substituted (namely), "Where any Court desires that any person shall be arrested, or any property shall be attached, under any provision of this Code not relating to the execution of decrees, and such person resides or property is situate outside the local limits of its jurisdiction, the Court may, in its discretion, issue a warrant of arrest or make an order of attachment, and:"

Amendment of section 648.

and to the same section, the following words shall be added (namely), "unless the person arrested furnish sufficient security for his appearance before that Court, or (where the case is one under chapter XXXIV) for satisfying any decree that may be passed against him by such Court, in either of which cases the Court making the arrest shall release him."

74. To section 649 the following paragraph shall be added (namely):—

Amendment of section 649.

"In the same chapter, the expression 'Court which passed a decree' or words to that effect, shall, unless there be something repugnant in the context, be deemed to include, where the decree to be executed is passed in appeal, the Court which passed the decree against which the appeal was preferred, and, where the Court which passed the decree to be executed has ceased to exist, the Court which, if the suit wherein the decree was passed were instituted at the time of making application for execution of the decree, would have jurisdiction to try such suit."

75. After section 650 the following shall be inserted (namely):—

Service of foreign summonses.

"650A. Summonses issued by any Court situate beyond the limits of British India may be sent to the Courts in British India and served as if they had been issued by such Courts; provided that the Courts issuing such summonses have been established by the authority of the Governor General in Council, or that the Governor General in Council has, by notification in the *Gazette of India*, declared the provisions of this section to apply to such Courts."

76. In section 652, after the words "connected with," the words "its own procedure or" shall be inserted.

Amendment of section 652.

77. In the first schedule, column third, opposite "XI of 1865," for the figures and word "11, paragraph 2," the figures and words "11, the last nineteen words of section 13, sections 19," shall be substituted; and opposite "V of 1866," after the word "inclusive," the words "and the schedule" shall be inserted.

Amendment of schedule I.

78. In the second schedule—

Amendment of schedule II.

for the figures "230," the figures "223" shall be substituted:

before the words and figures "Chapter XXI," the words and figures "Chapter XX, section 360—Power to invest certain Courts with insolvency-jurisdiction" shall be inserted:

after the words and figures "Chapter XXXIV—Of arrest and attachment before judgment," the words and figures "except as regards immoveable property, Chapter XXXVI—Appointment of receivers" shall be inserted:

for the figures "522," the figures "526" shall be substituted.

79. In the fourth schedule, in form No. 172, for the word "seven" in each of the places where it occurs, the word "ten" shall be substituted.

Amendment of schedule IV.

80. In the preceding sections of this Act, the words "section" and "schedule" respectively mean section of, and schedule annexed to, the said Code.

Interpretation-clause.

And whereas it is also expedient to amend the Indian Registration Act, 1877, in manner hereinafter appearing; It is hereby further enacted as follows:—

81. In section 35 of the same Act, after the words "person appears," the words "to the registering officer" shall be inserted; and after the words "refuse to register the document," the words "as to the person so denying, appearing or dead" shall be inserted.

Amendment of Act III of 1877, section 35.

82. In section 51 of the same Act, for the figures "87," the figures "89" shall be substituted.

Amendment of section 51.

83. In section 83 of the same Act, for the words "Subordinate Magistrate of the first," the words "Magistrate of the second" shall be substituted.

Amendment of section 83.

84. To section 89 of the same Act, the following clause shall be added (namely):—

Addition to section 89.

"Every Court granting a certificate under section 316 of the Code of Civil Procedure shall send a copy of such certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the immoveable property comprised in such certificate is situate, and such officer shall file the copy in his Book No. 1."

And whereas it is also expedient to amend the Indian Limitation Act, 1877, in manner hereinafter appearing; It is hereby further enacted as follows:—

85. In the second schedule to the said Indian Limitation Act, 1877, after clause 171, the following clauses shall be inserted (namely):—

Amendment of Act XV of 1877, schedule II.

"171A.—Under section 368 of the same Code, to have the representative of a deceased defendant made a defendant.	Sixty days ...	The date of the defendant's death.
"171B.—Under section 371 of the same Code, for an order to set aside an order for abatement or dismissal.	Ditto ...	The date of the order for abatement or dismissal."

D. FITZPATRICK,

Secy. to the Govt. of India.

[Third publication.]

The following preliminary Report of a Select Committee, together with the Bill as settled by them, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 19th March, 1879:—

WE, the undersigned Members of the Select Committee to which the Bill to define and amend the law relating to alluvion, islands and abandoned river-beds was referred, have the honour to report that we have considered the Bill and the papers noted in the margin.

From the Hon'ble H. S. Cunningham, dated 7th October, 1878 (Paper No. 1).
„ B. H. Baden-Powell, Esq., to Hon'ble T. H. Thornton, dated 26th October, 1878 (Paper No. 2).
„ Secretary to Government, North-Western Provinces and Oudh, No. 3193 A, dated 23rd October, 1878, and enclosures (Papers No. 3).
„ Officiating Collector, Dháká, No. 835, dated 12th October, 1878 (Paper No. 4).
„ Chief Commissioner, Ajmér and Merwára, No. 795, dated 20th November, 1878 (Paper No. 5).
„ Secretary to Chief Commissioner, Mysore, No. 6653J-12, dated 18th November, 1878 (Paper No. 6).
„ Secretary to Government, North-Western Provinces and Oudh, No. 3475A, dated 29th November, 1878, and enclosures (Papers No. 7).
„ Secretary for Birár to Resident, Haidarábád, No. 11 B, dated 13th December, 1878 (Paper No. 8).
„ Assistant Secretary, British Indian Association, dated 19th December, 1878, and enclosure (Papers No. 9).
„ Assistant Secretary to Chief Commissioner, British Burma, No. 2582-245, dated 21st December, 1878, and enclosure (Papers No. 10).
„ J. G. W. Sykes, Esq., Advocate, High Court, North-Western Provinces, dated 22nd October, 1878 (Paper No. 11).
„ Secretary to Government, Bengal, No. 55, dated 7th January, 1879, and enclosures (Papers No. 12).
„ Secretary to Government, Panjáb, No. 320, dated 20th January, 1879, and enclosures (Papers No. 13).
„ Assistant Secretary to Chief Commissioner, Central Provinces, No. 399-15, dated 23rd January, 1879, and enclosure (Papers No. 14).
„ Secretary to Chief Commissioner, Assam, No. 104T, dated 27th January, 1879, and enclosure (Papers No. 15).
„ Rájá Harbalab Náráyana Singh, dated 10th January, 1879 (Papers No. 16).
„ Secretary to Government, North-Western Provinces and Oudh, No. 267, dated 4th February, 1879, and enclosures (Papers No. 17).
„ Secretary to Government, Panjáb, No. 469, dated 3rd February, 1879, and enclosures (Papers No. 18).
„ ditto ditto, No. 633, dated 18th February, 1879, and enclosure (Papers No. 19).
Despatch from Secretary of State for India, No. 3, dated 6th February, 1879, and enclosure (Papers No. 20).
From Registrar, High Court, Calcutta, No. 400, dated 10th March, 1879 (Paper No. 21).

2. The Bill as introduced proposed that the division of the whole area of an island formed opposite several holdings should be made rateably among the owners in proportion to their respective frontages, and was framed so as merely to indicate those holders. If, for example, there were three such owners, A, B and C, whose respective frontages were 100 yards, 200 yards and 300 yards, it was intended that A should take one-sixth of the whole area of the island, B one-third and C one-half, and this division was to have been effected either by private arrangement or in default thereof by a suit for partition. It has, however, been strongly urged that, to preclude litigation and discrepancy of

practice, the Bill should, at least in the case of land forming in rivers, contain rules not only for giving the areas, but for defining the plots, to which the several riparian owners are entitled. For this purpose rules have been suggested both by the Board of Revenue of the Lower Provinces and the High Court at Fort William, the former proposing that the alluvion should be divided by right lines perpendicular to the extremities of the frontages, the latter proposing a division by right lines bisecting the angles made by perpendiculars drawn from the extremities of adjacent frontages. But it will be seen on examination that, under either of these plans, alluvial lands formed in the bend of a river would sometimes fall to more than one estate, and further provision would then be required for a rateable division of those lands between the owners of the estates concerned. The subject is one of no small difficulty; but it seems to us that the following rule, which is said by a distinguished Settlement-officer (Mr. Ibbetson) to be practically the rule now in force in the Panjáb, and which is recommended for adoption by the Government of that Province, solves the problem satisfactorily and completely:—

"Where from natural causes an island or other land is formed in or on the bank of a river, either by accumulation of material or by recession of the river, each owner having a frontage on the river is entitled to so much of the land as is included by his frontage, the thread of the stream and lines drawn riverwards from the ends of such frontage to meet the thread of the stream in a direction normal to such thread.

[The term "normal," we may observe, is here used instead of "perpendicular," as the thread of the stream may be a curve. It is obvious that in such case several normals may possibly be drawn from the same point, and that these normals may be either of different or of the same length. The rule, therefore, proceeds as follows:—]

"Where more than one such normal can be drawn from one and the same end of any frontage and each of such normals is of different length, the shortest of such normals shall be deemed to be the including line; and where more than one such normal can be so drawn, and each of such normals is of the same length, the line bisecting the angle between the two extreme positions of the shortest normal shall be deemed to be the including line."

It will be seen that the above rule applies not only to alluvion deposited on the banks of two contiguous holdings, but also to islands. Incidentally, this will have the effect of rendering immaterial the often difficult question whether a new deposit is an island or not.

3. The above is the chief substantial alteration which we have made in the Bill. We now proceed to specify the minor changes which we deem desirable.

4. In the tidal portion of rivers like the Huglí are many islands which are flooded by ordinary tides in the rainy season, but only by extraordinary springs, or not at all, in the dry season. These chars are cultivable in the dry season and should be included in the definition of "island." We have therefore added to that definition the words "throughout the year."

5. To fix with more precision the time at which, for the purposes of the Bill, an alluvial island is first formed, we have provided that it must be capable of being employed for cultivation, pasture or other useful purpose, such, for example, as the supply of reeds or brush-wood. The question of fordability will thus be decided after an island newly formed becomes, as the Privy Council puts it, "valuable and usable."

6. Where any formation takes place on a site of which the Government is proved to be the owner, we have declared that the Government is entitled to such formation.

7. In the case of land formed on the shore of the sea or of a lake and in that of an island formed in the sea or a lake, we have provided that the distribution in proportion to the frontage of the riparian owners shall be effected by such officer as the Local Government may appoint and in accordance with such rules (consistent with the proposed Act) as the Local Government may from time to time prescribe.

8. We think that, to entitle the Crown to alluvial islands, the channel between the island and each bank or shore should not be fordable during the dry season next after the formation.

9. In determining the right to abandoned river-beds, we think we should have regard to the thread of the stream in the preceding dry season, and not to what it was immediately before the abandonment—a matter which cannot be always ascertained. In other respects, the rule for the division of such beds among the riparian owners will be the same as that which we have provided in the case of alluvial lands.

10. We have empowered the Local Government to declare, with reference to any tidal river, where, for the purposes of the proposed Act, the river shall be deemed to end and the sea to begin; and we have provided that no declaration under the Act shall be cancelled or altered, save with the previous sanction of the Governor General in Council.

11. In the Panjáb the ownership of lands subject to the action of rivers is mainly regulated by local usage. We have accordingly retained the section of the Bill as introduced, which provided that such usages should be respected and, in certain cases, presumed to be in force. But such provisions do not appear to be required in Madras, Bombay, Oudh or the North-Western Provinces, and though local usage is saved in the Lower Provinces and Assam by

the Bengal Regulation XI of 1825, there seems to be only one instance in which there has been any attempt to establish it. We have, therefore, confined to the Panjáb the section saving usage. But there is ground for the belief that even in that Province some of the local usages referred to,—including the usage known as "the deep-stream rule"—besides being objectionable on economic grounds and adverse to imperial interests are more or less unsuited to the time and distasteful to the communities affected by them. In these circumstances we have deemed it right, on the recommendation of experienced officers, to provide a procedure whereby such usages may, if thought expedient, be discontinued, and fixed boundaries substituted for varying boundaries in riparian estates.

12. As the rights of mortgagees and tenants to alluvial lands are saved by the Transfer of Property Bill, No. III, sections 37 and 65, clause (*e*), we have not thought it necessary to provide for such rights.

13. The Bill in its present form is not to be taken as expressing our final views as to all the difficult and important subjects with which it deals. But we think that the changes which it has undergone are such as to render republication desirable, for the purpose of eliciting criticism from the public and from the judicial and executive officers by whom its provisions will be carried into effect. We also think that its further consideration should be stayed until the new Law Commission has reported thereon. We therefore recommend that the Bill as now amended be republished with this Report in the *Gazette of India*, and sent to the Local Governments for opinion and for publication in the local Gazettes.

14. The Bill and Statement of Objects and Reasons have been published in English in the local Gazettes for Madras, Bengal, the North-Western Provinces and Oudh, the Panjáb, the Central Provinces and British Burma. Publication in English has not been reported from Bombay and Assam. Publication in the vernacular has been reported only from Madras, Bengal, the North-Western Provinces and Oudh, the Panjáb and the Central Provinces.

WHITLEY STOKES.

RIVERS THOMPSON.

T. H. THORNTON.

G. H. P. EVANS.

F. R. COCKERELL.

CALCUTTA;
The 19th March, 1879.

No. II.

A Bill to define and amend the law relating to alluvion, islands and abandoned river-beds.

WHEREAS it is expedient to define and amend the law relating to alluvion, islands and abandoned river-beds; It is hereby enacted as follows:—

Preamble.

I.—Preliminary.

Short title.

1. This Act may be called "The Indian Alluvion Act, 1879:"

Local extent.

It extends to the whole of British India;

Commencement.

And it shall come into force at once.

Repeal of enactments.

2. The Acts, Regulation and Rules mentioned in the schedule hereto annexed shall be repealed to the extent specified in the third column. References to the Regulation and Rules so repealed, in enactments passed subsequently thereto, shall be read as if made to this Act.

Interpretation-clause.

3. In this Act—

"island" means land surrounded by water and capable of being employed for cultivation, pasture or other useful purpose. It includes such land arising in a river or lake, submerged in the wet season and visible only in the dry season; but it excludes land arising in tidal rivers, tidal lakes or the sea, submerged by the flow of ordinary tides throughout the year:

"owner" means, in the case of a bank or shore held on raiyatwárí tenure, the Government; in the case of a bank or shore forming part of land situate in the Presidency of Bombay and wholly or partially exempt from the payment of land-revenue, or held under a grant or lease fixing the Government demand in respect thereof in perpetuity, the holder of such land; and in the case of a bank or shore held by a village-community, or by one or more members of it, such community:

"sea" includes bay, inlet, creek and arm of the sea:

"frontage" means the right line connecting the corners of each holding where they strike the sea, lake or river:

"Thread of the stream" means (*a*) the middle line of the main-stream during the dry season, or, where there are two streams of equal depth and width, the line equidistant during such season from the outermost shores of the two streams; (*b*) the middle line of the river between what are the shores on each side when the water is at its average height, neither swollen by flood, nor shrunk by drought; or (*c*) the middle line of the particular channel in which the formation or ancient river-bed referred to occurs or is situate;

and a channel is said to be "fordable" when it does not exceed five feet in depth in the dry season next after the formation referred to and throughout the twenty-four hours.

II.—Alluvial Land and Islands.

Right to land formed on shore of sea or lake.

4. Where, from natural causes, land forms gradually on the shore of the sea or of a lake, either by accumulation of material or by recession of the sea or lake, the owners of the shore are severally entitled to the land so formed in proportion to the frontage which they respectively had on the sea or lake immediately before the formation; and the partition of the land so formed shall be made by such officer as the Local Government appoints in this behalf, and in accordance with such rules, consistent with this Act, as the Local Government may from time to time prescribe:

Provided that, where the land or any portion thereof forms on a site which is proved to belong to the Government or a private owner, the Government or such owner, as the case may be, is entitled to the land or portion so formed.

Right to islands where channel is not fordable.

5. Where an island is formed, from natural causes, in a river, the sea or a lake, either by accumulation of material or by recession of the river, sea or lake, if the island is separated from each bank or shore by a channel not fordable at any point, the Government is entitled to such island:

Provided that, where the island or any portion thereof is formed on a site which is proved to belong to a private owner, such owner is entitled to the island or portion so formed.

Right to other islands in sea or lake.

6. If, where an island is formed as aforesaid in the sea or a lake, the channels between it and either shore are fordable at any point, the owners of the nearest shore are severally entitled to the island in proportion to the frontage which they respectively have on the sea or lake; and the partition of the island so formed shall be made by such officer as the Local Government appoints in this behalf and in accordance with such rules, consistent with this Act, as the Local Government may from time to time prescribe.

Right to land formed in, or on bank of, river.

7. Where, from natural causes, an island or other land is formed in, or on the bank of, a river, either by accumulation of material or by recession of the river, and the Government is not entitled thereto under section five, each owner having a frontage on the river is entitled to so much of the land as is included by his frontage, the thread of the stream during the dry season next after the formation and lines drawn rivers[illegible] from the ends of such frontage to meet the [illegible] of the stream in a direction normal to such

Where more than one such normal can be drawn from one and the same end of any frontage and [illegible] of such normals is of different length, the shortest of such normals shall be deemed to be the including line, and where more than one such normal can be so drawn and each of such normals is of the same length, the line bisecting the angle between the two extreme positions of the shortest normal shall be deemed to be the including line.

Provided that, where the land or any portion thereof is formed on a site which is proved to belong to the Government or a private owner, the Government or such owner, as the case may be, is entitled to the land or portion so formed.

Islands formed by division of rivers.

8. If a river freshly divides and surrounds, or, by changing its course, cuts off, lands belonging to the owner of the bank, such owner is entitled to the lands so surrounded or cut off.

III.—Abandoned River-beds.

Right to abandoned river-beds.

9. Where a river suddenly abandons the bed which it occupies during the season of flood, each owner having a frontage on such bed is entitled to so much of the bed as is included by his frontage, the thread of the stream during the dry season next before the abandonment and lines drawn towards the bed from the ends of such frontage to meet such thread in a direction normal thereto.

Where more than one such normal can be drawn from one and the same end of any frontage, the rules contained in the second paragraph of section seven shall apply:

Provided that, when the ancient bed is proved to have belonged immediately before the abandonment to the Government or a private owner, it shall continue to be the property of the Government or of such owner, as the case may be.

IV.—Miscellaneous.

Power to declare "main-stream," "dry season" and "thread of the stream."

10. The Local Government may, from time to time, declare, with reference to any river, or any part of any river,—

(*a*) what shall be deemed to be, for the purposes of this Act, the "main-stream" and the "dry season"; and

(*b*) which of the said definitions of "thread of the stream" shall be deemed to be in force.

The Local Government may also declare, with reference to any tidal river, where, for the purposes of this Act, the river shall be deemed to end and the sea to begin.

Every declaration made under this section, and all rules made under section four or section six, shall be published in the official Gazette, and shall thereupon have the force of law. And no such declaration shall be cancelled or altered save with the previous sanction of the Governor General in Council.

In the absence of a declaration made under clause (*b*) as to any river or part thereof, and having the force of law, the first of the said definitions of "thread of the stream" shall be deemed to be in force with reference to such river or part.

Savings.

11. Nothing herein contained shall—

(*a*) affect any law relating to the assessment of land-revenue or to the enhancement or abatement of rent; or

(*b*) confer on any owner of a bank or shore in respect of which he is hereby declared to be entitled to alluvial land, to an island, or to an abandoned river-bed, any title to such land, island or river-bed, better than that which he has to the bank or shore; or

(*c*) enlarge any holding granted by Government, the area of which has been fixed by any sanad or other document executed under the authority of Government; or

(*d*) authorize any acts of private persons done in order to divert currents or cause accretions; or

(*e*) authorize any encroachments by private persons on the banks, beds or channels of navigable rivers; or

(*f*) prevent any officer duly empowered by the Local Government in this behalf from removing obstacles which appear to him to interfere with the safe and customary navigation of such rivers, or which obstruct the passage of boats by tracking on the banks of such rivers or otherwise; or

(*g*) prevent any officer duly empowered by the Local Government in this behalf from regulating the direction and flow of such rivers and the preservation and distribution of their waters.

Local usage in Panjáb.

12. In the territories administered by the Lieutenant-Governor of the Panjáb, nothing herein contained shall affect any definite and well-established local usage respecting the right to alluvial land, islands or abandoned river-beds; but (except in the cases provided for by the Panjáb Land-Revenue Act, 1871, section 16) the burden of proving such usage shall lie on the person alleging it:

Provided that the Local Government may from time to time (*a*) cause the bed of any river or part of a river, together with the islands and alluvial lands situate therein or adjacent thereto, to be surveyed and mapped, (*b*) appoint an officer to enquire into, determine and record the rights of private persons and the Government, in, to or over the said bed, islands and lands, and (*c*) declare that rights so recorded shall not be affected by any local usage. And the provisions of the Panjáb Land Revenue Act, 1871, chapter II, shall apply, so far as may be, to proceedings under this section, and the determination of the said rights shall be made after consideration of the gain and loss (if any) caused by changes in the course of the river for a period of twelve years next before the date of the survey-notification.

Right of Crown to alluvial lands, &c., not hereinbefore provided for.

13. All land and islands formed, and all river-beds abandoned, as mentioned respectively in sections four, five and nine, and not vesting under any of the provisions hereinbefore contained, shall vest in the Government.

THE SCHEDULE.

(*a*). ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

Number and year.	Subject.	Extent of repeal.
IV of 1872...	Panjáb Laws Act ...	So much as relates to Bengal Regulation XI of 1825.
XX of 1875...	Central Provinces Laws Act	Ditto.
XVIII of 1876	Oudh Laws Act ...	Ditto.

(*b*). BENGAL REGULATION.

Number and year.	Subject.	Extent of repeal.
XI of 1825...	Alluvion	The whole.

(*c*). BENGAL ACT.

Number and year.	Subject.	Extent of repeal.
IV of 1868...	Amending Act IX of 1847	Sections 2 and 4.

(*d*). RULES.

Date.	Subject.	Extent of repeal.
22nd May 1852.	Alluvion and Diluvion in Sindh.	Paragraphs 1, 2, 3, 4, 5 and 20.

D. FITZPATRICK,
Secy. to the Govt. of India.

[First publication.]

The following Bill, and Statement of Objects and Reasons accompanying it, are published for general information, by order of His Excellency the Governor General, under the 22nd of the Rules for the Conduct of the Legislative Business of the Council of the Governor General:—

THE CODE OF CRIMINAL PROCEDURE, 1879.

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A Bill to Consolidate and amend the law relating to Criminal Procedure.

WHEREAS it is expedient to consolidate and amend the law relating to Criminal Procedure; It is hereby enacted as follows:— Preamble.

PART I.

PRELIMINARY.

CHAPTER I.

1. This Act may be called "The Code of Criminal Procedure, 1879:" and shall come into force on the first day of January, 1880; Short title. Commencement.

It extends to the whole of British India; but in the absence of any specific provision to the contrary, nothing herein contained shall affect any special or local law now in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed,* by any other law now in force, or shall apply to— Local extent.

Act X, 1872, ss. 1, 2, 111, 529, 535, 540, 541. Act X, 1875, s. 148. Act IV, 1877, s. 3.

* *e.g.*, Act V of 1869.

(*a*) the Commissioner of Police or the Police in the towns of Calcutta, Madras and Bombay; Act X, 1872, s. 540.

(*b*) heads of villages in the Presidency of Fort Saint George;

(*c*) village Police-officers in the Presidency of Bombay;

(*d*) any officer duly authorized to try petty offences in military bázárs at cantonments and stations occupied by the troops of the said Presidencies respectively.

Act X, 1875, s. 2. Act X, 1872, s. 2, para. 1. Act X, 1872, ss. 82, 86. Act X, 1872, s. 2, last para., s. 10.

2. On and from the first day of January, 1880, the enactments mentioned in the first schedule shall be repealed to the extent specified in the third column of the said schedule, but not so as to restore any jurisdiction or form of procedure not then existing or followed, or to render unlawful the continuance of any confinement which is then lawful. Repeal of enactments.

All notifications published, proclamations issued, powers conferred, courts established, local limits defined, sentences passed and orders, rules and appointments made, under any enactment hereby repealed, or under any enactment repealed by any such enactment, and which are in force immediately before the first day of January, 1880, shall be deemed to have been respectively published, issued, conferred, established, defined, passed and made under the corresponding section of this Code. Notifications, &c., under repealed Acts.

3. In every enactment passed before this Code comes into force, in which reference is made to, or to any chapter or section of, the Code of Criminal Procedure, Act No. XXV of 1861, or Act No. X of 1872, such reference shall be taken to be made to this Code or to its corresponding chapter or section. References to Code of Criminal Procedure. Act X, 1872, s. 2, paras. 3, 4.

In every such enactment the expressions "Officer exercising (or 'having') the powers (or the 'full powers') of a Magistrate," "Subordinate Magistrate, first class," and "Subordinate Magistrate, second class," shall respectively be deemed to mean "Magistrate of the first class," "Magistrate of the second class," and "Magistrate of the third class;" the expression "Magistrate of a division of a district" shall be deemed to mean Sub-divisional Magistrate, and the expression "Magistrate of Police" shall be deemed to mean Presidency Magistrate. Expressions in former Acts. Act IV, 1877, s. 10.

4. In this Code the following words and expressions have the following meanings, unless a different intention appears from the subject or context:— Interpretation. Act X, 1872, s. 4. Act IV, 1877, s. 6.

(*a*) "Complaint" means the allegation made to a proper officer that some person, whether known or unknown, has been guilty of an act which amounts to an offence: "Complaint." New. Liv. 501.

(*b*) "Investigation" includes all the proceedings by the Police authorized by this Code for the collection of evidence: "Investigation."

(*c*) "Inquiry" includes every inquiry conducted under this Code by a Magistrate or Court: "Inquiry." "Inquired into" omitted.

(*d*) "Judicial proceeding" means any proceeding in the course of which evidence is or may be taken: "Judicial proceeding." Penal Code, 193. I. L. R., I All. 6. 1 Mad. H. C. Rep. 46.

(*e*) "Writing" includes "printing," "lithography," "photography" and "engraving:" "Writing."

(*f*) "To sign" means to affix a name or mark to an instrument or record in writing or by means of a stamp: "To sign." New.

(*g*) "Sub-division" means a sub-division of a District: "Sub-division."

(*h*) "Province" means the territories for the time being under the administration of any Local Government: "Province."

(*i*) "Presidency-town" means the local limits for the time being of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William, Madras or Bombay: "Presidency-town."

Act X, 1875, s. 3, altered. Another definition *infra*, s. 269.

(*j*) "High Court" means, in reference to proceedings against European British subjects or persons jointly charged with European British subjects, the High Courts of Judicature at Fort William, Madras and Bombay, the High Court of Judicature for the North-Western Provinces and the Chief Court of the Panjáb: "High Court."

In other cases "High Court" means the highest Court of criminal appeal or revision for any local area:

(*k*) "Chief Justice" includes also the senior Judge of a Chief Court: "Chief Justice."

Act X, 1875, s. 3. Act X, 1877, s. 539.

(*l*) "Advocate General" includes also a Government Advocate, or where there is no Advocate General or Government Advocate, such officer as the Local Government may from time to time appoint in this behalf: "Advocate General."

(*m*) "Clerk of the Crown" includes any officer specially appointed by the Chief Justice to discharge the functions given by this Code to the Clerk of the Crown: "Clerk of the Crown."

See 11 Bom. 103. Act X, 1872, s. 57. Act X, 1875, s. 3.

(*n*) "Public prosecutor" means any person appointed under section 502, and includes any person acting under the directions of a public prosecutor; and any person conducting a prosecution on behalf of Her Majesty in any High Court in the exercise of its original criminal jurisdiction: "Public prosecutor."

(*o*) "Pleader" used with reference to any proceeding in any Court means a pleader authorized to practise in such Court, and includes (1) an advocate, a vakíl and an attorney of a High Court so authorized, and (2) any other person appointed with the permission of the Court to act in such proceeding. "Pleader."

Act X, 1872, s. 136.

(*p*) "Officer in charge of a Police-station" includes, when the officer in charge of the station is absent or ill, the Police-officer next in rank present at the Police-station above the rank of Constable: "Officer in charge of a Police-station."

11 Bom. 98.

(*q*) "Sessions case" means a case triable exclusively by the Court of Session, or which the Magistrate commits to the Court of Session, though he might have tried it himself: "Sessions case."

(*r*) "Offence" means anything made punishable by any law for the time being in force: "Offence."

(*s*) "Cognizable offence" means an offence for, and "cognizable case" means a case in, which a Police-officer may, under any law for the time being in force, arrest without warrant: "Cognizable offence." "Cognizable case."

"Non-cognizable offence" means an offence for, and "Non-cognizable case" means a case in, which a Police-officer may not arrest without warrant: "Non-cognizable offence." "Non-cognizable case."

(*t*) "Bailable offence" means an offence shewn as bailable in the second schedule or which is made bailable by any other law for the time being in force: and "non-bailable offence" means any other offence: "Bailable offence." "Non-bailable offence."

(*u*) "Warrant case" means a case relating to an offence punishable with death, transportation, whipping, or imprisonment for a term exceeding six months: "Warrant case."

(*v*) "Summons case" means a case relating to an offence not so punishable: "Summons case."

(*w*) "European British subject" means— "European British subject." Act X, 1872, s. 71. Act X, 1875, s. 2, extended to persons naturalized in British India.

(1) any subject of Her Majesty naturalized in British India, or born, naturalized or domiciled in the United Kingdom of Great Britain and Ireland, or in any of the European, American or Australian Colonies or Possessions of Her Majesty, or in the Colony of New Zealand, or in the Colony of the Cape of Good Hope or Natal;

(2) any child or grand-child of any such person by legitimate descent:

(*x*) "Chapter" means a chapter of this Code: "Chapter." "Schedule" means a schedule hereto annexed: "Schedule."

(*y*) "Place" includes also a house, building and vessel: "Place."

Words which refer to acts done extend also to illegal omissions, and Words referring to acts. Act XI, 1874, s. 2.

all words and expressions used herein and defined in the Indian Penal Code, and not hereinbefore defined, shall be deemed to have the meanings attached to them respectively by that Code. Words to have same meaning as in Penal Code. *e.g.*, "special law," "local law."

Trial of offences under Penal Code. Act X, 1872, ss. 6, 7, 11.

5. All offences under the Indian Penal Code shall, and all offences under any other law shall, in the absence of any enactment for the time being in force regulating the mode of inquiry or trial, be enquired into and tried according to the provisions hereinafter contained. Trial of offences against other laws. Act X, 1872, ss. 6, 8, para. 1. Act X, 1875, s. 6. Act IV, 1877, s. 14.

PART II.

CONSTITUTION AND POWERS OF CRIMINAL COURTS AND OFFICES.

CHAPTER II.

OF THE CONSTITUTION OF CRIMINAL COURTS AND OFFICES.

A.—Classes of Criminal Courts.

6. Besides the High Courts and the Courts constituted under any law other than this Code for the time being in force, there Classes of Criminal Courts. Act X, 1872, ss. 5, 19.

shall be five classes of Criminal Courts in British India, namely :—

I.—Courts of Session :
II.—Courts of Presidency Magistrates :
III.—Courts of Magistrates of the first class :
IV.—Courts of Magistrates of the second class :
V.—Courts of Magistrates of the third class.

B.—Territorial Divisions.

Act X, 1872, ss. 12, 39.

7. Every Province (excluding the Presidency-towns) shall be a Sessions Division, or shall consist of Sessions Divisions;

Sessions Divisions.

and every Sessions Division shall, for the purposes of this Code, be a District or consist of Districts.

Districts.

Act X, 1872, ss. 13, 38.

The Local Government may from time to time alter the limits or, with the previous sanction of the Governor General in Council, the number, of such Divisions and Districts.

Power to alter Divisions and Districts.

Act XI, 1874, s. 4.
Act X, 1872, s. 14.

The existing Sessions Divisions and Districts shall be Sessions Divisions and Districts respectively, unless and until they are so altered.

Existing Divisions and Districts maintained till altered.

Every Presidency-town shall, for the purposes of this Code, be deemed to be a District.

Presidency-towns to be deemed Districts.

Act X, 1872, s. 39.
Act X, 1872, s. 40.

8. The Local Government may divide any District outside the Presidency Towns into Sub-divisions, or constitute any portion of any such District a Sub-division, and may from time to time alter the limits of such Sub-divisions.

Power to divide Districts into sub-divisions.

All existing Sub-divisions which are now usually put under the charge of a Magistrate shall be deemed to have been made under this Code.

Existing Sub-divisions maintained.

C.—Courts and offices outside the Presidency-towns.

Act X, 1872, ss. 15, 16 and 17.

9. The Local Government shall establish a Court of Session for every Sessions Division, and appoint a Judge of such Court.

Court of Session.

It may also appoint Additional Sessions Judges, Joint Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in one or more such Courts.

Act X, 1872, s. 35.

10. In every District outside the Presidency-towns, the Local Government shall appoint a Magistrate of the first class, who shall be called the District Magistrate.

District Magistrate.

Act X, 1872, s. 55.

11. Whenever, in consequence of the office of a District Magistrate becoming vacant, any officer succeeds temporarily to the chief executive administration of the District in criminal matters, such officer shall, pending the orders of the Local Government, exercise all the powers and perform all the duties respectively conferred and imposed by this Code on the District Magistrate.

Officers temporarily succeeding to vacancies in office of District Magistrate.

Act X, 1872, ss. 37, 49.

12. The Local Government may appoint as many persons as it thinks fit, besides the District Magistrate, to be Magistrates of the first, second or third class in any District outside the Presidency-towns; and the Local Government, or the District Magistrate subject to the control of the Local Government, may define local areas within which such persons may exercise the powers with which they may respectively be invested under this Code.

Subordinate Magistrates.

Local limits of their jurisdiction.

In the absence of any such definition, such persons may exercise such powers throughout such District.

Act X, 1872, s. 40.

13. The Local Government may place any Magistrate of the first or second class in charge of a Sub-division.

Power to put Magistrate in charge of Sub-division.

Such Magistrates shall be called Sub-divisional Magistrates.

The Local Government may, if it thinks fit, delegate its powers under this section to the District Magistrate.

Delegation of power to Magistrate of District.

Act X, 1872, s. 42.
Act XI, 1874, s. 17.

14. The Local Government may confer upon any person all or any of the powers conferred or conferrible by or under this Code on a Magistrate of the first, second or third class, in respect to particular cases or to a particular class or particular classes of cases, or in regard to cases generally, in any local area outside the Presidency-towns.

Special Magistrates.

Such Magistrates shall be called Special Magistrates.

See Act No. XI of 1874, s. 5.

With the previous sanction of the Governor General in Council, the Local Government may delegate, with such limitations as it thinks fit, to any officer under its control the power conferred by the first paragraph of this section.

Act X, 1872, s. 50.

15. The Local Government may direct any two or more Magistrates in any place outside of the Presidency-towns to sit together as a Bench, and may invest such Bench with any of the powers conferred or conferrible by or under this Code on a Magistrate of the first, second or third class, and direct it to exercise such powers in such cases, or such classes of cases, only, and within such local limits, as the Local Government thinks fit.

Benches of Magistrates.

Sufferuddin v. Ibrahim, I. L. R. 3 Calc. 764.

Act X, 1872, s. 51.

Except as otherwise provided by any order of the Local Government under this section, every such Bench shall have the powers conferred by this Code on a Magistrate of the highest class to which any one of its members belongs, and who is present taking part in the proceedings as a member of the Bench, and as far as possible shall, for the purposes of this Code, be deemed to be a Magistrate of such class.

Powers exercisable by Bench in absence of special direction.

Act X, 1872 ss, 52, 53.

16. The District Magistrate may from time to time, subject to the control of the Local Government, make rules consistent with this Code for the guidance of Magistrates' Benches in his District respecting the following subjects :—

Power to frame rules for guidance of Benches.

(*a*) the classes of cases to be tried;
(*b*) the times and places of sitting;
(*c*) the constitution of the Bench for conducting trials;
(*d*) the mode of settling differences of opinion which may arise between the Magistrates in session.

Act X, 1872, s. 37, cl. 2.

17. All Magistrates appointed under sections 12, 13 and 14, and all Benches constituted under section 15, shall be subordinate to the District Magistrate, and

Subordination of other Magistrates to District Magistrate;

Act X, 1872, s. 41.

every Magistrate (other than a Sub-divisional Magistrate) and Bench exercising powers in a Sub-division shall be subordinate to the Sub-divisional Magistrate, subject, however, to the general control of the District Magistrate.

to Sub-divisional Magistrate.

Act X, 1872, s. 37, cl. 2.

Neither the District Magistrate nor the Magistrates or Benches appointed or constituted under sections 12, 13, 14 and 15 shall be subordinate to the Sessions Judge, except to the extent and in the manner hereinafter expressly provided.

D.—Courts of Presidency Magistrates.

Act IV, 1877, ss. 8, 9.

18. The Local Government shall from time to time appoint a sufficient number of persons (hereinafter called Presidency Magistrates) to be Magistrates for each of the Presidency-towns, and shall appoint one of such persons to be Chief Magistrate for each such town.

Appointment of Presidency Magistrates.

Any two or more of such persons may (subject to the rules made by the Chief Magistrate under the power hereinafter conferred) sit together as a Bench.

Act IV, 1877, s. 8, para. 5.

19. Every Presidency Magistrate shall exercise jurisdiction in all places within the Presidency-town for which he is appointed, and within the limits of the port of such town and of any navigable river or channel leading thereto, as such limits are defined under the law for the time being in force for the regulation of ports and port-dues.

Local limits of their jurisdiction.

Act IV, 1877, s. [illegible] para.

20. Every Presidency Magistrate in the town of Bombay shall exercise all jurisdiction which, under any law in force immediately before the first day of April, 1877, was exercised in that town by the Court of Petty Sessions :

Bombay Court of Petty Sessions.

Provided that appeals under the law for the time being regulating the municipality of Bombay shall lie to the Chief Magistrate only.

1877,

21. Every Chief Magistrate shall exercise in the Presidency-town for which he is appointed all the powers which by any law or rule in force at the time this Act comes into force are required to be exercised by any Senior or Chief Magistrate, and may from time to time, with the previous sanction of the Local Government, make rules consistent with this Code to regulate—

Chief Magistrate.

(*a*) the conduct and distribution of business and the practice in the Courts of the Magistrates of the town;
(*b*) the times and places at which Benches of Magistrates shall sit;
(*c*) the constitution of such Benches; and
(*d*) the mode of settling differences of opinion which may arise between Magistrates in session.

E.—Justices of the Peace.

Act II, 1869, s. 3.

22. The Governor General in Council, so far as regards the whole or any part of British India outside the Presidency-towns,

Justices of the Peace for the Mufassal.

and every Local Government, so far as regards the territories subject to its administration (other than the towns aforesaid),

may, by notification in the official Gazette, appoint such European British subjects as he or it thinks fit to be Justices of the Peace within and for the territories mentioned in such notification.

Act II, 1869, s. 4.

23. The Governor General in Council or the Local Government, so far as regards the town of Calcutta,

Justices of the Peace for the Presidency-towns.

and the Local Government, so far as regards the towns of Madras and Bombay,

may, by notification in the official Gazette, appoint to be Justices of the Peace within the limits of the town mentioned in such notification any persons resident within British India and not being the subjects of any foreign State whom such Governor General in Council or Local Government (as the case may be) thinks fit.

Act II, 1869, s. 10.

24. Every person now acting as a Justice of the Peace within and for any part of British India other than the said towns, under any commission issued by a High Court, shall be deemed to have been appointed under section 22 by the Governor General in Council to act as a Justice of the Peace for the whole of British India other than the same towns.

Present Justices of the Peace.

Every person now acting as a Justice of the Peace within the limits of any of the said towns under any such commission shall be deemed to have been appointed under section 23 by the Local Government.

13 Geo. III, c. 63, s. 38. Act X, 1875, s 152. Act IV, 1877, s. 8. Native High Court Judges are thus Justices of the Peace.

25. In virtue of their respective offices, the Governor General, the Ordinary Members of the Council of the Governor General and the Judges of the High Courts are Justices of the Peace within and for the whole of British India, and the Presidency Magistrates are Justices of the Peace within and for the towns of which they are respectively Magistrates.

Ex officio Justices of the Peace.

F.—Suspension and Removal.

Act X, 1872, s. 9.

26. All Judges of criminal Courts other than the High Courts, and all Magistrates, may be suspended or removed by the Local Government: Provided that such Judges and Magistrates as now are liable to be suspended or removed by the Governor General in Council shall continue to be so liable.

Suspension and removal of Judges and Magistrates.

Act II, 1869, s. 9.

27. The Governor General in Council may suspend any Justice of the Peace appointed by him, and the Local Government may suspend or dismiss any Justice of the Peace appointed by it.

Suspension and removal of Justices of the Peace.

CHAPTER III.

Powers of Courts.

A.—Description of Offences cognizable by each Court.

28. Any offence under the Indian Penal Code may be tried by the High Court or Court of Session or by any other Court by which such offence is shown in the seventh column of the second Schedule to be triable.

Offences under Penal Code.

Act X, 1872, s. 8.

29. Any offence under any other law shall, where any Court is mentioned in this behalf in such law, be tried by such Court; and when no Court is so mentioned, may be tried by the High Court or by any Court constituted under this Code:

Offences under other laws.

Provided that no Magistrate of the second class shall try any such offence which is punishable with imprisonment for a term which may extend to three years, and no Magistrate of the third class shall try any such offence which is punishable with imprisonment for a term which may extend to one year.

Act X, 1872, s. 36.

30. In the territories respectively administered by the Lieutenant-Governor of the Panjáb and the Chief Commissioners of Oudh, the Central Provinces, British Burma, Coorg and Assam, and in those parts of the other Provinces in which there are Deputy Commissioners or Assistant Commissioners, the Local Government may invest the District Magistrate with power to try as a Magistrate all offences not punishable with death.

Offences not punishable with death.

B.—Sentences which may be passed by Courts of various Classes.

Act X, 1872, s. 15, paras. 2 and 17.

31. A High Court may pass any sentence authorized by law.

Sentence which High Court or Sessions Judges may pass.

A Sessions Judge, Additional Sessions Judge or Joint Sessions Judge may pass any sentence authorized by law; but any sentence of death passed by such Judge shall be subject to confirmation by the High Court.

An Assistant Sessions Judge may pass any sentence authorized by law except a sentence of death, transportation or imprisonment for a term exceeding seven years; but any sentence of imprisonment for a term exceeding three years passed by an Assistant Sessions Judge shall be subject to confirmation by the Sessions Judge. Act X, 1872, s. 18.

32. The Courts of Magistrates may pass the following sentences, namely:— Act X, 1872, s. 20.

Sentences which Magistrates may pass.

(*a*.) Courts of Presidency Magistrates and of Magistrates of the first class:	Imprisonment for a term not exceeding two years, including such solitary confinement as is authorized by law; Fine not exceeding one thousand rupees; Whipping. Act IV, 1877, s. 11.
(*b*.) Courts of Magistrates of the second class:	Imprisonment for a term not exceeding six months, including such solitary confinement as is authorized by law; Fine not exceeding two hundred rupees; Whipping.
(*c*.) Courts of Magistrates of the third class.	Imprisonment for a term not exceeding one month; Fine not exceeding fifty rupees.

The Court of any Magistrate may pass any lawful sentence, combining any of the sentences which it is authorized by law to pass.

33. The Court of any Magistrate may award such term of imprisonment in default of payment of fine as is authorized by law: Act X, 1872, 20, Expl. 309, para. See I. L. R. Mad. 77.

Power to sentence to imprisonment in default of fine.

Provided that the term is not in excess of the Magistrate's powers under this Code:

Provided also that in no case decided by a Magistrate where imprisonment has been awarded as part of the substantive sentence shall the period of imprisonment awarded in default of payment of the fine exceed one-fourth of the period of imprisonment which such Magistrate is competent to inflict as punishment for the offence, otherwise than as imprisonment in default of payment of the fine. Act X, 187 s. 309, pa 2. As to para. 1 that sect see Act 1 1868. Act IV, 187 s. 12, omitting para. 1 of

Proviso as to cases decided by a Magistrate.

34. The Court of a District Magistrate specially empowered under section 30 may pass any sentence of imprisonment for a term not exceeding seven years, including such solitary Act X, 187 s. 36.

Higher powers of certain District Magistrates.

confinement as is authorized by law, or of fine, or of whipping, or of any combination of these punishments authorized by law.

But any sentence of imprisonment for a term exceeding three years passed by any such Court shall be subject to the confirmation of the Sessions Judge.

Act X, 1872, s. 314. Act X, 1875, s. 109. Act IV, 1877, s. 13.

35. When a person is convicted, at one trial, of two or more distinct offences, the Court may sentence him, for such offences, to the several punishments prescribed therefor which such Court is competent to inflict: such punishments, when consisting of imprisonment or transportation, to commence the one after the expiration of the other in such order as the Court may direct.

Sentence in cases of simultaneous conviction of several offences.

It shall not be necessary for the Court, by reason only of the aggregate punishments for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court:

Provided that in no case shall such person be sentenced to punishment for a longer period than fourteen years:

Maximum term of imprisonment.

Provided also that, if the case is tried by a Magistrate (other than a Magistrate acting under section 34), the aggregate punishments shall not exceed twice the amount of punishment which he is, in the exercise of his ordinary jurisdiction, competent to inflict.

I. L. R. 1 Bom. 223.

For the purpose of confirmation or appeal, a combined sentence passed under this section in case of simultaneous convictions for several offences shall be deemed to be a single sentence.

C.—Ordinary and Additional Powers.

X, 1872, s. 22, 24, 26, 28, 30.

36. All District Magistrates, Sub-divisional Magistrates and Magistrates of the first, second and third class have the powers hereinafter respectively conferred upon them and specified in the third schedule. Such powers are called their "ordinary powers."

Ordinary powers of Magistrates.

1872, s. 25, 27.

37. In addition to his ordinary powers, any Magistrate of the first, second or third class may be invested by the Local Government or the District Magistrate, as the case may be, with any powers specified in the fourth schedule as powers with which a Magistrate of such class may be invested by the Local Government or the District Magistrate.

Additional powers conferrible on Magistrates.

D.—Conferment, Continuance and Cancellation of Powers.

38. In conferring powers under this Code, the Local Government may empower persons specially by name, or classes of officials generally by their official titles.

Mode of conferring

39. Whenever any person holding an office in the service of Government who has been invested with any powers under this Code throughout any local area is transferred to an equal or higher office of the same nature within a like local area, he shall, unless the Local Government otherwise directs, or has otherwise directed, continue to exercise the same powers in the local area to which he is so transferred. Act X, 1872, s. 56. I. L. R. 2 Calc., 117.

Continuance of powers of officers transferred.

40. The Local Government may vary or cancel any powers conferred on any person under this Code. Act X, 1872, s. 54.

Powers may be varied or cancelled.

PART III.

General Provisions.

CHAPTER IV.

Of Aid and Information to the Magistrates and Police.

41. Every person is bound to assist a Magistrate or Police-officer demanding his aid, whether within or without the Presidency-towns, Act X, 1872, s. 91. Act IV, 1877, s. 247.

Public when to assist Magistrates and Police.

(*a*) in the prevention of a breach of the peace, or of any injury attempted to be committed to any public property; New as to public property.

(*b*) in the taking of any other person whom such Magistrate or Police-officer is authorized to arrest, or

(*c*) in the suppression of a riot or affray.

42. Every person, whether within or without the Presidency-towns, aware of the commission of any offence punishable under the following sections of the Indian Penal Code (namely), 121, 121A, 122, 123, 124, 124A, 125, 126, 130, 302, 303, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 456, 457, 458, 459 and 460, shall, in the absence of reasonable excuse, the burden of proving which shall lie upon such person, give information of the same to the nearest Magistrate or to the officer in charge of the nearest Police-station. Act X, 1872, s. 89. Act IV, 1877, s. 246.

Public to give information of certain offences.

43. Every village-headman, village-watchman, owner or occupier of land, or the agent of any such owner or occupier, and every Native officer employed in the collection of revenue or rent of land on the part of Government or the Court of Wards, shall forthwith communicate to the nearest Magistrate, or to the officer in charge of the nearest Police-station, any information which he may obtain respecting— Act X, 1872, s. 90.

Village-headmen, landholders and others bound to report certain matters.

(*a*) the residence of any notorious receiver or vendor of stolen property in the village of which he is headman or watchman, or in which he owns or occupies land, or is agent, or collects revenue or rent, as the case may be;

Arrest, escape and retaking.

(*b*) the resort to any place within the limits of such village of any person whom he knows, or reasonably suspects, to be a thug or robber;

(*c*) the commission of or intention to commit any non-bailable offence in or near such village;

(*d*) the occurrence therein of any sudden or unnatural death.

CHAPTER V.

Of Arrest, Escape and Retaking.

A.—Arrest generally.

Act X, 1872, s. 177.

44. In making an arrest, the Police-officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

Arrest how made.

Act X, 1872, s. 178, adding words as to attempt to evade.

If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such Police-officer or other person may use all means necessary to effect the arrest.

Resisting endeavour to arrest.

Act X, 1872, ss. 99, 179.

45. If any person acting under a warrant of arrest, or any Police-officer having authority to arrest, has reason to believe that the person to be arrested has entered into, or is within, any place, the person residing in, or in charge of, such place shall, on demand of such person acting as aforesaid or such Police-officer, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

Search of place entered by person sought to be arrested.

Act X, 1872, s. 100.

46. If ingress to such place cannot be obtained under section 45, it shall be lawful in any case for a person acting under a warrant, and in any case in which a warrant cannot be obtained without affording the person to be arrested an opportunity of escape, for a Police-officer, to enter such place and search therein, and

Procedure where ingress not obtainable.

Act X, 1872, s. 180.

in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if, after notification of his authority and purpose and demand of admittance duly made, he cannot otherwise obtain admittance.

Act X, 1872, s. 181, which applies only where person to be arrested is accused of an offence for which a warrant may issue.

Provided that, if any such place is an apartment in the actual occupancy of a woman (not being the person to be arrested) who, according to the custom of her caste, does not appear in public, such person or Police-officer shall, before entering such apartment, give notice to such woman that she is at liberty to withdraw, and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it.

Breaking open zanáná.

47. Any Police-officer or other person authorized to make an arrest may break open any outer or inner door or window of any house in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein.

Power to break open doors for purposes of liberation

Arrest, escape and retaking.

Act X, 1872, s. 182.

48. The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

No unnecessary restraint.

Act X, 1872, s. 387.

49. Whenever a person is arrested by a Police-officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail, but the person arrested cannot furnish bail, and

Search of arrested persons.

whenever a person is arrested without warrant and cannot legally be admitted to bail, or is unable to furnish bail,

the officer making the arrest or, when the arrest is made by a private person, the Police-officer to whom such private person makes over the person arrested, may search such person, and place in safe custody all articles, other than necessary wearing apparel, found upon him.

A list of such articles shall be forwarded with the daily diary or with the final report in the case.

New. Liv., p. 50.

50. The officer or other person making any arrest under this Code may take from the person arrested any offensive weapons which he has about his person, and shall deliver all weapons so taken to the Court or officer before which or whom the person making the arrest is required by this Code to produce the person arrested.

Power to seize offensive weapons.

B.—Arrest without Warrant.

Act X, 1872, s. 92, omitting clauses 1 and 3.

51. Any Police-officer may, without order from a Magistrate and without a warrant, arrest—

When Police may arrest without warrant.

firstly—any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made, or a reasonable suspicion exists of his having been so concerned;

Cf. Livingston 508.

secondly—any person who has been proclaimed either under this Code or in a notification published in any official Gazette or otherwise duly promulgated by order of an officer of Government;

thirdly—any person found with property in his possession which may reasonably be suspected to be stolen property;

fourthly—any person who obstructs a Police-officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; and

fifthly—any person reasonably suspected of being a deserter from Her Majesty's Army or Navy.

Act X, 1872, s. 97. Crim. Code, Art.

52. Any officer in charge of a Police-station may, in like manner, arrest or cause to be arrested—

Arrest of vagabonds.

(*a*) any person found taking precautions to conceal his presence within the limits of such station

under circumstances which afford reason to believe that he is taking such precautions with a view to committing an offence; or

(*b*) any person within the limits of such station who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself; or

(*c*) any person who is by repute an habitual robber, house-breaker, thief, or an habitual receiver of stolen property knowing it to be stolen, or who is of a dangerous character.

Act X, 1872, s. 103.

53. When any officer in charge of a Police-station requires any officer subordinate to him to arrest without a warrant (otherwise than in his presence) any person who may lawfully be arrested by such subordinate officer without a warrant, he shall deliver to the officer required to make the arrest an order in writing, specifying the person to be arrested, and the offence for which the arrest is to be made.

Procedure when Police-officer deputes subordinate to arrest without warrant.

Act X, 1872, s. 93.

54. Any person who in the presence of a Police-officer commits or is accused of committing a non-cognizable offence, and refuses on demand of such officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, may be arrested or detained by such officer in order that his name or residence may be ascertained; and shall, within twenty-four hours from the arrest, be forwarded to the nearest Magistrate, unless, before the expiration of that time, his true name and residence are ascertained, in which case he shall be forthwith released.

Refusal to give name and residence.

Act X, 1872, s. 109.

55. For the purpose of arresting without warrant any person whom he is authorised to arrest under this chapter, a Police-officer may pursue such person into any place in British India.

Pursuit of offenders into other jurisdictions.

Act X, 1872, s. 105.

56. Any private person may arrest any person who, in his view, commits a non-bailable and cognizable offence;

Arrest by private persons.

X, 1872, 97. Crim. Code, Art.

and shall, without unnecessary delay, make over any person so arrested to a Police-officer; or in the absence of a Police-officer, take such person to the nearest Police-station.

Procedure on such arrest.

The Police shall deal with such person according to the provisions of section 51 or 54, as the case may be, and shall not detain him in custody unless it appears to be liable to arrest or detention under the section applicable.

A Police-officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before the Magistrate having jurisdiction in the case, or before the officer in charge of a Police-station.

Act X, 1872, s. 124.

58. No Police-officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

Person arrested not to be detained more than 24 hours.

Act X, 1872, s. 123.

59. Officers in charge of Police-stations shall report for orders to the District or Sub-divisional Magistrate the cases of all persons arrested without warrant within the limits of their respective stations, whether such persons have been admitted to bail or otherwise.

Police to report apprehensions.

Act IV, 1877, s. 70, para. 1.

60. No person who has been so arrested by a Police-officer shall be discharged except on his recognizance, with or without sureties, or under the special order of a Magistrate.

Discharge of person apprehended.

Act X, 1872, s. 108. Act IV, 1877, s. 15.

61. When any offence is committed in the presence of a Magistrate, he may order any person to arrest the offender and may thereupon, subject to the provisions herein contained as to bail, commit the offender to custody.

Offence committed in Magistrate's presence.

Act X, 1872, s. 166, clause 2. Act IV, 1877, s. 62.

62. Any Magistrate may at any time direct the arrest, in his presence, of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant.

Arrest in presence of Magistrate.

C.—Escape and Retaking.

Act XXV, 1861, s. 112. N. Y. Cr. Proc. Code, s. 166.

63. If a person in lawful custody escapes or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and retake him at any time and in any place in British India.

Power, on escape, to pursue and retake.

Act XXV, 1861, s. 113. N. Y. Cr. Proc. Code, s. 168.

64. To retake the person so escaping or rescued, the person so pursuing may, after notice of his intention and refusal of admittance, and subject to the provisions of section 46, break open any outer or inner door or window of any house or place.

Power to break open door.

CHAPTER VI.

Of Processes to compel Appearance.

A.—Summons.

Act X, 1872, s. 152, omitting 'and sealed.' Act IV, 1877, s. 47.

65. Every summons issued by a Court under this Code shall be in writing signed by the presiding officer of such Court, or by such other officer as the High Court may from time to time by rule direct.

Form of summons.

Act X, 1872, s. 155, altered.

It shall ordinarily be served by an officer of the Court; but the Court issuing the summons may, if it thinks fit, direct it to be served by a Police-officer.

Summons by whom served.

Act

66. If the person summoned is found, the summons shall be served on him personally by delivering or tendering the summons to him.

Summons how served.

Every person to whom a summons is so delivered or tendered shall, if so required by the serving officer, sign a receipt therefor, or countersign a copy thereof.

Signature of receipt for summons.

Act X, 1872, s. 154, 'or servant' added. Act IV, 1877, s. 49.

67. Where the person summoned cannot by the exercise of due diligence be found, the summons may be served by leaving it for him with some adult male member or servant of his family residing with him; and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefor, or countersign a copy thereof.

Service when person summoned cannot be found.

Act X, 1872, s. 155.

68. If the signature or countersignature mentioned in sections 66 and 67 cannot by the exercise of due diligence be obtained, the serving officer shall fix a copy of the summons on some conspicuous part of the house in which the person summoned ordinarily resides; and thereupon the summons shall be deemed to have been duly served.

Procedure when receipt cannot be obtained.

Act X, 1872, s. 158, proviso.

69. Where the person summoned is in the active service of Government or of a Railway Company, the Court issuing the summons shall send it to the head of the office in which such person is employed; and such head shall thereupon cause the summons to be served in manner provided by section 66.

Service on servant of Government or of Railway Company.

Act XXIII, 1840, s. 1. Act IV, 1877, s. 50.

70. When a Court desires that a summons issued by it shall be served at any place outside the local limits of its jurisdiction, it shall send such summons in duplicate to a Magistrate within the local limits of whose jurisdiction the person summoned resides or is, to be there served.

Service of summons outside local limits.

Act IV, 1877, s. 51.

71. When a summons issued by a Court is served outside the local limits of its jurisdiction, and in any case where the officer who has served a summons is not present at the hearing of the case, the service may be proved—

Proof of service in such cases and when serving officer not present.

(*a*) by a solemn declaration, purporting to be made before a Magistrate, that such summons has been served; or

(*b*) by a copy of the summons purporting to be countersigned by the person to whom it is delivered or tendered or with whom it is left; or

(*c*) by a receipt under section 66 or 67.

The declaration mentioned in clause (*a*) may be endorsed on the copy of the summons and returned to the Court.

B.—Warrant of Arrest.

Act X, 1872, s. 159, amended. Act IV, 1877, s. 56, which does not require the seal. But see 9 Bomb. 157.

72. Every warrant for the arrest of an accused person issued by a Court shall be in writing under the hand and seal of the presiding officer.

Form of warrant of arrest.

Every such warrant remains in force until it is cancelled by the Court which issued it, or until it is executed.

Continuance of warrant of arrest.

Act X, 1872, s. 160. Act IV, 1877, s. 58.

73. Any Court issuing a warrant for the arrest of any person may in its discretion direct by endorsement on the warrant that, if such person execute a bond with sufficient sureties for his appearance before the Court on a specified day, the officer to whom the warrant is directed shall take such security and shall release such person from custody.

Court may direct security to be taken.

The endorsement shall state (*a*) the number of sureties, (*b*) the amount in which they and the person for whose arrest the warrant is issued are to be respectively bound, and (*c*) the day on which he is to appear before the Court.

Whenever security is taken under this section, the officer to whom the warrant is directed shall forward the bond to the Court.

Recognizance to be forwarded.

Act X, 1872, s. 161. Act IV, 1877, s. 56.

74. A warrant of arrest shall ordinarily be directed to one or more Police-officers, and, when issued by a Presidency Magistrate, shall always be so directed; but any other Court issuing such a warrant may, if its immediate execution is necessary and no Police-officer is immediately available, direct it to any other person or persons, and such person or persons shall execute the same:

Warrants to whom directed.

Act X, 1872, s. 164. Act IV, 1877, s. 59.

Provided that when a warrant is directed to more officers or persons than one, it may be executed by all, or by any one or more, of them.

Warrant to several persons.

Act X, 1872, s. 162.

75. A District Magistrate may direct a warrant to any landholder, farmer or manager of land within his district for the arrest of any escaped convict, proclaimed offender or person who has been accused of a non-bailable offence, and who has eluded pursuit.

Warrant may be directed to landholders, &c.

Such landholder, farmer or manager shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued is in, or enters on, his land or farm, or the land under his charge.

When the person against whom such warrant is issued is arrested, he shall be made over with the warrant to the nearest Police-officer, who shall cause him to be taken before the Magistrate having jurisdiction, unless security is taken under section 73.

Act

76. When a warrant is directed to a person other than a Police-officer, any other person may aid in executing such warrant, if the person to whom it is directed is near at hand and acting in execution thereof.

Warrants directed to any person other than a Police-officer.

77. A warrant directed to any Police-officer may also be executed by any other Police-officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed.

Warrant directed to Police-officer.

Act

Act X, 1872, s. 176.

78. The Police-officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested and, if so required, shall show him the warrant.

Notification of substance of warrant.

Act X, 1872, s. 183.

79. The Police-officer or other person executing a warrant of arrest shall (subject to the provisions of section 73 as to security) without unnecessary delay bring the person arrested before the Court before which he is required by this Code to produce him.

Person arrested to be brought before Court without delay.

Act X, 1872, s. 167. Act IV, 1877, s. 63.

80. A warrant of arrest may be executed at any place in British India.

Where warrant may be executed.

Act X, 1872, s. 168. Act IV, 1877, s. 64.

81. When a warrant is to be executed outside the local limits of the jurisdiction of the Court issuing the same, such Court may, instead of directing such warrant to a Police-officer, forward the same by post or otherwise to any Magistrate or Commissioner of Police within the local limits of whose jurisdiction it is to be executed.

Warrant forwarded to Magistrate for execution outside jurisdiction.

The Magistrate or Commissioner to whom such warrant is so forwarded shall endorse his name thereon, and cause it to be executed within the local limits of his jurisdiction.

Act IV, 1877, s. 64, paras. 5, 6, 7.

82. When a warrant directed to a Police-officer is to be executed beyond the local limits of the jurisdiction of the Court issuing the same, he may take it for endorsement either to a Magistrate or to a Police-officer not below the rank of an officer in charge of a station, within the local limits of whose jurisdiction the warrant is to be executed.

Warrant directed to police-officer for execution outside jurisdiction.

Such Magistrate or Police-officer shall endorse his name thereon, and such endorsement shall be sufficient authority to the Police-officer to whom the warrant is directed to execute the same within such limits, and the local Police shall if so required assist such officer in executing such warrant.

Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate or Police-officer within the local limits of whose jurisdiction the warrant is to be executed will prevent such execution, the Police-officer to whom it is directed may execute the same without such endorsement in any place beyond the local limits of the jurisdiction of the Court which issued it.

72.

83. When a warrant of arrest is executed outside the district in which it was issued, the person arrested shall, unless the Court which issued the warrant is within twenty miles, or is nearer than the Magistrate or Commissioner of Police within the local limits of whose jurisdiction the arrest was made, or unless security is taken under section 73, be taken before such Magistrate or Commissioner.

1877. Procedure on arrest of person against whom warrant issued.

84. Such Magistrate or Commissioner shall, if the person arrested appears to be the person intended by the Court which issued the warrant, direct his removal in custody to such Court, unless the offence is bailable, and such person is then ready and willing to give the security (if any) required under section 73, in which case the Magistrate or Commissioner shall take such security and forward the bond to the Court which issued the warrant.

Act X, 1872, s. 170. Act IV, 1877, s. 65, para. 2.

Procedure by Magistrate before whom person arrested is brought.

C.—Proclamation and Attachment.

Act X, 1872, ss. 171 and 353. Act X, 1875, s. 82. Act IV, 1877, ss. 67 and 137. 10 Beng. App. 18.

85. If a Court has reason to believe that any person against whom a warrant has been issued by it is absconding or concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of such proclamation.

Proclamation for person absconding.

The proclamation shall be published as follows:—

(*a*) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(*b*) it shall be affixed on some conspicuous part of his ordinary place of abode, or on some conspicuous place of such town or village; and

(*c*) a copy thereof shall be affixed to some conspicuous part of the Court-house.

A statement by the Court to the effect that the proclamation was duly published on a specified day shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

New as to day of publication.

Act X, 1872, ss. 172 and 3 Act IV, 1877, ss. 68, 137.

86. The Court may order the attachment of any property, moveable or immoveable, or both, belonging to any such person.

Attachment of property of person absconding.

Such order shall authorize the attachment of any property belonging to such person within the district in which it is made; and it shall authorize the attachment of any property belonging to such person without such district, when endorsed by the District Magistrate within the local limits of whose jurisdiction such property is situate.

If the property ordered to be attached be immoveable, the attachment under this section shall, in the case of land paying revenue to Government, be made through the Collector of the District in which the land is situate, and in all other cases—

(*a*) by seizure; or

(*b*) by the appointment of a receiver; or

(*c*) by an order prohibiting the payment of rent to the absent person; or

(*d*) by all or any two of such methods, as the Court thinks fit.

If the person so believed to be absconding or concealing himself does not appear within the time specified in the proclamation, the property under attachment shall be at the disposal of Government; but it shall not be sold until the expiration of six months from the date of the attachment, unless it is of a perishable nature, or the Court considers that the sale would be for the benefit of the owner, in either of which cases the Court may cause it to be sold whenever it thinks fit.

Act X, 1872, ss. 173, 354. Act X, 1875, s. 83. Act IV, 1877, ss. 69, 138.

87. If, within two years from the date of the attachment, any person whose property is or has been at the disposal of Government under the last paragraph of section 86 appears voluntarily or is apprehended and brought before the Magistrate having jurisdiction, and proves to the satisfaction of the Court by whose order the property was attached, that he did not abscond or conceal himself for the purpose of evading justice, such property, or, if the same has been sold, the nett proceeds of the sale, or if part only thereof has been sold, the nett proceeds of the sale and the residue of the property, shall, after satisfying thereout all costs incurred in consequence of the attachment, be delivered to him.

Restoration of attached property.

D.—Miscellaneous.

Act X, 1872, ss. 156, 352, 355. Act X, 1875, ss. 81, 84. Act IV, 1877, ss. 34, 36, 53, 135, 136, 217.

88. A Court may, in any case in which it is empowered by this Code to issue a summons for the appearance of any person, issue a warrant for his arrest—

Issue of warrant in lieu of or in addition to summons.

(*a*) if either before the issue of such summons, or after the issue of the same but before the time fixed for his appearance, the Court sees reason to believe that he has absconded or will not obey the summons; or

(*b*) 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.

Act X of 1872, s. 476. Act IV, 1877, s. 140.

89. When any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons or warrant is present in such Court, such officer may require such person to execute a bond with or without sureties for his appearance in such Court.

Power to take bond for appearance.

Act X, 1872, s. 208. Act IV, 1877, s. 124, para. 2.

90. When any person who is bound by any bond taken under this Code to appear before a Court does not so appear, the officer presiding in such Court may issue a warrant directing that such person be arrested or produced before him.

Arrest on breach of bond for appearance.

Act X, 1872, ss. 158, 185. Act IV, 1877, s. 52.

91. The provisions contained in this chapter relating to a summons and warrant and their issue, service and execution shall, so far as may be, apply to every summons and every warrant of arrest issued under this Code.

Provisions in this chapter generally applicable to summonses and warrants of arrest.

CHAPTER VII.

OF PROCESSES TO COMPEL THE PRODUCTION OF DOCUMENTS AND OTHER MOVEABLE PROPERTY.

A.—Summons to produce.

Act X, 1872, s. 365. Act X, 1875, s. 86. Act IV, 1877, s. 144.

92. Whenever any Court or any officer in charge of a Police-station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court or officer may issue a summons to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it at the time and place stated in the summons.

Summons to produce document or other thing.

New.

Nothing in this section applies to a letter or telegram in the custody of the Postal or Telegraph Department.

Act X, 1872, s. 369, last sentence. Act IV, 1877, s. 146.

93. If any letter or telegram in the custody of the Postal or Telegraph Department is, in the opinion of any District Magistrate, Chief Presidency Magistrate, High Court or Court of Session, wanted for the purpose of any investigation, inquiry, trial or other proceeding under this Code, such Magistrate or Court may require such Department to deliver such letter or telegram to such person as such Magistrate or Court directs.

Procedure as to letters and telegrams.

If any such letter is, in the opinion of any other Magistrate or of any Commissioner of Police, or District Superintendent of Police, wanted for any such purpose, he may require the Postal Department to cause search to be made for and to detain such letter, pending the orders of any such District Magistrate, Chief Presidency Magistrate or Court.

B.—Search-warrants.

Act X, 1872, s. 366. Act X, 1875, s. 87. Act IV, 1877, s. 145.

94. Where there is reason to believe that a person to whom a summons under section 92 or a requisition under section 93, paragraph one, has been or might be addressed will not or would not produce the document or other thing as directed in such summons,

When search-warrant may be issued.

or where such document or other thing is not known to be in the possession of any person,

Act X, s. 368. Act IV, 1877, s. 159.

or where the Court considers that the purposes of any inquiry, trial or other proceeding under this Code, will be served by a general search or inspection,

it may issue a search-warrant; and the person to whom such warrant is directed may search or inspect any place within the local limits of the jurisdiction of such Court.

Act X, s. 369, 1.

Nothing herein contained shall authorize any Magistrate, other than a District Magistrate, to

grant a warrant to search for a letter or telegram in the custody of the Postal or Telegraph authorities.

General warrant should not be the rule.

Act X, 1872, ss. 370, 371, 372, 373, 375, 376, para. 1, Act IV, 1877, s. 161.

95. The Court may, if it thinks fit, specify in the warrant the particular place, building or part thereof to which only the search or inspection shall extend; and the person charged with the execution of such warrant shall then search or inspect only the place, building or part so specified.

Power to restrict warrant.

Act X, 1872, ss. 377. Act IV, 1877, s. 160.

96. The provisions of sections 72, paragraph two, 74, 76, 77, 80, 81 and 82 shall, so far as may be, apply to all search-warrants issued under section 94.

Direction, &c., of search-warrants.

97. If a District Magistrate, Sub-divisional Magistrate, Presidency Magistrate or a Magistrate of the first class, upon information and after such inquiry as he thinks necessary, has reason to believe that any place is used for the deposit or sale of stolen property, or of property which has been fraudulently obtained,

Search of house suspected to contain stolen property, forged documents, &c.

or for the deposit or sale or manufacture of forged documents, false seals, or counterfeit stamps or coin, or instruments or materials for counterfeiting coin or for forging,

or that any forged documents, false seals or counterfeit Government stamps, or coin, or instruments or materials used for counterfeiting coin or for forging are kept or deposited in any place,

he may by his warrant authorize any Police-officer above the rank of a constable—

(*a*) to enter, with such assistance as may be required such place, and

(*b*) to search the same as specified in the warrant, and

(*c*) to take possession of any property, documents, seals, stamps or coins therein found which he reasonably suspects to be stolen, unlawfully obtained, forged, false or counterfeit, and also any such instruments and materials as aforesaid, and

(*d*) to convey such property, documents, seals, stamps, coins, instruments or materials before a Magistrate, or to guard the same on the spot until the offender is taken before a Magistrate, or otherwise to dispose thereof in some place of safety, and

(*e*) to take into custody and carry before a Magistrate every person found in such place who appears to have been privy to the deposit, sale or manufacture or keeping of any such property, documents, seals, stamps, coins, instruments or materials, knowing or having reasonable cause to suspect the said property to have been stolen or otherwise unlawfully obtained, or the said documents, seals, stamps, coins, instruments or materials to have been forged, falsified or counterfeited, or the said instruments or materials to have been or to be intended to be used for counterfeiting coin or for forging.

Act X, 1872, ss. 382, 384. Act IV, 1877, s. 162.

98. Whenever any place liable to search or inspection under this chapter is closed, any person residing in, or being in charge of, such place shall, on demand of the officer or other person executing the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

Persons in charge of closed place to allow search.

If ingress into such place cannot be so obtained, the officer or other person executing the warrant may proceed in manner provided by section 46.

Act X, 1872, s. 383. Act IV, 1877, ss. 163, 164.

Act X, 1872, s. 385. Act IV, 1877, s. 165.

99. Before making a search under this chapter, the officer or other person about to make it shall call upon two or more respectable inhabitants of the locality in which the place to be searched is situate to attend and witness the search.

Search to be made in presence of witnesses.

The search shall be made in their presence, but they shall not be required to attend the Court as witnesses unless specially summoned by it.

The occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search.

Occupant of place searched may attend.

Act X, 1872, s. 386. Act IV, 1877, s. 166.

100. Whenever it is necessary to cause a woman to be searched, the search shall be made with strict regard to the customs of the country.

Mode of searching women.

Act X, 1872, ss. 373, para. 2, 374.

101. When, in the execution of a search-warrant at any place beyond the local limits of the jurisdiction of the Court which issued the same, the thing for which search is made is found, it shall, when such place is nearer to the Magistrate having jurisdiction therein than to such Court, be immediately taken before such Magistrate; and, unless there be good cause to the contrary, such Magistrate shall make an order authorizing it to be taken to such Court.

Disposal of things found in search beyond jurisdiction.

C.—Miscellaneous.

Act X, 1872, s. 367. Act X, 1875, s. 88. Act IV, 1877, s. 147.

102. Any Court may, if it thinks fit, impound any document or other thing produced before it under this Code.

Power to impound document produced.

Act X, 1872, s. 378, para. 2.

103. Any Magistrate may direct a search to be made in his presence of any place for the search of which he is competent to issue a search-warrant.

Magistrate may direct search in his presence.

PART IV.

PREVENTION OF OFFENCES.

CHAPTER VIII.

LAWFUL RESISTANCE.

New.

104. Lawful resistance to the commission of an offence may be made by any person in the cases and to the extent in and to which he may exercise the right of private defence.

Lawful resistance to offences.

CHAPTER IX.

Of Security for keeping the Peace and for Good Behaviour.

A.—Security for keeping the Peace on Conviction.

Act X, 1872, ss. 489, 490. Act X, 1875, s. 140. Act IV, 1877, s. 208.

105. Whenever a person accused of rioting, assault or other breach of the peace, or with abetting the same, or with assembling armed men or taking other unlawful measures with the evident intention of committing the same, is convicted of such offence before a High Court, a Court of Session or the Court of a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate or a Magistrate of the first class,

Security for keeping the peace on conviction.

Bond becomes void when conviction set aside, N. W. P., 1875, p. 376.

and such Court is of opinion that it is necessary to require such person to execute a bond for keeping the peace,

such Court may, at the time of passing sentence on such person, order him to execute a bond for a sum proportionate to his means, with or without sureties, for keeping the peace during such period not exceeding three years as it thinks fit to fix.

Act X, 1872, ss. 490, 493. Cf. s. 506. Act X, 1875, s. 141. Act IV, 1877, s. 209.

B.—Security for keeping the Peace in other Cases and Security for Good Behaviour.

Act X, 1872, s. 491, omitting the "explanation" Act IV, 1877 ss. 215, 231.

106. Whenever a Presidency Magistrate, a District Magistrate, a Sub-Divisional Magistrate or a Magistrate of the first class receives information that any person is likely to commit a breach of the peace, or to do any act that may probably occasion a breach of the peace within the local limits of such Magistrate's jurisdiction, or that there is within such limits a person who is likely to commit a breach of the peace or do any act as aforesaid in any place beyond such limits, the Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period not exceeding three years as the Magistrate thinks fit to fix.

Security for keeping the peace in other cases.

One year in Act X, 1872, s. 498.

Act X, 1872, s. 494.

107. When any Magistrate not empowered to proceed under section 106, or a Court of Session or High Court, has reason to believe that any person is likely to commit a breach of the peace or to do any act that may probably occasion a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by detaining such person in custody, such Magistrate or Court may issue a warrant for his arrest (if he is not already in custody), and may send him before a Magistrate empowered to deal with the case under section 106.

Procedure of Magistrate, &c., not empowered to act under section 106.

A Magistrate before whom a person is sent under this section may in his discretion detain such person in custody until the completion of the enquiry hereinafter prescribed.

108. Whenever a Presidency Magistrate, District Magistrate, Sub-Divisional Magistrate or Magistrate of the first class receives information—

Act X, 1872, s. 504. Act IV, 1877, ss. 212, 231.

Security for good behaviour from vagrants and suspected persons.

(*a*) that any person is taking precautions to conceal his presence within the local limits of such Magistrate's jurisdiction, and that there is reason to believe that such person is taking such precautions with a view to committing an offence, or

(*b*) that there is within such limits a person who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself,

such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period not exceeding six months as the Magistrate thinks fit to fix.

109. Whenever any such Magistrate receives information that any person within the local limits of his jurisdiction is by repute an habitual robber, housebreaker or thief, or an habitual receiver of stolen property knowing the same to have been stolen, or of a dangerous character,

Act X, 1872, ss. 505, 506. Act IV, 1877, ss. 213, 214, 231.

Security for good behaviour from notorious offenders.

such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period not exceeding three years as the Magistrate thinks fit to fix.

110. The provisions of sections 108 and 109 do not apply to European British subjects in cases where they may be dealt with under the European Vagrancy Act, 1874.

Act X, 1872, s. 517. Act IV, 1877, s. 232.

Proviso as to European vagrants.

111. When a Magistrate acting under section 106, section 108 or section 109 deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number of sureties (if any) required.

Act X, 1872, ss. 492, 505, 515. Act IV, 1877, s. 216, para. 1, 222.

Order to be made.

112. If the person in respect of whom such order is made is present in court, it shall be read over to him or, if he so desires, the substance thereof shall be explained to him in a language which he understands.

Act X, s. 492. Act IV, s. 216, 2.

Procedure in respect of person present in Court.

113. If such person is not present in court, the Magistrate shall issue a summons requiring him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is to bring him, before the Court:

Act X, ss. 492,

Summons or warrant in case of person not so present.

Provided that, whenever it appears to such Magistrate, upon the report of a Police-officer or upon other information, that there is rea-

Act IV, s. 217 pa In bai lihood Police arrest out w

son to fear the commission of a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the Magistrate may at any time issue a warrant for his arrest.

114. Every summons or warrant issued under section 113 shall be accompanied by a copy of the order made under section 111, and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with, or arrested under, the same.

Copy of order under section 111 to accompany summons or warrant.

Act X, 1872, s. 495. Act IV, 1877, s. 218.

115. The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called upon to shew cause why he should not be ordered to execute a bond for keeping the peace, and may permit him to appear by a pleader.

Power to dispense with personal attendance.

New. 1 O'Kin. 130.

116. When an order under section 111 has been read or explained to a person present in Court under section 112, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant issued under section 113, the Magistrate shall proceed to enquire into the truth of the information upon which he has acted.

Inquiry as to truth of information.

Such enquiry shall be made, as nearly as may be, where the order requires security for keeping the peace, in the manner hereinafter prescribed for conducting trials in summons-cases; and where the order requires security for good behaviour, in the manner hereinafter prescribed for conducting trials in warrant-cases, except that no charge need be framed.

X, 1872, s. 497. IV, 1877, 220.

117. If, upon such enquiry, it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the enquiry is made should execute a bond with or without sureties, the Magistrate shall make an order accordingly:

Order to give security.

Provided that no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 111:

95.

Provided also that the amount of every bond shall be fixed with due regard to the circumstances of the case and the means of the person required to execute the same.

872, 877,

118. If, on an inquiry under section 116, the Magistrate is not satisfied that there is occasion to bind over the person in respect of whom such enquiry is made to keep the peace, or to be of good behaviour, as the case may be, the Magistrate shall make an entry on the record to that effect, and, if such person is in custody only for the purposes of the enquiry, shall release him.

Discharge of person informed against.

C.—Proceedings in all Cases subsequent to Order to furnish Security.

119. If any person in respect of whom an order requiring security is made under section 105 or section 117 is, at the time such order is made, sentenced to, or undergoing a sentence of, imprisonment, the period for which such security is required shall commence on the expiration of such sentence.

Act X, 1872, s. 504, para. 2. Act IV, 1877, ss. 210, 224. I. L. R. 1 All. 666 n.

Commencement of period for which security is required.

In other cases such period shall commence on the date of such order.

120. The bond to be executed by any such person shall bind him to keep the peace or to be of good behaviour to Her Majesty the Queen, Empress of India, and to all Her subjects, as the case may be, and in the latter case the commission or attempt to commit, or abetment of, any offence whatever, and wherever it may be committed, is a breach of the bond.

Act X, 1872, s. 502, para. 6.

Contents of bond.

121. A Magistrate may refuse to accept any surety for good behaviour offered under this chapter, on the ground that such surety is an unfit person.

Act X, 1872, s. 516.

Power to reject sureties.

122. If any person ordered to give security under section 105 or section 117 does not give such security on or before the date on which the period for which such security is to be given commences, he shall, except in the case next hereinafter mentioned, be committed to prison, or, if he is already in prison, be detained in prison, until such period expires or until within such period he gives the security required.

Act X, 1872, ss. 499, para. 3, 510. Act IV, 1877, s. 223.

Imprisonment in default of security.

When such person has been ordered by a Magistrate to give security for a period exceeding one year, such Magistrate shall, if such person does not give such security as aforesaid, issue a warrant directing him to be detained pending the orders of the Court of Session, or, if such Magistrate be a Presidency Magistrate, pending the orders of the High Court, and the proceedings shall be laid, as soon as conveniently may be, before such Court.

Act X, 1872, ss. 507, 508. Act IV, 1877, s. 221.

Proceedings when to be laid before High Court or Court of Session.

Such Court, after examining such proceedings and requiring any further information or evidence which it thinks necessary, may pass such order on the case as it thinks fit: Provided that the period (if any) for which any person is imprisoned for failure to give security shall not exceed three years.

Imprisonment for failure to give security for keeping the peace shall be simple.

Act X, 1872, s. 499, para. 3.

Kind of imprisonment.

Imprisonment for failure to give security for good behaviour may be rigorous or simple as the Court or Magistrate in each case directs.

Act X, 1872, s. 510, para. 3.

123. Whenever the District Magistrate or a Presidency Magistrate is of opinion that any person imprisoned for failing to give security under this chapter,

Act X, 1872, ss. 500, 511. Act IV, 1877, s. 225.

Power to release persons imprisoned for failing to give security.

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whether by the order of such Magistrate or that of his predecessor in office, or of some subordinate Magistrate, may be released without hazard to the community or to any other person, he may order such person to be discharged.

Act X, 1872, s. 512. Whenever the District Magistrate or a Presidency Magistrate is of opinion that any person imprisoned for failing to give security under this chapter as ordered by the Court of Session or High Court may be safely released without such security, such Magistrate shall make an immediate report of the case for the orders of the Court of Session or High Court, as the case may be, and such Court may, if it thinks fit, order such person to be discharged.

Act X, 1872, ss. 500, 511. Act IV, 1877, s. 226. **124.** Any surety for the peaceable conduct or good behaviour of another person may at any time apply to a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class to cancel the bond.

Discharge of sureties.

On such application being made, the Magistrate shall issue his summons or warrant, as he thinks fit, requiring the person for whom such surety is bound to appear or to be brought before him.

When such person appears or is brought before the Magistrate, such Magistrate shall cancel the bond, and shall order such person to give, for the unexpired portion of the term of such bond, fresh security of the same description as the original security. Every such order shall, for the purposes of sections 120, 121, 122 and 123, be deemed to be an order made under section 105 or section 117, as the case may be.

CHAPTER X.

Unlawful Assemblies.

Act X, 1872, s. 480. Act XI, 1874, s. 43. Indian Penal Code, ss. 145, 151. **125.** Any Magistrate or officer in charge of a Police-station, whether within or without the Presidency-towns, may command any unlawful assembly, or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

Assembly to disperse on command of Magistrate or Police-officer.

Act X, 1872, s. 481. **126.** If, upon being so commanded, any such assembly does not disperse, any Magistrate or officer in charge of a Police-station, whether within or without the Presidency-towns, may proceed to disperse such assembly by force, and may require the assistance of any male person, not being an officer or soldier in Her Majesty's Army or a Volunteer enrolled under the Indian Volunteers Act, 1869, and acting as such, for the purpose of dispersing such assembly, and, if necessary, arresting and confining the persons who form part of it in order to disperse such assembly or that they may be punished according to law.

Use of civil force to disperse.

Volunteers added.

Act X, 1872, s. 482. **127.** If any such assembly cannot be otherwise dispersed, and if it is necessary for the public security that it should be dispersed, the Magistrate of the highest rank who is present may cause it to be dispersed by military force.

Use of military force.

Act X, 1872, s. 484, adding volunteers. **128.** When a Magistrate determines to disperse any such assembly by military force, he may require any officer in command of any soldiers in Her Majesty's Army or of any Volunteers enrolled under the Indian Volunteers Act, 1869, to disperse such assembly by such force, and to arrest and confine such persons forming part of it as the Magistrate may direct, or as it may be necessary to arrest and confine in order to disperse the assembly, or that they may be punished according to law.

Duty of officer commanding troops required by Magistrate to disperse assembly.

Every such officer shall obey such requisition in such manner as he thinks fit; but in so doing he shall use as little force, and do as little injury to person and property, as is consistent with dispersing the assembly and arresting and detaining such persons.

Act **129.** When the public security is manifestly endangered by any such assembly, and when no Magistrate can be communicated with, any commissioned officer of Her Majesty's Army may disperse such assembly by military force, and may arrest and confine any persons forming part of it in order to disperse such assembly, or that they may be punished according to law; but as soon as he can communicate the facts of the case to a Magistrate, he shall do so.

Power of commissioned military officers to disperse assembly.

Act X, 1872, s. 488. **130.** No prosecution against any Magistrate, Military officer, Police-officer or soldier for any act purporting to be done under this chapter shall be instituted in any criminal Court, except with the sanction of the Governor General in Council or of the Local Government; and

Protection against prosecution for acts done under this chapter.

Act X, 1872, ss. 485, 486.

(*a*) no Magistrate or Police-officer acting under this chapter in good faith;

(*b*) no officer acting under section 129 in good faith;

(*c*) no person doing any act in good faith in compliance with a requisition under section 126 or section 128, and

(*d*) no inferior officer or private soldier doing any act in obedience to any order which under military law he was bound to obey,

shall be deemed to have thereby committed an offence.

CHAPTER XI.

Public Nuisances.

Act X, 1872, s. 483, as amended by Act X, 1872, s. 2, and Act XII, 1876, s. 2, and Act XI, 1874, s. 45, and Act X, 1872, s. 525, and Act XI, 1874, s. 45. **131.** Whenever a District Magistrate, or Sub-divisional Magistrate or, when empowered by the Local Government in this behalf, a Magistrate of the first class, considers, on receiving a report or other information and on taking such evidence (if any) as he thinks fit,

Conditional order for removal of nuisance.

that any unlawful obstruction or nuisance should be removed from any highway, navigable river or public place, or

that any trade or occupation, by reason of its being injurious to the health or physical comfort of the community, should be suppressed or removed, or

"Combustible" omitted.

that the construction of any building, or the disposal of any substance as likely to occasion conflagration or explosion, should be prevented or stopped, or

that any building is in such a state of weakness that it is likely to fall and thereby cause injury to persons passing by, and that its removal in consequence is necessary, or

that any tank or well adjacent to any highway should be fenced in such a manner as to prevent danger arising to the public,—

such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or owning, possessing or controlling such building substance, tank or well, as aforesaid, within a time to be fixed in the order,

to remove such obstruction or nuisance; or

to suppress or remove such trade or occupation; or

to prevent or stop the construction of such building; or

to remove it; or

to alter the disposal of such substance; or

to fence such tank or well, as the case may be, or

to appear before himself or some other Magistrate of the first or second class, at a time and place to be fixed by the order, and move to have the order set aside or modified in manner hereinafter provided.

No order duly made by a Magistrate under this section shall be called in question in any Civil Court.

Explanation.—A "public place" includes property belonging to the State, camping grounds, and grounds left unoccupied for sanitary and recreative purposes.

X, 1872, 132. **132.** The order shall, if practicable, be served on the person against whom it is made in manner herein provided for service of a summons.

Service or notification of order.

If such order cannot be so served, it shall be notified by proclamation, and a written notice thereof shall be stuck up at such place or places as may be fittest for conveying the information to such person.

1872, **133.** The person against whom such order is made shall—

Person to whom order is addressed to obey,

(*a*) perform, within the time specified in the order, the act directed thereby; or

or show cause or claim jury.

(*b*) appear in accordance with such order and either show cause against the same, or apply to such Magistrate to appoint a jury to try whether the same is reasonable and proper.

Act X, 1872, s. 525. **134.** If such person does not perform such act or appear and shew cause or apply for the appointment of a jury as required by section 133, he shall be liable to the penalty prescribed in that behalf in section 188 of the Indian Penal Code; and the order shall be made absolute.

Consequence of his failing to do so.

Act X, 1872, ss. 525, 527. Act XI, 1874, s. 45. **135.** If he appears and shews cause against the order, the Magistrate shall take evidence in the matter.

Procedure where he appears to shew cause.

I O'Kin. 486.

If the Magistrate is satisfied that the order is not reasonable and proper, no further proceedings shall be taken in the case.

If the Magistrate is not so satisfied, the order shall be made absolute.

Act X, 1872, s. 523, para 2. **136.** On receiving an application under section 133 to appoint a jury, the Magistrate shall—

Procedure where he claims jury.

(*a*) forthwith appoint a jury consisting of an uneven number of persons not less than five, of whom the foreman and one half of the remaining members shall be nominated by such Magistrate, and the other members by the applicant;

Act X, 1872, s. 524. (*b*) summon such foreman and members to attend at such place and time as the Magistrate thinks fit; and

(*c*) fix a time within which they are to return their verdict.

Act X, 1872, ss. 526, 526. **137.** If the jury or a majority of the jurors find that the order of the Magistrate is reasonable and proper as originally made, or subject to a modification which the Magistrate accepts, the Magistrate shall make the order absolute, subject to such modification (if any).

Procedure where jury finds Magistrate's order to be reasonable.

In other cases, no further proceedings shall be taken.

Act X, 1872, s. 525. **138.** When an order has been made absolute under section 134, section 135, or section 137, the Magistrate shall give notice of the same to the person against whom the order was made and shall further require him to perform the act directed by the order within a time to be fixed in the notice, and inform him that, in case of disobedience, he will be liable to the penalty provided by section 188 of the Indian Penal Code.

Procedure on order being made absolute.

If such act is not performed within the time fixed, the Magistrate may cause it to be performed, and may recover the costs of performing it, either by the sale of any building, goods or other property removed by his order, or by the distress and sale of any other moveable property of such person within or without the local limits of the Magistrate's jurisdiction. If such other property is without such limits, the order shall authorize its attachment and sale when endorsed by the Magistrate within the local limits of whose jurisdiction the property to be attached is found.

Consequences of disobedience to order.

Act X, 1872, s. 522, para. 4.

No suit shall lie in respect of anything reasonably done under this section.

Act X, 1872, s. 523, para. 4.

139. If the applicant by neglect or otherwise prevents the appointment of the jury, or if from any cause the jury appointed do not return their verdict within the time fixed or within such further time as the Magistrate may in his discretion allow, the Magistrate may pass such order as he thinks fit, and such order shall be executed in the manner provided by section 138.

Procedure on failure to appoint jury or omission to return verdict.

Act X, 1872, s. 528.

140. If a Magistrate making an order under section 131 considers that immediate measures should be taken to prevent imminent danger or injury of a serious kind to the public, he may, whether a jury is to be, or has been, appointed or not, issue such an injunction to the person against whom the order was made as is required to obviate or prevent such danger or injury.

Injunction pending inquiry.

In default of such person forthwith obeying such injunction, the Magistrate may himself use, or cause to be used, such means as he thinks fit to obviate such danger or to prevent such injury.

No suit shall lie in respect of anything reasonably done by a Magistrate under this section.

Act X, 1872, s. 518. Expl. 1. 1 O'Kin. 58.

141. In cases where, in the opinion of a District Magistrate, a Sub-divisional Magistrate, or of any other Magistrate specially empowered by the Local Government or the District Magistrate to act under this section, a speedy remedy is desirable and the delay which would be occasioned by a resort to the procedure contained in section 131 and the next following sections would occasion a greater evil than that suffered by the person against whom the order was made, or would defeat the intention of this chapter,

Power to issue order absolute at once in urgent cases.

Act X, 1872, s. 518. 1 Beng. Ap. Cr. 20.

such Magistrate may, by a written order stating the material facts of the case and served in manner provided by section 132, direct any person to abstain from a certain act or to take certain order with certain property in his possession, or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed, or danger to human life, health or safety, or a riot or an affray.

Act X, 1872, s. 518, Expl. II.

An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed be passed *ex parte*, and may in all cases be made upon such information as satisfies the Magistrate.

Act X, 1872, s. 518, Expl. III.

An order under this section may be directed to a particular individual, or to the public generally when frequenting or visiting a particular place.

As to disobedience to such orders, see Penal Code, s. 188.

Act X, 1872, s. 318, Expl. IV.

Any Magistrate may rescind or alter any order made under this section by himself or by his predecessor in office.

Act X, 1872, s. 519. Penal Code, s. 291.

142. A Sub-divisional Magistrate or any other Magistrate empowered by the Local Government or the District Magistrate in this behalf may order any person not to repeat or continue a public nuisance.

Magistrate may prohibit repetition or continuance of public nuisances.

CHAPTER XII.

Disputes as to Immoveable Property.

Act X, 1872, s. 530. 3 Calc. 552.

143. Whenever a District Magistrate, Sub-Divisional Magistrate, or a Magistrate of the first class, is satisfied from a Police-report or other information that a dispute likely to cause a breach of the peace exists concerning any tangible immoveable property, or the boundaries thereof, within the local limits of his jurisdiction, he shall make an order in writing stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court, in person or by agent, within a time to be fixed by such Magistrate, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

Procedure where dispute concerning land, &c., is likely to cause breach of peace.

I. L. R. 3 Calc. 320.

The Magistrate shall then, without reference to the merits of the claims of any of such parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties and their respective witnesses, consider the effect of the evidence and, if possible, decide whether any and which of the parties is in possession of the said subject.

Inquiry as to possession.

1 O'Kin. 136. 2 O'Kin. 67, 264.

If he decides that one of the parties is in possession of the said subject, he shall issue an order declaring such party to be entitled to retain possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction.

Party in possession to be continued until legally evicted.

Act X, 1872, s. 531. 1 O'Kin. 88.

144. If such Magistrate decides that none of the parties is in possession, or is unable to satisfy himself as to which of them is in possession, of the subject of dispute, he may attach it, until a competent Civil Court has determined the rights of the parties thereto, or the person entitled to possession thereof.

Power to attach subject of dispute.

Act X, 1872, s. 532.

145. Whenever any such Magistrate is satisfied as aforesaid that a dispute likely to cause a breach of the peace exists concerning the right to do or prevent the doing of anything in or upon any tangible immoveable property situate within the local limits of his jurisdiction, he may inquire into the matter; and may, if it appears to him that such right exists, make an order permitting such thing to be done, or directing that such thing shall not be done, as the case may be, until the person objecting to such thing being done or claiming that such thing may

Disputes concerning easements, &c.

be done, obtains the decision of a competent Civil Court, adjudging him to be entitled to prevent the doing of, or to do, such thing, as the case may be:

Provided that no order shall be passed under this section permitting the doing of anything where the right to do such thing is exerciseable at all times of the year, unless such right has been ordinarily exercised within three months next before the institution of the inquiry; or, where the right is exerciseable only at particular seasons, unless such right has been so exercised during the season next before the dispute.

Act X, 1872, s. 533.

146. Whenever a local inquiry is necessary for the purposes of this chapter, any District Magistrate or Sub-divisional Magistrate may depute any Magistrate subordinate to him to make the inquiry, and may furnish him with such instructions consistent with the law for the time being in force as may seem necessary for his guidance, and may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid.

Local inquiry.

CHAPTER XIII.

Preventive Action of the Police.

Act X, 1872, s. 95.

147. Every Police-officer may interpose for the purpose of preventing, and shall to the best of his ability prevent, the commission of any cognizable offence.

Police to prevent cognizable offences.

Act X, 1872, s. 96.

148. Every Police-officer receiving information of a design to commit any cognizable offence shall communicate such information to the Police-officer to whom he is subordinate, and to any other officer whom it may concern, to prevent or take cognizance of the commission of any such offence.

Information of design to commit such offences.

Act X, 1872, s. 97.

149. A Police-officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if the commission of the offence cannot be otherwise prevented.

Arrest to prevent such offences.

X, 1872, s. 98.

150. A Police-officer may of his own authority interpose to prevent any injury attempted to be committed in his view to any public property, moveable or immoveable, or the removal or injury of any public land-mark, or buoy or other mark used for navigation.

Prevention of injury to public property.

1872,

151. Any officer in charge of a Police-station may, without a warrant, enter any place within the limits of such station for the purpose of inspecting or searching for any weights or measures, or instruments for weighing, used or kept therein, whenever he has reason to believe that there are in such place any weights, measures or instruments for weighing which are false.

Inspection of weights and measures.

If he finds in such place any weights, measures or instruments for weighing which are false, he may seize the same, and shall forthwith give information of such seizure to the Magistrate having jurisdiction.

PART V.

INFORMATION TO THE POLICE AND OF THEIR POWERS TO INVESTIGATE.

CHAPTER XIV.

Act X, 1872, s. 113.

152. Every information to an officer in charge of a Police-station shall be reduced into writing by or under his direction, and shall be signed by the person giving it; and the substance thereof shall be entered in a book to be kept by such officer in such form as the Local Government may prescribe in this behalf.

Information to be reduced to writing.

Act X, 1872, s. 113.

153. When a complaint is made to an officer in charge of a Police-station of the commission within the limits of such station of a non-cognizable offence, he shall refer the complainant to the Magistrate.

Complaint in non-cognizable cases.

Act X, 1872, s. 110.

No Police-officer shall investigate a non-cognizable case without the order of a Magistrate of the first or second class having power to try such case or commit the same for trial.

Investigation into non-cognizable cases.

Any Police-officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as in a cognizable case.

Act X, 1872, s. 109, *v. infra*, s. 181.

154. Any officer in charge of a Police-station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to enquire into or try under the provisions of chapter XV relating to the place of inquiry or trial.

Investigation into cognizable cases.

Act X, 1872, s. 114, last para.

No proceeding of a Police-officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

Act X, 1872, s. 114.

155. If, from information received or otherwise, an officer in charge of a Police-station has reason to suspect the commission of an offence which he is empowered under section 154 to investigate, he shall send a report of the same to the nearest Magistrate having jurisdiction to receive Police-reports, and shall proceed in person, or shall depute one of his subordinate officers to proceed, to the spot to investigate the facts and circumstances of the case, and to take such measures as may be necessary for the discovery and arrest of the offender:

Procedure where cognizable offence suspected.

See Nelson 109.

Act X, 1872, s. 116.

Where local investigation dispensed with.

Provided that when any information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a Police-station need not proceed in person or depute a subordinate officer to make an investigation on the spot:

Act X, 1872, s. 117, para. 1.

Where Police-officer in charge sees no sufficient ground for investigation.

Provided also that, if it appear to the officer in charge of a Police-station that there is no sufficient ground for entering on an investigation, he shall not proceed to investigate the case.

Act X, 1872, s. 117, para. 2.

Reports under section 155 how submitted.

156. Every report under section 155 shall, if the Local Government so directs, be submitted through such superior officer of Police as the Local Government, by general or special order, appoints in that behalf.

Such superior officer may give such instructions to the officer in charge of the Police-station as he thinks fit, and shall, after recording such instructions on such report, transmit the same without delay to the Magistrate having jurisdiction to receive Police-reports.

Act X, 1872, s. 115.

Power to make preliminary inquiry.

157. Such Magistrate, on receiving such report, may, if he thinks fit, at once proceed, or depute any Magistrate subordinate to him to proceed, to hold a preliminary inquiry into, or otherwise to dispose of, the case in manner provided in this Code.

Act X, 1872, s. 118.

Police-officer's power to require attendance of witnesses.

158. Any Police-officer making an investigation under this chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the circumstances of the case; and such person shall attend as so required.

Act X, 1872, ss. 119, 121.

Examination of witnesses by Police.

159. Any Police-officer making an investigation under this chapter may examine orally any person supposed to be acquainted with the facts and circumstances of the case, and may reduce into writing any statement made by the person so examined.

Such person shall be bound to answer all questions relating to such case put him by such officer other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

Act X, 1872, ss. 119, para. 3, 121.

Statements to Police not to be signed or admitted in evidence.

160. No statement made by any person under section 159 or by an accused person to the Police shall, if reduced into writing, be signed by the person making it, nor shall it be treated as part of the record or used as evidence against the accused person.

Act X, 1872, ss. 120, 184. Cf. Act I, 1872, s. 24.

No inducement to be offered to confess.

161. No Police-officer or other person in authority shall offer or make to an accused person any such inducement, threat or promise as is mentioned in the Indian Evidence Act, 1872, section 24.

But no Police-officer or other person shall prevent, by any caution or otherwise, an accused person from making any statement which he may be disposed to make of his own free will. Nelson, 113.

Act X, 1872, s. 122. Act IV, 1877, s. 16.

Power to record statements and confessions.

162. Any Magistrate may record any statement made to him by any person, or any confession made to him by any accused person, in the course of an investigation under this chapter.

I. L. R. 1 Bom. 219.

Such statements shall be recorded in the manner hereinafter prescribed for recording evidence. Such confessions shall be recorded, signed and certified in the manner provided in section 366, and shall then be forwarded to the Magistrate by whom the case is inquired into or tried.

No Magistrate shall record any such confession unless, upon questioning the person making it, he has reason to believe that it was made voluntarily; and he shall make a memorandum at the foot thereof to the following effect:—

"I believe that this confession was voluntarily made. It was read over to the person making it, and was admitted by him to be correct.

"(*Signed*) A. B.,
"*Magistrate.*"

Act X, 1872

Search by officer in charge of Police-station.

163. Whenever an officer in charge of a Police-station, or a Police-officer making an investigation, considers that the production of any thing is necessary to the conduct of an investigation into any offence which he is authorised to investigate, he may search, or cause search to be made, for the same, in any place within the limits of the station of which he is in charge, or to which he is attached.

Such officer shall, if practicable, conduct the search in person.

If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in writing, specifying the thing for which search is to be made, and the place to be searched; and such subordinate officer may thereupon search for such thing in such place.

The provisions of this Code as to search-warrants shall, so far as may be, apply to a search made under this section.

Act X, 1 s. 380.

When officer of Police-station may require another to issue search-warrant.

164. An officer in charge of a Police-station may require an officer in charge of another Police-station, whether in the same or a different district, to cause a search to be made in any place, in any case in which the former officer might cause such search to be made within the limits of his own station.

Such officer, on being so required, shall proceed according to the provisions of section 163, and shall forward the thing found, if any, to the officer at whose request the search was made.

Act X, 1872, s. 124.

Procedure when investigation is not completed in twenty-four hours.

165. When any investigation under this chapter has not been completed within the period of twenty-four hours fixed by section 58 and no special order has been passed under that section, and there are grounds for believing that the accusation is well-founded, the officer in charge of the Police-station shall forward the accused to the nearest Magistrate, with a statement of the offence for which he has been arrested, and such Magistrate, whether he has or has not jurisdiction to try the case, may authorise the detention of the accused. If he has not jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may forward the accused to a Magistrate having such jurisdiction.

A Magistrate authorizing detention under this section shall record in writing his reasons for so doing.

If such order be given by a Magistrate other than the District Magistrate or Sub-divisional Magistrate, he shall forward a copy of his order, with his reasons for making it, to the Magistrate to whom he is subordinate.

Act X, 1872, s. 123, clause 2.

Report of investigation by subordinate Police-officer.

166. When any subordinate Police-officer has made any investigation under this chapter, he shall report the result of such investigation to the officer in charge of the Police-station.

Act X, 1872, s. 126.

Release of accused when evidence deficient.

167. If, upon an investigation under this chapter, it appears to the officer in charge of the Police-station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear before the District Magistrate or Sub-divisional Magistrate, if and when so required.

X, 1872, s 123, 127, 80.

Case to be sent to Magistrate when evidence is sufficient.

168. If upon an investigation under this chapter it appears to the officer in charge of the Police-station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to the District Magistrate, or Sub-divisional Magistrate, or some Magistrate empowered to take cognizance of offences upon a police-report, or if the offence charged is bailable and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed.

When the officer in charge of a Police-station forwards an accused person to a Magistrate or takes security for his appearance before such Magistrate under this section, he shall at the same time send to such Magistrate any weapon or other article which it may be necessary to produce before him, and shall require the complainant, if any, and so many of the persons who appear to be acquainted with the circumstances of the case as may be necessary to execute a bond to appear before the Magistrate and prosecute or give evidence (as the case may be) in the matter of the charge against the accused.

If the Court of the District Magistrate or Sub-Divisional Magistrate be mentioned in the bond, it shall be held to include any Court to which such Magistrate may refer the case for inquiry or trial, provided notice of such reference be given to such complainant or witness.

The day fixed under this section shall be the day whereon the accused person is to appear, if security for his appearance has been taken, or the day on which he may be expected to arrive at the Court of the Magistrate, if he is to be forwarded in custody.

The officer in whose presence the bond is executed shall deliver a copy thereof to each of the persons who executed it, and shall then send the original with his report to the Magistrate having jurisdiction.

Act X, 1872, ss. 130, last para. 131, para. 1.

Police-officer not to accompany complainant or witnesses.

Complainants and witnesses not to be subjected to restraint.

169. No Police-officer shall accompany the complainant or witnesses on his or their way to the Court of the Magistrate,

and no complainant or witness shall be subjected to unnecessary restraint or inconvenience, or required to give any security for his appearance other than his own bond:

Act X, 1872, s. 131, para. 2.

Recusant complainant or witness may be forwarded in custody.

Provided that, if any complainant or witness refuses to attend or to execute the bond directed in section 168, the officer in charge of the Police-station may forward him under custody to the Magistrate, who may detain him in custody until he executes such recognizance, or until the hearing of the case is completed.

Act X, 1872, s. 126.

Daily record of proceedings in investigation.

170. Every Police-officer making an investigation under this chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

Any Criminal Court may send for the Police-diaries of a case under inquiry or trial in such Court, and may use such diaries to aid it in such inquiry or trial. Neither the accused nor his agents shall be entitled to call for them, nor shall he or they be entitled to see them merely because they are referred to by the Court; but if they are used by the Police-officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such Police-officer, the provisions of the Indian Evidence Act, 1872, sections 145 and 161, shall apply.

Act X, 1872, ss. 125, 12

Report of Police-officer.

171. Every investigation under this chapter shall be completed without unnecessary delay, and, as soon as it is completed, the officer in charge of the Police-station shall forward to the Magistrate having jurisdiction a report in the form prescribed by

the Local Government, setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case, and stating whether the accused person has been forwarded in custody, or has been released on his bond, and, if so, whether with or without sureties.

Where a superior officer of Police has been appointed under section 156, the report shall be submitted through him, and he may, pending the orders of the Magistrate, give instructions as to the conduct of the investigation.

Act X, 1872, s. 133.

172. The officer in charge of a Police-station, on receiving information that a person—

Police to inquire and report on unnatural and sudden deaths.

(*a*) has been killed by another, or
(*b*) has suddenly died, or
(*c*) has committed suicide,

shall immediately give intimation thereof to the nearest Magistrate empowered to hold inquests, and shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises and other marks as may be found on the body and as may appear to have been caused by a cut or blow, and stating in what manner, or by what weapon or instrument, such marks appear to have been inflicted.

The report shall be signed by such Police-officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the District Magistrate or the Sub-divisional Magistrate.

When there is any doubt regarding the cause of death, the Police-officer shall forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other medical officer appointed in this behalf by the Local Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

In the territories respectively administered by the Governors of Fort St. George and Bombay in Council, investigations under this section may be made by the Head of the village, who shall then report the result to the nearest Magistrate authorized to hold inquests.

The following Magistrates are empowered to hold inquests, namely, any District Magistrate or Sub-divisional Magistrate, and any Magistrate specially empowered in this behalf by the Local Government or the District Magistrate.

Act X, 1872, s. 134.

173. An officer in charge of a Police-station may, by order in writing, summon two or more persons as aforesaid for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of the case. Any person so summoned shall be bound to attend and to answer all questions other than questions the answers to which would have a tendency to expose him to a criminal charge, or to a penalty or forfeiture.

Power to summon persons.

Penal Code, ss. 174, 179.

If the facts do not disclose a cognizable offence to which section 168 applies, such persons shall not be required by the Police-officer to attend a Magistrate's Court.

Act X, 1872, s. 135.

174. The nearest Magistrate empowered to hold inquests may, and, where necessary, shall, hold an inquiry into the cause of any such death, either instead of, or in addition to, the investigation held by the Police-officer; and if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence. The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any of the manners hereinafter prescribed, according to the circumstances of the case.

Inquiry into cause of such death by nearest Magistrate.

New, cf. Act IV, 1871, s. 11.

Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined.

Power to disinter corpse.

PART VI.

PROCEEDINGS IN PROSECUTIONS.

CHAPTER XV.

Of the Jurisdiction of the Criminal Courts in Inquiries and Trials.

A.—Place of Inquiry or Trial.

Act X, 1872, s. 63. Act IV, 1877, s. 18.

175. Every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed.

Ordinary place of inquiry and trial.

Act X, 1872, s. 63.

176. Notwithstanding anything contained in section 175, the Local Government may direct that any cases or class of cases committed for trial in any district may be tried in any Sessions Division:

Power to order cases to be tried in different Sessions divisions.

Act XI, s. 9.

Provided that such direction be not repugnant to any direction previously issued under the twenty-fourth and twenty-fifth of Victoria, chapter 104, section 15, or under this Code, section 536.

Act IV, s. 19.

177. When a person is accused of the commission of any offence by reason of anything which has been done, and of any consequence which has ensued, such offence may be inquired into or tried by a Court within the local limits of whose jurisdiction any such thing has been done, or any such consequence has ensued.

Accused triable in district where act is done, or where consequence ensues.

Illustrations.

(*a*.) A is wounded in district X and dies in district Z. The offence of the culpable homicide of A may be inquired into and tried either in X or Z.

(*b*.) A is wounded in district X, and is, during ten days in district Y and during ten days more in district Z, unable in either Y or Z to follow his ordinary pursuits. The offence of causing grievous hurt to A may be inquired into and tried in X, Y or Z.

(*c*.) A is put in fear of injury in district X, and is thereby induced, in district Y, to deliver property to the person who put him in fear. The offence of extortion committed on A may be inquired into and tried either in X or Y.

Act X, 1872, s. 66. Act IV, 1877, s. 20.

178. When an act is an offence by reason of its relation to any other act which is also an offence, a charge of the first-mentioned offence may be inquired into and tried by a Court within the local limits of whose jurisdiction either act was done.

Place for trial where act is offence by reason of relation to other offence.

Illustrations.

(*a*.) A charge of abetment may be inquired into and tried either in the district in which the abetment was committed, or in the district in which the offence abetted was committed.

(*b*.) A charge of receiving or retaining stolen goods may be inquired into and tried either in the district in which the goods were stolen, or in any district in which any of them were at any time dishonestly received or retained.

(*c*.) A charge of wrongfully concealing a person known to have been kidnapped may be inquired into and tried in the district in which the wrongful concealing, or in the district in which the kidnapping, took place.

Act X, 1872, s. 67, illustration (*c*), s. 68. Act IV, 1877, s. 22.

179. The offence of being a thug, of murder as a thug, of dacoity, of dacoity with murder, of having belonged to a gang of dacoits, or of having escaped from custody, may be inquired into and tried by a Court within the local limits of whose jurisdiction the person charged is.

Being a thug or belonging to a gang of dacoits, escape from custody, &c.

Act X, 1872, s. 67, illustration (*c*).

The offence of criminal misappropriation or of criminal breach of trust may be inquired into and tried by a Court within the local limits of whose jurisdiction the property which is the subject of the offence was received by the accused person, or the offence was committed.

Criminal misappropriation and criminal breach of trust.

Act X, 1872, s. 67, illustration (*f*). L. R., 1 I. A. 17.

The offence of stealing an animal may be inquired into or tried by a Court within the local limits of whose jurisdiction such animal was stolen or was possessed by the thief or by any person who receives or detains the same knowing or having reason to believe it to be stolen.

Stealing an animal.

Act XVIII, s. 29. Act X, 1872, s. 69. Act IV, 1877, s. 23.

180. When it is uncertain in which of several local areas an offence was committed, or

Place of inquiry or trial where scene of offence is uncertain;

where an offence is committed partly in one local area and partly in another, or

or not in one district only;

where an offence is a continuing one, and continues to be committed in more local areas than one, or

or offence is continuing;

where it consists of several acts done in different local areas,

or consists of several acts.

it may be inquired into and tried by a Court having jurisdiction over any such local area.

Act X, 1872, s. 67, illustration (*a*). I Mad. H. C. Rep. 193.

181. An offence committed whilst the offender is actually in the course of performing a journey or voyage may be inquired into and tried by a Court through or into the local limits of whose jurisdiction the offender, or the person against whom, or the thing in respect of which, the offence was committed, passed in the course of that journey or voyage.

Offence committed on a journey.

Act IV, 1877 s. 238. Act LII, 1860, repealed.

182. All offences against the provisions of any law for the time being in force relating to Railways, Telegraphs, the Post-office or Arms and Ammunition may be inquired into and tried in a Presidency-town, whether the offence is stated to have been committed within such town or not: provided that the offender and the witnesses necessary for his prosecution are to be found within such town.

Offences against Railway, Telegraph, Post-office and Arms Acts.

Act IV, 1877, s. 239.

Act X, 1872, s. 69. Act IV, 1877, s. 23.

183. Whenever any doubt arises as to the Court by which any offence should be inquired into or tried, the High Court within the local limits of whose appellate criminal jurisdiction the offender actually is, may decide by which Court the offence shall be inquired into or tried.

High Court to decide, in case of doubt, district where inquiry or trial shall take place.

Act X, 1872, s. 157. Act IV, 1877, s. 54.

184. When a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate or, if he is specially empowered in this behalf by the Local Government, a Magistrate of the first class, sees reason to believe that any person within the local limits of his jurisdiction has committed without such limits an offence which cannot, under the provisions of sections 175 to 182 (both inclusive), or any other law for the time being in force, be inquired into or tried within such local limits, but is under some law for the time being in force triable in British India, such Magistrate may inquire into the offence as if it had been committed within such local limits, and compel such person in manner hereinbefore provided to appear before him, and send him to the Magistrate having jurisdiction to enquire into or try such offence, or, if such offence is bailable, take bail for his appearance before such Magistrate.

Power to issue summons or warrant for offence committed beyond local jurisdiction.

Act X, 1872, s. 174. Act IV, 1877, s. 55. Act XXIII, 1840, s. 7.

When there are more Magistrates than one having such jurisdiction and the Magistrate acting under this section cannot satisfy himself as to the Magistrate to or before whom such person should be sent, or bound to appear, the case shall be reported for the orders of the High Court.

Act X, 1872, s. 175.

185. If the person has been arrested under a warrant issued under section 184 by a Magistrate other than a Presidency Magistrate or District Magistrate, such Magistrate shall send the person arrested to the District Magistrate, unless the Magistrate having jurisdiction to inquire into or try such offence issues his warrant for the arrest of such person, in which case the person arrested shall be delivered to the Police-officer executing such warrant, or shall be sent to the Magistrate by whom such warrant was issued.

Procedure where such warrant issued by Subordinate Magistrate.

If the offence which the person arrested is alleged or suspected to have committed is one which may be inquired into or tried by any Criminal Court in the same district other than that of the Magistrate acting under section 184, such Magistrate shall send such person to the District Magistrate or Sub-divisional Magistrate to whom such Court is immediately subordinate.

B.—Time of commencing Prosecutions.

Prosecutions for which there is no limitation.

186. There is no limitation of the time within which prosecutions for the offences mentioned in this section must be commenced:—

(*a*) offences against the State;

(*b*) offences relating to the Army and Navy;

(*c*) false evidence and offences against public justice;

(*d*) offences relating to coin and Government stamps;

(*e*) offences under the Indian Penal Code, sections 299 to 311 (both inclusive);

(*f*) offences under the same Code, sections 359 to 373 (both inclusive);

(*g*) offences under the same Code, sections 390 to 414 (both inclusive);

(*h*) offences under the same Code relating to documents and to trade-marks and property-marks; and

(*i*) offences under the same Code relating to marriage.

Limitation of three years.

187. A prosecution for any of the offences mentioned in this section must be commenced within three years after the offence is committed:—

(*a*) offences against the public tranquillity;

(*b*) offences by or relating to public servants;

(*c*) contempts of the lawful authority of public servants;

(*d*) offences against property, except those referred to in section 186, clause (*h*).

Limitation of six months.

188. A prosecution for any other offence not expressly provided for by this chapter or by any special or local law must be commenced within six months after the offence is committed.

Abetments and attempts.

189. The provisions contained in sections 186, 187 and 188 as to the offences therein mentioned or referred to, apply also to abetments of, and attempts to commit, those offences respectively.

Exclusion of time during which accused is absent from jurisdiction.

190. In computing the period of limitation prescribed for any prosecution, the time during which the accused person has been absent from the jurisdiction of the Court having power under this Code to try him shall be excluded.

Any person not surrendering himself pursuant to a proclamation duly made under this Code shall be deemed to be absent within the meaning of this section.

When prosecutions commence.

191. For the purpose of this chapter, a prosecution shall be deemed to commence when the summons or warrant is applied for, or when no such application is made, when the summons or warrant is issued; or when the person prosecuted is arrested without a warrant, when the arrest is made.

C.—Conditions requisite for Initiation of Proceedings.

Cognizance of offences by Magistrates.

192. Except as hereinafter provided, any Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, and any other Magistrate specially empowered in this behalf, may take cognizance of any offence— Act X, 1872, ss. 140, 141. Act IV, 1877, ss. 25, 28.

(*a*) upon receiving a complaint of facts which constitute such offence;

(*b*) upon a Police-report of such facts;

(*c*) upon information received from any person other than a Police-officer, or upon his own knowledge or suspicion that such offence has been committed. Act X, 1872, s. 142, para. 1.

The Local Government, or the District Magistrate under the general or special orders of the Local Government, may specially empower any Magistrate to take cognizance under clause (*a*) of offences, and any Magistrate of the first or second class to take cognizance under clause (*b*) of offences.

The Local Government may empower any Magistrate of the first or second class to take cognizance under clause (*c*) of offences. Act X, 1872, ss. 26, 35, [illegible]

Transfer of cases by District or Sub-divisional Magistrates.

193. Any District Magistrate or Sub-divisional Magistrate may transfer any case, of which he has taken cognizance, for inquiry or trial to any Magistrate subordinate to him.

Cognizance of cases transferred to Subordinate Magistrate.

Any Magistrate subordinate to a District Magistrate or Sub-Divisional Magistrate may, to the full extent of the powers with which he has been invested under this Code, deal with any case of which such District Magistrate or Sub-Divisional Magistrate has taken cognizance and which he has transferred to such Subordinate Magistrate. Act X, 1872, s. 44. Act XI, 1[illegible], s. 6.

Cognizance of offences by Courts of Session.

194. Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction, unless the accused person has been committed by a Magistrate duly empowered in that behalf. Act [illegible], s. [illegible]. Act [illegible], s. [illegible].

Additional Session Judges and Joint Sessions Judges shall try such cases only as the Local Government by general or special order directs them to try, or as the Sessions Judge of the Division makes over to them for trial. Act [illegible], s. [illegible].

Act X, 1872, s. 18.

Assistant Sessions Judges.

Assistant Sessions Judges shall try such cases only as the Sessions Judge of the Division makes over to them by general or special order.

Act X, 1875, s. 145.

Cognizance of offences by High Court.

195. The High Court may take cognizance of any offence upon a commitment made to it in manner hereinafter provided.

Charter 1865, clause 24.

Nothing herein contained shall be deemed to affect the provisions of any letters patent granted under the twenty-fourth and twenty-fifth of Victoria, chapter 104.

Act X, 1872, s. 467. Act X, 1875, s. 133. Act IV, 1877, s. 99.

Prosecution for contempts of lawful authority of public servants.

196. No Court shall take cognizance—

(*a*) of any offence described in sections 172 to 188 (both inclusive) of the Indian Penal Code, except with the sanction, or on the complaint, of the public servant concerned, or of his official superior.

Act X, 1872, s. 468. Act IV, 1877, s. 41.

Prosecution for certain offences against public justice.

(*b*) of any offence described in section 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211 or 228 of the same Code, when such offence is committed before or against any Court, except with the sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate;

Court of Subordinate Judge is subordinate to that of District Judge. I. L. R., 2 Bom. 481.

Act X, 1872, s. 469. Act IV, 1877, s. 43.

Prosecution for certain offences relating to documents given in evidence.

(*c*) of any offence described in section 463, 471, 475 or 476 of the same Code, when such offence has been committed by a party to any proceeding in any Court in respect of a document given in evidence in such proceeding, except with the sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate.

[illegible], 1872, [illegible], 1870, omitting the Explanation. [illegible] X, 1875, [illegible]. 134. [illegible] IV, 1877, [illegible]. 43. [illegible]. 36, [illegible] West, J. [illegible] appeal [illegible] order [illegible]rding [illegible]tion, I. [illegible]. 1 All.

Nature of sanction necessary.

The sanction referred to in this section may be expressed in general terms, and need not name the accused person; but it shall, so far as practicable, specify the Court or other place in which, and the occasion on which, the offence was committed.

Such sanction may be given at any time; and a sanction in respect of any offence referred to in this section shall authorise the Court taking cognizance of the case to amend the charge to one of any other such offence disclosed by the facts.

[illegible], 1872, [illegible] [illegible], 1875, [illegible]. 131. [illegible] IV, 1877, [illegible].

Prosecution for offences against the State.

197. No Court shall take cognizance of any offence punishable under chapter VI of the Indian Penal Code, except section 127, or punishable under section 294A of the same Code, unless upon complaint made by order of, or under authority from, the Governor General in Council, the Local Government, or some officer empowered by the Governor General in Council in this behalf.

[illegible], 1872, [illegible] [illegible], 1875, [illegible] 1877, [illegible]. 69.

Prosecution of Judges and public servants.

198. No Court shall take cognizance of any offence of which any Judge, or any public servant not removable from his office without the sanction of the Government of India or the Local Government, is accused as such Judge or public servant, except with the previous sanction of the Government having power to order his removal, or of some officer empowered in this behalf by such Government, or of some Court or other authority to which such Judge or public servant is subordinate, and whose power to give such sanction has not been limited by such Government.

Such Government may determine the person by whom, and the manner in which, the prosecution of such Judge or public servant is to be conducted, and may specify the Court before which the trial is to be held.

Prosecution for breach of contract, defamation and offences against marriage.

199. No Court shall take cognizance of an offence falling under chapter XIX or XXI or under sections 493 to 496 (both inclusive) of the Indian Penal Code, except upon a complaint made. Act X, 1872, s. 142. Act IV, 1877, s. 29.

Prosecution for adultery.

200. No Court shall take cognizance of an offence under section 497 or 498 of the Indian Penal Code, except upon a complaint made by the husband of the woman, or, in his absence, by some person who had care of such woman on his behalf at the time when such offence was committed. Act X, 1872, ss. 478, 479. Act IV, 1877, s. 45, Sch. I, O'Kin. 524.

CHAPTER XVI.

OF COMPLAINTS TO MAGISTRATES.

Examination of complainant.

201. A Magistrate taking cognizance of a case on complaint shall at once examine the complainant upon oath or affirmation, and the examination shall be reduced into writing and shall be signed by the complainant, and also by the Magistrate: Act X, 1872, s. 144.

Provided that, when the case has been transferred under section 193 and the Magistrate so transferring it has already examined the complainant, the Magistrate to whom it is so transferred shall not be bound to re-examine the complainant;

Provided also that where the Magistrate is a Presidency Magistrate, such examination may be on oath or affirmation or not as the Magistrate in each case thinks fit, and the Magistrate may, if he thinks fit, before the matter of the complaint is brought before him, require it to be reduced to writing. Act IV, 1877, s. 30.

Procedure by Magistrate not empowered to entertain complaint.

202. If the Magistrate is not competent to entertain the complaint, he shall refer the complainant to a Magistrate having jurisdiction, and if the complaint has been made in writing, shall return it for presentation to the proper tribunal. Act X, 1872, s. 145.

Act X, 1872, s. 146.

203. If any Magistrate other than a Presidency Magistrate sees reason to distrust the truth of a complaint which he is authorized to entertain, he may postpone the issuing of process for compelling the attendance of the person complained against, and may direct a previous inquiry or investigation to be made by means of any officer immediately subordinate to such Magistrate or of a Police-officer, or in such other mode as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint.

Postponement of issue of process.

If such inquiry or investigation is made by means of some person other than an officer exercising any of the powers of a Magistrate or a Police-officer, such person shall exercise all the powers conferred by this Code on an officer in charge of a Police-station, except that he shall not have power to arrest without warrant.

Act X, 1872, s. 147, para. 1. Act IV, 1877, s. 32.

204. The Magistrate before whom a complaint is made may, if after examining the complainant there is in his judgment no sufficient ground for proceeding, dismiss the complaint.

Dismissal of complaint.

CHAPTER XVII.

Of the Commencement of Proceedings before Magistrates.

Act X, 1872, s. 147, para. 3, 148, 149. Act IV, 1877, ss. 27, 33, 34, 35.

205. If in the opinion of a Magistrate taking cognizance of a case there is sufficient ground for believing that any person has committed an offence, he shall, if the case appears to be one in which according to the fourth column of the second schedule a summons should issue in the first instance, issue his summons, or, if the case appear to be one in which according to that column a warrant should issue in the first instance, his warrant, for causing such person to appear or be brought at a certain time and place before such Magistrate or some other Magistrate having jurisdiction:

Issue of process.

Act X, 1872, s. 148, proviso, 150.

Provided that in any case in which a summons should be issued under the foregoing part of this section, if the Magistrate sees reason to believe that the accused is about to abscond or will not obey the summons, he may, after recording his reasons in writing, instead of issuing a summons, issue a warrant in the first instance for the arrest of such person.

Act X, 1872, s. 151. Act IV, 1877, s. 37.

206. Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused, and permit him to appear by his pleader.

Magistrate may dispense with personal attendance of accused.

But such Magistrate may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in manner hereinbefore provided.

Act IV, 1877, s. 37.

CHAPTER XVIII.

Of Inquiry into Cases triable by the Court of Session or High Court.

207. Any Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, Magistrate of the first class or any Magistrate empowered in this behalf by the Local Government may commit any person for trial to the Court of Session or High Court for any offence triable by such Court.

Act X, 1872, s. 143, as extended to High Court.

Power to commit for trial.

208. The following procedure shall be adopted in inquiries before Magistrates where the case is triable exclusively by a Court of Session or High Court or, in the opinion of the Magistrate, ought to be tried by such Court.

Act X, 1872, s. 189. Act IV, 1877, s. 31.

Procedure in inquiries preparatory to commitment.

209. The Magistrate shall, when the accused appears or is brought before him, proceed to hear the complainant (if any), and take in manner hereinafter provided all such evidence as may be produced in support of the prosecution or in behalf of the accused.

Act X, 1872, ss. 190, 191, 2nd para. Act IV, 1877, s. 32.

Taking of evidence produced.

If the complainant or accused applies to the Magistrate to issue process to compel the attendance of any witness or the production of any document or other thing, the Magistrate shall issue such process unless, for reasons to be recorded in writing, he deems it unnecessary to do so.

Act X, 1872, ss. 357, 360. Act IV, 1877, s. 86, para. 2.

Process for production of further evidence.

The Magistrate may, before summoning any witness on such application, require that his reasonable expenses incurred in attending for the purposes of the trial be deposited in Court.

Act X, 1872, s. 361, para. 3.

Nothing in this section shall be deemed to require a Presidency Magistrate to record his reasons in writing.

210. When the evidence referred to in section 209 and such other evidence (if any) as the Magistrate may of his own motion cause to be produced has been taken, and the Magistrate has examined the accused in regard to such matters connected with the accusation as the Magistrate thinks fit, such Magistrate shall, if he finds that there are not sufficient grounds for committing the accused person for trial, discharge him, unless it appears to the Magistrate that such person should be tried before himself or some other Magistrate, in which case he shall proceed accordingly.

Act X, 1872, ss. 195, 2nd para. (as to inserting explanation) Act IV, 1877, s. 37, para. 2 (as to inserting the explanation).

When accused person to be discharged.

211. When, upon such evidence being taken and such examination (if any) being made, the Magistrate finds that there are sufficient grounds for committing the accused for trial, he shall frame a charge under his hand, declaring with what offence the accused is charged.

Act X, 1872, ss. 196, Act IV, 1877, s. 38, para. 3 and

When charge is to be framed.

Act X, 1872, s. 199. Act X, 1875, s. 13. Act IV, 1877, s. 90.

As soon as the charge has been framed, it shall be read and explained to the accused and a copy thereof shall, if he so require, be given to him free of cost.

Charge to be explained, and copy furnished, to accused.

Act X, 1872, s. 200. Act IV, 1877, s. 91.

212. The accused shall be required at once to give in, orally or in writing, a list of the persons (if any) whom he wishes to be summoned to give evidence on his trial.

List of witnesses for defence on trial.

The Magistrate may in his discretion allow the accused to give in any further list of witnesses at a subsequent time, and nothing in this section shall be deemed to preclude the accused from giving, at any time before his trial before the High Court, to the Clerk of the Crown a further list of the persons whom he wishes to be summoned to give evidence on such trial.

Further list.

Act X, 1872, s. 200. Act IV, 1877, s. 91.

213. The Magistrate may in his discretion summon and examine any witness named in any list given in to him under section 212.

Power of Magistrate to examine such witnesses.

Act X, 1872, ss. 198, 200. Act IV, 1877, ss. 89, para. 1, 91.

214. When the accused on being required to give in a list under section 212 has declined to do so, or when he has given in such list and the witnesses (if any) included therein whom the Magistrate desires to examine have been summoned and examined under section 213, the Magistrate may make an order committing the accused for trial by the High Court or the Court of Session (as the case may be), and (unless the Magistrate is a Presidency Magistrate) recording the reasons for such commitment.

Order of commitment.

X, 1872, 197.

215. If any person (not being an European British subject) is accused before a Magistrate other than a Presidency Magistrate of having committed an offence conjointly with a European British subject who is about to be committed for trial, or to be tried, before the High Court on a similar charge, and the Magistrate finds that there are sufficient grounds for committing the accused for trial, he shall commit him to take his trial before the High Court, and not before the Court of Session.

Person charged in Mufassal jointly with European British subject.

216. A commitment once made under section 214 or 215 by a competent Magistrate can be quashed by the High Court only, and only on a point of law.

Quashing commitments under section 214 or 215.

217. When the accused has given in any list of witnesses under section 212 and has been committed for trial, the Magistrate shall summon such of the witnesses included in the list as have not been compelled to appear before himself under section 213 to appear before the Court to which the accused has been committed:

Summons to witnesses for defence when accused is committed.

Provided that where such person has been committed to the High Court, the Magistrate may in his discretion leave such witnesses to be summoned by the Clerk of the Crown:

Provided also that if the Magistrate thinks that any witness is included in the list for the purpose of vexation or delay, or of defeating the ends of justice, the Magistrate may require the accused to satisfy him that there are reasonable grounds for believing that such witness is material, and if he is not so satisfied, may refuse to summon the witness, or before summoning him require such sum to be deposited as such Magistrate thinks necessary to defray the expense of obtaining the attendance of the witness.

Act X, 1872, s. 359. I. L. R. 3, Calc. 582.

Refusal to summon unnecessary witness unless deposit made.

Act X, 1872, s. 360. Act IV, 1877, s. 93.

218. Complainants and witnesses for the prosecution and defence, whose attendance before the Court of Session or High Court is necessary, and who appear before the Magistrate, shall execute before him bonds binding themselves, to be in attendance when called upon at the Court of Session or High Court, to prosecute or to give evidence, as the case may be.

Bond of complainants and witnesses.

If any complainant or witness refuses to attend before the Court of Session or High Court, or to execute the recognizance above directed, the Magistrate may detain him in custody until he executes such bond, or until his attendance at the Court of Session or High Court is required, when the Magistrate shall send him in custody to the Court of Session or High Court, as the case may be.

Detention in custody in case of refusal to attend or to execute recognizance.

Act X, 1872, s. 201. Act X, 1875, s. 13.

219. When the enquiry is concluded, the accused shall, if he demands them a reasonable time before the trial, be furnished with copies of the depositions. Such copies shall be made at his expense unless the Magistrate sees fit to give them free of cost.

Copies of depositions.

Act X, 1872, s. 202.

220. When the accused is committed for trial, the Magistrate shall issue an order to such person as may be appointed by the Local Government in this behalf, notifying the commitment, and stating the offence in the same form as the charge, unless the Magistrate is satisfied that such person is already aware of the commitment and the form of the charge,

Commitment when to be notified.

Act XI, 1874, s. 15.

and shall send the charge, the record of the enquiry and any weapon or other moveable thing which is to be produced in evidence to the Court of Session or (where the commitment is made to the High Court) to the Clerk of the Crown or other officer appointed in this behalf by the High Court.

Act X, 1872, s. 198.

Charge, &c., to be forwarded to High Court.

The Charge.

Act X, 1872, s. 357, para. 2. Act IV, 1877, s. 91, para. 4.

221. The Magistrate may summon and examine supplementary witnesses after the commitment and before the commencement of the trial, and bind them over in manner hereinbefore provided to appear and give evidence.

Power to summon supplementary witnesses.

Such examination shall, if possible, be taken in the presence of the accused, and where the Magistrate is not a Presidency Magistrate, a copy of the evidence of such witnesses shall, if the accused so require, be given to him free of cost.

Act X, 1875, s. 26. Act IV, 1877, s. 89, para. 3.

222. Pending the trial, the Magistrate may, subject to the provisions of this Code regarding the taking of bail, commit the accused, by warrant, to custody in such jail as may from time to time be appointed by the Local Government in this behalf.

Custody of accused pending trial.

CHAPTER XIX.

Of the Charge.

Form of Charges.

Act X 1872, s. 489. Act IV, 1877, s. 94.

223. Every charge under this Code shall state the offence with which the accused is charged.

Charge to state offence.

If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

Specific name of offence sufficient description.

If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.

How stated where offence has no specific name.

The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.

The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

What implied in charges.

In the Presidency-towns the charge shall be written in English; elsewhere it shall be written either in English or in the language of the Court. If the language of the charge is not understood by the accused, the charge shall be interpreted to him in a language which he understands.

Language of charge.

Act X, 1875, s. 118. Act X, 1872, s. 439, last para. Act IV, 1877, s. 94, last para.

If the accused has been previously convicted of any offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which is to be awarded, the fact of the previous conviction must be stated in the charge. If such statement is omitted, it may be added at any time before sentence is passed, but not afterwards.

Previous conviction when to be set out.

The Charge.

Illustrations.

(*a.*) *A* is charged with the murder of *B*.
This is equivalent to a statement that *A*'s act fell within the definition of murder given in sections 299 and 300 of the Indian Penal Code; that it did not fall within any of the general exceptions of the same Code; and that it did not fall within any of the five exceptions to section 300; or that, if it did fall within exception 1, one or other of the three provisos to that exception applied to it.

(*b*) *A* is charged, under section 326 of the Indian Penal Code, with voluntarily causing grievous hurt to *B*, by means of an instrument for shooting. This is equivalent to a statement that the case was not provided for by section 335 of the Indian Penal Code, and that the general exceptions did not apply to it.

(*c.*) *A* is accused of murder, cheating, theft, extortion, adultery or criminal intimidation, or using a false property-mark. The charge may state that *A* committed murder, or cheating, or theft, or extortion, or adultery, or criminal intimidation, or that he used a false property-mark, without reference to the definitions of those crimes contained in the Indian Penal Code; but the sections under which the offence is punishable must, in each instance, be referred to in the charge.

(*d.*) *A* is charged, under section 184 of the Indian Penal Code, with intentionally obstructing a sale of property offered for sale by the lawful authority of a public servant. The charge should be in those words.

Act X, 1872, s. 440. Act IV, 1877 s. 95.

224. The charge shall contain such particulars as to the time and place of the alleged offence, and the person (naming him) against whom, or the thing in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

Particulars as to time, place and person.

Act X, 1872, s. 441. Act IV, 1877, s. 96.

225. When the nature of the case is such that the particulars mentioned in sections 223 and 224 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.

When manner of committing offence must be stated.

Illustrations.

(*a.*) *A* is accused of the theft of a certain article at a certain time and place. The charge need not set out the manner in which the theft was effected.

(*b.*) *A* is accused of cheating *B* at a given time and place. The charge must set out the manner in which *A* cheated *B*.

(*c.*) *A* is accused of giving false evidence at a given time and place. The charge must set out that portion of the evidence given by *A* which is alleged to be false.

(*d.*) *A* is accused of obstructing *B*, a public servant, in discharge of his public functions at a given time and place. The charge must set out the manner in which *A* obstructed *B* in the discharge of his functions.

(*e.*) *A* is accused of the murder of *B* at a given time and place. The charge need not state the manner in which *A* murdered *B*.

(*f.*) *A* is accused of disobeying a direction of the law with intent to save *B* from punishment. The charge must set out the disobedience charged and the law infringed.

(*g.*) *A* is accused of dacoity. The charge should state that *A* conjointly with four or more others committed robbery and thereby committed dacoity.

The Charge.

Act XVIII 1862, s.82.

226. In every charge words used in describing an offence shall be deemed to have been used in the sense attached to them respectively by the Indian Penal Code.

Words in charges taken in sense of Penal Code.

Act X, 1872, s. 443. Act X, 1875, s. 24. Act IV, 1877, s. 98.

227. No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission.

Effect of errors.

Illustrations.

(*a*) *A* is charged, under section 242 of the Indian Penal Code with "having been in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit," the word "fraudulently" being omitted in the charge. Unless it appears that *A* was in fact misled by this omission, the error shall not be regarded as material.

(*b.*) *A* is charged with cheating *B*, and the manner in which he cheated *B* is not set out in the charge, or is set out incorrectly. *A* defends himself, calls witnesses, and gives his own account of the transaction. The Court may infer from this that the omission to set out the manner of the cheating is not material.

(*c.*) *A* is charged with cheating *B*, and the manner in which he cheated *B* is not set out in the charge. There were many transactions between *A* and *B*, and *A* had no means of knowing to which of them the charge referred, and offered no defence. The Court may infer from such facts that the omission to set out the manner of the cheating was, in this case, a material error.

(*d.*) *A* is charged with the murder of Khoda Baksh on the 21st January. In fact, the murdered person's name was Haidar Baksh, and the date of the murder was the 20th January. *A* was never charged with any murder but one, and had heard the inquiry before the Magistrate, which referred exclusively to the case of Haidar Baksh. The Court may infer from these facts that *A* was not misled, and that the error in the charge was immaterial.

(*e.*) *A* was charged with murdering Haidar Baksh on the 20th January and Khoda Baksh (who tried to arrest him for that murder) on the 21st January. When charged for the murder of Haidar Baksh, he was tried for the murder of Khoda Baksh. The witnesses present in his defence were witnesses in the case of Haidar Baksh. The Court may infer from this that *A* was misled, and that the error was material.

Act X, 1875, s. 27.

228. When any person is committed for trial before a High Court, the Clerk of the Crown, or, if there be not a Clerk of the Crown, a Judge of the High Court, shall, on receipt of the charge, peruse and consider it, and may, if it appears necessary or expedient so to do, alter or re-draw the same, having regard to the rules as to the form of charges contained in this Code.

Procedure on commitment to High Court.

Act X, 1875, s. 27. Act X, 1872, s. 446.

229. If a prisoner is committed to the Court of Session or High Court without any charge at all, the Court or (in the case of a High Court) the Clerk of the Crown or a Judge of the High Court may draw up a charge, having regard to the rules last aforesaid.

How Court of Session may deal with charge.

If a prisoner is committed upon a charge which the Court, upon reference to the proceedings before the committing Magistrate, considers improper, the Court may draw up a charge for any offence which it considers to be proved by the evidence taken before the committing Magistrate.

Act X, 1872, ss. 444, 445. Act X, 1875, ss. 9, 10. Act IV, 1877, ss. 99, 100.

230. Any Court may, upon the application of the accused, or of the prosecution, or upon its own motion, alter any charge at any time before judgment is pronounced, or, in the case of trials before the Court of Session or High Court, before the verdict of the jury is returned or the opinions of the assessors are expressed.

Magistrate may alter charge.

Every such alteration shall be read and explained to the accused.

Act X, 1872, s. 447. Act X, 1875, s. 11. Act IV, 1877, s. 101.

231. If the alteration is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence, the Court may in its discretion, after making such alteration, proceed with the trial as if the altered charge had been the original charge.

When trial may proceed immediately after alteration.

Act X, 1872, s. 448. Act X, 1875, s. 12. Act IV, 1877, s. 102.

232. If the alteration is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused in his defence, the Court may either direct a new trial, or suspend the trial for such period as may be necessary to enable him to make his defence to the altered charge; and after hearing his defence, the Court may if it thinks fit further adjourn the trial to admit of the appearance of any witness whose evidence the Court considers to be material to the case, or who the accused wishes to be summoned in his defence.

When new trial may be directed, or trial suspended.

Adjournment.

Act X, 1872, s. 449. Act X, 1875, s. 15, omitting 'during the trial.' Act IV, 1877, s. 103.

233. Whenever a charge is altered by the Court, the complainant and the accused shall be allowed to recall, and examine with reference to such alteration, any witness who may have been examined.

Recall of witnesses when charge altered.

Act X, 1872, s. 450. Act X, 1875, s. 16. Act IV, 1877, s. 104.

234. If the offence stated in the altered charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the altered charge is founded.

Stay of proceedings if prosecution of offence in altered charge require previous sanction.

Act X, 1872, s. 451.

235. If any Appellate Court, or the High Court in the exercise of its powers of revision, is of opinion that any person convicted of an offence was in fact misled in his defence by an error in the charge, it shall direct a new trial to be had upon a charge amended in whatever manner it thinks fit.

Effect of material error.

If the Court is of opinion that the facts of the case are such that no valid charge could be pre-

ferred against the accused in respect of the facts proved, it shall quash the conviction.

Illustration.

Act XI, 1874, s. 40. *A* is convicted of an offence under section 196 of the Indian Penal Code, upon a charge which omits to state that he knew the evidence which he corruptly used or attempted to use as true or genuine was false or fabricated. If the Court thinks it probable that *A* had such knowledge, and that he was misled in his defence by the omission from the charge of the statement that he had it, it shall direct a new trial upon an amended charge; but if it appears probable from the proceedings that *A* had no such knowledge, it shall quash the conviction.

Joinder of Charges.

Act X, 1872, s. 452. Act X, 1875, s. 17, adding "before the Magistrate." Act IV, 1877, s. 105. **236.** There must be a separate charge for every distinct offence of which any person is accused before the Magistrate, and every such charge must be tried separately, except in the cases mentioned in sections 237, 238, 239 and 242.

Separate charges for distinct offences.

Illustration.

A is accused of a theft on one occasion, and of causing grievous hurt on another occasion. *A* must be separately charged and separately tried for the theft and the causing grievous hurt.

Act X, 1872, s. 453, omitting the Explanation. Act X, 1875, s. 18, adding "against the same person." I.L.R, 3 Calc. 540. Act IV, 1877, s. 106; cf. 24 & 25 Vic., c. 96, s. 5. **237.** When a person is accused at the same time of more offences than one of the same kind, committed against the same person within one year of each other, he may be charged with, and tried at one trial for, any number of them not exceeding three.

More offences than one of same kind may be charged within a year of each other.

Act X, 1872, s. 454, omitting illustration (*i*). Act X, 1875, s. 19. Act IV, 1877, s. 107. **238.** I.—If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

I.—Trial of more than one offence.

II.—If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with each of the offences so committed; but he must not receive a punishment more severe than could be inflicted for any of such offences.

II.—One offence falling within two definitions.

III.—If several acts, of which one or more than one would by itself constitute an offence, form, when combined, a different offence, the person accused of them may be charged with every offence, or any of the different offences, which he may have committed; but he shall not receive for such offences, collectively, a punishment more severe than could be inflicted for any one of such offences.

III.—Acts severally constituting more than one offence, but collectively coming within one definition.

Illustrations.

to paragraph I—

(*a*.) *A* rescues *B*, a person in lawful custody, and in so doing causes grievous hurt to *C*, a constable in whose custody *B* was. *A* may be separately charged with, convicted of, and punished for, offences under sections 225 and 333 of the Indian Penal Code.

(*b*.) *A* has in his possession several seals knowing them to be counterfeit and intending to use them for the purpose of committing several forgeries punishable under section 466 of the Indian Penal Code. *A* may be separately charged with, convicted of, and punished for, the possession of each seal under section 473 of the Indian Penal Code.

(*c*.) *A*, with intent to cause injury to *B*, institutes a criminal proceeding against him, knowing that there is no just or lawful ground for such proceeding. *A* also falsely accuses *B* of having committed an offence knowing that there is no just or lawful ground for such charge. *A* may be separately charged with, convicted of, and punished for, two offences under section 211 of the Indian Penal Code.

(*d*.) *A*, with intent to cause injury to *B*, falsely accuse him of having committed an offence, knowing that there is no just or lawful ground for such charge. On the trial *A* gives false evidence against *B*, intending thereby to cause *B* to be convicted of a capital offence. *A* may be separately charged with, convicted of, and punished for, offences under sections 211 and 194 of the Indian Penal Code.

(*e*.) *A*, knowing that *B*, a female minor, has been kidnapped in order that she may be subjected to grievous hurt, wrongfully confines her and detains her against her will as a slave. *A* may be separately charged with, convicted of, and punished for, offences under sections 368 (read with 367) and 370 of the Indian Penal Code.

(*f*.) *A*, with six others, commits the offences of rioting, grievous hurt, and of assaulting a public servant, endeavouring in the discharge of his duty as such to suppress the riot. *A* may be separately charged with, convicted of, and punished for, offences under sections 147 and 325 and 152 of the Penal Code.

(*g*.) *A* threatens *B*, *C* and *D* at the same time with injury to their persons with intent to cause alarm to them. *A* may be separately charged with, convicted of, and punished for, each of the three offences under section 506 of the Indian Penal Code.

(*h*.) *A* intentionally causes the death of three persons by upsetting a boat. *A* may be separately charged with, convicted of, and punished for, each of the three offences under section 302 of the Indian Penal Code.

The separate charges referred to in illustrations (*a*) to (*h*) respectively may be tried at the same time.

to paragraph II—

(*i*.) *A* wrongfully strikes *B* with a cane. *A* may be separately charged with, and convicted of, offences under sections 352 and 323 of the Indian Penal Code; but the Presidency Magistrate who tries him may not inflict a more severe punishment than if he had convicted him under section 323 only.

(*j*.) *A* wrongfully kills a buffalo worth sixty rupees, belonging to *B*, and then moves the carcass in order to take it dishonestly out of *B*'s possession without *B*'s consent. *A* may be separately charged with, and convicted of, offences under sections 429 and 379 of the Indian Penal Code; but the Presidency Magistrate who tries him may not inflict a more severe punishment than if he had convicted him under section 429 only.

(*k*.) Several stolen sacks of corn are made over to *A* and *B*, who know they are stolen property. *A* and *B* thereupon voluntarily assist each other to conceal the sacks at the bottom of a grain-pit. *A* and *B* may be separately charged with, and convicted of, offences under sections 411 and 414 of the Indian Penal Code; but the Presidency Magistrate who tries them may not inflict a severer punishment than if he had convicted them under one of those sections only.

(*l*.) *A* dishonestly uses a forged document as genuine evidence, in order to convict *B*, a public servant, of an offence under section 167 of the Indian Penal Code. *A* may be separately charged with, and convicted of, offences under sections 471 (read with 466) and 196 of the same

Code; but the Presidency Magistrate who tries him may not inflict a severer punishment than if he had convicted him under one of those sections only.

to paragraph III—

(*m*.) *A* commits house-breaking by day with intent to commit adultery, and commits, in the house so entered, adultery with *B*'s wife. *A* may be separately charged with, and convicted of, offences under sections 454 and 497 of the Indian Penal Code; but the Presidency Magistrate who tries him may not inflict a severer punishment than if he had convicted him under section 497 only.

(*n*.) *A* commits robbery on *B*, and, in doing so, voluntarily causes hurt to him. *A* may be separately charged with, and convicted of, offences under sections 323, 392 and 394 of the Indian Penal Code; but the Presidency Magistrate who tries him may not inflict a severer punishment than if he had convicted him under section 392 or 394 only.

(*o*.) *A* entices *B*, the wife of *C*, away from *C*, with intent to commit adultery with *B*, and then commits adultery with her. *A* may be separately charged with, and convicted of, offences under sections 498 and 497 of the Indian Penal Code; but the Presidency Magistrate who tries him may not inflict a severer punishment than if he had convicted him under section 497 only.

Act X, 1872, s. 455. Act X, 1875, s. 20. Act IV, 1877, s. 108. N. W. P., 1875, p. 187. **239.** If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences; and any number of such charges may be tried at once, or he may be charged in the alternative with having committed some one of the said offences.

Where it is doubtful what offence has been committed.

Illustration.

A is accused of an act which may amount to theft, or receiving stolen property, or criminal breach of trust or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust and cheating, or he may be charged with having committed theft, or receiving stolen property, or criminal breach of trust, or cheating.

1872, 56. X, 1875, 1, IV, 1877, 109. **240.** If, in the case mentioned in section 239, the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of that section, he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

When a person is charged with one offence, he can be convicted of another.

Illustration.

A is charged with theft. It appears that he committed the offence of criminal breach of trust, or that of receiving stolen goods. He may be convicted of criminal breach of trust, or of receiving stolen goods (as the case may be), though he was not charged with such offence.

1872, 1875, 1877, 241, J. **241.** When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and part of the charge is not proved, but the part which is proved amounts to a different offence, he may be convicted of the offence which he is proved to have committed, though he was not charged with it.

When offence proved included in offence charged.

Illustration.

(*a*.) *A* is charged, under section 407 of the Indian Penal Code, with criminal breach of trust in respect of property entrusted to him as a carrier. It appears that he did commit criminal breach of trust under section 406 in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under section 406.

Act X, 1872, s. 458. Act X, 1875, s. 23. Act IV, 1877, s. 111. **242.** When more persons than one are accused of the same offence, or of different offences committed in the same transaction, or when one person is accused of committing any offence, and another of abetment of, or attempt to commit, such offence, they may be charged and tried together or separately, as the Court thinks fit, and the provisions contained in the former part of this chapter shall apply to all such charges.

What persons may be charged jointly.

Illustrations.

(*a*.) *A* and *B* are accused of the same murder. *A* and *B* may be charged and tried together for the murder.

(*b*.) *A* and *B* are accused of a robbery, in the course of which *A* commits a murder with which *B* has nothing to do. *A* and *B* may be tried together on a charge, charging both of them with the robbery, and *A* alone with the murder.

(*c*.) *A* and *B* are both charged with a theft, and *B* is charged with two other thefts committed by him in the course of the same transaction. *A* and *B* may be both tried together on a charge, charging both with the one theft, and *B* alone with the two other thefts.

Act X, 1872, s. 459, omitting the first ten words "In trials before a Court of Session or High Court," and inserting "the complainant." Act X, 1875, s. 102. Act IV, 1877, s. 112. New. **243.** When more charges than one are made against the same person, and when a conviction has been had on one or more of them, the complainant, or the officer conducting the prosecution, may, with the consent of the Court, withdraw, or such Court of its own accord may suspend the inquiry into, or trial of, the remaining charge or charges. Such withdrawal shall have the effect of an acquittal on such charge or charges.

Withdrawal of remaining charges on conviction on one of several charges.

CHAPTER XX.

Of the Trial of Summons-cases by Magistrates.

Act X, 1872, s. 208, paras. 1 and 2. Act IV, 1877, s. 114. **244.** The following procedure shall be observed by Magistrates in the trial of summons-cases.

Procedure in summons-cases.

Act X, 1872, s. 206. Act IV, 1877, s. 119. **245.** When the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked if he has any cause to show why he should not be convicted.

Substance of accusation to be stated.

Act X, 1872, s. 206. Act IV, 1877, s. 120. **246.** If the accused admits that he has committed the offence with which he is charged, his admission shall be recorded as nearly as possible in the words used by him; and if he shows no sufficient cause why he should not be convicted, the Magistrate shall convict him accordingly.

Conviction on admission of truth of accusation.

Act X, 1872, s. 207. Act IV, 1877, s. 121. **247.** If the accused does not make such admission, the Magistrate shall proceed to hear the complainant (if any), and take all such evidence as

Procedure when no such admission is made.

may be produced in support of the prosecution, and also to hear the accused and take all such evidence as he produces in his defence.

Act X, 1872, s. 361. Act IV, 1877, s. 142.

The Magistrate may, if he thinks fit, on the application of the complainant or accused, issue process to compel the attendance of any witness or the production of any document or other thing.

The Magistrate may, before summoning any witness on such application, require that his reasonable expenses incurred in attending for the purposes of the trial be deposited in Court.

Act X, 1872, s. 211, paras. 1 and 2. Act IV, 1877, s. 126.

248. If the Magistrate upon taking the evidence referred to in section 247 and such further evidence (if any) as he may, of his own motion, cause to be produced, and (if he thinks fit) examining the accused, finds the accused not guilty, he shall record an order of acquittal.

Acquittal.

If he finds the accused guilty, he shall pass sentence upon him according to law.

Sentence.

IV of 1877, s. 117, Nelson 206.

249. A Magistrate may, under section 246 or section 248, convict the accused of any offence triable under this chapter which, from the facts admitted or proved, he appears to have committed, whatever may be the nature of the complaint or summons.

Finding not limited by complaint or summons.

Act X, 1872, ss. 205, 212. Act IV, 1872, s. 118.

250. If the summons has been issued on complaint and upon the day appointed for the appearance of the accused or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks proper to adjourn the hearing of the case to some other day.

Non-appearance of complainant.

Act X, 1872, s. 210. Act IV, 1877, s. 125.

251. If a complainant, at any time before a final order is passed in any case under this chapter, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint, the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused.

Withdrawal of complaint.

New.

252. The Magistrate may in his discretion, in any case instituted otherwise than upon complaint, stop the proceedings at any stage without pronouncing any judgment either of acquittal or conviction.

Power to stop proceedings when no complainant.

Act X, 1872, s. 209, paras. 1 and 2. Act IV, 1877, s. 242.

253. If in any case instituted upon complaint a Magistrate acquits the accused under section 248 or section 250, and is of opinion that the complaint was frivolous or vexatious, he may, in his discretion, by his order of acquittal, direct the complainant to pay to the accused, or to each of the accused where there are more than one, such compensation, not exceeding fifty rupees, as the Magistrate thinks fit.

Frivolous or vexatious complaints.

The sum so awarded shall be recoverable as if it were a fine; and if it cannot be so recovered, the complainant shall be imprisoned in the civil jail for such term, not exceeding thirty days, as the Magistrate directs, unless such sum is sooner paid.

Recovery of such compensation.

CHAPTER XXI.

Of the Trial of Warrant-cases by Magistrates.

Act X, 1872, s. 213.

254. The following procedure shall be observed by Magistrates in the trial of warrant-cases.

Procedure in warrant-cases.

See I. L. R., 3 Cal. 389.

255. When the accused appears or is brought before a Magistrate, such Magistrate shall proceed to hear the complainant (if any) and take all such evidence as may be produced in support of the prosecution.

Evidence for prosecution.

Act X, 1872, s. 362, para. 1. Act IV, 1877, s. 143, para. 1.

The Magistrate shall ascertain, from the complainant or otherwise, the names of any persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution, and shall summon to give evidence before himself such of them as he thinks necessary.

Act X, 1872, s. 215.

256. If upon taking all the evidence produced under section 255, and such examination (if any) of the accused as the Magistrate thinks necessary, he finds that no offence has been proved against the accused, the Magistrate shall discharge him.

Discharge of accused.

Act X, 1872, s. 216. Act XI, 1874, s. 16. Act IV, 1877, ss. 116, 121.

257. If when such evidence and examination have been wholly or partially taken, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this chapter, which such Magistrate is competent to try, and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

Charge to be framed when offence appears proved.

Act X, s. 217. Act IV, ss. 1

258. The charge shall then be read and explained to the accused, and he shall be asked whether he is guilty or has any defence to make.

Plea.

cf. Act X, ss. 257

If the accused pleads guilty, the Magistrate shall record the plea, and may in his discretion convict him thereon.

Act X, s. 218. Act IV, s. 121

259. If the accused refuses to plead or does not plead, or claims to be tried, he shall be called upon to enter upon his defence and to produce his evidence, and shall, at any time while he is making his defence, be allowed to recall and cross-examine any witness for the prosecution present in the Court or its precincts.

Defence.

If the accused puts in any written statement, the Magistrate may file it with the record, but shall not be bound to do so.

Act X, 1872, s. 362. Act IV, 1877, s. 143, para 2. Cf. s. 255 and 209.

260. If the accused applies to the Magistrate to issue any process for compelling the attendance of any witness (whether he has or has not been previously examined in the case) or the production of any document or other thing, the Magistrate shall issue such process unless, for reasons to be recorded by him in writing, he considers that such application should be refused.

Process for production of evidence for defence.

The Magistrate may, before summoning any witness on such application, require that his reasonable expenses incurred in attending for the purposes of the trial be deposited in Court.

Act X, 1872, s. 220, omitting the explanation. Act IV, 1877, s. 126, first half.

261. If in any case under this chapter in which a charge has been framed the Magistrate finds the accused not guilty, he shall record an order of acquittal.

Acquittal.

If in any such case the Magistrate finds the accused guilty, he shall pass sentence upon him according to law.

Conviction.

Act X, 1872, s. 215, expl. I. Contrast Act IV of 1877, s. 118; but see s. 133 of same.

262. When the proceedings have been instituted upon complaint and upon any day fixed for the hearing of the case the complainant is absent and the offence may be lawfully compounded, the Magistrate may, in his discretion, notwithstanding anything hereinbefore contained, at any time before the charge has been framed, discharge the accused.

Absence of complainant.

CHAPTER XXII.

Of Summary Trials.

Act X, 1872, ss. 222, 223, 224.

263. Notwithstanding anything herein contained, the District Magistrate and any Magistrate of the first class specially empowered in this behalf by the Local Government may try in a summary way all or any of the following offences:—

Power to try summarily.

I. L. R. 3 Calc. 867.

(*a*). Offences not punishable with death, transportation, whipping, or imprisonment for a term exceeding six months;

(*b*). Offences relating to weights and measures, under sections 264, 265 and 266 of the Indian Penal Code;

(*c*). Hurt, under section 323 of the same Code;

(*d*). Theft, under section 379 of the same Code, where the value of the property stolen does not exceed fifty rupees;

(*e*). Theft, under section 380 of the same Code, where the value of the property stolen does not exceed fifty rupees;

(*f*). Theft, under section 381 of the same Code, where the value of the property stolen does not exceed fifty rupees;

(*g*). Receiving stolen property, under section 411 of the same Code;

(*h*). Mischief, under section 427 of the same Code;

(*i*). House-trespass, under section 448 of the same Code;

(*j*). Insult with intent to provoke a breach of the peace, under section 504, and criminal intimidation, under section 505, of the same Code;

(*k*). Abetment of any of the foregoing offences;

(*l*). An attempt to commit any of the foregoing offences when such attempt is an offence.

Act X, 1872, s. 225.

264. The Local Government may confer on any Bench of Magistrates invested with the powers of a Magistrate of the second or third class power to try summarily all or any of the following offences:—

Power to invest Bench of Magistrates invested with less power.

(*a*). Offences against the Indian Penal Code, sections 277, 278, 279, 285, 286, 289, 290, 292, 293, 294, 323, 334, 336, 341, 352, 426 and 447;

(*b*). Offences against Municipal Acts, and the conservancy-clauses of Police Acts, punishable only with fine, or with imprisonment for a term not exceeding one month;

New. (*c*). Abetment of any of the foregoing offences; New.

(*d*). An attempt to commit any of the foregoing offences when such attempt is an offence.

Act X, 1872, s. 226.

265. In trials under this chapter, the procedure prescribed for summons-cases shall be followed in summons-cases, and the procedure prescribed for warrant-cases shall be followed in warrant-cases, except as hereinafter mentioned.

Procedure for summons and warrant-cases applicable with certain exceptions.

Act X, 1872, s. 227.

266. In cases where no appeal lies, the Magistrate or Bench of Magistrates need not record the evidence of the witnesses, or the reasons for passing the judgment, or frame a formal charge; but he or they shall enter in a register to be kept for the purpose the following particulars:—

Record in cases where there is no appeal.

(*a*) the serial number;

(*b*) the date of the commission of the offence;

(*c*) the date of the report or complaint;

(*d*) the name of the complainant (if any);

(*e*) the name, father's name and residence of the accused;

(*f*) the offence complained of or proved;

(*g*) the plea of the accused and his examination (if any);

(*h*) the finding, and, in the case of a conviction, a brief statement of the reasons therefor;

(*i*) the sentence, and

(*j*) the date on which the proceedings terminated.

Act X, 1872, s. 228.

267. In every case tried summarily by a Magistrate or Bench in which an appeal lies, such Magistrate or Bench shall, before passing sentence, record a judgment embodying the

Record in appealable cases.

substance of the evidence on which the conviction was had, and also the particulars mentioned in section 266.

Such judgment shall be the only record in cases coming within this section.

Act X, 1872, s. 229. **268.** Records made under section 266 and judgments recorded under section 267 shall be written by the presiding officer, either in English or in the language of the Court, or, if the Court to which such presiding officer is immediately subordinate so directs, in such officer's mother-tongue.

Language of judgment.

Act X, 1872, s. 230. The Local Government may authorize any Bench of Magistrates empowered to try offences summarily to prepare the aforesaid record or judgment by means of an officer appointed in this behalf by the Court to which such Bench is immediately subordinate, and the record or judgment so prepared shall be signed by each member of such Bench present taking part in the proceedings.

Bench may be authorised to employ clerk.

CHAPTER XXIII.

OF TRIALS BEFORE HIGH COURTS AND COURTS OF SESSION.

A.—Preliminary.

Act X, 1875, s. 3. **269.** In this chapter the expression "High Court" means a High Court of Judicature established or to be established under the twenty-fourth and twenty-fifth of Victoria, chapter 104, and includes the Chief Court of the Panjáb, and such other Courts as the Governor General in Council may from time to time, by notification in the *Gazette of India*, declare to be High Courts for the purposes of this chapter.

"High Court" defined.

Act X, 1875, s. 32. **270.** All trials under this chapter before a High Court shall be by jury;

Trials before High Court to be by jury.

and, notwithstanding anything contained herein, all criminal cases transferred to a High Court under this Code or under the Letters Patent of any High Court established under the twenty-fourth and twenty-fifth of Victoria, chapter 104, the trial may, if the High Court so direct, be by jury.

Act X, 1872, s. 232. **271.** All trials before a Court of Session shall be either by jury, or with the aid of assessors.

Trials before Sessions Court to be by jury or with assessors.

Act X, 1872, s. 233. **272.** The Local Government may by order in the official Gazette direct that the trial of all offences, or of any particular class of offences, before any Court of Session, shall be by jury in any district, and from time to time revoke or alter such order.

Local Government may order trials before Court of Session to be by jury.

When the accused is triable at the same time for several offences of which some are and some are not triable by jury, he shall be tried by jury for each offence.

273. In every trial before a Court of Session, the prosecution shall be conducted by a Public Prosecutor. Act X, 1872, s. 235.

Trial before Court of Session to be conducted by Public Prosecutor.

B.—Commencement of Proceedings.

274. When the Court is ready to commence the trial, the accused shall appear or be brought before it, and the charge shall be read and explained to him, and he shall be asked whether he is guilty of the offence charged, or claims to be tried. Act X, 1872, s. 237. Act X, 1875, ss. 28 and 29.

Commencement of trial.

If the accused pleads guilty, the plea shall be recorded, and he may be convicted thereon.

Plea of guilty.

275. If the accused refuses to, or does not, plead, or if he claims to be tried, the Court shall proceed to choose jurors or assessors as hereinafter directed and to try the case: Act X, 1872, s. 238. Act X, 1875, s. 30.

Refusal to plead or claim to be tried.

Provided that, subject to the right of objection hereinafter mentioned, the same jury may try, or the same assessors may aid in the trial of, as many accused persons successively as the Court thinks fit. Act X, 1872, s. 265. Act X, 1875, s. 34.

Trial by same jury or assessors of several offenders in succession.

276. When any charge, or portion of a charge, appears to a Judge of the High Court, at any time before the commencement of the trial of the person charged, to be clearly unsustainable, such Judge may make on the charge an entry to that effect. Act X, 1875, s. 14. Query, extend to Sessions Judges.

Entry on unsustainable charge.

Such entry shall have the effect of staying proceedings upon the charge or portion of the charge, as the case may be.

Effect of entry.

C.—Choosing a Jury.

277. In trials before the High Court the jury shall consist of nine persons. Act X, 1875, s. 33.

Number of jury.

In trials by jury before the Court of Session, the jury shall consist of such uneven number not being less than three, or more than nine, as the Local Government, by order applicable to any particular district or to any particular class of offences in that district, may from time to time direct. Act X, 1872, s. 236.

278. In a trial by jury, before the Court of Session, of a person not being a European or an American, at least one half of the jury shall, if he so desires, consist of persons who are neither Europeans nor Americans. Act X, 1872, s. 241.

Jury for trial of persons not Europeans or Americans before Court of Session.

279. The jurors shall be chosen by lot from the persons summoned to act as such— Act X, 1872, s. 240. Act X, 1875, s. 33.

Jurors to be chosen by lot.

in trials before the High Court, in such manner as that Court, and in trials before Sessions Courts, As to practice in High Court, Bombay, see I. L. R., 1 Bombay, 462.

in such manner as the Local Government may from time to time by rule direct:

Proviso. Provided that—

Act X, 1875, s. 49. 1*st*, pending the issue under this section of rules for any Court, the practice now prevailing in such Court in respect to the choosing of jurors shall be followed.

Existing practice maintained.

Act X, 1872, s. 243. Act X, 1875, s. 33. 2*nd*, in case of a deficiency of persons summoned, the number of jurors required may, with the leave of the Court, be chosen from such other persons as may be present; and

Persons not summoned when eligible.

Act X, 1875, s. 38. 3*rd*, in the Presidency-towns—

Trials before special jurors.

(*a*) if the accused person is charged with having committed an offence punishable with death, or

(*b*) if in any other case a Judge of the High Court so directs,

the jurors shall be chosen from the special jury list hereinafter prescribed.

Act X, 1872, s. 243. Act X, 1875, s. 58. **280.** As each juror is chosen, his name shall be called aloud, and upon his appearance, the accused shall be asked if he objects to be tried by such juror.

Names of jurors to be called.

Objection may then be taken to such juror by the accused or by the prosecutor, and the grounds of objection shall be stated:

Objection to jurors.

Act X, 1875, s. 49, para. 1. Provided that, in the High Court, objections without grounds stated shall be allowed to the number of eight on behalf of the Crown and eight on behalf of the person or all the persons charged.

Objection without grounds stated.

Act X, 1872, ss. 244, 405. Act X, 1875, ss. 47, 54. **281.** Any objection taken to a juror on any of the following grounds, if made out to the satisfaction of the Court, shall be allowed:—

Grounds of objection.

(*a*) some personal ground, such as alienage, infancy, old age, or deficiency in the qualification required by any law or rule having the force of law for the time being in force;

(*b*) his having by habit or religious vows relinquished all care of worldly affairs;

(*c*) his holding any office in or under the Court;

(*d*) his executing any duties of Police or being entrusted with Police-duties;

(*e*) his having been convicted of any offence which, in the opinion of the Court, renders him unfit to serve on the jury;

(*f*) some presumed or actual partiality in the juror;

1872, 1875. (*g*) inability to understand the language in which the evidence is given, or when such evidence is interpreted, the language in which it is interpreted;

(*h*) any other circumstance which, in the opinion of the Court, renders him improper as a juror.

Act X, 1872, s. 243, para 3. Act X, 1875, ss. 48, 55. **282.** Every objection taken to a juror shall be decided by the Court, and such decision shall be final.

Decision of objection.

Act X, 1872, s. 243. Act X, 1875, s. 56. If the objection is allowed, the place of such juror shall be supplied by any other juror attending in obedience to a summons and chosen in manner provided by section 279; or, if there is no such other juror present, then by any other person present in the Court whose name is on the list of jurors, or whom the Court considers a proper person to serve on the jury, provided that no objection to such juror or other person is taken under section 281 and allowed.

Supply of place of juror against whom objection allowed.

Act X, 1872, s. 246. Act X, 1875, s. 58. **283.** When the jurors have been chosen, they shall appoint one of their number to be foreman.

Foreman of jury.

The foreman shall preside in the debates of the jury, deliver the verdict of the jury, and ask any information from the Court that is required by the jury or any of the jurors.

If a majority of the jury do not, within such time as the Judge thinks reasonable, agree in the appointment of a foreman, he shall be appointed by the Court.

New. **284.** When the foreman has been appointed, the jurors shall be sworn under the Indian Oaths Act, 1873.

Swearing of jurors.

Act X, 1872, s. 254. **285.** If, in the course of a trial by jury, at any time before the return of the verdict, any juror, from any sufficient cause, is prevented from attending throughout the trial, or if any juror absents himself, and it is not possible to enforce his attendance,

Procedure when juror ceases to attend.

(*a*) a new juror shall be added; or

(*b*) the jury shall be discharged and a new jury chosen; or

(*c*) with the consent of the prosecutor and the accused, the trial shall proceed with the remaining jurors.

In cases (*a*) and (*b*) the trial shall commence anew.

Act X, 1875, s. 99. **286.** The Judge may also discharge the jury whenever the prisoner becomes incapable of remaining at the bar.

Discharge of jury in case of sickness of prisoner.

D.—Choosing Assessors.

Act X, 1872, s. 239. **287.** When the trial is to be held with the aid of assessors, two or more shall be chosen, as the Judge thinks fit, from the persons summoned to act as such.

Assessor how chosen.

Act X, 1872, s. 259. **288.** If, in the course of a trial with the aid of assessors, at any time prior to the finding, any assessor is, from any sufficient cause, prevented from attending throughout

Procedure when assessor is unable to attend.

the trial, or absents himself, and it is not possible to enforce his attendance, the trial shall proceed with the aid of the other assessor or assessors.

If all the assessors are prevented from attending or absent themselves, the proceeding shall be stayed, and a new trial shall be held with the aid of fresh assessors.

E.—Trial to Close of Cases for Prosecution and Defence.

Act X, 1872, s. 247. Act XI, 1874, s. 19. Act X, 1875, s. 59.

Opening case for prosecution.

289. When the jurors or assessors have been chosen, the prosecutor shall open his case by reading from the Indian Penal Code or other law the description of the offence charged, and stating shortly by what evidence he expects to prove the guilt of the accused.

Examination of witnesses.

The prosecutor shall then examine his witnesses.

Act X, 1872, s. 248. Act X, 1875, s. 60.

Examination of accused before Magistrate to be evidence.

290. The examination of the accused before the committing Magistrate shall be tendered as evidence by the prosecutor, scrutinised by the presiding Judge and read as evidence.

Act X, 1872, s. 249. Act XI, 1874, s. 20. Act X, 1875, s. 75. 12 Ben. Appendix 16, 17. The exercise of this discretion may be reviewed on appeal, 11 Bomb. 282.

Evidence given at preliminary inquiry admissible.

291. The evidence of a witness duly taken in the presence of the accused before the committing Magistrate may, in the discretion of the presiding Judge, if such witness is produced, be treated as evidence in the case.

Act X, 1872, s. 251. Act X, 1875, s. 62.

Procedure after examination of witnesses for prosecution.

292. When the examination of the witnesses for the prosecution and the examination (if any) of the accused is concluded, the accused shall be asked whether he means to call witnesses.

In such case it is not necessary to ask the assessors their opinion—I. L. R. 1 All. 610 n.

If he says that he does not, the prosecutor may sum up his case; and if the Court wholly discredits the evidence for the prosecution, it may then, in a case tried with the aid of assessors, record a finding, or, in a case tried by a jury, direct the jury to return a verdict of not guilty.

If the accused says that he means to call witnesses, or if, on his saying that he does not mean to call witnesses, the prosecutor sums up his case and the Court believes, or merely doubts the truth of, the evidence for the prosecution, the Court shall call on the accused to enter on his defence.

Act X, 1872, s. 251. Act X, 1875, s. 62.

Defence.

293. The accused or his advocate, attorney or agent, may then open his case, stating the facts or law on which he intends to rely, and whether he thinks the evidence for the prosecution insufficient or inapplicable. He may then examine his witnesses, if any, and after their cross-examination and re-examination (if any) may sum up his case.

Act X, 1872, s. 363. Act X, 1875, s. 85. Act IV, 1877, s. 91.

Right of accused as to examination and summoning of witness.

294. The accused shall be allowed to examine any witness not previously named by him, if such witness is in attendance; but he shall not, except as provided in section 232, be entitled of right to have any witness summoned, other than the witnesses named in the list delivered to the Magistrate by whom he was committed for trial.

Act X, 1872, s. 252. Act X, 1875, s. 63.

Prosecutor's right of reply.

295. If any evidence is produced on behalf of the accused, the prosecutor shall be entitled to reply.

Act X, 1872, s. 253, omitting provision as to reconducing to Court. Act X, 1875, s. 64. Taken from Livingston, Art. 357.

View by jury or assessors.

296. Whenever the Court thinks that the jury or assessors should view the place in which the offence charged is alleged to have been committed, or any other place in which any other transaction material to the trial is alleged to have occurred, the Court shall make an order to that effect, and the jury or assessors shall be conducted in a body, under the care of an officer of the Court, to such place, which shall be shown to them by a person appointed by the Court.

Such officer shall not suffer any other person to speak to, or hold any communication with, any of the jury or assessors, and, unless the Court otherwise directs, they shall, when the view is finished, be immediately conducted back into Court.

Act X, 1872, s. 258. Act X, 1875, s. 69.

When juror or assessor may be examined.

297. If a juror or assessor is personally acquainted with any relevant fact, it is his duty to inform the Judge that such is the case, whereupon he may be sworn, examined, cross-examined and re-examined in the same manner as any other witness.

Act X, 1872, s. 260. Act X, 1875, s. 67.

Jury or assessors to attend at adjourned sitting.

298. If a trial is adjourned, the jury or assessors shall attend at the adjourned sitting, and at every subsequent sitting, until the conclusion of the trial.

Act X, 1875, s. 65.

Locking-up jury.

299. The High Court may from time to time make rules as to keeping the jury together during a trial before such Court lasting for more than one day, and, subject to such rules, the presiding Judge may order whether and in what manner the jurors shall be kept together under the charge of an officer of the Court, or whether they shall be allowed to return to their respective homes.

F.—Conclusion of Trial in Cases tried by Jury.

Act X, 1[illegible] s. 255. Act X, 1[illegible] s. 90.

Charge to jury.

300. In cases tried by jury, when the case for the defence, and the prosecutor's reply, if any, are concluded, the Court shall proceed to charge the jury, summing up the evidence for the prosecution and defence, and laying down the law by which the jury are to be guided.

Act X, 1[illegible] s. 256. Act X, 1[illegible] s. 91.

Duty of Judge.

301. In such cases, it is the duty of the Judge—

(*a*) to decide all questions of law, and especially all questions as to the relevancy of facts which it is proposed to prove, the admissibility of evidence or the propriety of questions asked by or on behalf of the parties which may arise in the course of the trial, and, in his discretion, to prevent the production of inadmissible evidence, whether it is or is not objected to by the parties;

(*b*) to decide upon the meaning and construction of all documents given in evidence at the trial;

(*c*) to decide upon all matters of fact which it may be necessary to prove in order to enable evidence of particular matters to be given;

(*d*) to decide whether any question which arises is for himself or for the jury, and upon this point his decision shall be final.

The Judge may, if he thinks proper, in the course of his summing up, express to the jury his opinion upon any question of fact, or upon any question of mixed law and fact, relevant to the proceeding.

Illustrations.

(*a.*) It is proposed to prove a statement made by a person not called as a witness under circumstances which render evidence of his statement admissible.

It is for the Judge, and not for the jury, to decide whether the existence of those circumstances has been proved.

(*b.*) It is proposed to give secondary evidence of a document the original of which is alleged to have been lost or destroyed.

It is the duty of the Judge to decide whether the original has been lost or destroyed.

Act X, 1872, s. 257. Act X, 1875, s. 98.

Duty of jury.

302. It is the duty of the jury—

(*a*) to decide which view of the facts is true, and then to return the verdict which under such view ought, according to the direction of the Judge, to be returned;

(*b*) to determine the meaning of all technical terms and words used in an unusual sense which it may be necessary to determine, whether such words occur in documents or not;

(*c*) to decide all questions which according to law are to be deemed questions of fact;

(*d*) to decide whether general indefinite expressions do or do not apply to particular cases, unless such expressions refer to legal procedure, or unless their meaning is ascertained by law, in either of which cases it is the duty of the Judge to decide their meaning.

Illustrations.

(*a.*) A is tried for the murder of B.

It is the duty of the Judge to explain to the jury the distinction between murder and culpable homicide, and to tell them under what views of the facts A ought to be convicted of murder, or of culpable homicide, or to be acquitted.

It is the duty of the jury to decide which view of the facts is true, and to return a verdict in accordance with the direction of the Judge, whether that direction is right or wrong, and whether they do or do not agree with it.

(*b.*) The question is whether a person entertained a reasonable belief on a particular point,—whether work was done with reasonable skill or due diligence.

Each of these is a question for the jury.

1874, 1875. Retirement to consider.

303. In cases tried by jury, after the Judge has finished his charge, the jury may retire to consider their verdict.

Except with the leave of the Court, no person other than a juror shall speak to, or hold any communication with, any member of such jury.

Act X, 1872, s. 263. Act X, 1875, s. 94.

Delivery of verdict.

304. When the jury have considered their verdict, the foreman shall inform the Judge what is their verdict, or what is the verdict of a majority.

Act X, 1872, s. 263, para. 3. Act X, 1875, s. 96.

Procedure where jury differ.

305. If the jury are not unanimous, the Judge may require them to retire for further consideration. After such a period as the Judge considers reasonable, the jury may deliver their verdict, although they are not unanimous.

Act X, 1872, s. 263, para. 2. Act X, 1875, s. 95.

Verdict to be given on each charge. Judge may question jury.

306. The jury shall return a verdict on all the charges on which the accused is tried, and the Judge may ask them such questions as are necessary to ascertain what their verdict is.

Act X, 1872, s. 263, para. 2, last sentence.

Questions and answers to be recorded.

Such questions and the answers to them shall be recorded.

New. Dears. C. C. 229.

Amending verdict.

307. When a wrong verdict is delivered, the jury may, before or immediately after it is recorded, amend the verdict, and it shall stand as ultimately amended.

Act X, 1875, ss. 97, 98.

Verdict in High Court when to prevail.

308. When in a case tried before a High Court the jury are unanimous in their opinion, or when as many as six are of one opinion and the Judge agrees with them, the Judge shall give judgment in accordance with such opinion.

When in any such case the jury are satisfied that they will not be unanimous, but six of them are of one opinion, the foreman shall so inform the Judge.

Discharge of jury in other cases.

If the Judge disagrees with the majority, he shall at once discharge the jury.

If there are not so many as six who agree in opinion, the Judge shall, after the lapse of such time as he thinks reasonable, discharge the jury.

Act X, 1872, s. 263, para. 4.

Verdict in Sessions Court when to prevail.

309. When in a case tried before the Court of Session the Judge does not think it necessary to express disagreement with the verdict of the jurors or of a majority of the jurors, he shall give judgment accordingly.

Act XI, 1874, s. 21.

If the accused is acquitted, the Judge shall record judgment of acquittal. If the accused is convicted, the Judge shall pass sentence on him according to law.

Act X, 1872, s. 263, last para. Act XI, 1874, s. 21. I. L. R. 1 Bomb. 10. The dissent must be complete, I. L. R. 2 Bomb. 530.

Procedure where Judge disagrees with verdict.

310. If in any such case the Judge disagrees with the verdict of the jurors, or of a majority of the jurors, on all or any of the charges on which the accused has been tried, so completely that he considers it necessary for the ends of justice to submit the case to the High Court, he shall submit the case accordingly, record-

I. L. R., 3 Calc. 623.

ing the grounds of his opinion and, when the verdict is one of acquittal, stating the offence which he considers to have been committed.

Whenever the Judge submits a case under this section, he shall not record judgment of acquittal or of conviction on any of the charges on which the accused has been tried, but he may either remand the accused to custody, or admit him to bail.

See Markby J., in I. L. R., 3 Calc. 192.

The High Court shall deal with the case so submitted as it would deal with an appeal; but it may acquit or convict the accused of any offence of which the jury could have convicted him upon the charge framed and placed before it; and if it convict him, may pass such sentence as might have been passed by the Court of Session.

G.—Re-trial of Accused after Discharge of Jury.

Act X, 1875, s. 100.

311. Whenever the jury is discharged, the accused shall be detained in custody or on bail (as the case may be), and shall be tried by another jury, unless the Judge considers that he should not be re-tried, in which case the Judge shall make an entry to that effect on the charge, and such entry shall operate as an acquittal.

Re-trial of accused after discharge of jury.

H.—Conclusion of Trial in Cases tried with Assessors.

Act X, 1872, ss. 255, 261, 262.

312. When in a case tried with the aid to assessors, the case for the defence and the prosecutor's reply (if any) are concluded, the Court shall require each of the assessors to state his opinion orally, and shall record such opinion.

Delivery of opinion of assessors.

The Judge shall then give judgment; but in doing so shall not be bound to conform to the opinion of the assessors.

Judgment.

I.—List of Jurors for High Court and summoning Jurors for that Court.

Act X, 1875, s. 39.

313. The jurors' book for the year current when this Code comes into force shall be taken as containing a correct list of persons liable to serve as jurors under this chapter;

Jurors' book.

and those persons whose names are entered in the said book as being liable to serve on special juries only shall be deemed to be persons privileged and liable to serve only as special jurors under this chapter during the year for which the said list has been prepared.

Act X, 1875, s. 40.

314. The names of not more than two hundred persons shall at any one time be entered in the special jurors' list.

Number of special jurors.

Act X, 1875, s. 41.

All persons whose names are entered in the special jurors' list shall be exempted from serving on any other than special juries, but so long only as their names are contained in such list.

Exemption of special jurors.

Act X, 1875, s. 42.

315. The Clerk of the Crown shall, before the first day of April in each year, and subject to such rules as the High Court from time to time prescribes, prepare—

Lists of common and special jurors.

(*a*) a list of all persons liable to serve as common jurors; and

(*b*) a list of persons liable to serve as special jurors only.

Regard shall be had, in the preparation of the latter list, to the property, character and education of the persons whose names are entered therein.

No persons shall be entitled to have his name entered in the special jurors' list merely because he may have been entered in the special jurors' list for a previous year.

The Governor General in Council may exempt any salaried officer of Government from serving as a juror.

Act X, 1875, s. 43.

The Clerk of the Crown shall, subject to such rules as aforesaid, have full discretion to prepare the said lists as seems to him to be proper, and there shall be no appeal from, or review of, his decision.

Discretion of officer preparing lists.

Act X, 1875, s. 44.

316. Preliminary lists of persons liable to serve as common jurors and as special jurors, respectively, signed by the Clerk of the Crown, shall be published once in the local official Gazette before the fifteenth day of April next after their preparation.

Publication of preliminary lists.

Revised lists of persons liable to serve as common jurors and special jurors, respectively, signed as aforesaid, shall be published once in the local official Gazette before the first day of May next after their preparation.

Copies of the said lists shall be affixed to some conspicuous part of the Court-house.

Act X, 1875, s. 45.

317. Out of the persons named in the revised lists aforesaid, there shall be summoned for each sessions at least twenty-seven of those who are liable to serve on special juries, and fifty-four of those who are liable to serve on common juries.

Number of jurors to be summoned.

No persons shall be so summoned more than once in six months unless the number cannot be made up without him.

If, during the continuance of any sessions, it appears that the number of persons so summoned is not sufficient, such number as may be necessary of other persons liable to serve as aforesaid shall be summoned for such sessions.

Supplementary summons.

Act X, s.

318. Whenever a High Court has given notice of its intention to hold sittings at any place outside the Presidency towns for the exercise of its original criminal jurisdiction, the

Summoning jurors outside the Presidency-towns.

Court of Session at such place shall, subject to any direction which may be given by the High Court, summon a sufficient number of jurors from its own list in the manner hereinafter prescribed for summoning jurors to the Court of Session.

Act X, 1875, s. 51.

319. In addition to the persons so summoned as jurors, the said Court of Session shall, if it think needful, after communication with the Commanding Officer, cause to be summoned such number of commissioned and non-commissioned officers in Her Majesty's army resident within ten miles of its place of sitting, as the Court considers to be necessary to make up the juries required for the trial of persons charged with offences before the High Court as aforesaid.

Military jurors.

All officers so summoned shall be liable to serve on such juries notwithstanding anything contained in this Code; but no such officer shall be summoned whom his Commanding Officer desires to have excused on the ground of urgent military duty, or for any other special military reason.

Act X, 1875, s. 46.

320. Any person summoned under section 317, 318 or 319, who without lawful excuse fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Judge, or fails to attend after an adjournment of the Court after being ordered to attend, shall be deemed guilty of a contempt and be liable by order of the Judge to such fine as he thinks fit; and, in default of payment of such fine, to imprisonment in the civil jail until the fine is paid.

Failure of jurors to attend.

J.—List of Jurors and Assessors for Court of Session, and summoning Jurors and Assessors for that Court.

Act X, 1872, s. 400.

321. The Sessions Judge and the Collector of the District, or such other officer as the Local Government appoints in this behalf, shall prepare and make out in alphabetical order a list of persons residing within ten miles from the place where trials before the Court of Session are held, or within such other distance as the Local Government directs, who are capable of serving as jurors or assessors, qualified in the judgment of the Sessions Judge and Collector or other officer as aforesaid to serve as such, and not exempt under section 327.

List of jurors and assessors.

The list shall contain the name, place of abode and quality or business of every such person; and if the person is a European or an American, the list shall mention the race to which he belongs.

X, 1872, para.

322. Copies of such list shall be stuck up in the office of the Collector or other officer as aforesaid, and in the Court-houses of the District Magistrate and of the District Court, and in some conspicuous place in the town or towns in or near which the persons named in the list reside.

Publication of list.

Act X, 1872, para. 2.

323. To every such copy shall be subjoined a notice stating that objections to the list will be heard and determined by the Sessions Judge and Collector or other officer as aforesaid, at the Sessions Court-house, and at a time to be mentioned in the notice.

Objections to list.

Act X, 1872, s. 402.

324. For the hearing of such objections, the Sessions Judge shall sit with the Collector or other officer as aforesaid, and shall, at the time and place mentioned in the notice, revise the list and hear the objections (if any) of persons interested in the amendment thereof, and shall strike out the name of any person not suitable in their judgment to serve as a juror or as an assessor, or who may avail himself of the exemption from service given by section 327, and insert the name of any person omitted from the list whom they deem qualified for such service.

Revision of list.

In the event of a difference of opinion between the Collector or other officer as aforesaid and the Sessions Judge, the name of the proposed juror or assessor shall be omitted from the list.

A copy of the revised list shall be signed by the Sessions Judge and Collector or other officer as aforesaid and sent to the Court of Session.

Any order of the Sessions Judge and Collector or other officer as aforesaid in preparing and revising the list shall be final.

Act X, 1872, s. 403.

325. The list so prepared and revised shall be again revised once in every year.

Annual revision of list.

The list so revised shall be deemed a new list, and shall be subject to all the rules hereinbefore contained as to the list originally prepared.

Act X, 1872, s. 404

326. All male persons between the ages of twenty-one and sixty resident within the local limits of the jurisdiction of the Court of Session, except those next hereinafter mentioned, shall be deemed capable of serving as jurors and assessors, and shall be liable to be summoned accordingly.

Jurors and assessors.

Act X, 1872, s. 406.

327. The following persons are exempt from liability to serve as jurors or as assessors, namely:—

Exemptions.

(*a*). Officers in civil employ superior in rank to a District Magistrate;

(*b*). Judges and other Judicial Officers;

(*c*). Commissioners and Collectors of Revenue or Customs;

(*d*). Persons engaged in the Preventive Service in the Customs Department;

(*e*). Persons engaged in the collection of the revenue whom the Collector thinks fit to exempt on the ground of official duty;

(*f*). Persons actually officiating as priests or ministers of their respective religions;

(*g*). Persons in Her Majesty's Army except when, by any law in force for the time being, they are specially made liable to serve as jurors or assessors;

(*h*). Surgeons and others who openly and constantly practise the medical profession;

(*i*). Persons employed in the Post-office and Telegraph Departments;

(*j*). Persons exempted by the Local Government from liability to serve as jurors, and persons exempted from personal appearance in Court under the provisions of the Code of Civil Procedure, sections 640 and 641.

Person exempted not bound to avail himself of his right.

The exemption from service given by this section is a right of which each person exempted may avail himself or not as he thinks fit.

Act X, 1872, s. 407.

Court to summon jurors.

328. The Sessions Judge shall ordinarily, three days at least before the time fixed for holding the sessions, send a letter to a Magistrate requesting him to summon as many persons named in the said revised list as seem to the Judge to be needed for trials by jury and trials with the aid of assessors at the said sessions, the number to be summoned not being less than double the number required for any case about to be tried at such sessions.

The names of the persons to be summoned shall be drawn by lot in open Court, excluding those on the revised list who have served within six months, unless the number cannot be made up without them; and the names so drawn shall be specified in the said letter.

Act X, 1872, s. 410.

Power to summon another set of jurors or assessors.

329. The Court of Session may direct jurors or assessors to be summoned at other periods than the period specified in section 328, when the number of trials before the Court renders the attendance of one set of jurors or assessors for a whole session oppressive, or whenever for other reasons such direction is found to be necessary.

Act X, 1872, s. 409, para. 1.

Form and service of summons.

330. Every summons to a juror or assessor shall be in writing, and shall require his attendance as a juror or assessor, as the case may be, at a time and place to be therein specified.

Act X, 1872, s. 411.

When officer of Government may be excused.

331. If any person summoned to serve as a juror or assessor be in the service of Government or of a Railway Company, the Court may excuse his attendance if it appear, on the representation of the head of the office in which he is employed, that he cannot serve as a juror or assessor, as the case may be, without inconvenience to the public service.

Act X, 1872, s. 412.

Court may excuse attendance of juror or assessor.

332. The Court of Session may for reasonable cause excuse any juror or assessor from attendance at any particular session.

Act X, 1872, s. 413.

List of jurors or assessors attending.

333. At each session, the said Court shall cause to be made a list of the names of those who serve as jurors or assessors at such session.

Such list shall be kept with the revised list of the jurors and assessors prepared under section 324.

A reference shall be made in the margin of the said revised list to each of the names which are mentioned in the list prepared under this section.

Act X, 1872, s. 414.

Penalty for non-attendance of juror or assessor.

334. Any person summoned to attend as a juror or as an assessor who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Court, or fails to attend after an adjournment of the Court after being ordered to attend, shall be liable, by order of the Court of Session, to a fine not exceeding one hundred rupees.

Such fine shall be levied by the District Magistrate by attachment and sale of any moveable property belonging to such juror or assessor within the local limits of the jurisdiction of the Court making the order.

In default of recovery of the fine by such attachment and sale, such juror or assessor may be imprisoned in the civil jail for the term of fifteen days, unless such fine is paid before the end of the said term.

K.—Special Provisions for High Courts.

Act X, 1875, s. 146. Cf. s. 262, *supra*.

Power of Advocate General to stay prosecution.

335. At any stage of any trial before a High Court under this Code before the return of the verdict, the Advocate General may, if he thinks fit, inform the Court on behalf of Her Majesty that he will not further prosecute the defendant upon the charge; and thereupon all proceedings on such charge against the defendant shall be stayed, and he shall be discharged of and from the same. But such discharge shall not amount to an acquittal.

Act X, 1875, s. 4.

Time of holding sittings.

336. For the exercise of its original criminal jurisdiction, every High Court shall hold sittings on such days and at such convenient intervals as the Chief Justice of such Court from time to time appoints.

Act X, 1875, s. 5.

Place of holding sittings.

337. The High Court shall hold its sittings at the place at which it now holds them, or at such other place (if any) as the Governor General in Council in the case of the High Court at Fort William, and as the Local Government in the case of the other High Courts, may direct.

But it may from time to time, in the case of the High Court at Fort William, with the consent of the Governor General in Council, in all other cases with the consent of the Local Government, hold sittings at such other places within the local limits of its appellate jurisdiction as the High Court appoints.

Notice of sittings.

Such officer as the Chief Justice directs shall give notice beforehand in the local official Gazette of all sittings intended to be held for the exercise of

the original criminal jurisdiction of the High Court.

Act X, 1875, s. 27.

Intermediate custody of European British subjects.

338. The High Court may direct that all European British subjects committed or bailed for trial by it within certain specified districts or during certain specified periods of the year shall be tried at the ordinary place of sitting of the Court,

or direct that they shall be tried at a particular place named.

CHAPTER XXIV.

OF TENDER OF PARDON IN CASES TRIABLE BY THE HIGH COURT OR COURT OF SESSION.

Act X, 1872, s. 347. Act IV, 1877, s. 130.

Tender of pardon to accomplice.

339. The District Magistrate, a Presidency Magistrate, any Magistrate of the first class inquiring into the case, or, with the sanction of the District Magistrate, any Magistrate duly empowered to commit to the Court of Session, may, with the view of obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, any offence specified in the second schedule as triable exclusively by the Court of Session or High Court, tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to such offence, and to every other person concerned in the perpetration thereof.

Every person accepting a tender under this section shall be examined as a witness in the case.

Such person, if not on bail, shall be detained in custody until the termination of the trial.

Every Magistrate, other than a District Magistrate or a Presidency Magistrate, who tenders a pardon under this section, shall record his reasons for so doing; and when he has made such tender and examined the accused person, he shall not try the case himself, although the offence which the accused person appears to have committed may be triable by such Magistrate.

1872, om- as a of Re- 1875,

Power to direct tender of pardon.

340. At any time after committal, but before judgment is passed, the High Court or Court of Session may, with the view of obtaining on the trial the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, any such offence, tender, or direct the committing Magistrate to tender, a pardon on the same condition to such person.

1872, 1875, 1877,

Commitment of person to whom pardon has been tendered.

341. Where a pardon has been tendered under section 339 or 340, if before the trial it appears to the Court making or directing the tender, or to the Magistrate, that any person who has accepted such tender has, either by wilfully concealing anything essential or by giving false evidence, not complied with the condition on which the tender was made, such Court or Magistrate may commit him for trial for the offence in respect of which the pardon was so tendered, or for any other offence of which he appears to have been guilty in connection with the same matter.

The statement made by a person under pardon may be given in evidence against him when the pardon has been withdrawn under this section.

CHAPTER XXV.

GENERAL PROVISIONS AS TO INQUIRIES AND TRIALS.

Act X, 1872, ss. 186, paras. 1 and 2. Act XI, 1874, s. 13. Act X, 1875, s. 31. Act IV, 1877, s. 130. Act X, 1872, s. 186, para. 3. Act X, 1875, s. 130. Act IV, 1877, s. 131.

Right of accused to be defended.

342. Every person accused before any criminal Court may of right be defended by a pleader.

Procedure where accused does not understand proceedings.

343. If the accused, though not insane, cannot be made to understand the proceedings, the Court may proceed with the inquiry or trial; and in the case of a Court other than a High Court, if such inquiry results in a commitment, or if such trial results in a conviction, the proceedings shall be forwarded to the High Court with a report of the circumstance of the case, and the High Court shall pass thereon such order as it thinks fit.

Act X, 1872, ss. 193, 250, 342. Act X, 1875, s. 61. Act IV, 1877, ss. 5, 148. 1 O' Kin. 436.

Power to examine the accused.

344. At any stage of any inquiry or trial the Court may, without previously warning the accused, put such questions to him as the Court considers necessary.

The accused shall not render himself liable to punishment for refusal to answer such questions, or for giving false answers to them; but the Court shall draw such inference from such refusal or false answers as it thinks just.

Act X, 1872, s. 343, see Act I, 1872, s. 114, ill. (*h*).

Act X, 1872, s. 193.

The answers given by the accused may be put in evidence against him, not only in such inquiry or trial, but also in any other inquiry into or trial for, any other offence which such answer may tend to show he has committed.

Act X, 1872, s. 345.

No oath or affirmation shall be administered to the accused.

Act X, 1872, s. 344. Act IV, 1877, s. 149.

No influence to be used to induce disclosures.

345. Except as provided in section 339, no influence, by means of any promise or threat or otherwise, shall be used to an accused person to induce him to disclose or withhold any matter within his knowledge.

Act X, 1872, ss. 194, paras. 1 and 3, 208, para. 1, 219, 264.

Power to postpone or adjourn proceedings.

346. If, from the absence of a witness or any other reasonable cause, it becomes necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial,

Act X, 1875, s. 66. Act IV, 1877, ss. 86, 124. Acts 11 & 12 Vic., c. 42, s. 21.

the Court may, by order, from time to time, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and by a warrant, or to the like effect, remand the accused if in custody :

Remand.

Provided that no Magistrate shall remand an accused person to custody under this section for a period exceeding fifteen days at a time.

Every order made under this section by a Court other than a High Court shall be in writing signed by the presiding Judge.

Explanation.—If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

Reasonable cause for remand.

Act X, 1872, s. 188. Act X, 1875, s. 151. Act IV, 1877, s. 133. Compare N. Y. Crim. Proc. Code, s. 781.

347. In the case of offences which may lawfully be compounded, the injured person may compound the offence out of Court, or in Court, with the permission of the Magistrate or presiding Judge. Such composition shall have the effect of an acquittal of the accused.

Compounding offences.

Explanation.—The following offences, and no others, may be lawfully compounded :—

New.

(*a*) offences relating to the human body, except offences under the Indian Penal Code, sections 299 to 311 (both inclusive) and sections 359 to 373 (both inclusive) ;

(*b*) criminal breach of contracts of service ;

(*c*) defamation ;

(*d*) criminal intimidation, insult and annoyance ;

(*e*) offences against property, except offences under the Indian Penal Code, sections 390 to 414 (both inclusive) ;

(*f*) offences relating to documents, trade-marks and property-marks, except offences under the same Code, sections 463 to 477 (both inclusive) ;

(*g*) adultery and other offences relating to married women, under the same Code, sections 497 and 498 ;

(*h*) offences against Municipal and Cantonment Acts, and the conservancy-clauses of Police Acts ;

(*i*) abetment of any of the foregoing offences ;

(*k*) an attempt to commit any of the foregoing offences when such attempt is an offence.

Act X, 1872, s. 45.

348. If, in the course of an inquiry or trial before a Magistrate in any district outside the Presidency-towns, the evidence appears to him to warrant a presumption that the case is one which should be tried or committed for trial by some other Magistrate in such district, he shall stay proceedings and submit the case, with a brief report explaining its nature, to any Magistrate to whom he is subordinate, or to such other Magistrate, having jurisdiction, as the District Magistrate directs.

Procedure of Mufassal Magistrate in cases which he cannot dispose of.

Madras H. C. ruling cited Nelson, 63.

The Magistrate to whom the case is submitted shall, if so empowered, either try the case himself, or refer it to any officer subordinate to him having jurisdiction, or commit the accused for trial.

In any such case, such Magistrate or other officer as aforesaid shall examine the parties and witnesses, and shall proceed in all respects as if no proceedings had been held in any other Court.

Act X, 1872, s. 221. Act IV, 1877, s. 127.

349. If in any trial before a Magistrate it appears to him at any stage of the proceedings before signing judgment that the case is one which ought to be tried by the Court of Session or High Court, and he is empowered to commit for trial, he shall stop further proceedings and commit the accused under the provisions hereinbefore contained.

Procedure when after commencement of trial Magistrate finds case should be committed.

If such Magistrate is not empowered to commit for trial, he shall proceed under section 348.

Act X, 1872, s. 315. Act IV, 1877, s. 128.

350. Whoever, having been convicted of an offence punishable under chapter XII or XVII of the Indian Penal Code with imprisonment for a term of three years or upwards, is again accused of any offence punishable under either of those chapters with imprisonment for a term of three years or upwards, shall ordinarily, if the Magistrate before whom he is accused considers him an habitual offender, be committed to the Court of Session or High Court, as the case may be :

Trial of persons previously convicted of offences against coinage, stamp-law and property.

Proviso.

Provided that, in districts in which the District Magistrate has been invested with powers under section 30, the accused person may be placed on his trial before such Magistrate.

Act X, 1872, s. 46, [illegible] ing "[illegible] ent in [illegible] from [illegible]

351. Whenever a Magistrate of the second or third class, having jurisdiction, is of opinion upon concluding a trial that the accused is guilty, and that he ought to receive a punishment different in kind from, or more severe than, that which such Magistrate is empowered to inflict, he may record the finding and, instead of passing sentence, submit his proceedings, and forward the accused to the District Magistrate or Sub-divisional Magistrate to whom he is subordinate.

Procedure when Magistrate cannot pass sentence sufficiently severe.

The Magistrate to whom the proceedings are submitted may, if he thinks fit, examine the parties and recall and examine any witness who has already given evidence in the case ; and may call for and take any further evidence, and shall pass such judgment, sentence or order in the case as he thinks fit, and as is according to law : Provided that he shall not inflict a punishment more severe than he is empowered to inflict under sections 32 and 33.

s. g., order mitt[illegible] See Court R. 1 269.

Act X, 1872, ss. 328 and 329. Act IV, 1877, s. 156.

352. Whenever any Magistrate, after having heard the whole or any part of the evidence in an inquiry or trial, ceases to exercise jurisdiction therein, and is succeeded by another Magistrate who has and who exercises such jurisdiction, the Magistrate so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself ; or he may re-summon the witnesses and re-commence the enquiry or trial :

Conviction on evidence partly recorded by one Magistrate and partly by another.

Provided that the accused may, when the second Magistrate commences his proceedings, demand that the witnesses be re-summoned and re-heard, in which case the inquiry or trial shall be re-commenced :

Provided also that the High Court, or, in cases tried by Magistrates subordinate to the District Magistrate, the District Magistrate may, without appeal, set aside any conviction passed on evidence not wholly recorded by the Magistrate before whom the conviction was had, if such Court or District Magistrate is of opinion that the accused has been materially prejudiced thereby ; and may order a new inquiry or trial.

Nothing in this section applies to cases in which proceedings have been stayed under section 348.

Act X, 1872, s. 104.

353. Any person attending a criminal Court, although not upon an arrest or summons, may be detained by such Court for the purpose of examination, for any offence of which such Court can take cognizance and which, from the evidence, he may appear to have committed, and may be proceeded against as though he had been arrested or summoned.

Detention of offenders attending Court.

When the detention takes place in the course of an inquiry under chapter XVIII, or after a trial has been begun, the proceedings in respect of such person shall be commenced afresh and the witnesses re-heard.

[illegible] X, 1872, s. 187. [illegible] X, 1875, s. 150. [illegible] IV, 1877, s. 132.

354. The place in which any criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed an open Court, to which the public generally may have access, so far as the same can conveniently contain them :

Courts to be open.

Provided that the presiding Judge may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court.

CHAPTER XXVI.

Of the Mode of taking and recording Evidence in Inquiries and Trials.

[illegible] X, 1872, [illegible], para. [illegible] XV, 1878, [illegible], para.

355. Except as otherwise expressly provided, all evidence taken under chapters XVIII, XX, XXI, XXII and XXIII shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in presence of his pleader.

Evidence to be taken in presence of accused.

Act X, 1872, s. 332.

356. In inquiries and trials (other than summary trials) under this Code by or before a Magistrate (other than a Presidency Magistrate) or Sessions Judge, the evidence of the witnesses shall be recorded in the following manner.

Manner of recording evidence in Mufassal.

Act X, 1872, s. 333.

357. In summons-cases tried before a Magistrate, other than a Presidency Magistrate, and in cases of the offences mentioned below when tried by a Magistrate of the first or second class, the Magistrate shall make a memorandum of the substance of the evidence of each witness as the examination of the witness proceeds.

Record in summons-cases, and in trials of certain offences by first and second class Magistrates.

Such memorandum shall be written and signed by the Magistrate with his own hand, and shall form part of the record.

If the Magistrate is prevented from making a memorandum as above required, he shall record the reason of his inability to do so, and shall cause such memorandum to be made in writing from his dictation in open Court, and shall sign the same ; and such memorandum shall form part of the record.

The offences above referred to are—

Act X, 1872, s. 222.

(1). Offences relating to weights and measures, under sections 264, 265 and 266 of the Indian Penal Code ;
(2). Hurt, under section 323 of the same Code ;
(3). Theft, under section 379 of the same Code, where the value of the property stolen does not exceed fifty rupees ;
(4). Theft, under section 380 of the same Code, where the value of the property stolen does not exceed fifty rupees ;
(5). Theft under section 381 of the same Code, where the value of the property stolen does not exceed fifty rupees ;
(6). Receiving stolen property, under section 411 of the same Code ;
(7). Mischief, under section 427 of the same Code ;
(8). House-trespass, under section 448 of the same Code ;
(9). Criminal intimidation, under sections 504 and 506 of the same Code ;
(10). Abetment of any of the foregoing offences ;
(11). Attempt to commit (when such attempt is an offence) any of the foregoing offences.

Act X, 1872, s. 334.

358. In all other trials before Courts of Session and Magistrates (other than Presidency Magistrates) and in all inquiries under chapter XVIII, the evidence of each witness shall be taken down in writing in the language of the

Record in other cases in the Mufassal.

No exception of cases in which no appeal lies 11 Beng. Appx. 6.

Court, by the Magistrate or Sessions Judge, or in his presence and hearing and under his personal direction and superintendence, and shall be signed by the Magistrate or Sessions Judge.

Evidence given in English.

When the evidence of such witness is given in English, the Magistrate or Sessions Judge may take it down in that language with his own hand, and, unless the accused is familiar with English, or the language of the Court is English, an authenticated translation of such evidence in the language of the Court shall form part of the record.

Memorandum when evidence not taken down by the Magistrate or Judge himself.

In cases in which the evidence is not taken down in writing by the Magistrate or Sessions Judge, he shall, as the examination of each witness proceeds, make a memorandum of the substance of what such witness deposes, and such memorandum shall be written and signed by the Magistrate or Sessions Judge with his own hand, and shall form part of the record.

If the Magistrate or Sessions Judge is prevented from making a memorandum as above required, he shall record the reason of his inability to make it.

Act X, 1872, s. 335.

Language of record of evidence.

359. The Local Government may direct that in any district or part of a district, or in proceedings before any Court of Session, or before any Magistrate or class of Magistrates, the evidence shall in the cases referred to in section 358 be taken down by the Sessions Judge or Magistrate with his own hand and in his mother-tongue, unless he is prevented by any sufficient reason from taking down the evidence of any witness, in which case he shall record the reason of his inability to do so, and shall cause the evidence to be taken down in writing from his dictation in open Court.

The evidence so taken down shall be signed by the Sessions Judge or Magistrate, and shall form part of the record:

Provided that, if the mother-tongue of the Sessions Judge or Magistrate is not English or the language of the Court, the Local Government may direct him to take down the evidence in the English language, or in the language of the Court.

Act X, 1872, s. 336.

Option to Magistrate in cases under section 357.

360. In cases of the kind mentioned in section 357, the Magistrate may, if he thinks fit, take down the evidence of any witness in the manner provided in section 358, or, if within the local limits of the jurisdiction of such Magistrate, the Local Government has made the order referred to in section 359, in the manner provided in the same section.

Act X, 1872, s. 338.

Mode of recording evidence under section 358 or 359.

361. Evidence taken under section 358 or 359 shall not ordinarily be taken down in the form of question and answer, but in the form of a narrative.

The Magistrate or Sessions Judge may in his discretion take down, or cause to be taken down, any particular question and answer, if there appears any special reason for so doing, or if the prosecutor or the accused, or his pleader so requires.

Act X, 1872 s. 339.

Procedure in regard to such evidence when completed.

362. As the evidence of each witness taken under section 358 or 359 is completed, it shall be read over to him in the presence of the accused if in attendance, or of his pleader, when his personal attendance is dispensed with and he appears by pleader, and shall, if necessary, be corrected.

If the witness deny the correctness of any part of the evidence when the same is read over to him, the Magistrate or Sessions Judge may, instead of correcting the evidence, make a memorandum thereon of the objection made to it by the witness, and shall add such remarks as he thinks necessary.

If the evidence be taken down in a language different from that in which it has been given, and the witness does not understand the language in which it is taken down, he may require his evidence as taken down to be interpreted to him in the language in which it was given, or in a language which he understands.

Act X, 1872, s. 340.

Interpretation of evidence to accused or his agent.

363. Whenever any evidence is given in a language not understood by the accused and he is present in person, it shall be interpreted to him in open Court in a language understood by him.

If he appears by pleader and the evidence is given in a language other than the language of the Court, and not understood by the pleader, it shall be interpreted to such pleader in that language.

When documents are put in for the purpose of formal proof, it shall be in the discretion of the Court to interpret as much thereof as appears necessary.

Act X, 1[illegible] s. 335. Act IV, 18[illegible] s. 115.

Record of evidence in Presidency Magistrates' Courts.

364. In every case in which a Presidency Magistrate imposes a fine exceeding two hundred rupees, or imprisonment for a term exceeding six months, he shall either take down the evidence of the witnesses with his own hand, or cause it to be taken down in writing from his dictation in open Court. All evidence so taken down shall be signed by the Magistrate and shall be part of the record.

Act X, 1[illegible] s. 338. Act IV, 187[illegible] s. 115.

Evidence so taken down shall ordinarily be recorded in the form of a narrative, but the Magistrate may in his discretion take down, or cause to be taken down, any particular question or answer.

Sentences passed under section 35 on the same occasion shall, for the purposes of this section, be considered as one sentence.

Act X, 1872, s. 341.

Remarks respecting demeanour of witness.

365. Every Sessions Judge or Magistrate recording the evidence of a witness shall record such remarks as he thinks material respecting the demeanour of such witness whilst under examination.

Act X, 1872, s. 346. Act IV, 1877, ss. 84, 123.

Examination of accused how recorded.

366. Whenever the accused is examined by any Magistrate or by any Court other than a High Court established by Royal Charter, the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full, and shall be shown or read to him, and he shall be at liberty to explain or add to his answers.

When the whole is made conformable to what he declares is the truth, the examination shall be signed by the accused and the Magistrate or Judge of such Court, and such Magistrate or Judge shall certify under his own hand that it was taken in his presence and in his hearing, and contains a full and true account of the statement made by the accused.

In cases in which the examination of the accused is not recorded by the Magistrate or Judge himself, he shall be bound, unless he is a Presidency Magistrate, as the examination proceeds, to make a memorandum thereof in the language of the Court or in English, if he is sufficiently acquainted with the latter language; and such memorandum shall be written and signed by the Magistrate or Judge with his own hand, and shall be annexed to the record. If the Magistrate or Judge is unable to make a memorandum as above required, he shall record the reason of such inability.

If the Court of Session or High Court finds that the provisions of this section have not been fully complied with by a Magistrate committing any person for trial to such Court, it shall take evidence that such person duly made the statement recorded: and unless the error injures the accused as to his defence on the merits, it shall not affect the admissibility of such statement.

1875, in Chief

Record of evidence in High Court.

367. Every High Court established by Royal Charter and the Chief Court of the Panjáb may from time to time by general rule prescribe the manner in which evidence shall be taken down in cases coming before the Court in the exercise of its ordinary or its extraordinary original criminal jurisdiction, and the Judges of such Court shall take down the evidence or the substance thereof in accordance with the rule (if any) so prescribed.

CHAPTER XXVII.

OF THE JUDGMENT.

Act VIII, 1859, s. 183. Act X, 1872, s. 462.

Mode of delivering judgment.

368. The judgment in every trial in any criminal Court of original jurisdiction shall be pronounced in open court either immediately or at some subsequent time of which due notice shall be given to the parties or their pleaders; and the accused shall, if in custody, be brought up, or if not in custody shall be required to attend, to hear judgment delivered, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only, in which case it may be pronounced in the presence of his pleader.

Act X, 1872, s. 463. cf. Act X, 1877, s. 200.

Language of judgment.

369. Every such judgment shall, except as otherwise expressly provided by this Code, be written by the presiding officer of the Court in the language of the Court, or in English, or in the presiding officer's mother-tongue, and shall contain the point or points for determination, the decision thereon, and the reasons for the decision, and shall be dated and signed by the presiding officer in open court the time of pronouncing it.

Act X, 1872, s. 464. cf. Act VIII, 1859, s. 185.

Contents of judgment.

It shall specify the offence (if any) of which, and the section of the Indian Penal Code or other law under which, the accused is convicted, and the punishment (if any) to which he is sentenced.

When the conviction is under the Indian Penal Code, and it is doubtful under which of two sections, or under which of two parts of the same section, of that Code the offence falls, the Court shall distinctly express the same, and pass judgment in the alternative, according to section 72 of the same Code.

Act X, 1872, s. 461.

Judgment in alternative.

If it be a judgment of acquittal, it shall direct that the accused be set at liberty.

If the accused is convicted of an offence punishable with death, and the Court sentences him to any punishment other than death, the Court shall in its judgment state the reason why sentence of death was not passed:

Act X, 1872, s. 287, para. 2.

Provided that, in trials by jury, the Court need not write a judgment, but the Court of Session shall record the heads of the charge to the jury.

Act X, 1872, s. 255, last para., and 464.

Act X, 1872, s. 321. Act X, 1875, s. 113.

Sentence of death.

370. When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.

Act X, 1872, s. 464, second sentence.

Court not to alter judgment.

371. No Court when it has signed its judgment shall alter or review the same.

Submission of Sentences for Confirmation.

Act IV, 1877, s. 114.

372. Instead of recording a judgment in manner hereinbefore provided, a Presidency Magistrate shall record the following particulars:—

Presidency Magistrate's judgment.

(*a*) the serial number of the case;

(*b*) the date of the commission of the offence;

(*c*) the name of the complainant (if any);

(*d*) the name of the accused person;

(*e*) the offence complained of or proved;

(*f*) the plea of the accused and his examination (if any);

(*g*) the final order;

(*h*) the date of such order; and

Act IV, 1877, s. 126.

(*i*) in all cases in which the Magistrate inflicts imprisonment, or fine exceeding two hundred rupees, or both, a brief statement of the reasons for the conviction.

Act XI, 1874, s. 41.

373. The judgment shall be explained to the accused, and on his application a copy of the judgment or, when he so desires, a translation in his own language, if practicable, or in the language of the Court, shall be given to him without delay, and free of cost.

Judgment to be explained and copy given to accused.

When the accused is sentenced to death by a Sessions Judge, such Judge shall further inform him of the period within which, if he wishes to appeal, his appeal should be preferred.

Case of person sentenced to death.

374. The original judgment shall be filed with the record of proceedings, and where the original is recorded in a different language from that of the Court, a translation thereof into the language of the Court shall be added to such record.

Judgment to be translated.

Act X, 1872, s. 302.

375. In cases tried by the Court of Session, the Court shall forward a copy of its judgment to the District Magistrate within the local limits of whose jurisdiction the trial was held.

Court of Session to send copy of judgment to District Magistrate.

CHAPTER XXVIII.

OF THE SUBMISSION OF SENTENCES FOR CONFIRMATION.

Act X, 1872, s. 287, para. 1.

376. When the Court of Session passes sentence of death, the proceedings shall be submitted to the High Court, and the sentence shall not be executed unless it is confirmed by the High Court.

Sentence of death to be submitted by Court of Session.

Act X, 1872, s. 289.

377. If when such proceedings are submitted the High Court thinks that additional evidence upon any point bearing upon the guilt or innocence of the convicted person is necessary, it may direct such evidence to be taken.

Power to direct additional evidence on such reference.

Such evidence shall not be taken in the presence of jurors or assessors, and unless the High Court otherwise directs, the presence of the convicted person may be dispensed with when the same is taken.

The result of such evidence shall be certified to the High Court.

Act X, 1872, s. 288.

378. In any case submitted under section 376, whether tried with the aid of assessors or by jury, the High Court may confirm the sentence, or pass any other sentence warranted by law, or may annul the conviction, and order a new trial on the same or an amended charge, or may acquit the accused person.

Power of High Court to confirm sentence or annul conviction.

Act X, 1872, s. 290.

379. In every case so submitted, the confirmation of the sentence or any new sentence or order passed by the High Court, shall, when such Court consists of two or more Judges, be signed by at least two of them.

Confirmation or new sentence to be signed by two Judges.

? New.

380. When any such case is heard before a bench of Judges and such Judges are equally divided, the case, with their opinions thereon, shall be laid before another Judge, and such Judge, after such examination and hearing as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion.

Procedure in case of difference of opinion.

Act X, 1872, s. 301, para. 1.

381. In cases submitted by the Court of Session to the High Court for the confirmation of a sentence of death, the proper officer of the High Court shall, without delay, after the order of confirmation or other order has been made by the High Court, send a copy of the order, under the seal of the High Court, and attested with his official signature, to the Court of Session.

Procedure in cases submitted to High Court for confirmation.

Act X, 1872, ss. 18 and 19. Act XI, 1874, s. 3.

382. When a sentence passed by an Assistant Sessions Judge or by a District Magistrate acting under section 34 is submitted to a Sessions Judge for confirmation, such Sessions Judge may either confirm, modify or annul such sentence or the finding on which the same is based, or if he thinks further enquiry or additional evidence upon any point bearing upon the guilt or innocence of the accused to be necessary, he may direct such inquiry or evidence to be made or taken.

Confirmation of sentence of Assistant Sessions Judge or Magistrate acting under section 34.

Unless the High Court otherwise directs, the presence of the convicted person may be dispensed with when such evidence is taken; and when the sentence has been submitted by an Assistant Sessions Judge, such evidence shall not be taken in the presence of jurors or assessors.

CHAPTER XXIX.

OF EXECUTION.

Act X, s. 301, p

383. When a sentence of death passed by a Court of Session is submitted to the High Court for confirmation, such Court of Session shall, on receiving the order of the

Execution of order passed under section 378.

Execution.

High Court thereon, cause such order to be carried into effect by issuing a warrant or taking such other steps as may be necessary.

Act X, 1872, s. 306. Act X, 1875, s. 114, adding "to transportation for life."

384. If a woman sentenced to death be found by the Civil Surgeon to be pregnant, the High Court shall order the execution of the sentence to be postponed, and may commute the sentence to transportation for life.

Postponement of capital sentence on pregnant woman.

Act X, 1872, s. 302A. Act XI, 1874, s. 32. Act IV, 1877, s. 183.

385. Where the accused is sentenced to transportation or imprisonment in cases other than those provided for by section 383, the Court shall forthwith forward him with a warrant to the jail in which he is to be confined.

Execution of sentences of transportation or imprisonment in other cases.

As to subsidiary jails, see Nelson, 290, Act V of 1872, s. 68.

386. Every person for whose imprisonment a warrant is issued under sections 383 or 385 shall be confined in such jail or other place as the Local Government directs in his behalf.

Sentence of imprisonment where to be carried out.

Act X, 1872, s. 303. Act X, 1875, ss. 103, 104. Act IV, 1877, s. 184.

387. Every warrant for the execution of a sentence of imprisonment, shall be directed to the officer in charge of the jail or other place in which the prisoner is, or is to be, confined.

Direction and form of warrant for execution.

Act X, 1872, s. 304. Act X, 1875, s. 104.

388. When the prisoner is to be confined in a jail, the warrant shall be lodged with the jailor, if he is at the jail and if he is not at the jail, with his deputy.

Warrant with whom to be lodged.

If the jailor has no deputy, the warrant may be lodged with any officer in charge of the jail for the time being.

Act X, 1872, s. 307. Act X, 1875, s. 105. Act IV, 1877, s. 185.

389. Whenever an offender is sentenced to pay a fine, the Court passing the sentence may in its discretion issue a warrant for the levy of the amount by distress and sale of any moveable property belonging to the offender, although the sentence directs that, in default of payment of the fine, the offender shall be imprisoned.

Execution of sentence of fine.

Such warrant may be executed within the local limits of the jurisdiction of such Court, and it shall authorize the distress and sale of any such property without such limits, when endorsed by the District Magistrate within the local limits of whose jurisdiction such property is found.

1877, s. 190.

390. When a Court issues a warrant under section 389, it may, instead of at once ordering the offender to be imprisoned under section 64 of the Indian Penal Code, release him on his executing a bond with or without sureties, as the Court thinks fit, conditioned for his appearance before such Court on the day appointed for the return to such warrant, such day not being more than eight days from the time of executing the bond.

Detention of offender until return made to distress-warrant.

Act X, 1872, s. 307, last sentence. Act IV, 1877, s. 185, last sentence.

391. The warrant may be issued either by any Judge or Magistrate who, if the case had been tried by him, might have imposed the fine, or by his successor in office.

Who may issue warrant.

Act X, 1872, s. 302A, last sentence. Act IV, 1877, s. 183.

392. Where the accused is sentenced to whipping only, the sentence shall be executed at such place and time as the Court may direct.

Execution of sentence of whipping only.

Act X, 1872, s. 310. Act IV, 1877, s. 187.

393. When the accused is sentenced to whipping in addition to imprisonment in a case which is subject to appeal, the whipping shall not be inflicted until fifteen days from the date of the sentence or, if an appeal be made within that time, until the sentence is confirmed by the appellate Court: but the whipping shall be inflicted immediately on the expiry of the fifteen days or, in case of an appeal, immediately on the receipt of the order of the appellate Court confirming the sentence.

Execution of sentence of whipping, in addition to imprisonment.

The whipping shall be inflicted in the presence of the officer in charge of the jail: unless the Judge or Magistrate orders it to be inflicted in his own presence.

Act XI, 1874, s. 33.

Act X, 1872, s. 311, para. 1. Act X, 1875, s. 108. Act IV, 1877, s. 188.

394. In the case of a person of or over sixteen years of age, whipping shall be inflicted with such instrument, in such mode, and on such part of the person, as the Local Government directs; and in the case of a person under sixteen years of age, it shall be inflicted in the way of school-discipline with a light ratan.

Mode of inflicting punishment.

Act X, 1872, s. 311, para. 2.

395. In no case, if the cat-o'-nine-tails be the instrument employed, shall whipping exceed one hundred and fifty lashes, or if the ratan be employed, shall such punishment exceed thirty stripes.

Limit of number of stripes.

Act IV, 1877, s. 190.

No sentence of whipping shall be executed by instalments.

Not to be executed by instalments.

Act X, 1872, s. 312. Act XI, 1874, s. 33. Act X, 1875, s. 108. Act IV, 1877, s. 189.

396. The punishment of whipping shall not be inflicted, unless a Medical Officer, if present, certifies, or, if there is not a Medical Officer present, unless it appears to the Magistrate or officer present, that the offender is in a fit state of health to undergo such punishment.

Whipping not to be inflicted if offender not in fit state of health.

Act XI, 1874, s. 33.

If, during the execution of a sentence of whipping, a Medical Officer certifies, or it appears to the Magistrate or officer present, that the offender is not in a fit state of health to undergo the remainder of the sentence, the whipping shall be finally stopped.

Stay of execution.

Act X, 1872, s. 313. Act X, 1875, s. 108. Act IV, 1877, s. 191.

397. In any case in which, under section 396, a sentence of whipping is, wholly or partially, prevented from being executed, the offender shall be kept

Procedure if punishment cannot be inflicted under the last section.

in custody till the Court which passed the sentence can revise it; and the said Court may, at its discretion, either remit such sentence, or sentence the offender in lieu of whipping, or in lieu of so much of the sentence of whipping as was not executed, to imprisonment for any period, which may be in addition to any other punishment to which he may have been sentenced for the same offence:

Provided that the whole period of imprisonment to which such offender is sentenced shall not exceed that to which he is liable by law, or that which the Court is competent to award.

Act X, 1872, s. 316. Act X, 1875, s. 110. Act IV, 1877, s. 192.

398. When sentence is passed under this Code on an escaped convict, such sentence, if of death, fine or whipping, shall take effect immediately, and if of imprisonment, penal servitude or transportation, shall take effect according to the following rules, that is to say:—

Execution of sentence on escaped convicts.

If the new sentence is severer in its quality than the sentence which such convict was undergoing when he escaped, the new sentence shall take effect immediately.

When the new sentence is not severer in its quality than the sentence the convict was undergoing when he escaped, the new sentence shall take effect after he has suffered imprisonment, penal servitude or transportation, as the case may be, for a further period equal to that which, at the time of his escape, remained unexpired of his former sentence.

Explanation.—For the purpose of this section—

(*a*) a sentence of transportation or penal servitude shall be deemed severer than a sentence of imprisonment;

(*b*) a sentence of imprisonment with solitary confinement shall be deemed severer than a sentence of the same description of imprisonment without solitary confinement; and

(*c*) a sentence of rigorous imprisonment shall be deemed severer than a sentence of simple imprisonment with or without solitary confinement.

Act X, 1872, s. 317. Act X, 1875, s. 111. Act IV, 1877, s. 193.

399. When a person already undergoing a sentence of imprisonment, penal servitude or transportation is sentenced to imprisonment, penal servitude or transportation, such imprisonment, penal servitude or transportation shall commence at the expiration of the imprisonment, penal servitude or transportation to which he has been previously sentenced:

Sentence on offender already sentenced for another offence.

Provided that if he is undergoing a sentence of imprisonment, and the sentence on such subsequent conviction be one of transportation, the Court may, in its discretion, direct that the latter sentence shall commence immediately, or at the expiration of the imprisonment to which he has been previously sentenced.

400. Nothing in section 398 or section 399 shall be held to excuse any person from any part of the punishment to which he is liable upon his former or subsequent conviction.

Act X, 1872, s. 317, last sentence.

Saving as to sections 398 and 399.

401. When any person under the age of sixteen years is sentenced by any Criminal Court to imprisonment for any offence, the Court may direct that such person, instead of being imprisoned in a criminal jail, shall be confined in any reformatory established by the Local Government as a fit place for confinement, in which there are means of suitable discipline and of training in some branch of useful industry, or which is kept by a person willing to obey such rules as the Government prescribes with regard to the discipline and training of persons confined therein.

Act X, 1872, s. 318. Act X, 1875, s. 112. Act V of 1876 has not yet come into force anywhere except—

Confinement of youthful offenders in reformatories.

All persons confined under this section shall be subject to the rules so prescribed.

CHAPTER XXX.

Of Suspensions, Remissions and Commutations of Sentences.

402. When any person has been sentenced to punishment for an offence, the Governor General in Council, or the Local Government, may at any time, without conditions, or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

Act X, 1872, s. 322, para. 1.

Power to suspend or remit sentences.

Whenever an application is made to the Governor General in Council or the Local Government for the suspension or remission of a sentence, the Governor General in Council or the Local Government, as the case may be, may require the presiding Judge of the Court before which the conviction was had to furnish without delay a statement of the facts proved on the trial, and of any facts having reference to the propriety of granting or refusing the application.

New.

If the person in whose favour a sentence has been suspended or remitted fails to fulfil the conditions prescribed by the Governor General in Council or the Local Government, the Governor General in Council or the Local Government, as the case may be, may cancel such suspension or remission whereupon such person may, if at large, be arrested by any police officer without warrant and remanded by any Magistrate to undergo the unexpired portion of the sentence.

Act X, 1872, s. 322, para. 2.

Nothing herein contained shall be deemed to interfere with the right of Her Majesty to grant pardons, reprieves, respites, or remissions of punishment.

Act X, 1872, s. 322, para. 3.

403. The Governor General in Council, or the Local Government, may without the consent of the person sentenced, commute any one of the following sentences for any other mentioned after it:—

Power to commute punishment.

death, transportation, penal servitude, imprisonment.

CHAPTER XXXI.

Of previous Acquittals or Convictions.

Act X, 1872, s. 460. Act X, 1875, s. 117. Act IV, 1877, s. 113. Cf. N. Y. Code of Crim. Proc., s. 13. Form of plea under this section, N. W. P., 1875, p. 373.

404. A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under section 239, or for which he might have been convicted under section 240.

Person once convicted or acquitted not to be tried for same offence.

A person convicted or acquitted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under section 238, paragraph one.

A person acquitted or convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that for which he was acquitted or convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was acquitted or convicted.

A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed, if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

Act X, 1872, s. 215, expl. Act X, 1875, s. 14.

Explanation.—The dismissal of a complaint, the discharge of the accused or any entry made upon a charge under section 276 is not an acquittal for the purposes of this section.

Illustrations.

(*a.*) *A* is tried upon a charge of theft as a servant and acquitted. He cannot afterwards be charged with theft as a servant, or, upon the same facts, with theft simply, or with criminal breach of trust.

(*b.*) *A* is tried upon a charge of murder and acquitted. There is no charge of robbery; but it appears from the facts that *A* committed robbery at the time when the murder was committed; he may afterwards be charged with, and tried for, robbery.

(*c.*) *A* is tried for an assault and convicted. The person assaulted afterwards dies. *A* may be tried again for culpable homicide.

(*d.*) *A* is tried, under section 270 of the Indian Penal Code, for malignantly doing an act likely to spread the infection of a disease dangerous to life, and is acquitted. The act so done afterwards causes a person permanently to lose his eyesight. *A* may be charged, under section 235 of the same Code, with voluntarily causing grievous hurt to that person.

(*e.*) *A* is charged before the Court of Session and convicted of the culpable homicide of *B*. *A* may not afterwards be tried on the same facts for the murder of *B*.

(*f.*) *A* is charged by a Magistrate of the first class with, and convicted by him of, voluntarily causing hurt to *B*. *A* may not afterwards be tried for voluntarily causing grievous hurt to *B* on the same facts, unless the case comes within paragraph three of this section.

(*g.*) *A* is charged by a Presidency Magistrate with, and convicted by him of, theft of property from the person of *B*. *A* may be subsequently charged with, and tried for, robbery on the same facts.

(*h.*) *A*, *B* and *C* are charged by a Magistrate of the first class with, and convicted by him of, robbing *D*. *A*, *B* and *C* may afterwards be charged with, and tried for, dacoity on the facts.

PART VII.

OF APPEAL, REFERENCE AND REVISION.

CHAPTER XXXII.

Of Appeals.

Act X, 1872, s. 267.

405. Any person required by a Magistrate, other than the District Magistrate or a Presidency Magistrate, to give security for good behaviour under section 117 may appeal to the District Magistrate.

Appeal from order requiring security for good behaviour.

Act X, 1872, s. 266, omitting "or to a Magistrate of first class empowered."

406. Any person convicted on a trial held by any Magistrate of the second or third class, or any person sentenced by a Sub-divisional Magistrate of the second class under section 351, may appeal to the District Magistrate.

Appeal from sentence of Magistrate of the second or third class.

Act X, 1872, s. 47, para. 2.

The District Magistrate may refer any appeal under this section, or any class of such appeals, to any Magistrate of the first class subordinate to him and empowered by the Local Government to hear such appeals, and may withdraw from any such Magistrate any appeal so referred.

Transfer of appeals to first class Magistrate.

Act X, 1872, s. 269.

407. Any person convicted on a trial held by the District Magistrate or other Magistrate of the first class, or any person sentenced under section 351 by a Magistrate of the first class, may appeal to the Court of Session:

Appeal from sentence of Magistrate of the first class.

Act X, 1872, s. 270.

Provided that when a District Magistrate passes a sentence in exercise of powers conferred by section 34, and such sentence has been submitted to the Court of Session under section 382, the appeal shall lie to the High Court:

Act X, 1872, s. 79.

Provided also that any European British subject so convicted may at his option appeal either to the High Court or the Court of Session.

Act X, 1872, s. 270.

408. Any person convicted by an Assistant Sessions Judge may, when the sentence is not submitted for confirmation to the Sessions Judge, appeal to the Sessions Judge, except in the case of an European British subject, when the appeal shall lie to the High Court.

Appeal from sentences of Assistant Sessions Judge not requiring confirmation.

409. An appeal to the Court of Session or Sessions Judge shall be heard by the Sessions Judge or by an Additional or Joint Sessions Judge.

Appeals to Court of Session how heard.

Act X, 1872, ss. 80, 270, 271. Act XI, 1874, s. 22.

410. Any person convicted on a trial held by a Sessions Judge, or Additional or Joint Sessions Judge, or convicted by an Assistant Sessions Judge, where the case has been submitted by the Sessions Judge under section 382, may appeal to the High Court.

Appeal from sentence of Sessions Court.

Act IV, 1877, s. 167.

411. Any person convicted on a trial held by a Presidency Magistrate may appeal to the High Court if the Magistrate has sentenced him to imprisonment for a term exceeding six months or to fine exceeding two hundred rupees.

Appeal from sentence of Presidency Magistrates.

Act X, 1872, s. 273, last para. Act IV, 1872, s. 167.

412. Notwithstanding anything hereinbefore contained, where an accused person has been convicted by a Court of Session or a Presidency Magistrate on his own plea, there shall be no appeal except as to the extent or legality of the sentence.

No appeal in certain cases when accused pleads guilty.

413. Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in cases in which a Court of Session or the District Magistrate or other Magistrate of the first class passes a sentence of imprisonment not exceeding one month only, or of fine not exceeding fifty rupees only, or of whipping only.

No appeal in petty cases.

Act X, 1872, s. 274.

414. Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in cases tried summarily in which a Magistrate empowered to act under section 263 passes a sentence of imprisonment not exceeding three months only, or of fine not exceeding two hundred rupees only, or of whipping only.

No appeal from certain summary convictions.

Act X, 1872, s. 274, para. 2.

415. An appeal may be brought against any sentence referred to in section 413 or 414 by which any two or more of the punishments therein mentioned are combined; but not against any sentence which would not otherwise be liable to appeal, because the person convicted is ordered to find security to keep the peace.

Proviso to sections 413 and 414.

Act XI, 1874, s. 24.

EXPLANATION.—A sentence of imprisonment in default of payment of fine is not a sentence by which two or more punishments are combined within the meaning of this section.

Act X, 1872, s. 274.

416. Nothing in sections 413 and 414 applies to appeals from sentences passed on European British subjects under chapter XXXIV.

Saving of sentences on European British subjects.

Act X, 1872, s. 272. Act IV, 1877, s. 168, para. 1.

417. The Local Government may direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal, dismissal or discharge.

Appeal on behalf of Government in case of acquittal, &c.

418. An appeal may lie on a matter of fact as well as a matter of law except where the conviction was in a trial by jury, in which case the appeal shall be admissible on a matter of law only.

Act X, 1872, s. 271, last para. Compare Act X, 1877, s. 541.

Appeal on what matters admissible.

419. No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force.

Act X, 1872, ss. 285, 286. Act IV, 1877, s. 180.

Unless otherwise provided, no appeal to lie from judgment or order of Criminal Court.

420. Every appeal shall be made in the form of a petition in writing presented by the appellant, and every such petition shall be accompanied by a copy of the judgment or order appealed against, and in cases tried by a jury a copy of the heads of the charge recorded under section 369.

Act X, 1872, ss. 275, 276. Act IV, 1877, s. 169.

Petition of appeal.

421. If the appellant is in jail, he may present his petition of appeal, and the copy of the judgment or order appealed against, to the officer in charge of the jail, who shall thereupon forward such petition and copy to the proper Appellate Court.

Act X, 1872, s. 277. Act IV, 1877, s. 171.

Procedure when appellant in jail.

422. On receiving the petition and copy under section 420 or section 421, the Appellate Court shall peruse the same, and if it considers that there is no sufficient ground for interfering, it may reject the appeal summarily. Provided that no appeal presented under section 420, shall be dismissed unless the appellant or his pleader has had a reasonable opportunity of being heard in support of the same.

Act X, 1872, s. 278. Act IV, 1877, s. 172, omitting last sentence.

Summary rejection of appeal.

Before rejecting an appeal under this section, the Court may call for the record of the case, but shall not be bound to do so.

423. If the Appellate Court does not reject the appeal summarily, it shall cause notice to be given to the appellant and the Public Prosecutor of the time and place at which such appeal will be heard, and shall furnish the Public Prosecutor with a copy of the grounds of appeal;

Act X, 1872, ss. 62, 266, para. 2, 279. Act IV, 1877, s. 178.

Notice of appeal.

and in cases of appeals under section 417, the Appellate Court shall cause a like notice to be given to the accused.

Act XI, 1874, s. 27.

424. The Appellate Court shall then send for the record of the case and, after perusing the same and hearing the appellant or his pleader, if he appears, and the Public Prosecutor if he appears, may, if it considers there is no sufficient ground for interfering, reject the appeal or may—

Act X, 1872, s. 280. Act IV, 1877, ss. 173, 177.

Powers of Appellate Court in disposing of appeal.

(*a*) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be retried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

(*b*) in an appeal from an order of discharge or dismissal, reverse such order and direct that further inquiry be made;

X, 1872, 284.

(*c*) in an appeal from a conviction (1) reverse the finding and sentence, and order the accused to be discharged or retried by a Court of competent jurisdiction subordinate to such Appellate Court, or (2) alter the finding, or enhance or reduce the sentence with or without altering the finding, or (3) alter the nature of the sentence with or without such enhancement or reduction and with or without altering the finding;

(*d*) in an appeal from any other order, alter or reverse such order:

Provided that, if the appeal is from the sentence of a Magistrate, the Appellate Court shall not inflict a greater punishment for the offence which, in the opinion of the Appellate Court, the appellant has committed than might have been inflicted for such offence by a Presidency Magistrate or a Magistrate of the first class:

Provided also that nothing herein contained shall authorise the Court to alter or reverse the verdict of a jury, unless it is of opinion that such verdict is erroneous owing to a misdirection by the Judge.

425. The rules contained in chapter XXVII as to the judgment of a Criminal Court of original jurisdiction shall apply, so far as may be practicable, to the judgment of any Appellate Court other than a High Court.

Judgments of subordinate Appellate Courts.

X, 1872, 281, and Sec. 297, para. 8, in case of Court of Revision. IV, 1877, s. 175.

426. Pending any appeal by a convicted person, the Appellate Court may order that the execution of the sentence or order appealed against be suspended and, if he is in confinement, that he be released on bail.

Suspension of sentence pending appeal.

Release of appellant on bail.

When the appellant is ultimately sentenced to imprisonment, the time during which he is so released shall be excluded in computing the term of his imprisonment.

, 1877, para. R. I. 281.

427. When an appeal is presented under section 417, the High Court may order the accused person to be arrested and brought before it, and may commit him to prison pending the disposal of the appeal or admit him to bail.

Arrest of accused in appeals under section 417.

1872, 1877,

428. In dealing with any appeal under this chapter, the Appellate Court, if it thinks additional evidence to be necessary, may either take such evidence itself, or may direct it to be taken by a Magistrate.

Appellate Court may take further evidence or direct it to be taken.

When the additional evidence is taken by the Magistrate, he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

Unless the Appellate Court otherwise directs, the appellant or his pleader shall be present when the additional evidence is taken; but such evidence shall not be taken in the presence of jurors or assessors.

429. When the Judges composing the Court of appeal are equally divided, the case, with their opinions thereon, shall be laid before another Judge of the same Court, and such Judge, after such examination and hearing as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion.

Act X, 1872, s. 271B. Act XI, 1874, s. 22.

Procedure where Judges of Court of appeal, &c., are equally divided.

430. Judgments and orders passed by an Appellate Court upon appeal shall be final, except in the cases provided for in section 417 and chapter XXXIII.

Act X, 1872, s. 285.

Finality of orders on appeal.

431. Every appeal under this chapter finally abates on the death of the appellant or, in the case of an appeal under section 417, on the death of the accused.

I. L. R., 2 Bom. 564.

Abatement of appeals.

CHAPTER XXXIII.

OF REFERENCE AND REVISION.

432. A Presidency Magistrate may, if he thinks fit, refer for the opinion of the High Court any question of law which arises in the hearing of any case pending before him, or may give judgment in any such case subject to the decision of the High Court on such reference; and, pending such decision, may either commit the accused to jail or release him on bail to appear for judgment when called upon.

Act IV, 1877, s. 240.

Reference by Presidency Magistrate to High Court.

433. When a question has been so referred, the High Court shall pass such order thereon as it thinks fit, and shall cause a copy of such order to be sent to the Magistrate by whom the reference was made, who shall dispose of the case conformably to the said order.

Act IV, 1877, s. 241.

Disposal of case according to decision of High Court.

The High Court may direct by whom the costs of such reference shall be paid.

Direction as to costs.

434. When any person has, in a trial before a Judge of a High Court acting in the exercise of its original criminal jurisdiction, been convicted of an offence, the Judge, if he thinks fit, may reserve and refer for the decision of a Court consisting of two or more Judges of such Court any question of law which has arisen in the course of the trial of such person, and the determination of which would affect the event of the trial.

Act X, 1875, s. 101. Qy confine to Chartered Courts and Chief Court.

Power to reserve questions arising in original jurisdiction of High Court.

If the Judge reserves any such question, the person convicted shall, pending the decision thereon, be remanded to jail or, if the Judge thinks fit, be admitted to bail,

Procedure when question reserved.

and the High Court shall have power to review the case, or such part of it as may be necessary, and finally determine such question, and thereupon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgment and sentence as the High Court thinks fit.

Act X,1872, ss. 294, 295. 12 Beng. 253.

435. The High Court or any Court of Session or District Magistrate may call for and examine the record of any proceeding before any inferior Criminal Court situate within the local limits of its or his jurisdiction for the purpose of satisfying itself or himself as to the legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of the proceedings of such inferior Court.

Power to call for records of inferior Courts.

Act X,1872, s. 520, I would omit. See I. L. R. 2 Calc. 295, from which it appears that the High Court cannot interfere even under section 15 of the High Court Act.

Orders made under sections 141 and 142 are not proceedings within the meaning of this section.

Act X, 1872, ss. 296,paras. 2 and 3. Act XI, 1874, s. 29. 10 Beng. 289.

436. When on examining the record of any case under section 435 the Court of Session or District Magistrate considers that such case is triable exclusively by the Court of Session, and that an accused person has been improperly discharged by the inferior Court, the Court of Session or District Magistrate may direct him to be committed for trial upon the matter of which he has been, in the opinion of the Court of Session or District Magistrate, improperly discharged:

Power to order commitment.

O'Kin. 93.

Provided that the accused has had an opportunity of shewing cause to such Court or Magistrate why the committal should not be made:

Act XI, 1874, s. 29.

Provided also that, if such Court or Magistrate thinks that the evidence shows that some other offence has been committed by the accused, such Court or Magistrate may direct the inferior Court to inquire into such offence.

Act X, 1872, s. 298. Act XI, 1874, s. 31.

437. On examining any record under section 435, the Court of Session may direct the District Magistrate by himself or by any of the Magistrates subordinate to him, or the District Magistrate may direct any subordinate Magistrate, to make further inquiry into any complaint which has been dismissed under section 204.

Power to order inquiry.

Act X, 1872, s. 296, para. 1.

438. The Court of Session or District Magistrate may, if it or he thinks fit, on examining under section 435 the record of any proceeding, report for the orders of the High Court the results of such examination.

Report to High Court.

Act X, 1872, s. 297. I. L. R. 2 Calc. 113. I. All. I, 139. I Bomb. 125; Nelson 287. I O'Kin. 84. This will empower High Court to reduce amount of forfeited recognizances? 2 O'K. 408.

439. In the case of any proceeding the record of which has been called for by itself, or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 424, 426, 427 and 428, and when the Judges composing the Court of revision are equally divided, the case shall be disposed of in manner provided by section 429.

High Court's powers of revision.

Act X, 187 s. 297, la para.

440. No party has any right to be heard either personally or by pleader before any High Court when exercising its powers of revision; but the High Court may, if it thinks fit, when exercising such powers, hear any party either personally or by pleader.

Optional with Court to hear parties.

Act IV, 1 s. 182.

441. When the record of any proceeding of any Presidency Magistrate is called for by the High Court under section 435, the Magistrate may submit with the record a statement setting forth the grounds of his decision or order and any facts which he thinks material to the issue; and the Court shall consider such statement before overruling or setting aside the said decision or order.

Statement by Magistrate of grounds of his decision to be considered by High Court.

Act X, 18 299.

442. Whenever a case is revised by the High Court under this chapter, it shall certify its decision or order to the Court by which the finding, sentence or order was recorded or passed. If the finding, sentence or order was recorded or passed by a Magistrate other than the District Magistrate, the certificate shall be sent through the District Magistrate.

Order on revision to be certified to lower Court or District Magistrate.

The Court or Magistrate to which the High Court certifies its order shall thereupon make such orders as are conformable to the decision of the High Court and, if necessary, the record shall be amended in accordance therewith.

PART VIII.

SPECIAL PROCEEDINGS.

CHAPTER XXXIV.

CRIMINAL PROCEEDINGS AGAINST EUROPEANS AND AMERICANS.

Act X, 18 74.

443. No charge against a European British subject shall be inquired into or tried by any Magistrate, unless he is a Justice of the Peace, and (except in the case of a Presidency Magistrate) unless he is a Magistrate of the first class and a European British subject.

Magistrates who may inquire into and try charges against European British subjects.

444. No charge against a European British subject shall be tried by any Sessions Court unless the presiding Judge is a European British subject.

Sessions Judge to be an European British subject.

Act s.

445. Nothing in section 443 or section 444 shall prevent any Magistrate from taking cognizance of an offence committed by any European British subject in any case in which he could take cognizance of a like offence if committed by another person:

Cognizance of offence committed by European British subject.

Provided that if he issues any process for the purpose of compelling the appearance of a European British subject accused of an offence, such process

shall be made returnable before a Magistrate having jurisdiction to inquire into or try the case.

Act X, 1872, s. 73.

446. Notwithstanding anything contained in section 32, or section 34, no Magistrate other than a Presidency Magistrate shall pass any sentence on a European British subject other than imprisonment for a term which may extend to three months, or fine which may extend to one thousand rupees, or both.

Sentences which may be passed by mufassal Magistrates.

Act X, 1872, ss. 75, 438.

447. When a European British subject is accused of an offence before a Magistrate, and such offence cannot, in the opinion of such Magistrate, be adequately punished by him, and is not punishable with death or with transportation for life, such Magistrate shall, if he thinks that the accused ought to be committed, commit him to the Court of Session or, in the case of a Presidency Magistrate, to the High Court.

When commitment is to be to Court of Session and to High Court.

Act XI, 1874, s. 12.

When the offence complained of is punishable with death or transportation for life, the commitment shall be to the High Court.

448. Where any person committed to the High Court under section 447 is charged with several offences of which one is punishable with death or transportation for life and the others with a less punishment, and the High Court considers that he should not be tried for the offence punishable with death or transportation, the High Court may nevertheless try him for the other offence.

Trial for offences of which one is, and the others are not, punishable with death or transportation.

Act X, 1872, s. 76.

449. Sessions Judges, Additional Sessions Judges or Joint Sessions Judges, and, when specially empowered in this behalf by the Local Government, Assistant Sessions Judges who have been Assistant Sessions Judges for not less than three years, may pass on European British subjects any lawful sentence of imprisonment for a term which may extend to one year, or fine, or both.

Sentences which may be passed by Court of Session.

If at any stage of the proceedings in a Sessions Court, before the signing of the judgment, the presiding Judge thinks that the offence which appears to be proved cannot be adequately punished by such a sentence, he shall record his opinion to that effect and transfer the case to the High Court. Such Judge may either himself bind over, or direct the committing Magistrate to bind over, the complainant and witnesses to appear before the High Court.

Procedure when Sessions Judge finds his powers inadequate.

Act X, 1872, s. 77.

450. If the Judge of the Sessions Division within which the offence is ordinarily triable is not a European British subject, the case shall be reported by the committing Magistrate for the orders of the High Court.

Procedure when Sessions Judge is not a European British subject.

Act X, 1872, s. 78. Act X, 1875, s. 35.

451. In trials of European British subjects before a High Court or Court of Session, if before the first juror is called and accepted or the first assessor is appointed, as the case may be, any such subject requires to be tried by a mixed jury, or by a mixed set of assessors, not less than half the number of the jurors or assessors shall be Europeans or Americans, or both Europeans and Americans.

Mixed jury for trial of European British subjects.

Act X, 1875, s. 36.

452. In any case in which a European British subject is accused jointly with a person not being an European British subject, and such European British subject is committed for trial before a High Court or Court of Session, such persons may be tried together, and the procedure on the trial shall be the same as it would have been had the European British subject been tried separately:

Trial of European British subject and Native jointly accused.

Act X, 1875, s. 37.

Provided that, if the European British subject requires under section 451 to be tried by a mixed jury, or by a mixed set of assessors, and the person not being a European British subject requires that he shall be tried separately, the latter person shall be tried separately in accordance with the provisions of chapter XXIII.

When Native may claim separate trial.

Act X, 1872, s. 83.

453. When any person claims to be dealt with as a European British subject, he shall state the grounds of such claim to the Magistrate before whom he is brought for the purposes of the inquiry or trial; and such Magistrate shall inquire into the truth of such statement, and allow the person making it a reasonable time within which to prove that it is true, and shall then decide whether he is or is not a European British subject, and shall deal with him accordingly. If any such person is convicted by such Magistrate and appeals from such conviction, the burden of proving that the Magistrate's decision was wrong shall lie upon him.

Procedure on claim of European British subject to be dealt with as such.

When any such person is committed by the Magistrate for trial before the Court of Session, and such person again before such Court claims to be dealt with as a European British subject, such Court shall after such further enquiry if any, as it thinks fit, decide whether he is or is not a European British subject, and shall deal with him accordingly. If he is convicted by such Court and appeals from such conviction, the burden of proving that the Court's decision was wrong shall lie upon him.

When the Court before which any person is tried decides that he is not a European British subject, such decision shall form a ground of appeal from the sentence or order passed in such trial.

Act X, 1872, s. 84.

454. If a European British subject does not claim to be dealt with as such by the Magistrate before whom he is tried or by whom he is committed, or if, when such claim

Failure to plead status a waiver.

has been made before and disallowed by the committing Magistrate, it is not again made before the Court to which he is committed, he shall be held to have waived his privilege as such European British subject, and shall not assert it in any subsequent stage of the same case.

Act X, 1872, s. 85. Unless the Magistrate has reason to believe that any person brought before him is not a European British subject, the Magistrate shall ask such person whether he is such a subject or not.

455. Where a person who is not a European British subject is dealt with under this chapter as such, and does not object, the inquiry, commitment or trial (as the case may be) shall not, by reason of such dealing, be invalid.

Trial under this chapter of person not a European British subject.

Act X, 1872, s. 81. **456.** Any European British subject who is detained in custody by any person, and who considers such detention unlawful, may apply to the High Court which would have jurisdiction over him in respect of any offence committed by him at the place where he is detained, or to which he would be entitled to appeal from any conviction for any such offence, for an order directing the person detaining him to bring him before the High Court to abide such further order as it may pass.

Right of European British subject under detention to apply for order to produce his person.

Act X, 1872, s. 81. **457.** The High Court, if it thinks fit, may, before issuing such order, inquire on affidavit or otherwise, into the grounds on which it is applied for, and grant or refuse such application; or it may issue the order in the first instance and, when the person applying for it is brought before it, it may make such further order in the case as it thinks fit, after such inquiry (if any) as it thinks necessary.

Procedure on such application.

Act X, 1872, s. 81. **458.** The High Court may issue such orders throughout the territories within the local limits of its appellate criminal jurisdiction, and such other territories as the Governor General in Council may from time to time direct.

Territories throughout which High Court may issue such orders.

Act XXII, 1870, ss. 2 & 4. **459.** Unless there be something repugnant in the context, all enactments heretofore or hereafter made by the Governor General in Council, which confer summary jurisdiction over offences, shall be deemed to apply to European British subjects, although such persons be not expressly referred to therein.

Application of Acts conferring summary jurisdiction.

Nothing in this section shall be deemed to authorize any court to exceed the limits prescribed by this chapter as to the amount of punishment which it may inflict on an European British subject, or to confer jurisdiction on any Magistrate not being a Justice of the Peace or on any Magistrate outside the Presidency Towns not being an European British subject.

Act X, 1872, s. 234. **460.** In every case in which an European (not being an European British subject) or an American is the accused person, or one of the accused persons, not less than half the number of Jurors or Assessors shall, if practicable and if such European or American so desires, be Europeans, or Americans.

Jury for trial of Europeans or Americans.

Act X, 1872, s. 242. **461.** Whenever an European or American is charged before the Court of Session jointly with a person of any other race, and claims to be tried by a jury consisting of at least one-half of Europeans and Americans, such person shall, if he so desires, be tried separately.

Jury when European or American charged jointly with one of another race.

Act X, 1872, s. 408. **462.** When a trial is to be held before the Court of Session in which the accused person, or one of the accused persons, is entitled to be tried by a jury constituted under the provisions of section 451, or section 460, the Court shall, three days at least before the day fixed for holding such trial, cause to be summoned, in the manner hereinafter prescribed, as many European and American jurors as are required for the trial.

Summoning and empannelling jurors under section 451, or 460.

The Court shall also at the same time in like manner cause to be summoned the same number of other persons named in the revised list, unless such number of such other persons has been already summoned for trials by jury at that session.

From the whole number of persons returned, the jurors who are to constitute the jury shall be chosen by lot in the manner prescribed in section 279, until a jury containing the proper number of Europeans or Americans, or a number approaching thereto as nearly as possible, has been obtained.

463. Criminal proceedings against European British subjects, Europeans not being European British subjects, and Americans before the Court of Session and High Court, shall, except as otherwise expressly provided, be conducted according to the provisions of chapter XXIII.

Conduct of criminal proceedings against European British subjects.

CHAPTER XXXV.

Lunatics.

Act X, 1872, s. 423. Act IV, 1877, s. 194. **464.** When any person accused of an offence before a Magistrate holding an inquiry or a trial appears to such Magistrate to be of unsound mind and incapable of making his defence,

Procedure in case of accused being lunatic.

the Magistrate shall inquire into the fact of such unsoundness, and shall cause such person to be examined by the Civil Surgeon of the district or such other medical officer as the Local Government directs, and thereupon shall examine such Surgeon or other officer as a witness, and shall reduce the examination into writing.

If such Magistrate is of opinion that the accused is of unsound mind, he shall postpone further proceedings in the case.

Act X, 1872, s. 425. Act X, 1875, s. 120. **465.** If any person committed for trial before a Court of Session or a High Court appears to the Court at his trial to be of unsound mind and incapable of making his defence, the Court shall, in the first instance, try the fact of such unsoundness and incapacity and, if satisfied of the fact, shall pass judgment accordingly, and thereupon the trial shall be postponed.

Procedure in case of person committed before Court of Session or High Court being lunatic.

Act XI, 1874, s. 39. The trial of the fact of the unsoundness of mind and incapacity of the accused shall be deemed to be part of his trial before the Court.

Act X, 1872, s. 426. Act X, 1875, s. 121. Act IV, 1877, s. 196. **466.** Whenever an accused person is found to be of unsound mind and incapable of making his defence, the Magistrate or Court, as the case may be, if the offence of which such person is accused is bailable, may release him on sufficient security being given that he shall be properly taken care of, and shall be prevented from doing injury to himself or to any other person, and for his appearance when required before the Magistrate or Court or such officer as the Magistrate or Court appoints in this behalf.

Release of lunatic pending investigation or trial.

If the offence is not bailable, or if sufficient security is not given, the Magistrate or Court shall report the case to the Local Government, and the Local Government may order such person to be confined in a Lunatic Asylum or other suitable place of safe custody, and the Magistrate or Court shall give effect to such order.

Custody of lunatic.

I. L. R. 2 [illegible] 356. Act X, 1872, [illegible] Act X, 1875, [illegible] Act IV, [illegible] s. 197. **467.** Whenever an inquiry or trial is postponed under section 464 or section 465, the Magistrate or Court, as the case may be, may at any time resume the inquiry or trial, and require the accused to appear or be brought before such Magistrate or Court.

Resumption of inquiry or trial.

When the accused has been released under section 466, and the sureties for his appearance produce him to the officer whom the Magistrate or Court appoints in this behalf, the certificate of such officer that the accused is capable of making his defence shall be receivable in evidence.

[illegible] 1872, [illegible] X, 1875, [illegible] IV, [illegible] s. 198. **468.** If, when the accused appears or is again brought before the Magistrate or the Court, as the case may be, the Magistrate or Court considers him capable of making his defence, the inquiry or trial shall proceed.

Procedure on accused appearing before Magistrate or Court.

If the Magistrate or Court considers the accused person to be still incapable of making his defence, the Magistrate or Court shall again act according to the provisions of section 464 or section 465, as the case may be.

Act X, 1872, s. 424. Act IV, 1877, s. 195. **469.** When the accused appears to be of sound mind at the time of inquiry or trial, and the Magistrate is satisfied from the evidence given before him that there is reason to believe that the accused committed an act which, if he had been of sound mind, would have been an offence, and that he was at the time when the act was committed, by reason of unsoundness of mind, incapable of knowing the nature of the act or that it was contrary to law, the Magistrate shall proceed with the case and, if the offence be triable exclusively by the Court of Session or High Court, send the accused for trial before the Court of Session or High Court, as the case may be.

When accused appears to have been insane.

Act X, 1872, s. 429. Act X, 1875, s. 124. Act IV, 1877, s. 199. 39 & 40 Geo. III, c. 94. *Reg.* v. *Macnaughten*, 10 Cl. & Fin. 200. **470.** Whenever any person is acquitted upon the ground that, at the time at which he is alleged to have committed an offence, he was, by reason of unsoundness of mind, incapable of knowing the nature of the act alleged as constituting the offence complained of, or that it was contrary to law, the judgment of acquittal shall state specially whether he committed the act or not.

Judgment of acquittal on ground of lunacy.

Act X, 1872, s. 430. Act X, 1875, s. 125. Act IV, 1877, s. 200. **471.** Whenever such judgment states that the accused person committed the act alleged, the Magistrate or Court before whom or which the trial has been held shall, if such act would, but for the incapacity found, have constituted an offence, order such person to be kept in safe custody in such place and manner as the Magistrate or Court thinks fit, and shall report the case for the order of the Local Government.

Person acquitted on such ground to be kept in safe custody.

The Local Government may order such person to be confined in a Lunatic Asylum, jail or other suitable place of safe custody.

Act X, 1872, s. 432. Act X, 1875, s. 127. Act IV, 1877, s. 202. **472.** When any person is confined under the provisions of section 466 or section 471, the Inspector General of Prisons, if such person is confined in a jail, or the visitors of the Lunatic Asylums or any two of them, if he is confined in a Lunatic Asylum, may visit him in order to ascertain his state of mind; and he shall be visited once at least in every six months by such Inspector General or by two of such visitors as aforesaid; and such Inspector General or visitors shall make a special report to the Local Government as to the state of mind of such person.

Lunatic prisoners to be visited by Inspector General.

Act X, 1872, s. 431. Act X, 1875, s. 126. Act IV, 1877, s. 201. **473.** If such person is confined under the provisions of section 466, and such Inspector General or visitors shall certify that, in his or their opinion, such person is capable of making

Procedure where lunatic prisoner is reported capable of making his defence.

his defence, he shall be taken before the Magistrate or Court, as the case may be, at such time as the Magistrate or Court appoints, and the Magistrate or Court shall deal with such person under the provisions of section 468; and the certificate of such Inspector General or visitors as aforesaid shall be receivable as evidence.

Act X, 1872, s. 433. Act X, 1875, s. 128. Act X, 1877, s. 203.

Procedure where lunatic confined under section 466 or 471 is declared fit to be discharged.

474. If such person is confined under the provisions of section 466 or section 471, and such Inspector General or visitors shall certify that, in his or their judgment, he may be discharged without danger of his doing injury to himself or to any other person, the Local Government may thereupon order him to be discharged, or to be detained in custody, or to be transferred to a public Lunatic Asylum if he has not been already sent to such an Asylum, and in case it orders him to be transferred to an Asylum, may appoint a commission, consisting of a judicial officer and two medical officers, whereof the chief medical officer attached to the Asylum shall be one.

The said commission shall make formal inquiry into the state of mind of such person, taking such evidence as is necessary, and shall report to the Local Government, who may order his discharge or detention as it thinks fit.

Act X, 1872, s. 434. Act X, 1875, s. 129. Act IV, 1877, s. 204.

Delivery of lunatic to care of relative.

475. Whenever any relative or friend of any person confined under the provisions of section 466 or section 471 desires that he shall be delivered over to his care and custody, the Local Government, upon the application of such relative or friend, and on his giving security to the satisfaction of such Government that the person delivered shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, may order such person to be delivered to such relative or friend.

Whenever such person is so delivered, it shall be upon condition that he shall be produced for the inspection of such officer and at such times as the Local Government directs.

The provisions of sections 472 and 474 shall, *mutatis mutandis*, apply to persons delivered under the provisions of this section; and the certificate of the inspecting officer appointed under this section shall be dealt with as a certificate under section 474.

CHAPTER XXXVI.

PROCEEDINGS IN CASE OF CERTAIN OFFENCES AFFECTING THE ADMINISTRATION OF JUSTICE.

Act X, 1872, s. 471, 477. Act X, 1875, s. 135. Act IV, 1877, s. 44, omitting last para. I. L. R. 1 Cal. 454. I. L. R. 1 All. 131, 193. cf. 14 & 15 Vic., c. 100, s. 19. 2 O'Kin. 217.

Procedure in cases mentioned in section 196.

476. When any Court is of opinion that there is ground for enquiring into any offence referred to in section 196, and committed before it or brought under its notice in the course of a judicial proceeding, such Court, after making any preliminary inquiry that may be necessary may send the case for enquiry to any Magistrate having power to try or commit for trial the accused for such offence, and may send the accused in custody, or take sufficient security for his appearance, before such Magistrate; and may bind over any person to appear and give evidence on such trial or enquiry.

Such Magistrate shall thereupon proceed according to law, and may, if he is authorised to transfer cases under section 193, transfer the enquiry to some other competent Magistrate, instead of completing the inquiry himself.

Power of Session Court as to such offences committed before itself.

477. A Court of Session may charge a person for any offence referred to in section 196 and committed before it, or brought under its notice in the course of a judicial proceeding, and may commit, or admit to bail and try, such person upon its own charge. Act X, 1872, s. 472. *Reg.* v. *Nomal*, 4 Beng. App. Crim. Jur 11.

Such Court may direct the Magistrate to cause the attendance of any witnesses for the purposes of the trial.

Power of Civil Courts to complete investigation and commit to Sessions Court.

478. When any such offence is committed before any Civil Court, or brought under the notice of any Civil Court in the course of a judicial proceeding and such case is triable exclusively by the High Court or Court of Session, or such Civil Court thinks that it ought to be tried by the High Court or Court of Session, such Civil Court may, instead of sending the case under section 476 to a Magistrate for enquiry, itself complete the enquiry, and commit or hold to bail the accused person to take his trial before the High Court or Court of Session, as the case may be. Act X, 1872, s. 474, paras. 1 and 2.

For the purposes of an enquiry under this section, the Civil Court may exercise all the powers of a Magistrate; and its proceedings in such enquiry shall be conducted as nearly as may be in accordance with the provisions of chapter XVIII, and shall be deemed to have been held by a Magistrate. Act X, 1872, s. 476.

Procedure of Civil Court in such cases.

479. When any such commitment is made by a Civil Court, the Court shall send the charge with the order of commitment and the record of the case to the Presidency Magistrate, District Magistrate or other Magistrate authorised to commit for trial; and such Magistrate shall bring the case before the High Court or Court of Session, as the case may be, together with the witnesses for the prosecution and defence. Act X, s. 476.

Procedure in certain cases of contempt.

480. When any such offence as is described in section 175, 178, 179, 180, or 228 of the Indian Penal Code is committed in the view or presence of any Court, the Court may cause the offender, whether he is a European British subject or not, to be detained in custody; and at any time before the rising of the Court on the same day* may, if it thinks fit, take cognizance of the offence and sentence the offender to fine not exceeding two hundred rupees and, in default of payment, to imprisonment in the civil jail for a term which may extend to one month, unless such fine be sooner paid. Act X, s. 480, Act IV, s. 206.

* Pollard's case, L. R. 2 P. C. 106.

Record in such cases.

481. In every such case, the Court shall record the facts constituting the offence, with the statement (if any) made by the offender, as well as the finding and sentence.

If the offence is under section 228 of the Indian Penal Code, the record must show the nature and stage of the judicial proceeding in which the Court interrupted or insulted was sitting, and the nature of the interruption or insult offered.

New. 18 Bengal Appendix 40.

Registrar to be deemed a Civil Court within Section 480.

482. A Registrar appointed under the Indian Registration Act, 1877, shall be deemed to be a Civil Court within the meaning of section 480.

Act X, 1872, s. 436, para. 1. Act IV, 1877, s. 206.

Procedure where Court considers that case should not be dealt with under section 480.

483. If the Court in any case considers that a person accused of any of the offences referred to in section 480 and committed in its view or presence should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, or such Court is for any other reason of opinion that the case should not be disposed of under section 480, such Court, after recording the facts constituting the offence and the statement of the accused as hereinbefore provided, may forward the case to a Magistrate having jurisdiction to try the same, and may require security to be given for the appearance of such accused person before such Magistrate or, if sufficient security is not given, shall forward such person under custody to such Magistrate.

The Magistrate to whom any person is forwarded under this section shall proceed to hear the complaint against him in manner hereinbefore provided.

X, 1872, 437. IV, 1877, 207.

Discharge of offender on submission or apology.

484. When any Court has under section 480 or 483 adjudged an offender to punishment, or forwarded him to a Magistrate for trial, for refusing or omitting to do anything which he was lawfully required to do, or for any intentional insult or interruption, the Court may in its discretion discharge the offender or remit the punishment on his submission to the order or requisition of such Court, or on apology being made to its satisfaction.

X, 1872 356, 364. 1875, 10. IV, 1877, 141.

Imprisonment or committal of person refusing to answer or produce document.

485. If any witness before a Court refuses to answer such questions as are put to him or to produce any document in his possession or power which the Court requires him to produce, and does not offer any reasonable excuse for such refusal, such Court may sentence him to simple imprisonment, or commit him to the custody of an officer of the Court, for any term not exceeding seven days, unless in the meantime such person consents to be examined and to answer; after which, in the event of his persisting in his refusal, he may be dealt with according to the provisions of section 480 or 483, and in the case of a High Court shall be deemed guilty of a contempt.

Omitting by warrant under his hand and seal.

Appeals from convictions in contempt-cases.

486. Any person convicted by any Court under section 480 or section 485 may appeal to the Court to which decrees or orders made in such Court are ordinarily appealable. Act X, 1872, s. 268.

Sections 420, 421, 422, 426 and 428 shall apply to appeals under this section, and the Appellate Court may alter or reverse the finding or sentence appealed against, and may if it sees fit enhance any punishment that has been awarded.

An appeal from such conviction by a Small Cause Court may be made to the Court of Session for the Sessions Division within which such Court is situate.

An appeal from such conviction by any officer as Registrar appointed as aforesaid may, when such officer is also Judge of a Civil Court, be made to the Court to which it would, under the preceding portion of this section, be made if such conviction were a conviction by such officer in his capacity as such Judge, and in other cases may be made to the Inspector-General of Registration. New.

Judge or Magistrate not to try offences referred to in section 481 when committed before himself.

487. Except as provided in sections 477, 480, and 485, no Judge or Magistrate other than a Judge of a High Court, the Recorder of Rangoon, and the Presidency Magistrates, shall try any person for any offence referred to in section 196, when such offence is committed before himself or brought under his notice in a judicial proceeding. Act X, 1872, s. 473. I. L. R. 1 Bomb. 330, 1 All. 162, 625. 7 Mad. XVI. App. Pro. See I. L. R. 1 Mad. 306, I. L. R. 1 All. 625.

Nothing in section 476 or 483 shall prevent a Magistrate empowered to commit to the Court of Session or High Court from committing any case to such Court, or shall prevent a Presidency Magistrate from himself disposing of any case instead of sending it for enquiry to another Magistrate.

CHAPTER XXXVII.

OF THE MAINTENANCE OF WIVES AND CHILDREN.

Order for maintenance of wives and children.

488. If any person having sufficient means neglects or refuses to maintain his wife or his legitimate or illegitimate child unable to maintain itself, the District Magistrate, a Presidency Magistrate, a Sub-Divisional Magistrate, or a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, at such monthly rate, not exceeding fifty rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate from time to time directs. Act X, 1872, s. 536. Act IV, 1877, s. 234.

Such allowance shall be payable from the date of the order.

If any person so ordered wilfully neglects to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in manner hereinbefore provided for levying fines, and may sentence such person, for each month's allowance remaining unpaid, to imprisonment for any term not exceeding one month:

Enforcement of order.

Provided that, if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her; and may make an order under this section notwithstanding such offer, if he is satisfied that such person is living in adultery, or that he has habitually treated his wife with cruelty.

Proviso.

No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

Act X, 1872, s. 537. Act IV, 1877, s. 235.

489. The Magistrate may, on proof of a change in the circumstances of any person receiving or ordered, under section 488, to pay a monthly allowance, his wife or child, may make such alteration in the allowance ordered as the Magistrate thinks fit, provided the monthly rate of fifty rupees be not exceeded.

Alteration in allowance.

Act X, 1872, s. 538. Act IV, 1877, s. 236.

490. A copy of the order of maintenance shall be given without payment to the person in whose favour it is made, or to his guardian, if any; and such order shall be enforceable by any Magistrate in any place where the person against whom it is made may be, on such Magistrate being satisfied as to the identity of the parties and the non-payment of the allowance due.

Enforcement of order of maintenance.

CHAPTER XXXVIII.

State-Prisoners.

Ben. Reg. III, 1818, s. 2. Mad. Reg. II, 1819, s. 2. Bombay Reg. XXV of 1827, preamble and section 1.

491. Whenever, for all or any of the reasons of State hereinafter mentioned, the Governor General in Council, the Governor of Fort St. George in Council, or the Governor of Bombay in Council is of opinion that any person should be placed under personal restraint, without any immediate view to ulterior judicial proceedings, a warrant of commitment under the authority of the Governor General in Council, the Governor of Fort St. George in Council or the Governor of Bombay in Council (as the case may be) and under the hand of one of the Secretaries to Government, shall be issued to the officer in whose custody such person (hereinafter called a State-prisoner) is to be placed.

Procedure in placing persons under restraint as State-prisoners.

The reasons above referred to are as follows:—

(*a*) the maintenance of the alliances formed by the British Government with foreign powers;

(*b*) the preservation of tranquillity in the territories of Native Princes and States entitled to its protection;

(*c*) the security of the British dominions from foreign hostility or internal commotion.

Act III, 1858, s. 2.

492. Such warrant shall authorize the detention of the State-prisoner therein mentioned in any fortress, jail or other place within British India.

Form and effect of warrant.

Ben. Reg. III, 1818, s. 5. Mad. Reg. II, 1819, s. 5. Bombay Reg. XXV, 1827, s. 5, clause 2.

493. The officer in whose custody any State-prisoner has been placed under this chapter or under any enactment repealed by this Code, shall forward, with such observations as he thinks necessary, to the Government under whose authority such prisoner was so placed, every representation which he may from time to time be desirous of submitting to such Government.

Representations made by State-prisoners to be submitted to Government.

Ben. Reg. III 1818, s. 6. Mad. Reg. II, 1819, s. 6. Bombay Reg. XXV, 1827, s. 5, clause 1.

494. Every officer in whose custody any State-prisoner is placed shall, as soon after taking such prisoner into his custody as may be practicable, report to such Government whether the degree of confinement to which the State-prisoner is subjected seems likely to injure his health, and whether the allowance fixed for his support is adequate to the supply of his own wants and those of his family then with him according to their rank in life.

Report to Government regarding nature of confinement, health and allowances of State-prisoners.

Ben. Reg. III, 1818, s. 9. Mad. Reg. II, 1819, s. 9. Bombay Reg. XXV, 1827, s. 7.

495. Whenever the Governor General in Council, the Governor of Fort St. George in Council or the Governor of Bombay in Council for any of the reasons mentioned in section 491, considers it necessary to attach the lands of any proprietor without any previous decision of a Court of justice or other judicial proceeding, he shall direct the District Magistrate within the local limits of whose jurisdiction the lands are situate to attach such lands, and they shall be attached accordingly.

Attachment of lands by order of Government.

Ben. Reg. III, 1818, s. 8. Mad. Reg. II, 1819, s. 10. Bombay Reg. XXV, 1827, s. 8.

496. The lands so attached shall be held under the management of the Collector, and shall be administered in the same manner as the estates of disqualified proprietors under the superintendence of Government.

Lands attached to be placed under management.

Such lands shall not be liable to be sold in execution of decrees of the Civil Courts, or for the realization of fines or otherwise, so long as they are so held under attachment, without the consent of the Government and the proprietor.

and not to be sold in execution.

Bom. Reg. varies.

But the whole or any part of the annual nett proceeds of such lands may, if the Government so directs, be applied to the satisfaction of the decrees of the Civil Courts against the proprietor.

Government to arrange for satisfying decrees.

Ben. Reg. III, 1818, s. 11. Mad. Reg. II, 1819, s. 11. Bom. Reg. XXV, 1827.

497. Whenever the Government by whose direction such lands were attached, is of opinion that the circumstances which rendered necessary the attachment have ceased to operate, and that the management of the lands can be committed to the proprietor without public hazard or inconvenience, such Government shall direct the Collector to release the lands from attachment, to adjust the accounts of the collection during the period in which they have been superintended by Government and to pay over to the proprietor the nett proceeds of the lands which have accumulated during the attachment.

Procedure where Government orders release of land from attachment.

Act XXXIV, 1850, s. 1. Act III, 1858, s. 3.

498. The warrant of commitment of any State-prisoner under this chapter may be directed to the Superintendent of the jail in any Presidency-town, or to the Commandant of any fortress, or to the officer in charge of any jail or other place, in which it is deemed expedient that such State-prisoner be confined, in any part of British India; and such warrant shall authorize the detention of such State-prisoner in the jail, fortress or other place therein mentioned.

Officers to whom warrant of commitment of State-prisoner may be directed.

Act III, 1858, s. 6.

499. The Governor General in Council may order the removal of any State-prisoner confined under this chapter or any enactment repealed by this Code from any jail, fortress or place in which he may be confined to any other jail, fortress or place of confinement within British India.

Removal of State-prisoners from one place of confinement to another.

Act XI, 1857, s. 1. Act XV, 1827, sec. 1.

500. Nothing in this chapter applies to European British subjects.

Saving of European British subjects.

CHAPTER XXXIX.

Directions of the Nature of a Habeas Corpus.

Act X, 1875, s. 45.

501. Any of the High Courts of Judicature at Fort William, Madras and Bombay may, whenever it thinks fit, direct—

Power to issue directions of the nature of a *habeas corpus*.

(*a*) that a person within the limits of its ordinary original criminal jurisdiction be brought up before the Court to be dealt with according to law;

(*b*) that a person illegally or improperly detained in public or private custody within such limits be set at liberty;

(*c*) that a prisoner detained in any gaol situate within such limits be brought before the Court to be there examined as a witness in any matter pending or to be inquired into in such Court;

(*d*) that a prisoner detained as aforesaid be brought before a Court-martial or any Commissioners acting under the authority of any Commission from the Governor General in Council for trial, or to be examined touching any matter depending before such Court-martial or Commissioners respectively;

(*e*) that a prisoner within such limits be removed from one custody to another for the purpose of trial;

(*f*) that the body of a defendant within such limits may be brought in on the Sheriff's return of *cepi corpus* to a writ of attachment.

Each of the said High Courts may from time to time frame rules to regulate the procedure in cases under this section.

Nothing in this section applies to State-prisoners detained under chapter XXXVIII or under any enactment hereby repealed.

PART IX.

SUPPLEMENTARY PROVISIONS.

CHAPTER XL.

Of the Public Prosecutor.

502. The Governor General in Council or the Local Government may appoint officers, to be called Public Prosecutors, who shall perform their functions in all or any cases or specified classes of cases in any local area, outside the Presidency-towns.

Power to appoint public prosecutors.

In any case committed for trial to the Court of Session, the District Magistrate, or, subject to the control of the District Magistrate, the Subdivisional Magistrate, may, in the absence of the Public Prosecutor, or where no Public Prosecutor has been appointed, appoint any other person, not being an officer of Police, to act as Public Prosecutor.

Act X, 1872, s. 60.

503. The Public Prosecutor may appear and plead without any written authority before any Court, in which any case of which he has charge is under inquiry, trial or appeal; and if any private person instructs a pleader to prosecute in any Court any person in any such case, the Public Prosecutor shall conduct the prosecution, and the pleader so instructed shall act therein under his directions.

Public Prosecutor may plead in all Courts in cases under his charge.

Pleaders, privately instructed, to be under his direction.

Act X, 1872, s. 61.

504. The Public Prosecutor may, with the consent of the Court, withdraw any charge against any person in any such case, and upon such withdrawal, if it is made whilst the case is under inquiry, the accused shall be discharged. If it is made when he is under trial, he shall be acquitted: provided that the charge is withdrawn, in cases tried by jury, before the return of the verdict, and in other cases, before the judgment is pronounced.

Effect of withdrawal of charge by Public Prosecutor.

New.

Act X, 1872, s. 59. Act XI, 1874, s. 8. Act IV, 1877, s. 129.

505. Any Magistrate inquiring into or trying any case may permit any person to conduct the prosecution; but no person, other than the Advocate General, Standing Counsel, Government Solicitor, or public prosecutor, shall be entitled to do so without such permission.

Permission to conduct prosecution.

Any person conducting the prosecution may do so personally or by a pleader.

CHAPTER XLI.

Of Bail.

Act X, 1872, ss. 386, 393, 194, para. 1; also ss. 203 and 204. Act IV, 1877, ss. 70, 74. W. P., 1874, s. 371.

506. When any person is arrested or detained by a Police-officer without warrant for a bailable offence, or appears or is brought before a Court accused of any such offence, and is prepared at any time while in the custody of such Police-officer or at any stage of the proceedings before such Court to give bail, such person shall be released on bail: Provided that such officer or Court, if he or it thinks fit, may, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided.

Bail to be taken in case of bailable offence.

Act X, 1872, ss. 388, 389. Act IV, 1877, s. 71.

507. When any person accused of any non-bailable offence is arrested or detained without warrant by a Police-officer, or appears or is brought before a Court, he shall not be released on bail if there appear reasonable grounds for believing that he has been guilty of the offence of which he is accused.

When bail shall not be taken in case of non-bailable offence.

If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there is not reasonable ground for believing that such person has committed such offence, but that there is sufficient ground for further inquiry into his guilt, the accused person shall be released on bail pending such inquiry.

When it may be.

Any Court may, at any subsequent stage of any proceeding under this Code, cause any person who has been released under this section to be arrested, and may commit him to custody.

Act X, 1872, s. 390. Act X, 1875, s. 136. I. L. R. 1 All. 151.

508. The High Court or Court of Session may in any case, whether there be an appeal on conviction or not, direct that any accused person be admitted to bail, or that the bail required by a Police-officer or Magistrate be reduced.

Power to direct admission to bail or reduction of bail.

Bail to be taken under this chapter shall not be excessive.

Act X, 1872, s. 391. Act IV, 1877, s. 72.

509. Before any person is released on bail or released on his own bond, a bond for such sum of money as the Police-officer or Court, as the case may be, thinks sufficient shall be executed by such person, and when he is released on bail, by one or more sufficient sureties, conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the Police-officer or Court as the case may be.

Bond of accused and sureties.

If the case so require, the bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session or other Court to answer the charge.

Act X, 1872, s. 394. Act IV, 1877, s. 75.

510. As soon as the bond has been executed, the accused shall be released; and when he is in jail, the Court admitting him to bail shall issue an order of release to the officer in charge of the jail, and such officer on receipt of the order shall release him.

Discharge from custody.

Act X, 1872, s. 392. Act IV, 1877, s. 75.

511. If, through mistake or fraud, insufficient sureties have been taken, or if they afterwards become insufficient, the Court may issue a warrant of arrest directing that the accused person be brought before it, and may order him to find sufficient sureties, and on his failing so to do may commit him to jail.

Power to order sufficient bail when that first taken is insufficient.

Act X, 1872, s. 395. Act IV, 1877, s. 76.

512. All or any sureties for the attendance and appearance of a person released on bail may at any time apply to a Magistrate to discharge the bond either wholly or so far as relates to the applicants.

Discharge of sureties.

On such application being made, the Magistrate shall issue his warrant of arrest, directing that the person so released be brought before him.

On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Magistrate shall direct the bond to be discharged either wholly or so far as relates to the applicants, and shall call upon such person to find other sufficient sureties, and if he fails to do so, may commit him to jail.

CHAPTER XLII.

Of Commissions for the Examination of Witnesses.

Act X, 1872, ss. 330, paras. 1 and 2. Act X, 1875, s. 76, para. 1, omitting proviso where witness is in Native State. Act IV, 1877, s. 157. Act IV, 1877, s. 158.

513. Whenever, in the course of an inquiry or trial or other proceeding under this Code, it appears to a Presidency Magistrate, a Court of Session or the High Court that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, such Magistrate or Court may dispense with such attendance and may issue a commission to any District Magistrate or Magistrate of the first class, within the local limits of whose jurisdiction such witness resides, to take the evidence of such witness.

When attendance of witness may be dispensed with.

Issue of commission and procedure thereunder.

The Magistrate to whom the commission is issued, or, if he is the District Magistrate, such Magistrate of the first class as he appoints in this behalf, shall proceed to the place where such witness is, or shall summon such witness before him, and shall take his evidence in the same manner, and may for this purpose exercise the same powers, as in trials of warrant-cases under this Code.

I. 1874, 1875, s. para. 4.

514. If the witness is within the local limits of the jurisdiction of any Presidency Magistrate, the Magistrate or Court issuing the commission may direct the same to the said Presidency Magistrate, who thereupon may compel the attendance of, and examine, such witness as if he were a witness in a case pending before himself.

Commission in case of witness being within Presidency-town.

Nothing in this section shall be deemed to affect the power of the High Court to issue commissions under the thirty-ninth and fortieth of Victoria, chapter 46, section 3.

1872, s. para. 4. 1875, s. para. 5.

515. The parties to any proceeding under this Code in which a commission is issued may respectively forward any interrogatories in writing which the Magistrate or Court directing the commission may think relevant to the issue, and the Magistrate to whom the commission is directed shall examine the witness upon such interrogatories.

Parties may examine witness.

Such parties may appear before such Magistrate by advocate, attorney or pleader, or if not in custody, in person, and may examine, cross-examine and re examine (as the case may be) the said witness.

Act X, 1872, s. 330, para. 5.

516. Whenever, in the course of a trial before any Magistrate other than a Presidency Magistrate, it appears that a commission ought to be issued for the examination of a witness whose evidence is necessary for the ends of justice, such Magistrate shall apply to the Court of Session to which he is subordinate, stating the reasons for the application; and such Court may either issue a commission in the manner hereinbefore provided or reject the application.

Power of mufassal Magistrate to apply for issue of commission.

Act X, 1872, s. 330, para. 6. Act X, 1875, s. 76, para. 6.

517. After any commission issued under section 513 or section 516 has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the Court out of which it issued; and the commission, the return thereto and the deposition of such witness shall be open at all reasonable times to inspection of the parties, and may, subject to all just exceptions, be read in evidence in the case by either party, and shall form part of the record.

Return of commission.

N. Y. Crim. Proc. Code, s. 708.

518. In every case in which a commission is directed under section 513 or section 516, the inquiry or trial may be stayed for a specified time reasonably sufficient for the execution and return of the commission.

Stay of inquiry or trial.

CHAPTER XLIII.

Special Rules of Evidence.

Act X, 1872, s. 323. Act X, 1875, s. 71. Act IV, 1877, s. 152.

519. The deposition of a Civil Surgeon or other medical witness, duly taken and duly attested by a Magistrate, may be given in evidence in any inquiry, trial or other proceeding under this Code, although the deponent is not called as a witness.

Deposition of medical witness.

The Court may, if it thinks fit, summon and examine such deponent as to the subject-matter of his deposition.

Power to summon medical witness.

Act X, 1872, s. 325. Act X, 1875, s. 72. Act IV, 1877, s. 153.

520. Any document purporting to be a report under the hand of the Chemical Examiner or Assistant Chemical Examiner to Government, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.

Report of Chemical Examiner.

The Court may presume that the signature to any such document is genuine, and that the person signing it held the office which he purported by such signature to hold at the time when he signed the document.

Presumption as to signature.

The High Court or a Presidency Magistrate may, if it or he thinks fit, summon and examine such Chemical Examiner or Assistant Chemical Examiner as to the subject-matter of his said report.

Power to summon Chemical Examiner.

Act XVIII, 1862, s. 27. Not in Act X of 1872.

521. In proving the existence of circumstances as a defence under the second, third, fifth, sixth, seventh, eighth, ninth or tenth Exception to section 499 of the Indian Penal Code, good faith shall be presumed until the contrary appears.

Good faith to be presumed in certain cases.

Act X, 1872, ss. 326, 515, last clause. Act X, 1875, s. 119. Act IV, 1877, ss. 154, 280.

522. A previous conviction or acquittal may be proved in any inquiry, trial or other proceeding under this Code—

Previous conviction or acquittal how proved.

(*a*) by an extract certified, under the hand of the officer having the custody of the records of the Court in which such conviction or acquittal was had to be a copy of the sentence or order; or

(*b*) in case of a conviction, either by a certificate signed by the officer in charge of the jail in which the punishment or any part thereof was inflicted, or by production of the warrant of commitment, under which the punishment was suffered.

Act X, 1872, s. 327. Act X, 1875, s. 74. Act IV, 1877, s. 155.

523. If it be proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court competent to try or commit for trial such person for the offence complained of may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions, and any such deposition may, on the arrest of such person, be put in on his trial for the offence with which he is charged, if the attendance of the deponent cannot be procured.

Record of evidence in absence of accused.

CHAPTER XLIV.

PROVISIONS AS TO BONDS.

Act X, 1872, s. 499. Act X, 1875, s. 139. Act IV, 1877, s. 80.

524. When any person is required by any Court or officer to execute a bond with or without sureties, such Court or officer may, except in the case of a bond for good behaviour, permit him to deposit a sum of money or Government promissory notes to such amount as the Court or officer may fix in lieu of executing such bond.

Deposit instead of recognizance.

Act X, 1872, ss. 396, 397, 398, 502, paras. 1 to 5, 503, 514. Act X, 1875, ss. 137, 138. Act IV, 1877, ss. 77, 78, 79, 228, 229.

525. Whenever it is proved before the Court by which a bond under this Code has been taken, or before the Court of a Presidency Magistrate or Magistrate of the first class, that such bond has been forfeited, such Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof, or to show cause why it should not be paid.

Procedure on forfeiture of bond.

If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same by issuing a warrant for the attachment and sale of the movable property belonging to such person.

Such warrant may be executed within the local limits of the jurisdiction of the Court which issued it; and it shall authorise the distress and sale of any movable property belonging to such person without such limits, when endorsed by the District Magistrate within the local limits of whose jurisdiction such property is found.

If such penalty be not paid and cannot be recovered by such attachment and sale, the person so bound shall be liable, by order of the Court which issued the warrant, to imprisonment in the civil jail for a term which may extend to six months.

The Court may at its discretion remit any portion of the penalty mentioned and enforce payment in part only.

Act X, 1872, s. 398, penultimate para.

526. All orders passed under section 525 by any Magistrate other than a Presidency Magistrate or District Magistrate shall be appealable to the District Magistrate, or, if not so appealed, may be revised by him.

Appeals from, and revision of, orders under section 525.

Act X, 1872, s. 188, last para.

527. The High Court or Court of Session may direct any Magistrate to levy the amount due on a bond to appear and attend at such High Court or Court of Session.

Power to direct levy of amount due on certain recognizances.

Act X, 1872, s. 418. Act X, 1872, s. 115. Act IV, 1877, ss. 243, 244. Act XI, 1878, s. 38. Court of Bombay Government Gazette, 18th [illegible] 1879, p. [illegible]. Qy. add visions of 24 & 25 c. 96, as to ing property contained in the ing matters overlooked of 38 Vict. s. 10 payment innocent purchasers stolen property money ordered thief exercise of amercement proceeds sale application and restoration of property

CHAPTER XLV.

OF THE DISPOSAL OF PROPERTY PRODUCED UNDER THIS CODE.

528. When an inquiry or trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal of any document or other property produced before it regarding which any offence appears to have been committed, or which has been used for the commission of any offence, or which has been produced as evidence in such inquiry or trial.

Order for disposal of property regarding which offence committed.

When a High Court or a Court of Session makes such order and cannot through its own officers conveniently deliver the property to the person entitled thereto, such Court may direct that the order be carried into effect by the committing Magistrate.

EXPLANATION.—In this section the term "property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in

the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange whether immediately or otherwise.

Act X, 1872, s. 419.

529. Any Court of appeal, confirmation, reference or revision may direct any such order passed by a Court subordinate thereto to be stayed pending consideration by the former Court, and may modify, alter or annul such order.

Stay of such order.

Act X, 1872, s. 420.

530. The order passed by any Court under section 528 or 529 may be in the form of a reference of the property to the District Magistrate or to a Sub-divisional Magistrate, who shall in such cases deal with it as if the property had been seized by the Police, and the seizure had been reported to him in the manner hereinafter mentioned

Order may take form of reference to District Magistrate.

Livingston, p. 480.

531. On a conviction under the Indian Penal Code, section 292, 293, 501 or 502, the Court may order all the copies of the thing in respect of which the conviction was had, and which remain in the possession or power of the person convicted, to be destroyed.

Destruction of libellous and other matter.

The Court may in like manner, on a conviction under the Indian Penal Code, sections 272, 273, 274 or 275, order the food, drink, drug or medical preparation in respect of which the conviction was had to be destroyed.

Act X, 1872, s. 534. Act X, 1875, s. 142. Act IV, 1877, s. 283.

532. Whenever a person is convicted of using criminal force, and it appears to the Court that, by such force, any person has been dispossessed of any immoveable property, the Court may order such person to be restored to the possession of the same.

Power to restore possession of immoveable property.

No such order shall prejudice any right or interest to or in such immoveable property which any person may be able to establish in a civil suit.

Act X, 1872, s. 415. Act IV, 1877, s. 244.

533. The seizure by any Police-officer of property alleged or suspected to have been stolen or found under circumstances which create suspicion of the commission of any offence, shall be forthwith reported to a Magistrate, who shall thereupon make such order as he thinks fit respecting the delivery of such property to its owner, or if such owner cannot be ascertained, respecting the custody and production of such property.

Procedure by Police upon seizure of stolen property.

Act X, 1872, s. 416.

If the owner of such property is known, the Magistrate shall order it to be delivered to him on such condition (if any) as the Magistrate thinks fit. If the owner of such property is unknown, the Magistrate may detain it, and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto to appear before him and establish his claim within six months from the date of such proclamation.

Procedure where owner of property seized unknown.

Act X, 1872, s. 417. Act IV, 1877, s. 244.

534. If no person within such period establishes his claim to such property, and if the person in whose possession such property was found is unable to show that it was legally acquired by him, such property shall be at the disposal of the Government, and may be sold under the orders of the Presidency Magistrate, District Magistrate or Sub-divisional Magistrate or of a Magistrate of the first class empowered by the Local Government in this behalf.

Procedure where no claimant appears within six months.

In the case of every order passed under this section, an appeal shall be allowed to the Court to which appeals against sentences of the Court passing such order would lie.

535. If the owner of such property is unknown or absent, and such property is of a perishable nature, or the Magistrate is of opinion that its sale would be for the benefit of the owner, the Magistrate may at any time direct it to be sold; and the provisions of sections 533 and 534 shall, as nearly as may be, apply to the net proceeds of such sale.

Power to sell perishable property.

CHAPTER XLVI.

OF THE TRANSFER OF CRIMINAL CASES.

Act X, 1872, s. 64. Act X, 1875, s. 147.

536. Whenever it is made to appear to the High Court—

High Court may transfer case, or itself try it.

(*a*) that a fair and impartial enquiry or trial cannot be had in any criminal Court subordinate thereto, or

(*b*) that some question of law of unusual difficulty is likely to arise, or

(*c*) that a view of the place in or near which any offence has been committed may be required for the satisfactory enquiry into or trial of the same, or

(*d*) that an order under this section will tend to the general convenience of the parties or witnesses—

it may order—

(1) that any offence be enquired into or tried by any Court not empowered under sections 175 to 182, but in other respects competent to enquire into or try such offence;

(2) that any particular criminal case or appeal, or class of such cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction, or

(3) that any particular criminal case or appeal be transferred to and tried before itself.

When the High Court withdraws for trial before itself any case from any Court other than the Court of a Presidency Magistrate, it shall except as provided in section 270, observe in such

trial the same procedure which that Court would have observed if the case had not been so withdrawn.

I. L. R., 1 Calc. 223.

Every application for the exercise of the power conferred by this section shall be made by motion which shall, except when the applicant is the Advocate General, be supported by affidavit or affirmation.

Archb. 88.

When an accused person makes an application under this section, the High Court may direct him to execute a bond conditioned that he will, if convicted, pay the costs of the prosecutor.

Act IV, 1877, s. 181.

Notice to Public Prosecutor of application under this section.

Every accused person making any such application shall give to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of the application unless at least twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

Act X, 1872, s. 64 A. Act XI, 1874, s. 11.

Power of Government of India to transfer criminal cases and appeals.

537. Whenever it appears to the Governor General in Council that the transfer next hereinafter mentioned will promote the ends of justice or tend to the general convenience of parties or witnesses, he may, by notification in the *Gazette of India*, direct the transfer of any particular criminal case or appeal from one High Court to another High Court, or from any Criminal Court subordinate to one High Court to any other Criminal Court of equal or superior jurisdiction subordinate to another High Court.

The Court to which such case or appeal is transferred shall deal with the same as if it had been originally instituted in, or presented to, such Court.

Act X, 1872, s. 47.

Magistrate may withdraw or refer cases.

538. Any District Magistrate or Sub-divisional Magistrate may withdraw any case from, or recall any case which he has made over to any Magistrate subordinate to him, and may inquire into or try such case himself, or refer it for inquiry or trial to any other such Magistrate competent to inquire into or try the same.

Act XI, 1874, s. 6.

Act X, 1872, s. 48.

Power to authorize District Magistrates to withdraw classes of cases.

The Local Government may authorize the District Magistrate to withdraw from the Magistrates subordinate to him either such classes of cases as he thinks proper, or particular classes of cases.

CHAPTER XLVII.

OF IRREGULAR PROCEEDINGS.

Act X, 1872, s. 32. Nelson, p. 54.

Irregularities which do not vitiate proceedings.

539. If any Magistrate empowered by law to do under certain circumstances any of the following things, namely:—

(*a*) to issue a search-warrant, under section 97;

(*b*) to order, under section 153, the Police to investigate an offence;

(*c*) to hold an inquest under section 174;

(*d*) to issue process, under section 184, for the apprehension of a person within the local limits of his jurisdiction who has committed an offence outside such limits; or

(*e*) to take cognizance of an offence under section 192, clause (*a*) or clause (*b*);

(*f*) to transfer a case under section 193;

(*g*) to withdraw a case and try it himself under section 538;

by mistake or accident does that thing in the absence of any of the requisite circumstances, his proceedings shall not be set aside merely on the ground of such absence.

Act X, 1872, s. 34.

Irregularities which vitiate proceedings.

540. If any Magistrate, not being empowered by law in this behalf, does any of the following things (namely),—

(*a*) passes a sentence under section 351, on proceedings recorded by another Magistrate;

(*b*) takes cognizance under section 192, clause (*c*) of an offence;

(*c*) attaches and sells property under section 86;

(*d*) tries an offender summarily;

(*e*) decides an appeal;

(*f*) calls under section 435 for proceedings;

(*g*) issues a search-warrant for a letter in the Post-office, or a telegram in the Telegraph Department;

(*h*) revises under section 526 an order passed under section 525;

(*i*) demands security to keep the peace;

(*j*) discharges bonds to keep the peace;

(*k*) demands security for good behaviour;

(*l*) discharges a person lawfully bound to be of good behaviour;

(*m*) makes an order under section 131 as to a local nuisance;

(*n*) issues an order under section 141.

(*o*) prohibits under section 143 the repetition or continuance of a public nuisance;

(*p*) makes an order under chapter XII;

(*q*) makes an order for maintenance, or

(*r*) sells property under section 534 or section 535;

his proceedings shall be void.

Act X, 1872, s. 70. Act IV, 1877, s. 24.

Proceedings in wrong place.

541. No finding, sentence or order of any criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceeding in the course of which it was arrived at or passed, took place in a wrong Sessions Division, District Sub-division or other local area, unless it appears that some party to such proceeding was prejudiced in the conduct of his case by such error.

Act X, 1872, s. 33. Act X, 1875, s. 25.

When irregular commitments may be validated.

542. If any Magistrate or other authority purporting to exercise powers duly conferred, but not being so conferred, commits an accused person to take his trial before a Court of Session or High Court, the Court to which the commitment is made may, after perusal of the proceedings accept the commitment if it considers that the accused has not been prejudiced, unless objection was made on behalf either of the accused or of the prosecution to the jurisdiction of such Magistrate or other authority during the inquiry and before the order of commitment.

If such Court considers that the accused was prejudiced, or if such objection as aforesaid was so made, it shall quash the commitment, and direct a fresh inquiry by a competent Magistrate.

Omission to ask question prescribed by section 454, clause 2.

543. An omission to ask any person whether he is a European British subject in a case to which the second clause of section 454 applies shall not affect the validity of any proceeding.

Act X, 1872, s. 216, Expln. I.

Effect of omission to prepare charge.

544. No finding or sentence pronounced or passed shall be deemed invalid merely on the ground that no charge was framed, unless, in the opinion of the Court of appeal or revision, a failure of justice has been occasioned thereby.

Act X, 1872, s. 216, Expln. II.

If the Court of appeal or revision thinks that a failure of justice has been occasioned by an omission to frame a charge, it shall order that a charge shall be framed, and that the trial be recommenced from the point immediately after the framing of the charge.

Act X, 1872, s. 233, Explanation.

Trial by jury of offences triable with assessors.

545. If an offence triable with the aid of assessors is tried by a jury, the trial shall not on that ground be invalid.

Trial with assessors of offences triable by jury.

If an offence triable by a jury is tried with the aid of assessors, the trial shall not on that ground only be invalid, unless the objection is taken before the Court records its finding.

Act XI, 1874 s. 41.

Errors in judgment.

546. No error or defect in any judgment shall invalidate the proceedings where such error or defect is in a matter not affecting the merits of the case.

Act X, 1872, ss. 283, 300 & 12 Vic., c. 43, s. 8. Act IV, 1877, ss. 117, 177. I. L. R., 1 All. 610.

Finding or sentence when reversible by reason of error or omission in charge or proceedings.

547. Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered on appeal or revision on account of any error or omission in the complaint or summons or in the charge, or in the proceedings during trial, or any misdirection in any charge to a jury, unless such error or omission or misdirection has occasioned a failure of justice either by affecting the due conduct of the prosecution, or by injuring the accused person as to his defence on the merits.

Act IV, 1877, ss. 81, 178. Bomb.

Subject as last aforesaid, no irregularity in the proceedings prior to the commencement of the trial is a sufficient ground for reversing any sentence or order passed in a trial properly held.

Act IV, 1877, s. 185, para. 5.

Distress not illegal nor distrainer a trespasser for defect of form in proceedings.

548. No distress made under this Code shall be deemed unlawful, nor shall any person making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, writ of distress or other proceedings relating thereto.

CHAPTER XLVIII.

MISCELLANEOUS.

Act X, 1875, s. 149.

Courts and persons before whom affidavits may be sworn.

549. Affidavits and affirmations to be used before any High Court or any officer of such Court may be sworn and affirmed before such Court or the Clerk of the Crown, or any Commissioner or other person appointed by such Court for that purpose, or any Judge or Commissioner for taking affidavits in any Court of Record in British India, or any Commissioner to administer oaths in Chancery in England or Ireland, or any Magistrate authorized to take affidavits or affirmations in Scotland.

Act X, 1872, ss. 192 & 351. Act X, 1875, s. 80. Act IV, 1877, ss. 85 & 134.

Power to summon material witness, or examine person present.

550. Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness or examine any person in attendance, though not summoned as a witness; or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person, if his evidence appears to it essential to the just decision of the case.

Act IV, 1877, s. 139.

Power to order prisoner in jail to be brought up for examination.

551. Notwithstanding anything contained in the Prisoners Testimony Act, 1869, any Presidency Magistrate desirous of examining, as a witness or accused person, in any case pending before him, any person confined in any jail within the local limits of his jurisdiction, may issue an order to the officer in charge of the said jail requiring him to bring such prisoner in proper custody, at a time to be therein named, to the Magistrate for examination.

The officer so in charge, on receipt of such order, shall act in accordance therewith, and shall provide for the safe custody of the prisoner during his absence from the jail for the purpose aforesaid.

Act X, 1875, s. 70. Act X, 1877, s. 422.

Interpreter to be bound to interpret truthfully.

552. When the services of an interpreter are required by any Criminal Court for the interpretation of any evidence or statement, he shall be bound to state the true interpretation of such evidence or statement.

Act X, 1872, s. 421. Act X, 1875, s. 116. Act IV, 1877, s. 245.

Expenses of complainants and witnesses.

553. Subject to any rules made by the Local Government with the previous sanction of the Governor General in Council, any Criminal Court may order payment, on the part of Government, of the reasonable expenses of any

complainant or witness attending for the purposes of any enquiry, trial or other proceeding before such Court under this Code.

Act X, 1872, s. 308. Act X, 1875, s. 106. Act IV, 1877, s. 186.

554. Whenever a criminal Court, under any law in force for the time being, imposes a fine or confirms in appeal or revision a sentence of fine, or a sentence of which fine forms a part, the Court may order the whole or any part of the fine to be applied—

Power of Court to pay expenses or compensation out of fine.

(*a*) in defraying expenses properly incurred in the prosecution;

(*b*) in compensation for the injury caused by the offence complained of, where substantial compensation could, in the opinion of the Court, be recovered by civil suit.

If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

Act X, 1872, s. 322, para. 5. Act XI, 1874, s. 34.

555. Whenever any fine is imposed on any person for any offence, the Governor General in Council or the Local Government may (subject to the provisions of section 554) direct that the whole or any part of the fine be applied in defraying the expenses properly incurred in the prosecution.

Power of Government to pay expenses out of fine.

Act X, 1872, s. 308, last para. Act. X, 1875, s. 106, last para. 22 Suth. W. R. Civil Rulings, 336.

556. At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum which may have been paid as compensation under section 554.

Payments to be taken into account in subsequent suit.

Act X, 1872, s. 276. Act XI, 1872, s. 25. Act IV, 1877, s. 170.

557. If any person affected by a judgment or order passed by a Criminal Court desires to have a copy of the Judge's charge to the jury or of any order or deposition or other part of the record, he shall, on applying for such copy, be furnished therewith: provided that he pay for the same, unless the Court, for some special reason, thinks fit to furnish it free of cost.

Copies of Proceedings.

Ben. Reg. XX of 1825.

558. When any officer or soldier or other person subject to any Act of Parliament for the time being in force for the punishment of mutiny and desertion in the army, and who is serving with any body of troops in Her Majesty's service at any place situate more than one hundred and twenty miles from the towns of Calcutta, Madras and Bombay, respectively, is accused of having committed any offence punishable under the Indian Penal Code, and which if committed in England would be punishable by the criminal law there, any Magistrate before whom such officer, soldier or other person is brought shall, unless the Governor General in Council otherwise directs, deliver him, together with a statement of the offence of which he is accused, to the commanding officer of the regiment, corps or detachment to which he belongs, or to the commanding officer of the nearest military station, for the purpose of being brought for trial before a Court-martial.

Delivery to Military authorities of persons subject to the Mutiny Act.

Apprehension of such persons.

Every Magistrate shall, on receiving a written application for that purpose by the commanding officer of any body of troops stationed or employed at any such place, use his utmost endeavours to apprehend and secure any such officer, soldier or other person accused of an offence.

Enforcement of process for attendance of witnesses before Courts-martial.

Any person appointed to conduct the proceedings of a Court-martial held under any such Act may send the Magistrate within the local limits of whose jurisdiction persons required to attend before such Court-martial reside any process to compel the attendance of such persons; and the Magistrate shall aid in the execution of such process and of all other processes issued by such Courts-martial.

Act X, 1872, s. 187.

559. Police-officers superior in rank to officers in charge of a Police-station may exercise the same powers, within the District or sub-division to which they are appointed, as may be exercised by officers in charge of Police-stations within the limits of their respective stations.

Powers of superior officers of Police.

Act IV, 1877, s. 17.

560. Upon complaint made to a Presidency Magistrate on oath of the abduction or unlawful detention of a woman, or of a female child under the age of fourteen years, for any unlawful purpose, he may make an order for the immediate restoration of such woman to her liberty, or of such female child to her husband, parent, guardian or other person having the lawful charge or government of such child, and may compel compliance with such order, using force if necessary.

Power to compel restoration of abducted females in Presidency-town.

Act IV, 1877, s. 242, omitting provision as to complaints, which is provided for elsewhere.

561. Whenever any person causes a Police-officer to arrest another person in a Presidency-town, if it appears to the Magistrate by whom the case is heard that there was no sufficient ground for causing such arrest, the Magistrate may award such compensation, not exceeding fifty rupees, to be paid by the person so causing the arrest to the person so arrested for his loss of time and expenses in the matter, as the Magistrate thinks fit.

Compensation to person groundlessly given in charge in Presidency-town.

In such cases, if more persons than one are arrested or complained against, the Magistrate may, in like manner, award to each of them such compensation, not exceeding fifty rupees, as such Magistrate thinks fit.

All compensation awarded under this section may be recovered as if it were a fine, and if it cannot be so recovered, the person by whom it is payable should be imprisoned in the civil jail for such term not exceeding thirty days as the Magistrate directs, unless such sum is sooner paid.

Act X, 1827, ss. 292, 293.

562. With the previous sanction of the Local Government, every High Court not established by Royal Charter may from time to time—

Power of certain High Courts to make rules.

(*a*) make rules for keeping all books, entries and accounts to be kept in all criminal Courts subordinate to it, and for the preparation and transmission of any returns or statements to be prepared and submitted by such Courts; and

(*b*) frame forms for every proceeding in the said Courts for which it thinks that a form should be provided;

(*c*) make rules for regulating its own practice and proceedings and the practice and proceedings of all criminal Courts subordinate to it:

Provided that such rules and forms be not inconsistent with this Code or any other law in force for the time being.

All rules made under this section shall be published in the official Gazette.

563. Subject to the power conferred by section 562 and by the twenty-fourth and twenty-fifth of Victoria, chapter 104, section 15, the forms set forth in the fifth schedule hereto annexed, with such variation as the circumstances of each case require, shall be used for the respective purposes therein mentioned.

Forms.

Act X, 1872, s. 337.

564. The Local Government may determine what, for the purposes of this Code, shall be held to be the language of each Court, other than the High Court, established within the territories administered by such Government.

Power to decide language of the Court.

565. All powers conferred by this Code on the Local Government may be exercised from time to time as occasion requires.

Powers of Local Government exercisable from time to time.

Act X, 1872, ss. 3 & 539. Act IV, 1877, ss. 5 & 237.

566. The procedure prescribed by this Code shall be followed, so far as may be, in all cases pending in any criminal Court when this Code comes into force and in all miscellaneous criminal cases and proceedings instituted in any Court.

Pending cases and miscellaneous proceedings.

SCHEDULE I.

ENACTMENTS REPEALED.

(*a*).—*Statutes.*

Year, reign and chapter	Title.	Extent of repeal.
13 Geo. III, chapter 63	An Act for establishing certain Regulations for the better management of the affairs of the East India Company as well in India as in Europe	Section 38.

(*b*).—*Acts.*

Number and year.	Subject.	Extent of repeal.
XXIII of 1840 ...	Execution of process	So much as has not been repealed.
XXXIV of 1850 ...	State-Prisoners	The whole.
III of 1858 ...	State-Prisoners	So much as has not been repealed.
XLV of 1860 ...	Penal Code	The illustrations to section 214.
XVIII of 1862 ...	Criminal Procedure, Supreme Courts ...	So much as has not been repealed.
II of 1869 ...	Justices of the Peace	So much as has not been repealed.
XXII of 1870 ...	Application to European British subjects of Acts conferring summary jurisdiction.	So much as has not been repealed.
IV of 1872 ...	Panjáb Laws	So far as it relates to Bengal Regulations III of 1818 and XX of 1825.
X of 1872 ...	The Code of Criminal Procedure ...	So much as has not been repealed.
XI of 1874 ...	Amending the Code of Criminal Procedure	The whole.
XV of 1874 ...	Laws Local Extent	So far as it relates to Acts XXXIV of 1850 and III of 1858, and to Bengal Regulations III of 1818 and XX of 1825, Madras Regulation II of 1819, and Bombay Regulation XXV of 1827.
X of 1875 ...	High Courts' Criminal Procedure ...	The whole Act, except section 144 and so much of section 146 as relates to informations.
XVII of 1875 ...	Burma Courts	So much of section 98 as relates to Bengal Regulation III of 1818.
XX of 1875 ...	Central Provinces Laws	So far as relates to Bengal Regulations III of 1818 and XX of 1825.
XVIII of 1876 ...	Oudh Laws	Ditto.
IV of 1877 ...	Presidency Magistrates	The whole.

SCHEDULE I—*continued.*

ENACTMENTS REPEALED—(*continued*).

(*c*).—*Regulations.*

Number and year.	Subject.	Extent of repeal.
Bengal Regulation III of 1818.	State-Prisoners	So much as has not been repealed.
Bengal Regulation XX of 1825.	Jurisdiction of Courts Martial... ...	Ditto.
Madras Regulation II of 1819.	State-Prisoners	Ditto.
Bombay Regulation XXV of 1827.	Ditto	Ditto.
III of 1872 ...	Sontal Parganas Settlement	So far as relates to Acts XXXIV of 1850, XXXVII of 1850, III of 1858 and X of 1872, and to Bengal Regulation III of 1818.
IX of 1874 ...	Arakan Hills District Laws	So far as relates to Acts XXXIV of 1850, XXXVII of 1850, III of 1858, II of 1869, X of 1872 and XI of 1874, and to Bengal Regulation III of 1818.
II of 1877 ...	Ajmer Laws	So far as relates to Bengal Regulations III of 1818 and XX of 1825.

SCHEDULE II.

TABULAR STATEMENT OF OFFENCES.

EXPLANATORY NOTE.—The entries in the second and sixth columns of this schedule, headed respectively "Offence" and "Punishment under the Indian Penal Code," are not intended as definitions of the offences and punishments described in the several corresponding sections of the Indian Penal Code, or even as abstracts of those sections, but merely as references to the subject of the section, the number of which is given in the first column.

CHAPTER V.—OF ABETMENT.

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
109	Abetment of any offence, if the act abetted is committed in consequence, and where no express provision is made for its punishment.	May arrest without warrant, if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.	According as the offence abetted is bailable or not.	The same punishment as for the offence abetted.	By the Court by which the offence abetted is triable.
110	Abetment of any offence, if the person abetted does the act with a different intention from that of the abettor.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
	When one act is abetted and a different act is done, subject to the proviso.	Ditto ...	Ditto ...	Ditto ...	The same punishment as for the offence intended to be abetted.	Ditto.
111	When an effect is caused by the act abetted different from that intended by the abettor.	Ditto ..	Ditto ...	Ditto ...	The same punishment as for the offence committed.	Ditto.
113	If abettor is present when offence is committed.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
114	Abetment of an offence punishable with death or transportation for life, if the offence be not committed in consequence of the abetment.	Ditto ...	Ditto ...	Not bailable ...	Imprisonment of either description for 7 years and fine.	Ditto.
115	If an act which causes harm be done in consequence of the abetment.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 14 years and fine.	Ditto.
116	Abetment of an offence punishable with imprisonment, if the offence be not committed in consequence of the abetment.	Ditto ...	Ditto ...	According as the offence abetted is bailable or not.	Imprisonment extending to quarter part of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.
	If the abettor or the person abetted be a public servant whose duty it is to prevent the offence.	Ditto ...	Ditto ...	Ditto ...	Imprisonment extending to half of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.

SCHEDULE II—*continued.*

CHAPTER V.—OF ABETMENT—(*continued*).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
117	Abetting the commission of an offence by the public, or by more than ten persons.	May arrest without warrant, if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.	According as the offence abetted is bailable or not.	Imprisonment of either description for 3 years, or fine, or both.	By the Court by which the offence abetted is triable.
118	Concealing a design to commit an offence punishable with death or transportation for life, if the offence be committed.	Ditto ...	Ditto ...	Not bailable ...	Imprisonment of either description for 7 years and fine.	Ditto.
	If the offence be not committed ..	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.
119	A public servant concealing a design to commit an offence which it is his duty to prevent, if the offence be committed.	Ditto ...	Ditto ...	According as the offence abetted is bailable or not.	Imprisonment extending to half of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.
	If the offence be punishable with death or transportation.	Ditto ...	Ditto ...	Not bailable ...	Imprisonment of either description for 10 years.	Ditto.
	If the offence be not committed ...	Ditto ...	Ditto ...	According as the offence abetted is bailable or not.	Imprisonment extending to quarter part of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.
120	Concealing a design to commit an offence punishable with imprisonment, if the offence be committed.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
	If not committed	Ditto ...	Ditto ...	Ditto ...	Imprisonment extending to one-eighth part of the longest term, and of the description, provided for the offence, or fine, or both.	Ditto.

CHAPTER VI.—OFFENCES AGAINST THE STATE.

121	Waging or attempting to wage war, or abetting the waging of war, against the Queen.	Shall not arrest without warrant.	Warrant ...	Not bailable ...	Death, or transportation for life, and forfeiture of property.	Court of Session.
121A	Conspiring to commit certain offences against the State.	Ditto ...	Ditto ...	Ditto ...	Transportation for life or any shorter term, or imprisonment of either description for 10 years.	Ditto.
122	Collecting arms, &c., with the intention of waging war against the Queen.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and forfeiture of property.	Ditto.
123	Concealing with intent to facilitate a design to wage war.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
124	Assaulting Governor General, Governor, &c., with intent to compel or restrain the exercise of any lawful power.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
124A	Exciting, or attempting to excite, disaffection.	Ditto ...	Ditto ...	Ditto ...	Transportation for life or for any term and fine, or imprisonment of either description for 3 years and fine, or fine.	Ditto.
125	Waging war against any Asiatic Power in alliance or at peace with the Queen, or abetting the waging of such war.	Ditto ...	Ditto ...	Ditto ...	Transportation for life and fine, or imprisonment of either description for 7 years and fine, or fine.	Ditto.

SCHEDULE II—*continued.*

CHAPTER VI.—OFFENCES AGAINST THE STATE—(*concluded*).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
126	Committing depredation on the territories of any Power in alliance or at peace with the Queen.	Shall not arrest without warrant.	Warrant ...	Not bailable ...	Imprisonment of either description for 7 years and fine, and forfeiture of certain property.	Court of Session.
127	Receiving property taken by war or depredation mentioned in sections 125 and 126.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
128	Public servant voluntarily allowing prisoner of State or War in his custody to escape.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
129	Public servant negligently suffering prisoner of State or War in his custody to escape.	Ditto ...	Ditto ...	Bailable ...	Simple imprisonment for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
130	Aiding escape of, rescuing or harbouring, such prisoner, or offering any resistance to the recapture of such prisoner.	Ditto ...	Ditto ...	Not bailable ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.

CHAPTER VII.—OFFENCES RELATING TO THE ARMY AND NAVY.

131	Abetting mutiny, or attempting to seduce an officer, soldier or sailor from his allegiance or duty.	May arrest without warrant.	Warrant ...	Not bailable ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.
132	Abetment of mutiny, if mutiny is committed in consequence thereof.	Ditto ...	Ditto ...	Ditto ...	Death, or transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
133	Abetment of an assault by an officer, soldier or sailor on his superior officer, when in the execution of his office.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
134	Abetment of such assault, if the assault is committed.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
135	Abetment of the desertion of an officer, soldier or sailor.	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
136	Harbouring such an officer, soldier or sailor who has deserted.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
137	Deserter concealed on board merchant-vessel, through negligence of master or person in charge thereof.	Shall not arrest without warrant.	Summons ...	Ditto ...	Fine of 500 rupees ...	Ditto.
138	Abetment of act of insubordination by an officer, soldier or sailor, if the offence be committed in consequence.	May arrest without warrant.	Warrant ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Ditto.
140	Wearing the dress or carrying any token used by a soldier, with intent that it may be believed that he is such a soldier.	Ditto ...	Summons ...	Ditto ...	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.

CHAPTER VIII.—OFFENCES AGAINST THE PUBLIC TRANQUILLITY.

143	Being member of an unlawful assembly...	May arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 6 months, or fine, or both.	Any Magistrate.

SCHEDULE II—*continued.*

CHAPTER VIII.—OFFENCES AGAINST THE PUBLIC TRANQUILLITY—(*continued*).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
144	Joining an unlawful assembly armed with any deadly weapon.	May arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.
145	Joining or continuing in an unlawful assembly, knowing that it has been commanded to disperse.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
147	Rioting	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
148	Rioting armed with a deadly weapon ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
149	If an offence be committed by any member of an unlawful assembly, every other member of such assembly shall be guilty of the offence.	According as arrest may be made without warrant for the offence or not.	According as a warrant or summons may issue for the offence.	According as the offence is bailable or not.	The same as for the offence ...	By the Court by which the offence is triable.
150	Hiring, engaging or employing persons to take part in an unlawful assembly.	May arrest without warrant.	According to the offence committed by the person hired, engaged or employed.	Ditto ...	The same as for a member of such assembly, and for any offence committed by any member of such assembly.	Ditto.
151	Knowingly joining or continuing in any assembly of five or more persons after it has been commanded to disperse.	Ditto ...	Summons ...	Bailable ...	Imprisonment of either description for 6 months, or fine, or both.	Any Magistrate.
152	Assaulting or obstructing public servant when suppressing riot.	Ditto ...	Warrant ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
153	Wantonly giving provocation with intent to cause riot, if rioting be committed.	Ditto ..	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Any Magistrate.
	If not committed	Ditto ...	Summons ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Ditto.
154	Owner or occupier of land not giving information of riot, &c.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Fine of 1,000 rupees	Presidency Magistrate or Magistrate of the first or second class.
155	Person for whose benefit or on whose behalf a riot takes place not using all lawful means to prevent it.	Ditto ...	Ditto ...	Ditto ...	Fine	Ditto.
156	Agent of owner or occupier for whose benefit a riot is committed not using all lawful means to prevent it.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
157	Harbouring persons hired for an unlawful assembly.	May arrest without warrant.	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Ditto.

SCHEDULE II—*continued.*

CHAPTER VIII.—OFFENCES AGAINST THE PUBLIC TRANQUILLITY—(*concluded*).

1 Section	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
158	Being hired to take part in an unlawful assembly or riot.	May arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 6 months, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
	Or to go armed	Ditto ...	Warrant ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
160	Committing affray	Shall not arrest without warrant.	Summons ...	Ditto ...	Imprisonment of either description for 1 month, or fine of 100 rupees, or both.	Any Magistrate.

CHAPTER IX.—OFFENCES BY OR RELATING TO PUBLIC SERVANTS.

161	Being or expecting to be a public servant, and taking a gratification other than legal remuneration in respect of an official act.	Shall not arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
162	Taking a gratification in order by corrupt or illegal means to influence a public servant.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
163	Taking a gratification for the exercise of personal influence with a public servant.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
164	Abetment by public servant of the offences defined in the last two preceding clauses with reference to himself.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
165	Public servant obtaining any valuable thing, without consideration, from a person concerned in any proceeding or business transacted by such public servant.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
166	Public servant disobeying a direction of the law with intent to cause injury to any person.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 year, or fine, or both.	Ditto.
167	Public servant framing an incorrect document with intent to cause injury.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
168	Public servant unlawfully engaging in trade.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
169	Public servant unlawfully buying or bidding for property.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 2 years, or fine, or both, and confiscation of property, if purchased.	Ditto.
170	Personating a public servant ...	May arrest without warrant.	Warrant ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.

SCHEDULE II—*continued.*

CHAPTER IX.—OFFENCES BY OR RELATING TO PUBLIC SERVANTS—(*concluded*).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
171	Wearing garb or carrying token used by public servant with fraudulent intent.	May arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 3 months, or fine of 200 rupees, or both.	Any Magistrate.
	CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.					
172	Absconding to avoid service of summons or other proceeding from a public servant.	Shall not arrest without warrant.	Summons ...	Bailable ...	Simple imprisoment for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
	If summons or notice require attendance in person, &c., in a Court of justice.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
173	Preventing the service or the affixing of any summons or notice, or the removal of it when it has been affixed, or preventing a proclamation.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
	If summons, &c., require attendance in person, &c., in a Court of justice.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
174	Not obeying a legal order to attend at a certain place in person or by agent, or departing therefrom without authority.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
	If the order require personal attendance, &c., in a Court of justice.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
175	Intentionally omitting to produce a document to a public servant by a person legally bound to produce or deliver such document.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Court in which the offence is committed, subject to the provisions of chapter XXXVI or, if not committed in a Court, a Presidency Magistrate or Magistrate of the first or second class.
	If the document is required to be produced in or delivered to a Court of justice.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
176	Intentionally omitting to give notice or information to a public servant by a person legally bound to give such notice or information.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
	If the notice or information required respects the commission of an offence, &c.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
177	Knowingly furnishing false information to a public servant.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
	If the information required respects the commission of an offence, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.

SCHEDULE II—*continued.*

CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS—(*continued*).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
178	Refusing oath when duly required to take oath by a public servant.	Shall not arrest without warrant.	Summons ...	Bailable ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Court in which the offence is committed, subject to the provisions of chapter XXXVI of this Code, or, if not committed in a Court, a Presidency Magistrate or Magistrate of the first or second class.
179	Being legally bound to state truth, and refusing to answer questions.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
180	Refusing to sign a statement made to a public servant when legally required to do so.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 3 months, or fine of 500 rupees, or both.	Ditto.
181	Knowingly stating to a public servant on oath as true that which is false.	Ditto ...	Warrant ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
182	Giving false information to a public servant in order to cause him to use his lawful power to the injury or annoyance of any person.	Ditto ...	Summons ...	Ditto ...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
183	Resistance to the taking of property by the lawful authority of a public servant.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
184	Obstructing sale of property offered for sale by authority of a public servant.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 month, or fine of 500 rupees, or both.	Ditto.
185	Bidding by a person under a legal incapacity to purchase it for property at a lawfully authorized sale, or bidding without intending to perform the obligations incurred thereby.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description of 1 month, or fine of 200 rupees, or both.	Ditto.
186	Obstructing public servant in discharge of his public functions.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Ditto.
187	Omission to assist public servant when bound by law to give such assistance.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Ditto.
	Wilfully neglecting to aid a public servant who demands aid in the execution of process, the prevention of offences, &c.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 500 rupees, or both.	Ditto.
188	Disobedience to an order lawfully promulgated by a public servant, if such disobedience causes obstruction or annoyance or injury to persons lawfully employed.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Ditto.
	If such disobedience causes danger to human life, health or safety, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.

SCHEDULE II—*continued.*

CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS—*(concluded)*.

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
189	Threatening a public servant with injury to him, or one in whom he is interested, to induce him to do or forbear to do any official act.	Shall not arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
190	Threatening any person to induce him to refrain from making a legal application for protection from injury.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Ditto.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.

193	Giving or fabricating false evidence in a judicial proceeding.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	Giving or fabricating false evidence in any other case.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.
194	Giving or fabricating false evidence with intent to cause any person to be convicted of a capital offence.	Ditto ...	Ditto ...	Not bailable ...	Transportation for life, or rigorous imprisonment for 10 years and fine.	Court of Session.
	If innocent person be thereby convicted and executed.	Ditto ...	Ditto ...	Ditto ...	Death, or as above ...	Ditto.
195	Giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation or imprisonment for more than seven years.	Ditto ...	Ditto ...	Ditto ...	The same as for the offence ...	Ditto.
196	Using in a judicial proceeding evidence known to be false or fabricated.	Ditto ...	Ditto ...	According as the offence of giving such evidence is bailable or not.	The same as for giving or fabricating false evidence.	Court of Session, Presidency Magistrate or Magistrate of the first class.
197	Knowingly issuing or signing a false certificate relating to any fact of which such certificate is by law admissible in evidence.	Ditto ...	Ditto ...	Bailable ...	The same as for giving false evidence	Ditto.
198	Using as a true certificate one known to be false in a material point.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
199	False statement made in any declaration which is by law received as evidence.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
200	Using as true any such declaration known to be false.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
201	Causing disappearance of evidence of an offence committed, or giving false information touching it to screen the offender, if a capital offence.	Ditto ..	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
	If punishable with transportation or imprisonment for ten years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.

SCHEDULE II—*continued.*

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—(*continued*).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons s all ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
	If punishable with less than 10 years' imprisonment.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment for quarter of the longest term, and of the description, provided for the offence, or fine, or both.	By a Presidency Magistrate or Magistrate of the first class, or by the Court by which the offence is triable.
202	Intentional omission to give information of an offence by a person legally bound to inform.	Ditto ...	Summons ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
203	Giving false information respecting an offence committed.	Ditto ...	Warrant ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
204	Secreting or destroying any document to prevent its production as evidence.	Ditto ...	Ditto ...	Ditto ...	Ditto	Presidency Magistrate or Magistrate of the first class.
205	False personation for the purpose of any act or proceeding in a suit or criminal prosecution, or for becoming bail or security.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
206	Fraudulent removal or concealment, &c., of property to prevent its seizure as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
207	Claiming property without right, or practising deception touching any right to it, to prevent its being taken as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
208	Fraudulently suffering a decree to pass for a sum not due, or suffering decree to be executed after it has been satisfied.	Ditto ...	Ditto ...	Ditto ...	Ditto	Presidency Magistrate or Magistrate of the first class.
209	False claim in a Court of justice ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years and fine.	Ditto.
210	Fradulently obtaining a decree for a sum not due, or causing a decree to be executed after it has been satisfied.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditfc.
211	False charge of offence made with intent to injure.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
	If offence charged be capital, or punishable with transportation for life, or imprisonment for 7 years or upwards.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
212	Harbouring an offender, if the offence be capital.	May arrest without warrant.	Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.

SCHEDULE II—*continued.*

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—(*continued*).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
	If punishable with transportation for life, or with imprisonment for 10 years.	May arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If punishable with imprisonment for 1 year and not for 10 years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment for quarter of the longest term, and of the description, provided for the offence, or fine, or both.	By a Presidency Magistrate or Magistrate of the first class, or by the Court by which the offence is triable.
213	Taking gift, &c, to screen an offender from punishment, if the offence be capital.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
	If punishable with transportation for life or with imprisonment for 10 years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If with imprisonment for less than 10 years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment for quarter of the longest term, and of the description, provided for the offence, or fine, or both.	By a Presidency Magistrate or Magistrate of the first class, or by the Court by which the offence is triable.

214	Gift made to cause restoration of property in consideration of screening offender, if the offence be capital.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
	If punishable with transportation for life, or with imprisonment for 10 years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If with imprisonment for less than 10 years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment for quarter of the longest term, and of the description, provided for the offence, or fine, or both.	By a Presidency Magistrate or Magistrate of the first class, or by the Court by which the offence is triable.
215	Taking gift to help to recover movable property of which a person has been deprived by an offence, without causing apprehension of offender.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years or fine, or both.	Presidency Magistrate or Magistrate of the first class.
216	Harbouring an offender who has escaped from custody, or whose apprehension has been ordered, if the offence be capital.	May arrest without warrant.	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If punishable with transportation for life, or with imprisonment for 10 years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.
	If with imprisonment for 1 year, and not for 10 years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment for quarter of the longest term, and of the description, provided for the offence, or fine, or both.	By a Presidency Magistrate or Magistrate of the first class, or by the Court by which the offence is triable.

SCHEDULE II—*continued.*

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—(*continued*).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
217	Public servant disobeying a direction of law with intent to save persons from punishment, or property from forfeiture.	Shall not arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
218	Public servant framing an incorrect record or writing with intent to save person from punishment, or property from forfeiture.	Ditto ...	Warrant ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session.
219	Public servant in a judicial proceeding making and pronouncing an order, report, verdict or decision which he knows to be contrary to law.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Ditto.
220	Commitment for trial or confinement by a person having authority, who knows that he is acting contrary to law.	Ditto ...	Ditto ...	Ditto ...	Ditto ditto ditto ...	Ditto.
221	Intentional omission to apprehend on the part of a public servant bound by law to apprehend an offender, if the offence be capital.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, with or without fine.	Ditto.
	If punishable with transportation for life, or imprisonment for 10 years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, with or without fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If with imprisonment for less than 10 years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, with or without fine.	Presidency Magistrate or Magistrate of the first or second class.
222	Intentional omission to apprehend on the part of a public servant bound by law to apprehend person under sentence of a Court of justice, if under sentence of death.	Ditto ...	Ditto ...	Not bailable ...	Transportation for life, or imprisonment of either description for 14 years, with or without fine.	Court of Session.
	If under sentence of transportation for life, or imprisonment or penal servitude for 10 years or upwards.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, with or without fine.	Ditto.
	If under sentence of imprisonment for less than 10 years.	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
223	Escape from confinement negligently suffered by a public servant.	Ditto ...	Summons ...	Ditto ...	Simple imprisonment for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
224	Resistance or obstruction by a person to his lawful apprehension.	May arrest without warrant.	Warrant ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
225	Resistance or obstruction to the lawful apprehension of another person, or rescuing him from lawful custody.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

SCHEDULE II—*continued.*

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—(*concluded*).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
	If charged with an offence punishable with transportation for life, or imprisonment for 10 years.	May arrest without warrant.	Warrant ...	Not bailable ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If charged with a capital offence ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, or fine.	Court of Session.
	If the person is sentenced to transportation for life, or to transportation, penal servitude or imprisonment for 10 years or upwards.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
	If under sentence of death	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
225A	Escape, or attempt to escape, from custody for failing to furnish security for good behaviour.	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for one year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
226	Unlawful return from transportation ...	Ditto ...	Ditto ...	Not bailable ...	Transportation for life, and fine and rigorous imprisonment for 3 years before transportation.	Court of Session.

227	Violation of condition of remission of punishment.	Shall not arrest without warrant.	Summons ...	Ditto ...	Punishment of original sentence, or if part of the punishment has been undergone, the residue.	By the Court by which the original offence was triable.
228	Intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding.	Ditto ...	Ditto ...	Bailable ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Court in which the offence is committed, subject to the provisions contained in chapter XXXVI of this Code.
229	Personation of a juror or assessor ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first class.

CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.

231	Counterfeiting, or performing any part of the process of counterfeiting, coin.	May arrest without warrant.	Warrant	Not bailable ...	Imprisonment of either description for 7 years and fine.	Court of Session.
232	Counterfeiting, or performing any part of the process of counterfeiting, the Queen's coin.	Ditto ...	Ditto ...	Ditto ...	Transportation for life or imprisonment of either description for 10 years and fine.	Ditto ...
233	Making, buying or selling instrument for the purpose of counterfeiting coin.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
234	Making, buying or selling instrument for the purpose of counterfeiting the Queen's coin.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.

SCHEDULE II—*continued.*

CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS—(*continued*).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
235	Possession of instrument or material for the purpose of using the same for counterfeiting coin.	May arrest without warrant.	Warrant ...	Not bailable ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If Queen's coin	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Court of Session.
236	Abetting in India the counterfeiting out of British India of coin.	Ditto ...	Ditto ...	Ditto ...	The punishment provided for abetting the counterfeiting of such coin within British India.	Ditto.
237	Import or export of counterfeit coin, knowing the same to be counterfeit.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
238	Import or export of counterfeits of the Queen's coin, knowing the same to be counterfeit.	Ditto ...	Ditto ...	Ditto ..	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.
239	Having any counterfeit coin known to be such when it came into possession, and delivering, &c., the same to any person.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
240	The same with respect to the Queen's coin.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
241	Knowingly delivering to another any counterfeit coin as genuine which, when first possessed, the deliverer did not know to be counterfeit.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine of ten times the value of the coin counterfeited, or both.	Presidency Magistrate or Magistrate of the first or second class.
242	Possession of counterfeit coin by a person who knew it to be counterfeit when he became possessed thereof.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
243	Possession of Queen's coin by a person who knew it to be counterfeit when he became possessed thereof.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
244	Persons employed in a Mint causing coin to be of a different weight or composition from that fixed by law.	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session.
245	Unlawfully taking from a Mint any coining instrument.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
246	Fraudulently diminishing the weight or altering the composition of any coin.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
247	Fraudulently diminishing the weight or altering the composition of the Queen's coin.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
248	Altering appearance of any coin with intent that it shall pass as a coin of a different description.	Ditto ...	Ditto ..	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.

SCHEDULE II—*continued.*

CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS—(*concluded*).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
249	Altering appearance of the Queen's coin with intent that it shall pass as a coin of a different description ...	May arrest without warrant.	Warrant ...	Not bailable ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
250	Delivery to another of coin possessed with the knowledge that it is altered ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Ditto.
251	Delivery of Queen's coin possessed with the knowledge that it is altered ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
252	Possession of altered coin by a person who knew it to be altered when he became possessed thereof ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.
253	Possession of Queen's coin by a person who knew it to be altered when he became possessed thereof ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Ditto.
254	Delivery to another of coin as genuine which, when first possessed, the deliverer did not know to be altered ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine of ten times the value of the coin.	Presidency Magistrate or Magistrate of the first or second class.
255	Counterfeiting a Government stamp ...	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for 10 years and fine.	Court of Session.
256	Having possession of an instrument or material for the purpose of counterfeiting a Government stamp ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years.	Ditto.
257	Making, buying or selling instrument for the purpose of counterfeiting a Government stamp.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
258	Sale of counterfeit Government stamp ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
259	Having possession of a counterfeit Government stamp.	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session, Presidency Magistrate or Magistrate of the first class.
260	Using as genuine a Government stamp known to be counterfeit.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Ditto.
261	Effacing any writing from a substance bearing a Government stamp, or removing from a document a stamp used for it with intent to cause wrongful loss to Government	Ditto ...	Ditto ..	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Ditto.
262	Using a Government stamp known to have been before used.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
263	Erasure of mark denoting that stamp has been used.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.

CHAPTER XIII.—OFFENCES RELATING TO WEIGHTS AND MEASURES.

264	Fraudulent use of false instrument for weighing.	Shall not arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

SCHEDULE II—*continued.*

CHAPTER XIII.—OFFENCES RELATING TO WEIGHTS AND MEASURES—(*concluded*).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
	Fraudulent use of false weight or measure	Shall not arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
266	Being in possession of false weights or measures for fraudulent use.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
267	Making or selling false weights or measures for fraudulent use.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS.

269	Negligently doing any act known to be likely to spread infection of any disease dangerous to life.	May arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 6 months, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
270	Malignantly doing any act known to be likely to spread infection of any disease dangerous to life.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
271	Knowingly disobeying any quarantine rule	Shall not arrest without warrant.	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Ditto.
272	Adulterating food or drink for man, intended for sale, so as to make the same noxious.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Ditto.
273	Selling any food or drink as food and drink for man knowing the same to be noxious.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
274	Adulterating any drug or medical preparation intended for sale so as to lessen its efficacy, or to change its operation, or to make it noxious.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
275	Offering for sale or issuing from a dispensary any drug or medical preparation known to have been adulterated.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
276	Knowingly selling or issuing from a dispensary any drug or medical preparation as a different drug or medical preparation.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
277	Defiling the water of a public spring or reservoir.	May arrest without warrant.	Ditto ...	Ditto ...	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.
278	Making atmosphere noxious to health ...	Shall not arrest without warrant.	Ditto ...	Ditto ...	Fine of 500 rupees	Ditto.
279	Driving or riding on a public way so rashly or negligently as to endanger human life, &c.	May arrest without warrant.	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Ditto.
280	Navigating any vessel so rashly or negligently as to endanger human life, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto	Presidency Magistrate or Magistrate of the first or second class.
281	Exhibition of a false light, mark or buoy	Ditto ...	Warrant ...	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Court of Session.

SCHEDULE II—*continued.*

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE DECENCY AND MORALS—(*concluded*).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
282	Conveying for hire any person by water, in a vessel in such a state, or so loaded, as to endanger his life ...	May arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
283	Causing danger, obstruction or injury in any public way or line of navigation.	Ditto ...	Ditto ...	Ditto ...	Fine of 200 rupees ...	Ditto.
284	Dealing with any poisonous substance so as to endanger human life, &c.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Ditto.
285	Dealing with fire or any combustible matter so as to endanger human life, &c.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto	Any Magistrate.
286	So dealing with any explosive substance...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
287	So dealing with any machinery ...	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto	Presidency Magistrate or Magistrate of the first or second class.
288	A person omitting to guard against probable danger to human life by the fall of any building over which he has a right entitling him to pull it down or repair it.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
289	A person omitting to take order with any animal in his possession, so as to guard against danger to human life, or of grievous hurt from such animal.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto	Any Magistrate.
290	Committing a public nuisance ...	Shall not arrest without warrant.	Ditto ...	Ditto ...	Fine of 200 rupees	Ditto.
291	Continuance of nuisance after injunction to discontinue.	May arrest without warrant.	Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
292	Sale, &c., of obscene books, &c. ...	Ditto ...	Warrant ...	Ditto ...	Imprisonment of either description for 3 months, or fine, or both.	Ditto.
293	Having in possession obscene book, &c., for sale or exhibition.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
294	Obscene songs	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
295A	Keeping a lottery-office	Shall not arrest without warrant.	Summons ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Any Magistrate.
	Publishing proposals relating to lotteries	Ditto ...	Ditto ...	Ditto ...	Fine of 1,000 rupees	Ditto.

CHAPTER XV.—OFFENCES RELATING TO RELIGION.

295	Destroying, damaging, or defiling a place of worship or sacred object with intent to insult the religion of any class of persons.	May arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

SCHEDULE II—*continued.*

CHAPTER XV.—OFFENCES RELATING TO RELIGION—(*concluded*).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
296	Causing a disturbance to an assembly engaged in religious worship.	May arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
297	Trespassing in a place of worship or sepulchre, disturbing funeral with intention to wound the feelings or to insult the religion of any person, or offering indignity to a human corpse.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
298	Uttering any word or making any sound in the hearing, or making any gesture, or placing any object in the sight, of any person, with intention to wound his religious feeling.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto	Ditto.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.

Offences affecting Life.

302	Murder	May arrest without warrant.	Warrant ...	Not bailable ...	Death, transportation for life and fine	Court of Session.
303	Murder by a person under sentence of transportation for life.	Ditto ...	Ditto ...	Ditto ...	Death	Ditto.
304	Culpable homicide not amounting to murder, if act by which the death is caused is done with intention of causing death, &c.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
	If act is done with knowledge that it is likely to cause death, but without any intention to cause death, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years, or fine, or both.	Ditto.
304A	Causing death by rash or negligent act ...	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for two years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
305	Abetment of suicide committed by a child, or insane or delirious person, or an idiot, or a person intoxicated.	Ditto ...	Ditto ...	Not bailable ...	Death, or transportation for life, or imprisonment for 10 years and fine.	Court of Session.
306	Abetting the commission of suicide ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
307	Attempt to murder ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
	If such act cause hurt to any person ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or as above...	Ditto.
308	Attempt to commit culpable homicide ...	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for 3 years, or fine, or both.	Ditto.
	If such act cause hurt to any person ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Ditto.
309	Attempt to commit suicide ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for one year and fine.	Presidency Magistrate or Magistrate of the first or second class.
311	Being a thug ...	Ditto ...	Ditto ...	Not bailable ...	Transportation for life and fine ...	Court of Session.

SCHEDULE II—*continued.*

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—(*continued*).

Of the Causing of Miscarriage; of Injuries to Unborn Children; of the Exposure of Infants; and of the Concealment of Births.

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
312	Causing miscarriage	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session.
	If the woman be quick with child ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
313	Causing miscarriage without woman's consent.	Ditto ...	Ditto ...	Not bailable ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
314	Death caused by an act done with intent to cause miscarriage.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
	If act done without woman's consent ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or as above.	Ditto.
315	Act done with intent to prevent a child being borne alive, or to cause it to die after its birth.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years, or fine, or both.	Ditto.
316	Causing death of a quick unborn child by an act amounting to culpable homicide.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
317	Exposure of a child under 12 years of age by parent or person having care of it, with intention of wholly abandoning it.	May arrest without warrant.	Ditto ...	Bailable ...	Imprisonment of either description for 7 years, or fine, or both.	Ditto.
318	Concealment of birth by secret disposal of dead body.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
			Of Hurt.			
323	Voluntarily causing hurt	* May arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Any Magistrate.
324	Voluntarily causing hurt by dangerous weapons or means.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
325	Voluntarily causing grievous hurt ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
326	Voluntarily causing grievous hurt by dangerous weapons or means.	Ditto ...	Ditto ...	Not bailable ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
327	Voluntarily causing hurt to extort property or a valuable security, or to constrain to do an illegal act which may facilitate the commission of an offence.	Ditto ...	Warrant ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Court of Session.
328	Administering stupefying drug with intent to cause hurt.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

* See Act XI of 1874, section 46.

SCHEDULE II—*continued.*

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—(*continued*).

Of Hurt—concluded.

1 Section.	2 Offence.	3 Where the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
329	Voluntarily causing grievous hurt to extort property or a valuable security, or to constrain to do an illegal act which may facilitate the commission of an offence.	May arrest without warrant.	Warrant ...	Not bailable ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.
330	Voluntarily causing hurt to extort confession or information, or to compel restoration of property, &c.	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for 7 years and fine.	Ditto.
331	Voluntarily causing grievous hurt to extort confession or information, or to compel restoration of property, &c.	Ditto ...	Ditto ...	Not bailable ...	Imprisonment of either description for 10 years and fine.	Ditto.
332	Voluntarily causing hurt to deter public servant from his duty.	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
333	Voluntarily causing grievous hurt to deter public servant from his duty.	Ditto ...	Ditto ...	Not bailable ...	Imprisonment of either description for 10 years and fine.	Court of Session.
334	Voluntarily causing hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.	Ditto ...	Summons ...	Bailable ...	Imprisonment of either description for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
335	Causing grievous hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 4 years, or fine of 2,000 rupees, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
336	Doing any act which endangers human life or the personal safety of others ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 months, or fine of 250 rupees, or both.	Any Magistrate.
337	Causing hurt by an act which endangers human life, &c. ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine of 500 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
338	Causing grievous hurt by an act which endangers human life, &c. ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine of 1,000 rupees, or both.	Ditto.
	Of wrongful Restraint and wrongful Confinement.					
341	Wrongfully restraining any person ...	May arrest without warrant.	Summons ...	Bailable ...	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
342	Wrongfully confining any person ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
343	Wrongfully confining for three or more days ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.

SCHEDULE II—*continued.*

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—(*continued*).

Of wrongful Restraint and wrongful Confinement—(concluded).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
344	Wrongfully confining for ten or more days.	May arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
345	Keeping any person in wrongful confinement, knowing that a writ has been issued for his liberation.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, in addition to imprisonment under any other section.	Ditto.
346	Wrongful confinement in secret ...	May arrest without warrant.	Ditto ...	Ditto ...	Ditto	Ditto.
347	Wrongful confinement for the purpose of extorting property, or constraining to an illegal act, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.
348	Wrongful confinement for the purpose of extorting confession or information, or of compelling restoration of property, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto Ditto ...	Court of Session, Presidency Magistrate or Magistrate of the first class.

Of Criminal Force and Assault.

352	Assault or use of criminal force otherwise than on grave provocation.	Shall not arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.
353	Assault or use of criminal force to deter a public servant from discharge of his duty.	May arrest without warrant.	Warrant ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
354	Assault or use of criminal force to a woman with intent to outrage her modesty.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
355	Assault or criminal force with intent to dishonour a person, otherwise than on grave and sudden provocation.	Shall not arrest without warrant.	Summons ...	Ditto ...	Ditto	Ditto.
356	Assault or criminal force in attempt to commit theft of property worn or carried by a person.	May arrest without warrant.	Warrant ...	Not bailable ...	Ditto	Any Magistrate.
357	Assault or use of criminal force in attempt wrongfully to confine a person.	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Ditto.
358	Assault or use of criminal force on grave and sudden provocation.	Shall not arrest without warrant.	Summons ...	Ditto ...	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Ditto.

Of Kidnapping, Forcible Abduction, Slavery and forced Labour.

363	Kidnapping	May arrest without warrant.	Warrant ...	Not bailable ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.

SCHEDULE II—*continued.*

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—(*concluded*).

Of Kidnapping, Forcible Abduction, Slavery and forced Labour—(concluded).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
364	Kidnapping or abducting in order to murder.	May arrest without warrant.	Warrant ...	Not bailable ...	Transportation for life, or rigorous imprisonment for 10 years and fine.	Court of Session.
365	Kidnapping or abducting with intent secretly and wrongfully to confine a person.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
366	Kidnapping or abducting a woman to compel her marriage or to cause her defilement, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
367	Kidnapping or abducting in order to subject a person to grievous hurt, slavery, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
368	Concealing or keeping in confinement a kidnapped person.	Ditto ...	Ditto ...	Ditto ...	Punishment for kidnapping or abduction.	Ditto.
369	Kidnapping or abducting a child with intent to take property from the person of such child.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
370	Buying or disposing of any person as a slave.	Shall not arrest without warrant.	Ditto ...	Bailable ...	Ditto	Ditto.
371	Habitual dealing in slaves	May arrest without warrant.	Ditto ...	Not bailable ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
372	Selling or letting to hire minor for the purpose of prostitution ..	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
373	Buying or obtaining possession of a minor for the same purpose ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
374	Unlawful compulsory labour ...	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for 1 year, or fine, or both.	Any Magistrate.
	Of Rape.					
376	Rape	May arrest without warrant.	Warrant ...	Not bailable ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.
	Of Unnatural Offences.					
377	Unnatural offences	May arrest without warrant.	Warrant ...	Not bailable ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.
	CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY.					
	Of Theft.					
379	Theft	May arrest without warrant.	Warrant ...	Not bailable ...	Imprisonment of either description for 3 years, or fine, or both.	Any Magistrate.
380	Theft in a building, tent or vessel ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.

SCHEDULE II—*continued.*

CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY—(*continued*).

Of Theft—(concluded).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
381	Theft by clerk or servant of property in possession of master or employer.	May arrest without warrant.	Warrant ...	Not bailable ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
382	Theft, preparation having been made for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, in order to the committing such theft or to retiring after committing it, or to retaining property taken by it.	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for 10 years and fine.	Court of Session.

Of Extortion.

384	Extortion	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
385	Putting or attempting to put in fear of injury, in order to commit extortion.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
386	Extortion by putting a person in fear of death or grievous hurt.	Ditto ...	Ditto ...	Not bailable ...	Imprisonment of either description for 10 years and fine.	Court of Session
387	Putting or attempting to put a person in fear of death or grievous hurt, in order to commit extortion.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
388	Extortion by threat of accusation of an offence punishable with death, transportation for life, or imprisonment for 10 years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto
	If the offence threatened be an unnatural offence.	Ditto ...	Ditto ...	Ditto ...	Transportation for life	Ditto.
389	Putting a person in fear of accusation of offence punishable with death, transportation for life, or with imprisonment for 10 years, in order to commit extortion.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
	If the offence be an unnatural offence ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life	Ditto.

Of Robbery and Dacoity.

392	Robbery	May arrest without warrant.	Warrant ...	Not bailable ...	Rigorous imprisonment for 10 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If committed on the highway between sunset and sunrise.	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for 14 years and fine.	Ditto.
393	Attempt to commit robbery ...	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for 7 years and fine.	Ditto.

SCHEDULE II—*continued.*

CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY—(*continued*).

Of Robbery and Dacoity—(concluded).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
394	Person voluntarily causing hurt in committing or attempting to commit robbery, or any other person generally concerned in such robbery.	May arrest without warrant.	Warrant ...	Not bailable ...	Transportation for life, or rigorous imprisonment for 10 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
395	Dacoity	Ditto ..	Ditto ...	Ditto ...	Ditto	Court of Session
396	Murder in dacoity	Ditto ...	Ditto ...	Ditto ...	Death, transportation for life, or rigorous imprisonment for 10 years and fine.	Ditto.
397	Robbery or dacoity with attempt to cause death or grievous hurt.	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for not less than 7 years.	Ditto.
398	Attempt to commit robbery or dacoity when armed with deadly weapon.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
399	Making preparation to commit dacoity ...	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for 10 years and fine.	Ditto.
400	Belonging to a gang of persons associated for the purpose of habitually committing dacoity.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or as above...	Ditto.
401	Belonging to a wandering gang of persons associated for the purpose of habitually committing thefts.	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for 7 years and fine.	Ditto.
	Being one of five or more persons assembled for the purpose of committing dacoity.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

Of Criminal Misappropriation of Property.

403	Dishonest misappropriation of movable property, or converting it to one's own use.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.
404	Dishonest misappropriation of property, knowing that it was in possession of a deceased person at his death, and that it has not since been in the possession of any person legally entitled to it.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
	If by clerk or person employed by deceased	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.

Of Criminal Breach of Trust.

406	Criminal breach of trust	May arrest without warrant.	Warrant ...	Not bailable ...	Imprisonment of either description for 3 years, or fine, or both ...	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
407	Criminal breach of trust by a carrier, wharfinger, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.

SCHEDULE II—*continued.*

CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY—(*continued*).

Of Criminal Breach of Trust—(concluded).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
408	Criminal breach of trust by a clerk or servant.	May arrest without warrant.	Warrant ...	Not bailable ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
409	Criminal breach of trust by public servant or by banker, merchant or agent, &c.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.

Of the Receiving of Stolen Property.

411	Dishonestly receiving stolen property, knowing it to be stolen.	May arrest without warrant.	Warrant ...	Not bailable ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
412	Dishonestly receiving stolen property, knowing that it was obtained by dacoity.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or rigorous imprisonment for 10 years and fine.	Court of Session.
413	Habitually dealing in stolen property ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
414	Assisting in concealment or disposal of stolen property, knowing it to be stolen.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.

Of Cheating.

417	Cheating	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
418	Cheating a person whose interest the offender was bound, either by law or by legal contract, to protect.	Ditto ...	Ditto ...	Ditto ..	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
419	Cheating by personation	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
420	Cheating and thereby dishonestly inducing delivery of property, or the alteration or destruction of a valuable security.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session Presidency Magistrate or Magistrate of the first class.

SCHEDULE II—*continued.*

CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY—(*continued*).

Of Fraudulent Deeds and Dispositions of Property.

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
421	Fraudulent removal or concealment of property, &c., to prevent distribution among creditors.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
422	Fraudulently preventing from being made available for his creditors a debt or demand due to the offender.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
423	Fraudulent execution of deed of transfer containing a false statement of consideration.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
424	Fraudulent removal or concealment of property of himself or any other person, or assisting in the doing thereof, or dishonestly releasing any demand or claim to which he is entitled.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
	Of Mischief.					
426	Mischief	Shall not arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 3 months, or fine, or both.	Any Magistrate.
427	Mischief, and thereby causing damage to the amount of 50 rupees or upwards.	Ditto ...	Warrant ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
428	Mischief by killing, poisoning, maiming or rendering useless any animal of the value of 10 rupees or upwards.	* May arrest without warrant.	Ditto ...	Ditto ...	Ditto	Ditto.
429	Mischief by killing, poisoning, maiming or rendering useless any elephant, camel, horse, &c., whatever may be its value, or any other animal of the value of 50 rupees or upwards.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 5 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
430	Mischief by causing diminution of supply of water for agricultural purposes, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
431	Mischief by injury to public road, bridge, river or navigable channel, and rendering it impassable or less safe for travelling or conveying property.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
432	Mischief by causing inundation or obstruction to public drainage attended with damage.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
433	Mischief by destroying or moving or rendering less useful a light-house or sea-mark, or by exhibiting false lights.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Court of Session

SCHEDULE II—*continued.*

CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY—(*continued*).

Of Mischief—(concluded).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
434	Mischief by destroying or moving, &c., a landmark fixed by public authority.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
435	Mischief by fire or explosive substance, with intent to cause damage to amount of 100 rupees or upwards.	May arrest without warrant.	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
436	Mischief by fire or explosive substance with intent to destroy a house, &c.	Ditto ...	Ditto ...	Not bailable ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
437	Mischief with intent to destroy or make unsafe a decked vessel or a vessel of 20 tons burden.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
438	The mischief described in the last section when committed by fire or any explosive substance.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
439	Running vessel ashore with intent to commit theft, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
440	Mischief committed after preparation made for causing death or hurt, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Ditto.

Of Criminal Trespass.

447	Criminal trespass	May arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.
448	House-trespass	Ditto ...	Warrant ...	Ditto ...	Imprisonment of either description for 1 year, or fine of 1,000 rupees or both.	Ditto.
449	House-trespass in order to the commission of an offence punishable with death.	Ditto ...	Ditto ...	Not bailable ...	Transportation for life, or rigorous imprisonment for 10 years and fine.	Court of Session.
450	House-trespass in order to the commission of an offence punishable with transportation for life.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
451	House-trespass in order to the commission of an offence punishable with imprisonment.	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for 2 years and fine.	Any Magistrate.
	If the offence is theft	Ditto ...	Ditto ...	Not bailable ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
452	House-trespass, having made preparation for causing hurt, assault, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
453	Lurking house-trespass or house-breaking	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years and fine.	Presidency Magistrate or Magistrate of the first or second class.

SCHEDULE II—*continued.*

CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY—(*concluded*).

Of Criminal Trespass—(concluded).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
454	Lurking house-trespass or house-breaking in order to the commission of an offence punishable with imprisonment.	May arrest without warrant.	Warrant ...	Not bailable ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
	If the offence is theft	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
455	Lurking house-trespass or house-breaking after preparation made for causing hurt, assault, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session, Presidency Magistrate or Magistrate of the first class.
456	Lurking house-trespass or house-breaking by night.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
457	Lurking house-trespasss or house-breaking by night in order to the commission of an offence punishable with imprisonment.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for five years and fine.	Ditto.
	If the offence is theft ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 14 years and fine.	Ditto.
458	Lurking house-trespass or house-breaking by night, after preparation made for causing hurt, &c. ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session, Presidency Magistrate or Magistrate of the first class.
459	Grievous hurt caused whilst committing lurking house-trespass or house-breaking	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.
460	Death or grievous hurt caused by one of several persons jointly concerned in house-breaking by night, &c. ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
461	Dishonestly breaking open or unfastening any closed receptacle containing or supposed to contain property ...	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
462	Being entrusted with any closed receptacle containing or supposed to contain any property, and fraudulently opening the same ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.

CHAPTER XVIII.—OF OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY-MARKS.

465	Forgery	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for 2 years, or fine, or both.	Court of Session.

SCHEDULE II—*continued.*

CHAPTER XVIII.—OF OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY-MARKS—(*continued*)

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
466	Forgery of a record of a Court of justice or of a Register of births, &c., kept by a public servant.	Shall not arrest without warrant.	Warrant ...	Not bailable ...	Imprisonment of either description for 7 years and fine.	Court of Session.
467	Forgery of a valuable security, will, or authority to make or transfer any public security, or to receive any money, &c.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
	When the valuable security is a promissory note of the Government of India.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Ditto.
468	Forgery for the purpose of cheating ...	Shall not arrest without warrant.	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
469	Forgery for the purpose of harming the reputation of any person, or knowing that it is likely to be used for that purpose.	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for 3 years and fine.	Ditto.
471	Using as genuine a forged document which is known to be forged.	Ditto ...	Ditto ...	Ditto ...	Punishment for forgery ...	Ditto.
	When the forged document is a promissory note of the Government of India.	May arrest without warrant.	Ditto ...	Not bailable ...	Ditto ...	Ditto.
472	Making or counterfeiting a seal, plate, &c., with intent to commit a forgery punishable under section 467 of the Indian Penal Code, or possessing with like intent any such seal, plate, &c., knowing the same to be counterfeit.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 7 years and fine.	Ditto.
473	Making or counterfeiting a seal, plate, &c., with intent to commit a forgery punishable otherwise than under section 467 of the Indian Penal Code, or possessing with like intent any such seal, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto. ...
474	Having possession of a document, knowing it to be forged, with intent to use it as genuine.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto. ...
	If the document is a valuable security or will.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or as above...	Ditto. ...
475	Counterfeiting a device or mark used for authenticating documents described in section 467 of the Indian Penal Code, or posssessing counterfeit marked material.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto. ...
476	Counterfeiting a device or mark used for authenticating documents other than those described in section 467 of the Indian Penal Code, or possessing counterfeit marked material.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto. ...
477	Fraudulently destroying or defacing, or attempting to destroy or deface, or secreting, a will, &c.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 7 years and fine.	Ditto. ...
	Of Trade and Property-Marks.					
482	Using a false trade or property-mark with intent to deceive or injure any person.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for one year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

SCHEDULE II—*continued.*

CHAPTER XVIII.—OF OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY-MARKS—(*concluded*).

Of Trade and Property-Marks—(concluded).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
483	Counterfeiting a trade or property-mark used by another, with intent to cause damage or injury.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
484	Counterfeiting a property-mark used by a public servant, or any mark used by him to denote the manufacture, quality, &c., of any property.	Ditto ...	Summons ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
485	Fraudulently making or having possession of any die, plate, or other instrument for counterfeiting any public or private property or trade-mark.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Ditto ...
486	Knowingly selling goods marked with a counterfeit property or trade-mark.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
487	Fraudulently making a false mark upon any package or receptable containing goods, with intent to cause it to be believed that it contains goods which it does not contain, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
488	Making use of any such false mark ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
489	Removing, destroying or defacing any property-mark with intent to cause injury ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
	CHAPTER XIX.—OF THE CRIMINAL BREACH OF CONTRACTS OF SERVICE.					
490	Being bound by contract to render personal service during a voyage or journey, or to convey or guard any property or person, and voluntarily omitting to do so	Shall not arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description, for 1 month, or fine of 100 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
491	Being bound to attend on, or supply the wants of, a person who is helpless from youth, unsoundness of mind or disease, and voluntarily omitting to do so ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 months, or fine of 200 rupees, or both.	Ditto.
492	Being bound by a contract to render personal service for a certain period at a distant place to which the employé is conveyed at the expense of the employer, and there voluntarily deserting the service or refusing to perform the duty ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description, for 1 month, or fine of double the expense incurred, or both.	Ditto.
	CHAPTER XX.—OFFENCES RELATING TO MARRIAGE.					
493	A man by deceit causing a woman not lawfully married to him to believe that she is lawfully married to him, and to cohabit with him in that belief ...	Shall not arrest without warrant.	Warrant. ...	Not bailable ...	Imprisonment of either description, for 10 years and fine.	Court of Session.

SCHEDULE II—*continued.*

CHAPTER XX.—OFFENCES RELATING TO MARRIAGE—(*concluded*).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
494	Marrying again during the life-time of a husband or wife ...	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for 7 years and fine.	Court of Session.
495	Same offence with concealment of the former marriage from the person with whom subseqent marriage is contracted	Ditto ...	Ditto ...	Not bailable ...	Imprisonment of either description for 10 years and fine.	Ditto.
496	A person with fraudulent intention going through the ceremony of being married, knowing that he is not thereby lawfully married ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
497	Adultery ..	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for 5 years, or fine, or both.	Ditto.
498	Enticing or taking away or detaining with a criminal intent a married woman	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

CHAPTER XXI.—OF DEFAMATION.

500	Defamation	Shall not arrest without warrant.	Warrant ...	Bailable ...	Simple imprisonment for 2 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
501	Printing or engraving matter knowing it to be defamatory.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
502	Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter.	Ditto ...	Ditto ..	Ditto ...	Ditto	Ditto.

CHAPTER XXII.—OF CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE.

504	Insult intended to provoke a breach of the peace.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.
505	False statement, rumours, &c., circulated with intent to cause mutiny or offences against the public peace.	Ditto ...	Ditto ...	Not bailable ...	Ditto	Presidency Magistrate or Magistrate of the first or second class.
506	Criminal intimidation ...	Ditto ...	Ditto ...	Bailable ...	Ditto	Ditto.
	If threat be to cause death or grievous hurt, &c.	Ditto ...	Ditto ..	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
507	Criminal intimidation by anonymous communication or having taken precaution to conceal whence the threat comes.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, in addition to the punishment under above section.	Ditto.
508	Act caused by inducing a person to believe that he will be rendered an object of Divine displeasure.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

SCHEDULE II—*continued.*

CHAPTER XXII.—OF CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE—(*concluded*).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not	6 Punishment under the Indian Penal Code.	7 By what Court triable.
509	Uttering any word or making any gesture intended to insult the modesty of a woman.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Simple imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
510	Appearing in a public place, &c., in a state of intoxication, and causing annoyance to any person.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 24 hours, or fine of 10 rupees, or both.	Any Magistrate.

CHAPTER XXIII.—OF ATTEMPTS TO COMMIT OFFENCES.

511	Attempting to commit offences punishable with transportation or imprisonment, and in such attempt doing any act towards the commission of the offence.	According as the offence is one in respect of which the Police may arrest without warrant or not.	According as the offence is one in respect of which a summons or warrant shall ordinarily issue.	According as the offence contemplated by the offender is bailable or not.	Transportation or imprisonment not exceeding half of the longest term, and of the description, provided for the offence, or fine, or both.	By the Court by which the offence attempted is triable.

OFFENCES AGAINST OTHER LAWS.

If punishable with death, transportation or imprisonment for seven years or upwards.	May arrest without warrant.	Warrant ...	Not bailable ...	... ...	According to the provisions of section 29 of this Code.	
If punishable with imprisonment for three years and upwards but less than seven.	Ditto ...	Ditto ...	Ditto ...	... ...		
If punishable with imprisonment for less than three years.	Shall not arrest without warrant.	Summons ...	Bailable ...	... ...		
If punishable with fine only ...	Ditto ...	Ditto ...	Ditto ...	... ...		

SCHEDULE III.

ORDINARY POWERS OF MUFASSAL MAGISTRATES.

I.—Ordinary Powers of Magistrates of the Third Class.

(1.) Power to arrest an offender in the presence of the Magistrate, sect. 62.
(2.) Power to endorse a warrant, or to order the removal of an accused person arrested under a warrant, sects. 81, 82 & 84.
(3.) Power to issue proclamations in cases judicially before him, sect. 85.
(4.) Power to attach and sell property in cases judicially before him, sect. 86.
(5.) Power to endorse a search-warrant and order delivery of thing found, sects. 96 & 101.
(6.) Power to record confessions or statements during a Police-investigation, sect. 162.
(7.) Power to authorize detention of a person during a Police-investigation, sect. 165.
(8.) Power to detain an accused person found in Court, sect. 353.
(9.) Power to sell perishable property of a suspicious character, sect. 535.

II.—Ordinary Powers of Magistrates of the Second Class.

(1.) The ordinary powers of a Magistrate of the third class.
(2.) Power to order the Police to investigate an offence in cases in which the Magistrate has jurisdiction to try or commit for trial, sect. 155.

III.—Ordinary Powers of Magistrates of the First Class.

(1.) The ordinary powers of a Magistrate of the second class.
(2.) Power to issue search-warrants otherwise than in course of an inquiry, sect. 97.
(3.) Power to require security to keep the peace, sect. 106.
(4.) Power to require security for good behaviour, sects. 108 and 109.
(5.) Power to make orders, &c., in possession-cases, sects. 143, 144, 145.
(6.) Power to commit for trial.
(7.) Power to make orders of maintenance, sects. 488 & 489.

IV.—Ordinary Powers of Sub-Divisional Magistrates.

(1.) The ordinary powers of a Magistrate of the first class.
(2.) Power to make orders as to local nuisance, sect. 131.
(3.) Power to make order under sect. 141.
(4.) Power to make orders prohibiting repetitions of nuisances, sect. 142.
(5.) Power to hold inquests, sect. 172.
(6.) Power to issue process for person within jurisdiction who has committed an offence outside the jurisdiction, sect. 184.
(7.) Power to receive Police-reports, sect. 192.
(8.) Power to entertain complaints, sect. 192.
(9.) Power to entertain cases without complaint, 192.
(10.) Power to transfer cases to a Subordinate Magistrate, sect. 193.
(11.) Power to pass sentence on proceedings recorded by a Subordinate Magistrate, sect. 351.
(12.) Power to sell property alleged or suspected to have been stolen, &c., sect. 534.
(13.) Power to withdraw cases other than appeals, and to try or refer them for trial, sect. 538.

V.—Ordinary Powers of District Magistrates.

(1.) The ordinary powers of a Sub-Divisional Magistrate, being a Magistrate of the first class.
(2.) Power to direct warrants to landholders, sect. 75.
(3.) Power to issue search-warrants for letters in Post-office, sect. 94.
(4.) Power to discharge persons bound to be of good behaviour, sect. 123.
(5.) Power to try summarily, sect. 263.
(6.) Power to quash convictions in certain cases, sect. 352.
(7.) Power to withdraw or refer appeals from convictions by Magistrates of the second and third classes, sect. 406.
(8.) Power to hear appeals from convictions by Magistrates of the second and third classes, sect. 406.
(9.) Power to call for proceedings, sect. 435.
(10.) Power to revise orders passed under sects. 525 & 526.

SCHEDULE IV.

ADDITIONAL POWERS WITH WHICH MUFASSAL MAGISTRATES MAY BE INVESTED.

POWERS WITH WHICH A MAGISTRATE OF THE FIRST CLASS MAY BE INVESTED	BY THE LOCAL GOVERNMENT	(1). Power to make orders as to local nuisances, section 131: (2). Power to make orders under section 141: (3). Power to make orders prohibiting repetitions of nuisances, section 142: (4). Power to hold inquests, section 172: (5). Power to issue process for person within jurisdiction who has committed an offence outside the jurisdiction, section 184: (6). Power to entertain complaints, section 192: (7). Power to receive Police-reports, section 192: (8). Power to entertain cases without complaint, section 192: (9). Power to try summarily, section 263: (10). Power to hear appeals from convictions by Magistrates of the second and third classes, section 406: (11). Power to sell property alleged or suspected to be stolen, &c., section 534:
	BY THE MAGISTRATE OF THE DISTRICT	(1). Power to make orders under section 141: (2). Power to make orders prohibiting repetitions of nuisances, section 142: (3). Power to hold inquests, section 172 (4). Power to entertain complaints, section 192: (5). Power to receive Police-reports, section 192:
POWERS WITH WHICH A MAGISTRATE OF THE SECOND CLASS MAY BE INVESTED	BY THE LOCAL GOVERNMENT	(1). Power to commit for trial: (2). Power to make orders under section 141: (3). Power to make orders prohibiting repetitions of nuisances, section 142: (4). Power to hold inquests, section 172: (5). Power to entertain complaints, section 192: (6). Power to receive Police-reports, section 192: (7). Power to entertain cases without complaint, section 192:
	BY THE MAGISTRATE OF THE DISTRICT	(1). Power to make orders under section 141: (2). Power to make orders prohibiting repetitions of nuisances, section 142: (3). Power to hold inquests, section 172: (4). Power to entertain complaints, section 192: (5). Power to receive Police-reports, section 192:

SCHEDULE IV—*concluded.*

POWERS WITH WHICH A MAGISTRATE OF THE THIRD CLASS MAY BE INVESTED	BY THE LOCAL GOVERNMENT	(1). Power to commit for trial : (2). Power to make orders under section 141 : (3). Power to make orders prohibiting repetitions of nuisances, section 142 : (4). Power to hold inquests, section 172 : (5). Power to entertain complaints, section 192 :
	BY THE MAGISTRATE OF THE DISTRICT	(1). Power to make orders under section 141 : (2). Powers to make orders prohibiting repetitions of nuisances, section 142 : (3). Power to hold inquests, section 172 : (4). Power to entertain complaints, section 192 :

SCHEDULE V.

FORMS.

I.—SUMMONS TO AN ACCUSED PERSON.

(*See section 65.*)

To of

WHEREAS your attendance is necessary to answer to a charge of (*state shortly the offence charged*), you are hereby required to appear in person (*or by authorized agent, as the case may be*) before the (*Magistrate*) of on the day of . Herein fail not.

Dated the day of

(*Seal.*)

(*Signature.*)

II.—WARRANT OF ARREST.

(*See section 72.*)

To (*name and designation of the person or persons who are to execute the warrant*).

WHEREAS of stands charged with the offence of (*state the offence*), you are hereby directed to apprehend the said , and to produce him before me. Herein fail not.

(*Seal.*)

(*Signature.*)

This warrant may be endorsed as follows :—

If the said shall give bail himself in the sum of , with one surety in the sum of (*or two sureties each in the sum of*), to appear before me on the day of , he may be released.

Dated this day of 18 .

(*Signature.*)

III.—RECOGNIZANCE AND BAIL-BOND AFTER ARREST UNDER A WARRANT.

(*See section 84.*)

I, (*name*), of , being brought before the Magistrate of the District of (*or as the case may be*) under a warrant issued to compel my appearance to answer to the charge of , do hereby bind myself to appear in the Court of on the day of next to answer to the said charge, and, in case of my making default herein, I bind myself to forfeit to Her Majesty the sum of rupees .

Dated this day of 18 .

(*Signature.*)

I do hereby declare myself surety for the abovesaid of , that he shall attend before at in the Court of on the day of next to answer to the charge on which he has been arrested; and, in case of his making default therein, I hereby bind myself to forfeit to Her Majesty the sum of rupees

Dated this day of 18 .

(*Signature.*)

IV.—PROCLAMATION REQUIRING THE APPEARANCE OF A PERSON ACCUSED.

(*See section 85.*)

WHEREAS complaint has been made before me that (*name, description and address*) has committed (*or is suspected to have committed*) the offence of , punishable under section of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (*name*) cannot be found ; and whereas it has been shewn to my satisfaction that the said (*name*) has absconded (*or is concealing himself to avoid the service of the said warrant*) ;

Proclamation is hereby made that the said of is required to appear before this Court (*or before me*) to answer the said complaint within days from this date.

Dated this day of 18 .

(*Seal.*)

(*Signature.*)

V.—PROCLAMATION REQUIRING THE ATTENDANCE OF A WITNESS.

(*See section 85.*)

WHEREAS complaint has been made before me that (*name, description and place of residence*) has committed (*or is suspected to have committed*) the offence of (*mention the offence concisely*) and a warrant has been issued to compel the attendance of (*name, description and address of the witness*) before this Court to be examined touching on the matter of the said complaint; and whereas it has been returned to the said warrant that the said (*name of witness*) cannot be served, and it has been shown to my satisfaction that he has absconded (*or is concealing himself to avoid the service of the said warrant*) ;

Proclamation is hereby made that the said (*name*) is required to appear before the Court of on the day of next at o'clock, to be examined touching , the offence complained of.

Dated this day of 18 .

(*Seal.*)

(*Signature.*)

VI.—ORDER OF ATTACHMENT.

(*See section 86.*)

To the Police-officer in charge of the Police-station at

WHEREAS a warrant has been duly issued to compel the attendance of (*name, description and address*) to testify concerning a complaint pending before this Court, and it has been returned to the said warrant that it cannot be served; and whereas it has been shown to my satisfaction that he has absconded (*or is concealing himself to avoid the service of the said warrant*) ; and thereupon a proclamation was duly issued and published requiring the said to appear and give evidence at the time and place mentioned therein, and he has failed to appear ;

This is to authorize and require you to attach by seizure the moveable property belonging to the said to the value of rupees (*see sections and*) which you may find within the District of and to hold the said property under attachment

FORMS SCHEDULE V—*continued.*

pending the further order of this Court, and to return this warrant with an endorsement certifying the manner of its execution.

Dated this day of 18 .

(*Seal.*)

(*Signature.*)

WARRANT OF ATTACHMENT TO COMPEL APPEARANCE.

(*See section .*)

To (*name and designation of the person or persons who is or are to execute the warrant*).

WHEREAS complaint has been made before me that (*name, description and address*) has committed (*or is suspected to have committed*) the offence of punishable under section of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (*name*) cannot be found; and whereas it has been shown to my satisfaction that the said (*name*) has absconded (*or is concealing himself to avoid the service of the said warrant*), and thereupon a Proclamation has been duly issued and published requiring the said to appear to answer the said charge within days; and whereas the said is possessed of the following property other than the land paying revenue to Government in the village (*or town*) of , in the District of , *viz.*, , and an order has been made for the attachment thereof;

You are hereby required to attach the said property by seizure, and to hold the same under attachment pending the further order of this Court, and to return this warrant with an endorsement certifying the manner of its execution.

Dated this day of 18 .

(*Seal.*)

(*Signature.*)

ORDER AUTHORIZING AN ATTACHMENT BY THE DEPUTY COMMISSIONER AS COLLECTOR.

(*See section 86.*)

To the Deputy Commissioner of the District of

WHEREAS complaint has been made before me that (*name, description and address*) has committed (*or is suspected to have committed*) the offence of punishable under section of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (*name*) cannot be found; and whereas it has been shown to my satisfaction that the said (*name*) has absconded (*or is concealing himself to avoid the service of the said warrant*), and thereupon a Proclamation has been duly issued and published requiring the said to appear to answer the said charge within days, but he has not appeared; and whereas the said is possessed of certain land paying revenue to Government in the village (*or town*) of in the District of ;

You are hereby authorized and requested to cause the said land to be attached, and to be held under attachment pending the further order of this Court, and to certify without delay what you may have done in pursuance of this order.

Dated this day of 18 .

(*Seal.*)

(*Signature.*)

VII.—WARRANT IN THE FIRST INSTANCE TO BRING UP A WITNESS.

(*See section 88.*)

To (*name and designation of the Police-officer or other person or persons to execute the warrant*).

WHEREAS complaint has been made before me that of has (*or is suspected to have*) committed the offence of (*mention the offence concisely*), and it appears likely that (*name and description of witness*) can give evidence concerning the said complaint; and whereas I have good and sufficient reason to believe that he will not attend as a witness on the hearing of the said complaint unless compelled to do so;

This is to authorize and require you to serve the said (*name*) with this warrant, and to bring him before this Court on the day of , using no unnecessary violence or forceable restraint for that purpose, to be examined touching the offence complained of.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

SCHEDULE V—*continued.* FORMS.

VIII.—WARRANT TO SEARCH AFTER INFORMATION OF A PARTICULAR OFFENCE.

(*See section 95.*)

To (*name and designation of the Police-officer or other person or persons to execute the warrant*).

WHEREAS information has been laid (*or complaint has been made*) before me of the commission (*or suspected commission*) of the offence of (*mention the offence concisely*), and it has been made to appear to me that the production of (*specify the thing clearly*) is essential to the enquiry now being made (*or about to be made*) into the said offence (*or suspected offence*);

This is to authorize and require you to search for the said (*the thing specified*) in the (*describe the house or place, or part thereof, to which the search is to be confined*), and, if found, to produce the same forthwith before this Court: returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

IX.—WARRANT TO SEARCH SUSPECTED PLACE OF DEPOSIT.

(*See section 97.*)

To (*name and designation of a Police-officer above the rank of a Constable*).

WHEREAS information has been laid before me, and on due enquiry thereupon had I have been led to believe that the house (*describe the house or other place*) is used as a place for the deposit (*or sale*) of stolen property (*or, if for either of the other purposes expressed in the section, state the purpose in the words of the section*);

This is to authorize and require you to enter the said house (*or other place*) with such assistance as shall be required, and to use, if necessary, reasonable force for that purpose, and to search every part of the said house (*or other place, or, if the search is to be confined to a part, specify the part clearly*) and to seize and take possession of any property (*or documents, or stamps, or seals, or coins, as the case may be*)—[Add *when the case requires it*) and also of any instruments and materials which you may reasonably believe to be kept for the manufacture of forged documents, or counterfeit stamps, or false seals, or counterfeit coin (*as the case may be*),] and forthwith to bring before this Court such of the said things as may be taken possession of, returning this warrant with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

X.—BOND TO KEEP THE PEACE.

(*See section 105*).

WHEREAS I, (*name*), inhabitant of (*place*), have been called upon to enter into a bond to keep the peace for the term of , I hereby bind myself not to commit a breach of the peace or do any act that may probably occasion a breach of the peace during the said term; and in case of my making default therein, I hereby bind myself to forfeit to Her Majesty the sum of rupees .

Dated this day of 18 .

(*Signature.*)

XI.—FORM OF BOND FOR GOOD BEHAVIOUR.

(*See sections 108 and 109.*)

WHEREAS I, (*name*), inhabitant of (*place*), have been called upon to enter into a bond to be of good behaviour to Her Majesty the Queen and to all her subjects for the term of (*state the period*), I hereby bind myself to be of good behaviour to Her Majesty and to all her subjects during the said term; and in case of my making default therein, I bind myself to forfeit to Her Majesty the sum of rupees.

Dated this day of 18 .

(*Seal.*)

(*Signature.*)

FORMS. SCHEDULE V—*continued.*

XII.—SUMMONS ON INFORMATION OF A PROBABLE BREACH OF THE PEACE.

(*See section 113.*)

To of

WHEREAS it has been made to appear to me by credible information that (*state the substance of the information*) and that you are likely to commit a breach of the peace (*or by which act a breach of the peace will probably be occasioned*), you are hereby required to attend in person (*or by a duly authorized agent*) at the Magistrate's Office at on the day of 18 , at ten o'clock in the forenoon, to shew cause why you should not be required to enter into a bond for rupees (*when sureties are required add*) and also to give security by the bond of one (*or two as the case may be*) sureties in the sum of rupees (*each if more than one*), that you will keep the peace for the term of

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

XIII.—WARRANT OF COMMITMENT ON FAILURE TO FIND SECURITY TO KEEP THE PEACE.

(*See section 122.*)

To (*name and designation of Police-officer*) and to the Superintendent (*or Keeper*) of the Civil Jail at

WHEREAS (*name and place*) appeared before me in person (*or by his authorized agent*) on the day of in obedience to a summons calling upon him to shew cause why he should not enter into a bond for rupees with one surety (*or a bond with two sureties each in rupees*), that he the said (*name*) would keep the peace for the period of months; and whereas an order was then made requiring the said (*name*) to enter into and find such security (*state the security ordered when it differs from that mentioned in the summons*), and he has failed to comply with the said order;

This is to authorize and require you the said (*name of Police Constable*) to take and deliver, or cause to be taken and delivered, the said (*name*) to the Superintendent (*or Keeper*) of the said Civil Jail, and you the said Superintendent (*or Keeper*) to receive the said (*name*) into your custody together with this warrant, and him safely to keep in the said Jail for the said period of (*term of imprisonment*) unless he shall in the meantime comply with the said order by himself and his sureties entering into the said bond, in which case the same shall be received, and the said (*name*) released; and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

XIV.—WARRANT OF COMMITMENT ON FAILURE TO FIND SECURITY FOR GOOD BEHAVIOUR.

(*See section 122.*)

To (*name and designation of Police-officer*) and to the Superintendent (*or Keeper*) of the Civil Jail at

WHEREAS it has been made to appear to me that (*name and description*) has been and is lurking within the District of having no ostensible means of subsistence (*or, and that he is unable to give any satisfactory account of himself*);

or

WHEREAS evidence of the general character of (*name and description*) has been adduced before me and recorded from which it appears that he is by repute a robber (*or house-breaker, &c., as the case may be*);

or

WHEREAS evidence of the general character of (*name and description*) has been adduced before me and recorded from which it appears that he is by habit a robber (*or house-breaker, &c., as the case may be*);

And whereas an order has been recorded stating the same and requiring the said (*name*) to furnish security for his good behaviour for the term of (*state the period*) by entering into a bond with one surety (*or two or more sureties as the case may be*) himself for rupees , and the said surety (*or such of the said sureties*) for rupees , and the said (*name*) has failed to comply with the said order, and for such default has been adjudged imprisonment for (*state the term*) unless the said security be sooner furnished;

SCHEDULE V—*continued.* FORMS.

This is to authorize and require you the said (*name of Police-officer*) to take and deliver or cause to be taken and delivered the said (*name*) to the Superintendent (*or Keeper*) of the said Civil Jail, and you the said Superintendent (*or Keeper*) to receive the same (*name*) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (*term of imprisonment*), unless in the meantime he shall be prepared to furnish the said security, and in that event forthwith to cause him to be brought before the Court to be dealt with according to law; and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

XV.—WARRANT TO DISCHARGE A PERSON IMPRISONED ON FAILURE TO GIVE SECURITY.

(*See section 123.*)

To (*the Superintendent or Keeper*) of the Jail at (*or other officer in whose custody the person is*).

WHEREAS (*name and description of prisoner*) was committed to your custody under warrant of this Court, dated the day of , and has since with his surety (*or sureties*) duly entered into a recognizance,

or

and sufficient cause has been shewn to me for his release from further imprisonment,

or

and there have appeared to me sufficient grounds for the opinion that he can be released without any hazard to the community;

This is to authorize and require you forthwith to discharge the said (*name*) from your custody.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

XVI.—ORDER FOR THE REMOVAL OF NUISANCES.

(*See section 131.*)

To (*name, description and place of residence*).

WHEREAS it has been made to appear to me that you have caused an obstruction (*or nuisance*) to persons using the public roadway (*or other public place*), which, &c. (*describe the road or public place*), by, &c. (*state what it is that causes the obstruction or nuisance*), and that such obstruction (*or nuisance*) still exists;

or

WHEREAS it has been made to appear to me that you are carrying on as owner, or manager, the trade or occupation of (*state the particular trade and the place where it is carried on*), and that the same is injurious to the public health (*or comfort*) by reason (*state briefly in what manner the injurious effects are caused*), and should be suppressed or removed to a different place;

or

WHEREAS it has been made to appear to me that you are the owner (*or are in possession of or have the control over*) a certain tank (*or well*) adjacent to the public passage (*describe the thoroughfare*), and that the safety of the public is endangered by reason of the said tank (*or well*) being without a fence (*or insecurely fenced*);

or

WHEREAS, &c., &c. (*as the case may be*);

I do hereby direct and require you within (*state the time allowed*) to remove (*state what is required to be done to abate the nuisance*) or to appear at in the Court of on the day of next, and to show cause why this order should not be enforced;

or

I do hereby direct and require you within (*state the time allowed*) to cease carrying on the said trade or occupation at the said place, and not again to carry on the same, or to remove the said trade from the place where it is now carried on to (*specify the more suitable place by a limit of distance or local description*), or to appear, &c.;

or

I do hereby direct and require you within (*state the time allowed*) to put up a sufficient fence (*state the kind of fence and the part to be fenced*), or to appear, &c.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

FORMS

SCHEDULE V—*continued.*

XVII.—MAGISTRATE'S ORDER CONSTITUTING A JURY.

(*See section 136.*)

WHEREAS on the day of 18 , an order was issued to (*name*) requiring him (*state the effect of the order*) ; and whereas the said (*name*) has applied to me by a petition bearing date the day of for an order appointing a Jury to try whether the said recited order is reasonable and proper, I do hereby appoint (*the names, &c., of the five or more Jurors*) to be the Jury, to try and decide the said question, and do require the said Jury to report their decision within days from the date of this order at my office at

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

XVIII.—MAGISTRATE'S NOTICE AND PEREMPTORY ORDER AFTER THE FINDING BY A JURY.

(*See section 138.*)

To (*name, description and residence*).

I HEREBY give you notice that the Jury duly appointed on the petition presented by you on the day of have found that the order issued on the day of requiring you (*state substantially the requisition in the order*) is reasonable and proper, and I hereby direct and require you to obey the said order within (*state the time allowed*) on peril of the penalty provided by the Indian Penal Code for disobedience thereto.

Given under my hand and the seal of the Court, this day of 18

(*Seal.*)

(*Signature.*)

XIX.—INJUNCTION TO PROVIDE AGAINST IMMINENT DANGER PENDING ENQUIRY BY JURY.

(*See section 140.*)

To (*name, description and residence*).

WHEREAS the enquiry by a Jury appointed to try whether my order issued on the day of , 18 is reasonable and proper is still pending, and it has been made to appear to me that the nuisance mentioned in the said order is attended with so imminent serious danger to the public as to render necessary immediate measures to prevent such danger, I do hereby, under the provisions of section of the Code of Criminal Procedure, direct and enjoin you forthwith to (*state plainly what is required to be done as a temporary safeguard*), pending the result of the local enquiry by the Jury.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

XX.—MAGISTRATE'S ORDER TO PREVENT OBSTRUCTION, RIOT, &c.

(*See section 141.*)

To (*name, description and place of residence*).

WHEREAS it has been made to appear to me that you are in possession (*or have the management*) of (*describe clearly the property*), and that, in digging a drain on the said land, you are about to throw or place a portion of the earth and stones dug up upon the adjoining public road, so as to occasion risk of obstruction to persons using the road;

or

WHEREAS it has been made to appear to me that you and a number of other persons (*mention the class of persons*) are about to meet and proceed in a religious procession along the public street, &c. (*as the case may be*), and that such procession is likely to lead to a riot or an affray;

or

WHEREAS, &c., &c. (*as the case may be*) ; I do hereby order you not to place or permit to be placed any of the earth or stone dug from your land in any part of the said road ; or

I do hereby prohibit the procession passing along the said street, and strictly warn and enjoin you not to take any part in such procession (*or as the case recited may require*).

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

SCHEDULE V—*continued.*

FORMS.

XXI.—MAGISTRATE'S ORDER PROHIBITING THE REPETITION, &c., OF A NUISANCE.

(*See section 142.*)

To (*name, description and place of residence*).

WHEREAS it has been made to appear to me that, &c. (*state the proper recital guided by Form No. XX*) ;

I do hereby strictly order and enjoin you not to repeat the said nuisance by again placing or causing or permitting to be placed, &c. (*as the case may be*).

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

XXII.—MAGISTRATE'S ORDER DECLARING PARTY ENTITLED TO RETAIN POSSESSION OF LAND, &c., IN DISPUTE.

(*See section 143.*)

IT appearing to me, on the grounds duly recorded, that a dispute, likely to induce a breach of the peace, existed between (*describe the parties by name and residence, or residence only, if the dispute be between bodies of villagers*) concerning certain (*state concisely the subject of dispute*) situate within the local limits of my jurisdiction, all the said parties were called upon to give in a written statement of their respective claims as to the fact of actual possession of the said (*the subject of dispute*) and being satisfied by due enquiry had thereupon, without reference to the merits of the claim of either of the said parties to the legal right of possession, that the claim of actual possession by the said (*name or names or description*) is true,

I do decide and declare that he is (*or they are*) in possession of the said (*the subject of dispute*) and entitled to retain such possession until ousted by due course of law, and do strictly forbid any disturbance of his (*or their*) possession in the meantime.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

XXIII.—WARRANT OF ATTACHMENT IN THE CASE OF A DISPUTE AS TO THE POSSESSION OF LAND, &c.

(*See section 144.*)

To the Police-officer in charge of the Police-station at .

WHEREAS it has been made to appear to me that a dispute likely to induce a breach of the peace existed between (*describe the parties concerned by name and residence, or residence only, if the dispute be between bodies of villagers*) concerning certain (*state concisely the subject of dispute*) situate within the limits of my jurisdiction, and the said parties were thereupon duly called upon to state in writing their respective claims as to the fact of actual possession of the said (*the subject of dispute*), and whereas, upon due enquiry in the said claims, I have decided that neither of the said parties was in possession of the said (*the subject of dispute*) ;

This is to authorize and require you to attach the said (*the subject of dispute*) by taking and keeping possession thereof, and to hold the same under attachment until the decree or order of a competent Court determining the rights of the parties, or the claim to possession shall have been obtained ; and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of 18

(*Seal.*)

(*Signature.*)

XXIV.—MAGISTRATE'S ORDER PROHIBITING THE DOING OF ANY THING ON LAND OR WATER.

(*See section 145.*)

A DISPUTE having arisen concerning the right of use of (*state concisely the subject of dispute*) situate within the limits of my jurisdiction, the possession of which land (*or* water) is claimed exclusively by (*describe the person or persons*), and it appearing to me, on due enquiry into the same, that the said land (*or* water) has been open to the enjoyment of such use by the public (*or if by an individual or class of persons, describe him or them*), and (*if the use can be enjoyed throughout the year*) that the said use has been ordinarily enjoyed within three months of the

FORMS SCHEDULE V—*continued.*

institution of the said enquiry (*or, if the use is enjoyable only at particular seasons, say*: "*during the last of the seasons at which the same is capable of being enjoyed*");

I do order that the said (*the claimant or claimants of possession*), or any one in their interest, shall not take (*or* retain) possession of the said land (*or* water) to the exclusion of the enjoyment of the right of use aforesaid, until he (*or they*) shall obtain the decree or order of a competent Court adjudging him (*or them*) to be entitled to exclusive possession.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

XXV.—BOND AND BAIL-BOND ON A PRELIMINARY ENQUIRY BEFORE A POLICE-OFFICER.

(*See section 167.*)

I, (*name*), of , being charged with the offence of and after enquiry required to appear before the Magistrate of

or

and after enquiry called upon to enter into my own recognizance to appear when required , do hereby bind myself to appear at in the Court of on the day of next (*or on such day as I may hereafter be required to attend*) to answer further to the said charge, and, in case of my making default herein, I bind myself to forfeit to Her Majesty the Queen, Empress of India the sum of rupees .

Dated this day of 18 .

(*Signature.*)

I hereby declare myself (*or we jointly and severally declare ourselves and each of us*) surety (*or sureties*) for the above-said that he shall attend at , in the Court of , on the day of next (*or on such day as he may hereafter be required to attend*); further, to answer to the charge pending against him, and in case of his making default therein, I hereby bind myself to forfeit to Her Majesty the Queen, Empress of India the sum of rupees .

Dated this day of 18 .

(*Signature.*)

XXVI.—BOND TO PROSECUTE OR GIVE EVIDENCE.

(*See section 168.*)

I, (*name*), of (*place*), do hereby bind myself to appear at , in the Court of , at o'clock on the day of next, and then and there to prosecute (*or, as the case may be, to prosecute and give evidence, or to give evidence*) in the matter of a charge of against one A. B., and, in case of making default herein, I bind myself to forfeit to Her Majesty the sum of rupees .

Dated this day of 18 .

(*Signature.*)

XXVII.—NOTICE OF COMMITMENT BY MAGISTRATE OR GOVERNMENT PLEADER.

(*See section 220.*)

The Magistrate of hereby gives notice that he has committed one for trial at the next Sessions; and the Magistrate hereby instructs the Government Pleader to conduct the prosecution of the said case.

The charge against the accused is that, &c. (*state the offence as in the charge*).

Dated this day of 18 .

(*Signature.*)

XXVIII.—CHARGES.

(*See sections 223, 224, 225.*)

(I).—CHARGES WITH ONE HEAD.

(*a*). I, [*name and office of Magistrate, &c.*], hereby charge you, [*name of accused person*], as follows:—

On Penal Code, section 121.

(*b*). That you, on or about the day of , at , waged war against Her Majesty the Queen, Empress of India, and thereby committed an offence punishable under section 121 of the Indian

SCHEDULE V—*continued.* FORMS.

Penal Code, and within the cognizance of the Court of Session [*when the charge is framed by a Presidency Magistrate, for* Court of Session, *substitute* High Court].

(*c*). And I hereby direct that you be tried by the said Court on the said charge.

[*Signature and seal of the Magistrate.*]

[*To be substituted for* (*b*):—]

On section 124.

(2). That you, on or about the day of , at , with the intention of inducing the Honourable *A. B.*, Member of the Council of the Governor General of India, to refrain from exercising a lawful power as such Member, assaulted such Member, and thereby committed an offence punishable under section 124 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

On section 161.

(3). That you, being a public servant in the Department, directly accepted from [*state the name*], for another party [*state the name*], a gratification, other than legal remuneration, as a motive for forbearing to do an official act, and thereby committed an offence punishable under section 161 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 304.

(4). That you, on or about the day of , at , committed culpable homicide not amounting to murder, causing the death of , and thereby committed an offence punishable under section 304 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 306.

(5). That you, on or about the day of , at , abetted the commission of suicide by *A. B.*, a person in a state of intoxication, and thereby committed an offence punishable under section 306 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 325.

(6). That you, on or about the day of , at , voluntarily caused grievous hurt to , and thereby committed an offence punishable under section 325 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 392.

(7). That you, on or about the day of , at , committed robbery, an offence punishable under section 392 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 395.

(8). That you, on or about the day of , at , committed dacoity, an offence punishable under section 395 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 166.

(9). That you, on or about the day of , at , did [*or* omitted to do, *as the case may be*] , such conduct being contrary to the provisions of Act , section , and was known by you to be prejudicial to , and thereby committed an offence punishable under section 166 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 193.

(10). That you, on or about the day of , at , in the course of the trial of , before stated in evidence that " ," which statement you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under section 193 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

[*In cases tried by Magistrates, substitute* "within my cognizance" *for* "within the cognizance of the Court of Session." *In* (*d*) *omit* "by the said Court."]

(II).—CHARGES WITH TWO OR MORE HEADS.

(*a*) I, [*name and office of Magistrate, &c.*], hereby charge you, [*name of accused person*], as follows:—

On sections 241 and 242.

(*b*) *First.*—That you, on or about the day of at , knowing a coin to be counterfeit, delivered the same to another person, by name *A. B.*, as genuine, and thereby committed an offence punishable under section 241 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

Secondly.—That you, on or about the day of , at , knowing a coin to be counterfeit, attempted to induce another person, by name *A. B.*, to receive it as

FORMS SCHEDULE V—*continued.*

genuine, and thereby committed an offence punishable under section 242 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

(*c*). And I hereby direct that you be tried by the said Court on the said charge.

[*Signature and seal of the Magistrate.*]

On sections 302 and 304.

For (*b*) *First.*—That you, on or about the day of , at , committed murder by causing the death of , and thereby committed an offence punishable under section 302 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

Secondly.—That you, on or about the day of , at , by causing the death of , committed culpable homicide, and thereby committed an offence punishable under section 304 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On sections 379 and 382.

For (*b*) *First.*—That you, on or about the day of , at , committed theft, and thereby committed an offence punishable under section 379 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

Secondly.—That you, on or about the day of , at , committed theft, having made preparation for causing death to a person in order to the committing of such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

Thirdly.—That you, on or about the day of , at , committed theft, having made preparation for causing restraint to a person in order to the effecting of your escape after the committing of such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

Fourthly.—That you, on or about the day of , at , committed theft, having made preparation for causing fear of hurt to a person in order to the retaining of property taken by such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

Alternative charges on section 193.

For (*b*) That you, on or about the day of , at , in the course of the enquiry into before , stated in evidence that " ," and that you, on or about the day of at , in the course of the trial of , before , stated in evidence that " ," one of which statements you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under section 193 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

In trials before Magistrates, substitute " within my cognizance " *for* " within the cognizance of the Court of Session " *and omit* " by the said Court. "

XXIX.—WARRANT OF COMMITMENT ON A SENTENCE OF IMPRISONMENT OR FINE IF PASSED BY A MAGISTRATE.

(*See sections 248 and 261.*)

To (*name and designation of Police Constable*) and to the Superintendent (*or Keeper*) of the Jail at

WHEREAS on the day of 18 (*name of prisoner*) the (*1st, 2nd, 3rd, as the case may be*) prisoner in case No. of the calendar for 18 was convicted before me (*name and official designation*) of the offence of (*mention the offence or offences concisely*) under section (*or sections*) of the Penal Code (*or of Act*), and was sentenced to (*state the punishment fully and distinctly*);

This is to authorize and require you the said (*name of Police Constable*) to take and deliver, or cause to be taken and delivered, the said, (*name of offender*) to the Superintendent (*or Keeper*) of the said jail, and you the said (*Superintendent or Keeper*) to receive the said (*prisoner's name*) into your custody in the said jail together with this warrant, and there carry the aforesaid sentence into execution according to law.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

SCHEDULE V—*continued.* FORMS.

XXX.—WARRANT OF IMPRISONMENT ON FAILURE TO RECOVER AMENDS BY DISTRESS.

(*See section 253.*)

To (*name and designation of Police Constable*) and to the Superintendent (*or Keeper*) of the Civil Jail at

WHEREAS (*name and description*) has brought against (*name and description of the accused person*) the complaint that (*mention it concisely*) and the same has been dismissed as frivolous and vexatious, and the order of dismissal awards payment by the said (*name of complainant*) of the sum of rupees as amends; and whereas the said sum has not been paid and cannot be recovered by distress of the moveable property of the said (*name of complainant*) and an order has been made for his imprisonment in jail for the period of days, unless the aforesaid sum be sooner paid;

This is to authorize and require you the said (*name of Police Constable*) to take and deliver, or cause to be taken and delivered, the said (*name*) to the Superintendent (*or Keeper*) of the said Civil Jail, and you the said Superintendent (*or Keeper*) to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (*term of imprisonment*) unless the said sum be sooner paid, and on the receipt thereof forthwith to set him at liberty: returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

XXXI.—SUMMONS TO A WITNESS.

(*See section 65 and 255.*)

To of

WHEREAS complaint has been made before me that of has (*or is suspected to have*) committed the offence of (*state the offence concisely with time and place*) and it appears to me that you are likely to give material evidence for the prosecution;

You are hereby summoned to appear before this Court on the day of next at ten o'clock in the forenoon, to testify what you know concerning the matter of the said complaint, and not to depart thence without leave of the Court; and you are hereby warned that if you shall without just excuse neglect or refuse to appear on the said date, a warrant will be issued to compel your attendance.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

XXXII.—WARRANT OF COMMITMENT ON A SENTENCE OF IMPRISONMENT OR FINE IF PASSED BY A MAGISTRATE.

(*See section 261.*)

To (*name and designation of Police Constable*) and to the Superintendent (*or Keeper*) of the Jail at

WHEREAS on the day of 18 , (*name of prisoner*) the (*1st, 2nd, 3rd, as the case may be*) prisoner in case No. of the Calendar for 18 was convicted before me (*name and official designation*) of the offence of (*mention the offence or offences concisely*) under section (*or sections*) of the Penal Code (*or of Act*), and was sentenced to (*state the punishment fully and distinctly*);

This is to authorize and require you the said (*name of Police Constable*) to take and deliver or cause to be taken and delivered, the said (*name of offender*) to the Superintendent (*or Keeper*) of the said jail, and you the said (*Superintendent or Keeper*) to receive the said (*prisoner's name*) into your custody in the said jail together with this warrant, and there carry the aforesaid sentence into execution according to law.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

FORMS.

SCHEDULE V—*continued.*

XXXIII.—PRECEPT TO MAGISTRATE TO SUMMON JURORS AND ASSESSORS.

(See section 328.)

To the Magistrate of

WHEREAS a Criminal Session is appointed to be held in the Court-house at on the day of next, and the names of the persons herein stated have been duly drawn by lot from among those named of the revised list of jurors and assessors furnished to this Court, you are hereby required to summon the said persons to attend at the said Court of Session at 10 A. M. on the said date, and, within such date, to certify that you have done so in pursuance of this precept.

(Here enter the names of Jurors and Assessors.)

Given under my hand and the Seal of the Court, this day of 18 .

(Seal.)

(Signature.)

XXXIV.—SUMMONS TO JUROR OR ASSESSOR.

(See section 330.)

To (*name*) of (*place*).

PURSUANT to a precept directed to me by the Court of Session of requiring your attendance as an Assessor (*or Juror*) at the next Criminal Session, you are hereby summoned to attend at the said Court of Session at ten o'clock in the forenoon on the day of next.

Given under my hand and seal of office, this day of 18 .

(Seal.)

(Signature.)

XXXV.—WARRANT OF COMMITMENT UNDER SENTENCE OF DEATH.

(See section 369.)

To (*the Superintendent or Keeper*) of the Jail at

WHEREAS at the Sessions held before me on the day of 18 , (*name of prisoner*), the (*1st, 2nd, 3rd, as the case may be*) prisoner in case No. of the calendar, at the said Session, was duly convicted of the offence of culpable homicide amounting to murder under section of the Penal Code, and sentenced to suffer death, subject to the confirmation of the said sentence by the Court of Court ;

This is to authorize and require you, the said (*Superintendent or Keeper*), to receive the said (*prisoner's name*) into your custody in the said Jail, together with this warrant, and him there safely keep until you shall receive the further warrant or order of this Court, carrying into effect the order of the said Court.

Given under my hand and the seal of the Court, this day of 18 .

(Seal.)

(Signature.)

XXXVI.—WARRANT OF EXECUTION ON A SENTENCE OF DEATH.

(See section 383.)

To the Superintendent (*or Keeper*) of the Jail at

WHEREAS (*name of prisoner*) the (*1st, 2nd, 3rd, as the case may be*) prisoner in case No. of the calendar, at the Sessions held before me on the day of 18 , has been by a warrant of this Court, dated the day of , committed to your custody under sentence of death, and whereas the order of the Court of confirming the said sentence has been received by this Court;

This is to authorize and require you the said Superintendent (*or Keeper*) to carry the said sentence into execution by causing the said to be hanged by the neck until be dead, at the usual time and place of execution, and to return this warrant to the Court with an endorsement certifying that the sentence has been executed.

Given under my hand and the seal of the Court, this day of 18 .

(Seal.)

(Signature.)

SCHEDULE V—*continued.*

FORMS.

XXXVII.—WARRANT AFTER A COMMUTATION OF A SENTENCE.

(See section 384.)

To the Superintendent (*or Keeper*) of the Jail at

WHEREAS at a Session held on the day of 18, (*name of prisoner*) the (*1st, 2nd, or 3rd, as the case may be*) prisoner in case No. of the calendar, at the said Sessions, was convicted of the offence of , punishable under section of the Indian Penal Code, and sentenced to , and was thereupon committed to your custody; and whereas by the order of the Court of Court (*a duplicate of which is hereunto annexed*) the punishment adjudged by the said sentence has been commuted to the punishment of transportation for life (*or as the case may be*);

This is to authorize and to require you, the said (*Superintendent or Keeper*), safely to keep the said (*prisoner's name*) in your custody in the said Jail, as by law is required, until he shall be delivered over by you to the proper authority and custody for the purpose of his undergoing the punishment of transportation under the said order,

or

if the mitigated sentence is one of imprisonment, say after the words "custody in the said Jail," and there to carry into execution the punishment of imprisonment under the said order according to law.

Given under my hand and the seal of the Court, this day of 18 .

(Seal.)

(Signature.)

XXXVIII.—WARRANT TO LEVY A FINE BY DISTRESS AND SALE.

(See section 389.)

To (*name and designation of the Police-officer or other person, or persons, to execute the warrant*).

WHEREAS (*name and description of the offender*) was on the day of 18 , convicted before me of the offence of (*mention the offence concisely*) and sentenced to pay a fine of rupees , and whereas the said (*name*), although required to pay the said fine, hath not paid the same or any part thereof;

This is to authorize and require you to make distress by seizure of any moveable property belonging to the said (*name*) which may be found within the District of ; and, if within (*state the number of days or hours allowed*) next after such distress the said sum shall not be paid (*or forthwith*), to sell the moveable property distrained, or so much thereof as shall be sufficient to satisfy the said fine; returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this day of 18 .

(Seal.)

(Signature.)

XXXIX.—WARRANT OF COMMITMENT IN CERTAIN CASES OF CONTEMPT WHEN A FINE IS IMPOSED.

(See section 480,)

To (*name and designation of Police Constable*) at the Police-station of and to (*name*) the Superintendent (*or Keeper*) of the Civil Jail at

WHEREAS at a Court holden before me on this day (*name and description of the offender*) in the presence (*or view*) of the Court committed wilful contempt, for that he

(*a*) being legally bound (*state whether in obedience to the summons or order of the Court, or how otherwise*) to produce (*or deliver up*) a certain (*specify the document*) to the Court (*if to a particular officer so state*), intentionally omitted to produce or deliver up the said (*document specified*) when required to do so;

Applicable to a case under section 175 of the Penal Code.

(*b*) being legally required by the Court to bind himself by an oath (*or solemn affirmation*) duly administered to state the truth as a witness on the hearing of a suit (*or if not a suit as the fact may be*), wilfully refused to take such oath (*or solemn affirmation*) without alleging any just excuse for such refusal;

Applicable to a case under section 178 of the Penal Code.

(*c*) being a witness in (*state the suit or enquiry or other proceeding as the case may be*), and legally bound by an oath (*or solemn affirmation*) duly administered to state the truth, wilfully refused to give answer to a question (*or questions*) put to him by the Court touching

Aplicable to a case under section 179 of the Penal Code.

FORMS. SCHEDULE V—*continued.*

the subject-matter of the said suit (*or other proceeding*) without alleging any just cause for such refusal;

(*d*) being legally required by the Court (*or if by a duly empowered Ministerial Officer so state*) to sign a written record of the statements made by him as a witness on the hearing of a suit (*or if not a suit, as the fact may be*) wilfully refused to sign the same when required so to do, without alleging any just cause for such refusal;

Applicable to a case under section 180 of the Penal Code.

(*e*) wilfully insulted me whilst sitting in Court and engaged in the hearing of (*state the judicial proceeding*) or wilfully caused an interruption during the sitting of the Court, and whilst I was engaged in the hearing of (*state the judicial proceeding*) by (*mention concisely the conduct causing the contempt.*)

Applicable to a case under section 228 of the Penal Code.

And whereas for such his contempt the said (*name of offender*) has been adjudged by the Court to pay a fine of rupees or in default to suffer imprisonment for the space of (*state the number of months or days*);

This is to authorize and require you, the said (*name of Police Constable*), to take and deliver, or cause to be taken and delivered, the said (*name of offender*) to the Superintendent (*or Keeper*) of the said Civil Jail, and you, the said Superintendent (*or Keeper*) of the said Civil Jail, to receive the said (*name of offender*) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (*term of imprisonment*) unless the said fine be sooner paid; and on the receipt thereof, forthwith to set him at liberty, returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

XL.—MAGISTRATE'S WARRANT OF COMMITMENT FOR REFUSING TO ANSWER WHERE THERE IS NO FINE.

(*See section 485.*)

To (*name and designation of Police Constable*) at the Police-station of

WHEREAS (*name and description*) being summoned (*or brought before this Court*) as a witness and this day required to give evidence on an enquiry into an alleged offence refused to answer a certain question (*or questions*) put to him touching the said alleged offence, and duly recorded without alleging any just excuse for such refusal, and for his contempt has been adjudged detention in custody for (*term of detention adjudged*);

This is to authorize and require you to take the said (*name*) into custody, and him safely keep in the Lock up of the said station for the space of days unless in the meantime he shall consent to be examined and to answer the questions asked of him, and on the last of the said days, or forthwith on such consent being known, to bring him before this Court to be dealt with according to law; returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

XLI.—SESSIONS JUDGE'S WARRANT OF COMMITMENT FOR REFUSING TO ANSWER.

(*See section 480.*)

To (*name and designation of the Police Constable at the Police-station of*)

WHEREAS (*name and description*) being a witness in case No. of the calendar of cases for trial at the Court of Session holden before me on this day, and being required by the Court to answer a certain question (*or questions*) put to him on the hearing of the said case, and duly recorded has refused to answer the said question (*or questions*) without alleging any just excuse for such refusal, and for his contempt has been adjudged detention in custody, for (*term of detention adjudged*); This is to authorize and require you to take the said (*name*) into custody, and him safely to keep in the lock-up of the said station for the space of days, unless in the meantime he shall consent to be examined, and to answer the question (*or questions*) asked of him, and on the last of the said days, or forthwith on such consent being known, to bring him before this Court to be dealt with according to law; returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

SCHEDULE V—*continued.* FORMS

XLII.—WARRANT OF IMPRISONMENT ON FAILURE TO PAY MAINTENANCE.

(*See section 488.*)

To (*name and designation of Police Constable*) and to the Superintendent (*or Keeper*) of the Jail at

WHEREAS (*name, description and address*) has been proved before me to be possessed of sufficient means to maintain his wife (*name*) [*or his child* (*name*)], who is by reason of (*state the reason*) unable to maintain (*herself or himself*) and to have neglected (*or refused*) to do so, and an order has been duly made requiring the said (*name*) to allow to his said wife (*or child*) for maintenance the monthly sum of rupees , and whereas it has been further proved that the said (*name*) in wilful disregard of the said order has failed to pay rupees , being the amount of the allowance for the month (*or months*) of : And thereupon an order was made adjudging him to undergo simple (*or rigorous*) imprisonment in the said jail for the period of ;

This is to authorize and require you the said (*name of Police-officer*) to take and deliver, or cause to be taken and delivered, the said (*name*) to the Superintendent (*or Keeper*) of the said Civil Jail, and you the said Superintendent (*or Keeper*) to receive the said (*name*) into your custody in the said jail, together with this warrant, and there carry the said order into execution according to law; returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

XLIII.—WARRANT TO ENFORCE THE PAYMENT OF MAINTENANCE BY DISTRESS AND SALE.

(*See section 488.*)

To (*name and designation of the Police-officer or other person to execute the warrant*).

WHEREAS (*name and description and address*) has been proved before me to be possessed of sufficient means to maintain his wife (*name*) [or his child (*name*)], who is by reason of (*state the reason*) unable to maintain (*herself or himself*), and to have neglected (*or refused*) to do so, and an order has been duly made requiring the said (*name*), to allow to his said wife (*or child*) for maintenance the monthly sum of rupees , and whereas it has been further proved that the said (*name*) in wilful disregard of the said order has failed to pay rupees , being the amount of the allowance for the month (*or months of*);

This is to authorize and require you to make distress by seizure of any moveable property belonging to the said (*name*) which may be found within the district of , and if within (*state the number of days or hours allowed*) next after such distress the said sum shall not be paid (*or forthwith*), to sell the moveable property distrained, or so much thereof as shall be sufficient to satisfy the said sum; returning this warrant with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

XLIV.—WARRANT OF COMMITMENT UNDER SECTION 492.

To the (*here insert the officer's designation*).

WHEREAS the Governor General (*or* the Governor of Fort St. George, *or* the Governor of Bombay, *as the case may be*) in Council, for good and sufficient reasons, has seen fit to determine that (*here insert the State-prisoner's name*) shall be placed under personal restraint at (*here insert the name of the place*), you are hereby required, in pursuance of that determination, to receive the person above-named into your custody, and to deal with him in conformity to the orders of the Governor General (*or* the Governor) in Council, and the provisions of the Code of Criminal Procedure, chapter XXXVIII.

Fort William (*or as the case may be*), the

By order of the Governor General (*or* the Governor) in Council.

A. B.,

Secretary (*or Chief Secretary*) to Government.

FORMS

SCHEDULE V—*continued.*

XLV.—BOND AND BAIL-BOND ON A PRELIMINARY ENQUIRY BEFORE A MAGISTRATE.

(See sections 505, 509.)

I, (*name*), of (*place*), being brought before the Magistrate of (*as the case may be*) charged with the offence of , and required to give security for my attendance in his Court and at the Session Court, if required, do bind myself to attend at the Court of the said Magistrate on every day of the preliminary enquiry into the said charge, and should the case be sent for trial by the Session Court to be, and appear, before the said Court when called upon to answer the charge against me, and in case of my making default herein, I bind myself to forfeit to Her Majesty the sum of rupees .

Dated this day of 18 .

(*Signature.*)

I hereby declare myself (*or we jointly or severally declare ourselves and each of us*) surety for the said (*name*) that he shall attend at the Court of on every day of the preliminary enquiry into the offence charged against him, and should the case be sent for trial by the Session Court, that he shall be and appear before the said Court to answer the charge against him, and in case of his making default therein, I bind myself to forfeit to Her Majesty the Empress the sum of rupees .

Dated this day of 18 .

(*Signature.*)

XLVI.—WARRANT TO DISCHARGE A PERSON IMPRISONED ON FAILURE TO GIVE SECURITY.

(See section 510.)

To (*the Superintendent or Keeper*) of the Jail at (*or other Officer in whose custody the person is*).

WHEREAS (*name and description of prisoner*) was committed to your custody under warrant of this Court, dated the day of , and has since with his surety (*or sureties*) duly executed a bond,

or

and sufficient cause has been shewn to me for his release from further imprisonment,

or

and there have appeared to me sufficient grounds for the opinion that he can be released without any hazard to the community;

This is to authorize and require you forthwith to discharge the said (*name*) from your custody.

Given under my hand and the seal of the Court, this day of 18 .

(*Signature.*)

XLVII.—WARRANT OF ATTACHMENT TO ENFORCE A BOND.

(See section 525.)

To (*the Police-officer in charge*) of the Police-station at

WHEREAS (*name, description and address of person*) has failed to appear on (*mention the occasion*) pursuant to his recognizance, and has by such default forfeited to Her Majesty the Empress the sum of rupees (*the penalty in the bond*);

This is to authorize and require you to attach any moveable property of the said (*name*) that you may find within the district of by seizure and detention, and if the said amount be not paid within three days to sell the property so attached or so much of it as may be sufficient to realize the amount aforesaid, and to make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

FORMS

SCHEDULE V—*continued.*

XLVIII.—NOTICE TO SURETY ON BREACH OF A BOND.

To of

WHEREAS on the day of 18 , you became surety for (*name*) of (*place*), that he should appear before this Court on the day of , and bound yourself in default thereof to forfeit the sum of rupees to Her Majesty the Empress; and whereas the said (*name*) has failed to appear before this Court, and by reason of such default you have forfeited the aforesaid sum of rupees , you are hereby required to pay the said penalty or shew cause, within days from this date, why payment of the said sum should not be enforced against you.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

XLIX.—NOTICE TO SURETY OF FORFEITURE OF BOND FOR GOOD BEHAVIOUR.

To of

WHEREAS on the day of 18 , you became surety by a bond for (*name*) of (*place*) that he would keep the peace for the period of , and bound yourself in default thereof to forfeit the sum of rupees to Her Majesty the Empress; and whereas the said (*name*) has been convicted of the offence of (*mention the offence concisely*) committed since you became such surety, whereby your security-bond has become forfeited;

You are hereby required to pay the said penalty of rupees , or to show cause within days, why it should not be paid.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

L.—WARRANT OF ATTACHMENT AGAINST A SURETY.

To

WHEREAS (*name, description and address*) has bound himself as surety for the appearance of (*mention the condition of the bond*), and the said (*name*) has made default, and thereby forfeited to Her Majesty the Empress the sum of rupees (*the penalty in the bond*);

This is to authorize and require you to attach any moveable property of the said (*name*) which you may find within the district of by seizure and detention. If the said amount be not paid within three days, to sell property so attached, or so much of it as may be sufficient to realize the amount aforesaid, and make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

LI.—WARRANT OF COMMITMENT OF THE SURETY OF AN ACCUSED PERSON ADMITTED TO BAIL.

To (*name and designation of Police-officer*) and the Superintendent (*or Keeper*) of the Civil Jail at

WHEREAS (*name and description of surety*) has bound himself as a surety for the appearance of (*state the condition of the bond*), and the said (*name*) has therein made default whereby the penalty mentioned in the said bond has been forfeited to Her Majesty the Empress; and whereas the said (*name of surety*) has, on due notice to him, failed to pay the said sum or shew any sufficient cause why it should not be enforced against him, and the same cannot be recovered by attachment and sale of moveable property of his, and an order has been made for his confinement in Jail for (*specify the period*);

This is to authorize and require you the said (*name of Police-officer*) to take and deliver, or cause to be taken and delivered, the said (*name*) to the Superintendent (*or Keeper*) of the said Civil Jail, and you the said Superintendent (*or Keeper*) to receive the said (*name*) into your custody with this warrant and him safely to keep in the said Jail for the said (*term of imprisonment*), and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

FORMS

SCHEDULE V—*continued.*

LII.—NOTICE OF FORFEITURE OF A BOND TO KEEP THE PEACE TO THE PRINCIPAL.

To (*name, description and address*).

WHEREAS on the day of 18 , you entered into a bond (*or recognizance*) not to commit, &c. (*as in the bond or recognizance*), and proof of the forfeiture of the same has been given before me and duly recorded;

You are hereby called upon to pay the said penalty of rupees or to shew cause before me within days, why payment of the same should not be enforced against you.

Dated this day of 18 .

(*Seal.*) (*Signature*)

LIII.—WARRANT TO ATTACH THE PROPERTY OF THE PRINCIPAL ON BREACH OF A BOND TO KEEP THE PEACE.

To (*name and designation of Police-officer*) at the Police-station of

WHEREAS (*name and description*) did on the day of 18 , enter into a bond for the sum of rupees , binding himself not to commit a breach of the peace, &c. (*as in the bond*), and proof of the forfeiture of the said bond or recognizance has been given before me and duly recorded; and whereas notice has been given to the said (*name*) calling upon him to shew cause why the said sum should not be paid, and he has failed to do so or to pay the said sum;

This is to authorize and require you to attach by seizure moveable property belonging to the said (*name*) to the value of rupees which you may find within the district of , and if the said sum be not paid within to sell the property so attached, or so much of it as may be sufficient to realize the same; and to make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature*)

LIV.—WARRANT OF IMPRISONMENT ON BREACH OF A BOND TO KEEP THE PEACE.

To (*name and designation of Police-officer*) and to the Superintendent (*or Keeper*) of the Civil Jail at

WHEREAS proof has been given before me and duly recorded that (*name and description*) has committed a breach of the bond or recognizance entered into by him to keep the peace whereby he has forfeited to Her Majesty the Empress the sum of rupees ; and whereas the said (*name*) has failed to pay the said sum or to shew cause why the said sum should not be paid, although duly called upon to do so, and payment thereof cannot be enforced by attachment of his moveable property, and an order has been made for the imprisonment of the said (*name*) in the Civil Jail for the period of (*term of imprisonment*);

This is to authorize and require you the said (*name of Police-officer*) to take and deliver, or cause to be taken and delivered, in the said (*name*) to the Superintendent (*or Keeper*) of the said Civil Jail; and you the said Superintendent (*or Keeper*) to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (*term of imprisonment*); and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

LV.—WARRANT OF ATTACHMENT AND SALE ON FORFEITURE OF BOND FOR GOOD BEHAVIOUR.

To the Police-officer in charge of the Police-station at

WHEREAS (*name, description and residence*) did on the day of 18 , give security by bond in the sum of rupees for the good behaviour of (*name, &c., of the principal*), and proof has been given before me and duly recorded of the commission by the said (*name*) of the offence of whereby the said bond has been forfeited; and whereas notice has been given to the said (*name*) calling upon him to show cause why the said sum should not be paid, and he has failed to do so or to pay the said sum;

SCHEDULE V—*continued.*

FORMS.

This is to authorize you and require you to attach by seizure moveable property belonging to the said (*name*) to the value of rupees which you may find within the District of , and if the said sum be not paid within to sell the property so attached, or so much of it as may be sufficient to realize the same, and to make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

LVI.—WARRANT OF IMPRISONMENT ON FORFEITURE OF A BOND FOR GOOD BEHAVIOUR.

To (*name and designation of Police-officer*) and to the Superintendent (*or Keeper*) of the Civil Jail at

WHEREAS (*name, description and residence*) did on the day of 18 , give security by bond in the sum of rupees for the good behaviour of (*name, &c., of the principal*), and proof of the breach of the said bond has been given before me and duly recorded, whereby the said (*name*) has forfeited to Her Majesty the Empress the sum of rupees ; and whereas he has failed to pay the said sum or to show cause why the said sum should not be paid, although duly called upon to do so, and payment thereof cannot be enforced by attachment of his moveable property, and an order has been made for the imprisonment of the said (*name*) in the Civil Jail for the period of (*term of imprisonment*);

This is to authorize and require you the said (*name of Police Constable*) to take and deliver or cause to be taken and delivered the said (*name*) to the Superintendent (*or Keeper*) of the said Civil Jail, and you the said Superintendent (*or Keeper*) to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (*term of*) *imprisonment*); returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

STATEMENT OF OBJECTS AND REASONS.

No less than three Codes of Criminal Procedure are now in operation in British India: Act X of 1872, amended by Act XI of 1874, which is in force throughout the Mufassal; the High Courts' Act, X of 1875, which is in force in the Presidency-towns, Allahabad and Lahore, and the Presidency Magistrates' Act, IV of 1877, also in force in the Presidency-towns.

Many of the provisions of these Codes merely repeat one another; many of their rules, though dealing with the same subjects, unnecessarily vary in language; and the result is that the bulk of the Indian Statute-book is far greater than need be and that the Courts when construing one Code are often deprived of the guidance of prior decisions on another.

The primary object of this Bill, which has been framed at the suggestion of the Secretary of State, is to recast the Code of 1872, combining with it the substance of the High Courts' Act and the Presidency Magistrates' Act, and incorporating in it the numerous reported decisions on its wording, and thus at last give to India a single and complete Code of Criminal Procedure, and carry out, so far, the policy of providing a simple and uniform system of law for this country. The language and arrangement of Act X of 1872 have, for obvious reasons, been departed from only so far as is necessary for the main purpose of the Bill.

2. Though many of the outlying Acts and Regulations dealing with Criminal Procedure were repealed and re-enacted by Act X of 1872, many more are still untouched, and the secondary object of the present Bill is to consolidate these enactments, which are eleven in number:—

Acts.

XXIII of 1840 (Execution of process).
XXXIV of 1850 (State prisoners).
III of 1858 (State prisoners).
XVIII of 1862 (Administration of Criminal Justice in the High Courts).
II of 1869 (Justices of the Peace).
XXII of 1870, sections 2 and 4 (Application to European British subjects of Acts giving summary jurisdiction).

Regulations.

Bengal Regulation III, 1818 (State prisoners).
Bengal Regulation XX of 1825 (Jurisdiction of Courts Martial).
Madras Regulation II, 1819 (State prisoners).
Bombay Regulation XXV, 1827 (State prisoners).

3. The result of consolidating the Acts and Regulations above specified will be to substitute a single Act of 566 sections for fourteen enactments containing about one thousand unrepealed sections.

4. The present Bill is divided into nine Parts, the first containing the usual preliminary matter; the second dealing with the constitution and powers of the Criminal Courts and offices; the third containing some general provisions; the fourth treating of the prevention of offences; the fifth, of information to the Police and of their powers to investigate; the sixth, of proceedings in prosecutions; the seventh, of appeal, reference and revision; the eighth, of special proceedings; the ninth, of supplementary provisions.

Preliminary.

5. Part I consists of a single chapter containing the usual preliminary matter. The wording of some of the definitions in Act X of 1872 has been amended and definitions of 'to sign,' 'public prosecutor,' 'pleader,' 'offence,' 'chapter,' 'schedule' and 'place' have been added. The definition of 'European British subject' has been extended to persons naturalized in British India. Words referring to acts done are declared to extend also to illegal omissions, and words such as 'special law,' 'local law,' defined in the Penal Code will have the meanings attached to them respectively by that Code. On the other hand, the definitions of 'inquired into,' 'trial,' 'Magistrate's case,' have been omitted as not needed in the Code in its revised form.

Criminal Courts.

6. Part II (constitution and powers of the Criminal Courts and offices) consists of two chapters, of which the first deals (*a*) with the classes of Criminal Courts, (*b*) with territorial divisions, (*c*) with Courts outside the Presidency-towns, (*d*) with the Courts of the Presidency Magistrates, (*e*) with Justices of the Peace and (*f*) with the suspension and removal of Judges, Magistrates and Justices of the Peace. The second chapter treats of the powers of Judges and Magistrates, the description of offences cognizable by each Court, the sentences which may be passed by Courts of various classes, and the mode of conferring powers on the latter. The changes of the law here made are little more than verbal, save that in section 39 (= Act X of 1872, section 56), as to the continuance of powers of an officer transferred to another local area, words have been introduced to shew clearly that the direction therein mentioned may have preceded the transfer. In connection with section 33 as to power to sentence to imprisonment in default of payment of fine, it will be necessary to pass simultaneously with the Bill a short Act amending section 67 of the Penal Code, by inserting a declaration that such imprisonment shall be simple.

Section 35 declares, in accordance with a decision of the Bombay High Court, that, for the purpose of confirmation or appeal, a combined sentence, in case of simultaneous convictions for several offences, shall be deemed to be a single sentence.

General Provisions.

7. Part III contains certain general provisions which it seems convenient to group together and which, to avoid forward references, must stand near the beginning of the Code. They relate to the following matters: aid and information to the Magistrates and Police: arrest, escape and retaking: processes to compel appearance and production of documents. Here, again, the changes in the law are little more than verbal, save that, to the offences which the public are bound to assist in preventing, has been added (section 41) attempts to injure public property: that the section (44) authorizing, in the case of forcible resistance, the use of necessary means to effect arrests, has been extended to meet the case of attempts to evade them; that power has been given (section 47) to break open the doors of a house for the purpose of liberating persons who have lawfully entered for the purpose of making arrests therein: that persons making arrests have been expressly empowered (section 50) to take from the person arrested any offensive weapons which he may have about him; that the Police have been authorized to arrest, without warrant, deserters from the Navy; and that sections (63, 64) equivalent to Act XXV of 1861, section 112, have been inserted to provide for the retaking of persons escaping or rescued from lawful custody.

8. Under the present Code (Act X of 1872, section 153), summonses issued by Magistrates are ordinarily served "through a Police-officer:" the Bill (section 65) provides that they shall ordinarily be served by an officer of the Court, but that the Magistrate may direct service by the Police. Persons to or with whom a summons is delivered, tendered or left may be required (section 67) to countersign a copy of the original. Provision is made (sections 70, 71) for the service of a summons outside the local jurisdiction of the Magistrate who issues it, and for the proof of such service.

9. Section 72 requires that all warrants of arrest, whether issued in the Presidency-towns or the Mufassal, shall be sealed. Act IV of 1877, section 56, does not in such cases require a seal.

10. Section 85 clears up a doubt as to the commencement of the period provided in the corresponding section (171) of Act X of 1872, for the appearance of a person absconding against whom a warrant has been issued.

11. On the other hand, the power to arrest without warrant persons against whom a hue and cry has been raised is omitted, as that obsolete common-law process is unknown in India, and

the section authorizing masters and mates to arrest deserters from ships is omitted, as the matter is sufficiently provided for by the Merchant Shipping Act.

Prevention of Offences.

12. Part IV, which relates to the prevention of offences, comes, it is considered, properly before Part VI, which relates to their prosecution. It comprises six chapters dealing respectively with lawful resistance; security for keeping the peace and for good behaviour; the dispersion of unlawful assemblies; suppression of nuisances; disputes as to immoveable property; and, lastly, the preventive action of the Police.

13. The provision (section 104) relating to lawful resistance to the commission of an offence is new. It declares that such resistance may be made by any person in the cases and to the extent in and to which he may exercise the right of private defence—a right defined and limited by the Penal Code, sections 96—106.

14. In the chapter relating to bonds for keeping the peace, and for good behaviour, provision has been made (section 116) as to the manner of conducting inquiries. We have made it clear in section 124 that a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, and Magistrate of the first class can cancel a bond on the application of a surety. Such Magistrates are also empowered (section 108) to require security for good behaviour.

15. In the chapter (X) on dispersion of unlawful assemblies, volunteers enrolled under the Indian Volunteers Act, 1869, are placed on the same footing as soldiers of Her Majesty's army.

Information to the Police, and their power to investigate.

16. Part V consists of a single chapter relating to information to the Police and their power to investigate. It corresponds with chapter X of Act X of 1872, and sections 379, 380 of the same Act.

17. The words "or that immediate arrest is not necessary," which are to be found in section 117 of Act X of 1872, have been omitted from section 155 of the Bill, as it is not apparent why a police-officer should be debarred from investigating a case of a cognizable offence because he does not at starting feel himself justified in arresting any person.

18. Section 162 makes it clear that confessions to Magistrates shall not only be "taken," but signed and certified, like examinations of accused persons.

19. Power resembling that conferred on Coroners by Act IV of 1871, section 11, has been given (section 174) to Magistrates authorized to hold inquests, to disinter and examine corpses in order to discover the cause of death.

Proceedings in Prosecutions.

20. Part VI treats of proceedings in prosecutions up to appeal, and is divided into seventeen chapters, arranged as follows:—

XV. Jurisdiction of Criminal Courts in Inquiries and Trials.
XVI. Complaints to Magistrates.
XVII. Commencement of Proceedings before Magistrates.
XVIII. Inquiry into cases triable by the Court of Session or High Court.
XIX. The Charge.
XX. Trial of Summons Cases by Magistrates.
XXI. Trial of Warrant Cases by Magistrates.
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XXX. Suspensions, Remissions and Commutations of Sentences.
XXXI. Previous Acquittals or Convictions.

It will be seen that the above-mentioned chapters are arranged, as nearly as may be, according to the chronological order of the events in a prosecution.

Chapter XV (as to the jurisdiction of the Courts in inquiries and trials) deals, first, with the place of inquiry or trial: then with the time of commencing prosecutions: and, thirdly, with the conditions requisite for the initiation of proceedings.

21. "Delay," says Livingston, "inflicts punishment on the innocent, or lessens the force of example by punishing the guilty after the crime he has committed is forgotten." Sections 186-191 accordingly contain rules as to the time within which prosecutions for most offences must be commenced. There will be no limit for prosecutions for the following: offences against the State; offences relating to the Army and Navy; false evidence and offences against public justice; offences relating to coin and Government stamps; offences under the Penal Code, sections 299 to 311, 359 to 373 and 390 to 414; offences under the same Code relating to documents, trade and property-marks and marriage. Three years is the period fixed in case of the following: offences against the public tranquillity; offences by or relating to public servants; contempts of their lawful authority; offences against property other than those against trade and property-marks. For all other offences six months is the period prescribed. The time during which the accused is absent from the jurisdiction of the Court empowered to try him,

or fails to surrender pursuant to a proclamation, will be excluded in computing the prescribed periods.

22. Section 196 requires that the sanction to entertain complaints of certain offences shall, so far as practicable, specify the place in which, and the occasion on which, the offence complained of was committed.

23. Chapter XVI, of complaints to Magistrates, corresponds to sections 144 to 147 of Act X of 1872, but adds (section 202) a provision that a complaint in writing made to a Magistrate not competent to entertain it shall be returned for presentation to the proper tribunal.

24. Chapter XIX, of the charge, extends to the whole of British India the amendments in Act X of 1872, sections 439 to 459, made by Act X of 1875; and with reference to Mr. Justice West's observations in *Reg.* v. *Chand Hur*, 11 Bomb. 241, on the corresponding section (457) of Act X of 1872, section 241 of the Bill has been confined to offences consisting of several particulars, a combination of some only of which constitutes a complete minor offence.

25. The provision (Act X of 1872, section 218) that the accused shall, while making his defence, be allowed to recall and cross-examine the witnesses for the prosecution has been expressly confined (section 259) to cases where the witnesses are present in the Court or its precincts.

26. In chapter XXII, summary trials, the Local Government has been authorised to confer on Benches invested with second or third class powers jurisdiction to try abetments of, and attempts to commit, the offences which they may now try summarily.

27. Chapter XXIII provides a common procedure for the High Court and the Court of Session, preserving, however, the special rules as to juries and their verdicts.

When a juror becomes unable to attend or absents himself, power is given (section 285), with the consent of the prosecutor and the accused, to proceed with the remaining jurors.

Where jurors or assessors have been taken to view the place in which the offence charged is alleged to have been committed, the Court has been empowered (section 296) to exempt them from being immediately brought back.

Where the Sessions Judge disagrees with a verdict of acquittal and submits the case to the High Court, he is required (section 310) to state the offence which he considers to have been committed, and the High Court is empowered to acquit or convict the accused of any offence of which the jury could have convicted him upon the charge framed and placed before it. This, it is believed, is the intention of the corresponding clause of section 263 of Act X of 1872.

28. Much doubt exists as to the offences which may lawfully be compounded. The Exception to section 214 of the Penal Code (in which the law on the subject is contained) is excessively obscure, and this obscurity is increased rather than diminished by the illustrations annexed to that section. The Bill repeals these illustrations; and section 347 declares in unmistakeable language that certain specified offences, and no others, may be compounded. It will be necessary to pass simultaneously with the Bill a short Act declaring that, for the Exception to section 280 of the Penal Code, the following shall be substituted:—

"*Exception.*—The provisions of sections 213 and 214 do not extend to any case in which the offence may lawfully be compounded."

29. In chapter XXVII, as to judgment, section 369 allows the judgments of Mufassal Courts to be written in the mother-tongue of the presiding officer.

30. In chapter XXIX, as to execution, there are no sections corresponding with sections 319, 320 of Act X of 1872. The reason for this omission is that the matter with which they deal does not belong to criminal procedure, but falls within the scope of the Prisoners' Act, 1871; and it is proposed that, simultaneously with the passing of the present Bill, a short Act be passed, substituting for section 33 of the Prisoners' Act, and for section 57 of Act IV of 1877, a section equivalent to Act X of 1872, sections 319, 320.

31. Chapter XXX, as to suspensions, remissions and commutations of sentences.—Where application is made for the suspension or remissions of a sentence, the Government is empowered (section 402) to require the presiding Judge of the Court before which the conviction was had to furnish a statement of the facts proved on the trial, and of any facts bearing on the propriety of granting or refusing the application.

Appeal, Reference and Revision.

32. Part VII deals with appeals, references and the revisional jurisdiction of the High Court.

Section 407 provides that the appeal from a District Magistrate exercising the enhanced powers conferred under section 34 shall lie to the Court of Session in cases in which the sentence has not been submitted to that Court for confirmation, and, when it has been so submitted, to the High Court. This puts the appeals in question on the same footing as appeal from an Assistant Sessions Judge. There seems to be no reason for making any distinction between the two.

33. Section 424, in accordance with a decision of the Madras High Court (I. L. R. 1 Mad. 54), declares that, when an Appellate Court enhances any punishment inflicted by the sentence appealed against, it may inflict punishment of a different kind.

34. In the case of an appeal from an acquittal, section 427 expressly authorizes the High Court to order the accused to be arrested and brought before it, and to commit him to prison pending the disposal of the appeal, or admit him to bail.

35. A section (431) suggested by a decision of the Bombay High Court (I. L. R. 2 Bomb. 564) provides that appeals by persons required to give security for good behaviour or by convicted persons abate on their death, and that appeals against acquittals abate on the death of the accused. The power of revision conferred by section 439 will enable the High Court to alter sentences even after the appeal has abated.

36. Where, in the opinion of the Court of Session or District Magistrate, an accused person has been improperly discharged by an inferior Court, the accused should not be committed without having had an opportunity of shewing cause why the committal should not be made (1 O'K. 98). Provision to this effect has been made by section 436.

37. Section 439 (corresponding with Act X of 1872, section 297) has been framed so as to allow the High Court, when exercising its revisional jurisdiction, to interfere with improper acquittals. There is reason to believe that this change is in accordance with the intention of the framers of Act X of 1872.

Special Proceedings.

38. Part VIII, as to special proceedings, deals with the procedure relating to the following matters:—criminal proceedings against Europeans and Americans: lunatics: contempts of Court and other offences affecting the administration of justice: maintenance of wives and children: State prisoners: proceedings in the nature of *habeas corpus*.

Section 451 removes some differences which exist in the present law between the procedure of the High Courts and Courts of Session in cases in which European British subjects are concerned and which seem unnecessary. In particular, it is provided that, in the Court of Session as well as in the High Court, the requisite moiety of the jury or Assessors may be made up of Americans as well as Europeans.

39. The power given by sections 433 and 434 of Act X of 1872, to discharge from custody or make over to his relative a person acquitted on the ground of insanity, has been extended, in sections 474 and 475 of the Bill, to the case of persons who, being found to be insane at the time of trial, are committed to custody.

40. Section 477 has been framed so as to allow a Court of Session to charge a person for giving false evidence before itself—a power of which such Courts were unintentionally deprived by section 472 of the present Code.

41. Section 487 has been redrawn so as to avoid the difficulty which is felt in determining the meaning of the words "offence committed in contempt of its own authority," which occur in the corresponding section (473) of Act X of 1872.

Supplementary Provisions.

42. Part IX contains certain provisions supplementary to the general rules of procedure contained in the Code. It deals, first, with the public prosecutor, bail, commissions for the examination of witnesses and special rules of evidence. It then contains certain provisions relating to bonds to keep the peace, for good behaviour, for appearance, &c.: the disposal of property regarding which an offence has been committed: the transfer of criminal cases: irregular proceedings, and, lastly, certain miscellaneous matters.

43. Words have been introduced into the section (502) providing for the appointment of a public prosecutor which will have the effect of putting a stop to the practice of appointing a police officer.

44. Section 505 exempts the Advocate General, Standing Counsel, Government Solicitor or other officer empowered by the Local Government from the necessity of obtaining permission to conduct prosecutions.

45. The provisions of the present law as to commissions for the examination of witnesses have been amended in two respects. The Bill (section 515) requires that the interrogatories shall be thought relevant by the Magistrate or Court directing the commission, and power is expressly given (section 518) to stay the inquiry or trial for a specified time reasonably sufficient for the execution and return of the commission.

46. In proving the existence of circumstances as a defence under the 2nd, 3rd, 5th, 6th, 7th, 8th, 9th or 10th Exception to section 499 of the Penal Code, section 521 of the Bill provides that good faith shall be presumed until the contrary appears. This is now the law in the Presidency-towns (Act XVIII of 1862, section 27) and may usefully be extended to the Mufassal.

47. In accordance with a recent rule of the High Court at Bombay, section 528 declares that, when a High Court or Court of Session makes an order for the disposal of property, and cannot through its own officers conveniently deliver the property to the person entitled thereto, the Court may direct its order to be carried into effect by the committing Magistrate.

48. Section 531 provides, in case of a conviction under the Penal Code, sections 292, 293, 501 or 502, for the destruction of the obscene books and defamatory matter in respect of which the conviction was had. It also provides for the destruction of adulterated or noxious food, drink or drugs in respect of which a conviction was had under sections 272—275 of the same Code.

49. Section 536 provides, in accordance with a Minute of Sir B. Peacock, cited I. L. R. 1 Calc. 223, that applications to the High Court for the transfer of cases shall be made by motion supported by affidavit or affirmation.

Schedules.

50. Schedules II and V, which correspond respectively with schedules IV and II of Act X of 1872, have been altered so as to adapt them, not only to the Mufassal Courts, but to those of the Presidency Magistrates.

The lists of powers contained in section 21 *et seq.* of Act X of 1872 have been thrown into Schedules III and IV of the Bill.

51. Excluding the special provisions of the Acts relating respectively to Coroners in the Presidency-towns, extradition, European British vagrants, and criminal tribes, the Bill is now, so far as Mr. Cockerell, Mr. Fitzpatrick and myself have been able to make it, a complete body of criminal procedure. No pains have been spared to render its provisions plain and practical; and in return all competent persons are earnestly asked to point out the mistakes and omissions which they will doubtless discover in so large and complicated a work.

CALCUTTA;
The 28th March 1879.

WHITLEY STOKES.

D. FITZPATRICK,
Secy. to the Govt. of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, APRIL 12, 1879.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA. SECTIONS.

PART II.

LEGISLATIVE DEPARTMENT.

[Second publication.]

The following Bill, and Statement of Objects and Reasons accompanying it, are published for general information, by order of His Excellency the Governor General, under the 22nd of the Rules for the Conduct of the Legislative Business of the Council of the Governor General:—

THE CODE OF CRIMINAL PROCEDURE, 1879.

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A Bill to Consolidate and amend the law relating to Criminal Procedure.

Preamble. WHEREAS it is expedient to consolidate and amend the law relating to Criminal Procedure; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

CHAPTER I.

Short title. Commencement. **1.** This Act may be called "The Code of Criminal Procedure, 1879:" and shall come into force on the first day of January, 1880;

Act X, 1872, ss. 1, 2, 111, 529, 535, 540, 541. Act X, 1875, s. 143. Act IV, 1877, s. 3. * *e.g.*, Act V of 1869. Act X, 1872, s. 540.

Local extent. It extends to the whole of British India; but in the absence of any specific provision to the contrary, nothing herein contained shall affect any special or local law now in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed,* by any other law now in force, or shall apply to—

(*a*) the Commissioner of Police or the Police in the towns of Calcutta, Madras and Bombay;

(*b*) heads of villages in the Presidency of Fort Saint George;

(*c*) village Police-officers in the Presidency of Bombay;

(*d*) any officer duly authorized to try petty offences in military bázárs at cantonments and stations occupied by the troops of the said Presidencies respectively.

Act X, 1875, s. 2. Act X, 1872, s. 2, para. 1. Act X, 1872, ss. 82, 86. Act X, 1872, s. 2, last para., s. 10.

Repeal of enactments. Notifications, &c., under repealed Acts. **2.** On and from the first day of January, 1880, the enactments mentioned in the first schedule shall be repealed to the extent specified in the third column of the said schedule, but not so as to restore any jurisdiction or form of procedure not then existing or followed, or to render unlawful the continuance of any confinement which is then lawful.

All notifications published, proclamations issued, powers conferred, courts established, local limits defined, sentences passed and orders, rules and appointments made, under any enactment hereby repealed, or under any enactment repealed by any such enactment, and which are in force immediately before the first day of January, 1880, shall be deemed to have been respectively published, issued, conferred, established, defined, passed and made under the corresponding section of this Code.

Act X, 1872, s. 2, paras. 3, 4. References to Code of Criminal Procedure. **3.** In every enactment passed before this Code comes into force, in which reference is made to, or to any chapter or section of, the Code of Criminal Procedure, Act No. XXV of 1861, or Act No. X of 1872, such reference shall be taken to be made to this Code or to its corresponding chapter or section.

Expressions in former Acts. In every such enactment the expressions "Officer exercising (or 'having') the powers (or the 'full powers') of a Magistrate," "Subordinate Magistrate, first class," and "Subordinate Magistrate, second class," shall respectively be deemed to mean "Magistrate of the first class," "Magistrate of the second class," and "Magistrate of the third class;" the expression "Magistrate of a division of a district" shall be deemed to mean Sub-divisional Magistrate, and the expression "Magistrate of Police" shall be deemed to mean Presidency Magistrate. Act IV, 1877, s. 10.

Act X, 1872, s. 4. Act IV, 1877, s. 6. Interpretation. **4.** In this Code the following words and expressions have the following meanings, unless a different intention appears from the subject or context:—

New. Liv. 501. "Complaint." (*a*) "Complaint" means the allegation made to a proper officer that some person, whether known or unknown, has been guilty of an act which amounts to an offence:

"Investigation." (*b*) "Investigation" includes all the proceedings by the Police authorized by this Code for the collection of evidence:

"Inquiry." (*c*) "Inquiry" includes every inquiry conducted under this Code by a Magistrate or Court: "Inquired into" omitted.

Penal Code, 193. I. L. R., I All., 6. 1 Mad. H. C. Rep. 46. "Judicial proceeding." (*d*) "Judicial proceeding" means any proceeding in the course of which evidence is or may be taken:

"Writing." (*e*) "Writing" includes "printing," "lithography," "photography" and "engraving:"

New. "To sign." (*f*) "To sign" means to affix a name or mark to an instrument or record in writing or by means of a stamp:

New. "Sub-division." (*g*) "Sub-division" means a sub-division of a District:

"Province." (*h*) "Province" means the territories for the time being under the administration of any Local Government:

"Presidency-town." (*i*) "Presidency-town" means the local limits for the time being of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William, Madras or Bombay:

Act X, 1875, s. 3, altered. Another definition *infra*, s. 269. "High Court." (*j*) "High Court" means, in reference to proceedings against European British subjects or persons jointly charged with European British subjects, the High Courts of Judicature at Fort William, Madras and Bombay, the High Court of Judicature for the North-Western Provinces and the Chief Court of the Panjáb:

In other cases "High Court" means the highest Court of criminal appeal or revision for any local area:

"Chief Justice." (*k*) "Chief Justice" includes also the senior Judge of a Chief Court:

Act X, 1875, s. 3. Act X, 1877, s. 539. "Advocate General." (*l*) "Advocate General" includes also a Government Advocate, or where there is no Advocate General or Government Advocate, such officer as the Local Government may from time to time appoint in this behalf:

"Clerk of the Crown." (*m*) "Clerk of the Crown" includes any officer specially appointed by the Chief Justice to discharge the functions given by this Code to the Clerk of the Crown:

See 11 Bom. 103. Act X, 1872, s. 57. Act X, 1875, s. 3. "Public prosecutor." (*n*) "Public prosecutor" means any person appointed under section 502, and includes any person acting under the directions of a public prosecutor; and any person conducting a prosecution on behalf of Her Majesty in any High Court in the exercise of its original criminal jurisdiction:

"Pleader." (*o*) "Pleader" used with reference to any proceeding in any Court means a pleader authorized to practise in such Court, and includes (1) an advocate, a vakíl and an attorney of a High Court so authorized, and (2) any other person appointed with the permission of the Court to act in such proceeding.

Act X, 1872, s. 186. "Officer in charge of a Police-station." (*p*) "Officer in charge of a Police-station" includes, when the officer in charge of the station is absent or ill, the Police-officer next in rank present at the Police-station above the rank of Constable:

11 Bom. 98. "Sessions case." (*q*) "Sessions case" means a case triable exclusively by the Court of Session, or which the Magistrate commits to the Court of Session, though he might have tried it himself:

"Offence." (*r*) "Offence" means anything made punishable by any law for the time being in force:

"Cognizable offence." "Cognizable case." (*s*) "Cognizable offence" means an offence for, and "cognizable case" means a case in, which a Police officer may, under any law for the time being in force, arrest without warrant:

"Non-cognizable offence." "Non-cognizable case." "Non-cognizable offence" means an offence for, and "Non-cognizable case" means a case in, which a Police-officer may not arrest without warrant:

"Bailable offence." "Non-bailable offence." (*t*) "Bailable offence" means an offence shewn as bailable in the second schedule or which is made bailable by any other law for the time being in force: and "non-bailable offence" means any other offence:

"Warrant case." (*u*) "Warrant case" means a case relating to an offence punishable with death, transportation, whipping, or imprisonment for a term exceeding six months:

"Summons case." (*v*) "Summons case" means a case relating to an offence not so punishable:

Act X, 1872, s. 71. Act X, 1875, s. 2, extended to persons naturalized in British India. "European British subject." (*w*) "European British subject" means—

(1) any subject of Her Majesty naturalized in British India, or born, naturalized or domiciled in the United Kingdom of Great Britain and Ireland, or in any of the European, American or Australian Colonies or Possessions of Her Majesty, or in the Colony of New Zealand, or in the Colony of the Cape of Good Hope or Natal;

(2) any child or grand-child of any such person by legitimate descent:

"Chapter." "Schedule." (*x*) "Chapter" means a chapter of this Code: "schedule" means a schedule hereto annexed:

"Place." (*y*) "Place" includes also a house, building and vessel:

Act XI, 1874, s. 2. Words referring to acts. Words which refer to acts done extend also to illegal omissions, and

e. g., "special law," "local law." Words to have same meaning as in Penal Code. all words and expressions used herein and defined in the Indian Penal Code, and not hereinbefore defined, shall be deemed to have the meanings attached to them respectively by that Code.

Act X, 1872, ss. 6, 7, 11. Act X, 1872, ss. 6, 8, para. 1. Act X, 1875, s. 6. Act IV, 1877, s. 14. Trial of offences under Penal Code. Trial of offences against other laws. **5.** All offences under the Indian Penal Code shall, and all offences under any other law shall, in the absence of any enactment for the time being in force regulating the mode of inquiry or trial, be enquired into and tried according to the provisions hereinafter contained.

PART II.

CONSTITUTION AND POWERS OF CRIMINAL COURTS AND OFFICES.

CHAPTER II.

OF THE CONSTITUTION OF CRIMINAL COURTS AND OFFICES.

A.—Classes of Criminal Courts.

Act X, 1872, ss. 6, 19. Classes of Criminal Courts. **6.** Besides the High Courts and the Courts constituted under any law other than this Code for the time being in force, there

shall be five classes of Criminal Courts in British India, namely :—

I.—Courts of Session :
II.—Courts of Presidency Magistrates :
III.—Courts of Magistrates of the first class :
IV.—Courts of Magistrates of the second class :
V.—Courts of Magistrates of the third class.

B.—Territorial Divisions.

Act X, 1872, ss. 12, 39.

7. Every Province (excluding the Presidency-towns) shall be a Sessions Division, or shall consist of Sessions Divisions;

Sessions Divisions.

and every Sessions Division shall, for the purposes of this Code, be a District or consist of Districts.

Districts.

Act X, 1872, ss. 13, 38.

The Local Government may from time to time alter the limits or, with the previous sanction of the Governor General in Council, the number, of such Divisions and Districts.

Power to alter Divisions and Districts.

Act XI, 1874, s. 4.
Act X, 1872, s. 14.

The existing Sessions Divisions and Districts shall be Sessions Divisions and Districts respectively, unless and until they are so altered.

Existing Divisions and Districts maintained till altered.

Every Presidency-town shall, for the purposes of this Code, be deemed to be a District.

Presidency-towns to be deemed Districts.

Act X, 1872, s. 39.
Act X, 1872, s. 40.

8. The Local Government may divide any District outside the Presidency Towns into Sub-divisions, or constitute any portion of any such District a Sub-division, and may from time to time alter the limits of such Sub-divisions.

Power to divide Districts into sub-divisions.

All existing Sub-divisions which are now usually put under the charge of a Magistrate shall be deemed to have been made under this Code.

Existing Sub-divisions maintained.

C.—Courts and offices outside the Presidency-towns.

Act X, 1872, ss. 15, 16 and 17.

9. The Local Government shall establish a Court of Session for every Sessions Division, and appoint a Judge of such Court.

Court of Session.

It may also appoint Additional Sessions Judges, Joint Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in one or more such Courts.

Act X, 1872, s. 35.

10. In every District outside the Presidency-towns, the Local Government shall appoint a Magistrate of the first class, who shall be called the District Magistrate.

District Magistrate.

Act X, 1872, s. 55.

11. Whenever, in consequence of the office of a District Magistrate becoming vacant, any officer succeeds temporarily to the chief executive administration of the District in criminal matters, such officer shall, pending the orders of the Local Government, exercise all the powers and perform all the duties respectively conferred and imposed by this Code on the District Magistrate.

Officers temporarily succeeding to vacancies in office of District Magistrate.

Act X, 1872, ss. 37, 49.

12. The Local Government may appoint as many persons as it thinks fit, besides the District Magistrate, to be Magistrates of the first, second or third class in any District outside the Presidency-towns; and the Local Government, or the District Magistrate subject to the control of the Local Government, may define local areas within which such persons may exercise the powers with which they may respectively be invested under this Code.

Subordinate Magistrates.

Local limits of their jurisdiction.

In the absence of any such definition, such persons may exercise such powers throughout such District.

Act X, 1872, s. 40.

13. The Local Government may place any Magistrate of the first or second class in charge of a Sub-division.

Power to put Magistrate in charge of Sub-division.

Such Magistrates shall be called Sub-divisional Magistrates.

The Local Government may, if it thinks fit, delegate its powers under this section to the District Magistrate.

Delegation of power to Magistrate of District.

Act X, 1872, s. 42. Act XI, 1874, s. 17.

14. The Local Government may confer upon any person all or any of the powers conferred or conferrible by or under this Code on a Magistrate of the first, second or third class, in respect to particular cases or to a particular class or particular classes of cases, or in regard to cases generally, in any local area outside the Presidency-towns.

Special Magistrates.

Such Magistrates shall be called Special Magistrates.

See Act No. XI of 1874, s. 5.

With the previous sanction of the Governor General in Council, the Local Government may delegate, with such limitations as it thinks fit, to any officer under its control the power conferred by the first paragraph of this section.

Act X, 1872, s. 50.

15. The Local Government may direct any two or more Magistrates in any place outside of the Presidency-towns to sit together as a Bench, and may invest such Bench with any of the powers conferred or conferrible by or under this Code on a Magistrate of the first, second or third class, and direct it to exercise such powers in such cases, or such classes of cases, only, and within such local limits, as the Local Government thinks fit.

Benches of Magistrates.

Sufferuddin v Ibrahim, 1. L. R. 3 Calc. 754.

Act X, 1872, s. 51.

Except as otherwise provided by any order of the Local Government under this section, every such Bench shall have the powers conferred by this Code on a Magistrate of the highest class to which any one of its members belongs, and who is present taking part in the proceedings as a member of the Bench, and as far as possible shall, for the purposes of this Code, be deemed to be a Magistrate of such class.

Powers exercisable by Bench in absence of special direction.

Act X, 1872 ss, 52, 53.

16. The District Magistrate may from time to time, subject to the control of the Local Government, make rules consistent with this Code for the guidance of Magistrates' Benches in his District respecting the following subjects :—

Power to frame rules for guidance of Benches.

(*a*) the classes of cases to be tried;
(*b*) the times and places of sitting;
(*c*) the constitution of the Bench for conducting trials;
(*d*) the mode of settling differences of opinion which may arise between the Magistrates in session.

Act X, 1872, s. 37, cl. 2.

17. All Magistrates appointed under sections 12, 13 and 14, and all Benches constituted under section 15, shall be subordinate to the District Magistrate, and every Magistrate (other than a Sub-divisional Magistrate) and Bench exercising powers in a Sub-division shall be subordinate to the Sub-divisional Magistrate, subject, however, to the general control of the District Magistrate.

Subordination of other Magistrates to District Magistrate;

Act X, 1872, s. 41.

to Sub-divisional Magistrate.

Act X, 1872, s. 37, cl. 2.

Neither the District Magistrate nor the Magistrates or Benches appointed or constituted under sections 12, 13, 14 and 15 shall be subordinate to the Sessions Judge, except to the extent and in the manner hereinafter expressly provided.

D.—Courts of Presidency Magistrates.

Act IV, 1877, ss. 8, 9.

18. The Local Government shall from time to time appoint a sufficient number of persons (hereinafter called Presidency Magistrates) to be Magistrates for each of the Presidency-towns, and shall appoint one of such persons to be Chief Magistrate for each such town.

Appointment of Presidency Magistrates.

Any two or more of such persons may (subject to the rules made by the Chief Magistrate under the power hereinafter conferred) sit together as a Bench.

Act IV, 1877, s. 8, para. 5.

19. Every Presidency Magistrate shall exercise jurisdiction in all places within the Presidency-town for which he is appointed, and within the limits of the port of such town and of any navigable river or channel leading thereto, as such limits are defined under the law for the time being in force for the regulation of ports and port-dues.

Local limits of their jurisdiction.

Act IV, 1877, s. 9, para. s. 9, last para.

20. Every Presidency Magistrate in the town of Bombay shall exercise all jurisdiction which, under any law in force immediately before the first day of April, 1877, was exercised in that town by the Court of Petty Sessions:

Bombay Court of Petty Sessions.

Provided that appeals under the law for the time being regulating the municipality of Bombay shall lie to the Chief Magistrate only.

Act IV, 1877, s. 9.

21. Every Chief Magistrate shall exercise in the Presidency-town for which he is appointed all the powers which by any law or rule in force at the time this Act comes into force are required to be exercised by any Senior or Chief Magistrate, and may from time to time, with the previous sanction of the Local Government, make rules consistent with this Code to regulate—

Chief Magistrate.

(*a*) the conduct and distribution of business and the practice in the Courts of the Magistrates of the town;
(*b*) the times and places at which Benches of Magistrates shall sit;
(*c*) the constitution of such Benches; and
(*d*) the mode of settling differences of opinion which may arise between Magistrates in session.

E.—Justices of the Peace.

Act II, 1869, s. 3.

22. The Governor General in Council, so far as regards the whole or any part of British India outside the Presidency-towns,

Justices of the Peace for the Mufassal.

and every Local Government, so far as regards the territories subject to its administration (other than the towns aforesaid),

may, by notification in the official Gazette, appoint such European British subjects as he or it thinks fit to be Justices of the Peace within and for the territories mentioned in such notification.

Act II, 1869, s. 4.

23. The Governor General in Council or the Local Government, so far as regards the town of Calcutta,

Justices of the Peace for the Presidency-towns.

and the Local Government, so far as regards the towns of Madras and Bombay,

may, by notification in the official Gazette, appoint to be Justices of the Peace within the limits of the town mentioned in such notification any persons resident within British India and not being the subjects of any foreign State whom such Governor General in Council or Local Government (as the case may be) thinks fit.

Act II, 1869, s. 10.

24. Every person now acting as a Justice of the Peace within and for any part of British India other than the said towns, under any commission issued by a High Court, shall be deemed to have been appointed under section 22 by the Governor General in Council to act as a Justice of the Peace for the whole of British India other than the same towns.

Present Justices of the Peace.

Every person now acting as a Justice of the Peace within the limits of any of the said towns under any such commission shall be deemed to have been appointed under section 23 by the Local Government.

13 Geo. III, c. 63, s. 38. Act X, 1875, s 152. Act IV, 1877, s. 8. Native High Court Judges are thus Justices of the Peace.

25. In virtue of their respective offices, the Governor General, the Ordinary Members of the Council of the Governor General and the Judges of the High Courts are Justices of the Peace within and for the whole of British India, and the Presidency Magistrates are Justices of the Peace within and for the towns of which they are respectively Magistrates.

Ex officio Justices of the Peace.

F.—Suspension and Removal.

Act X, 1872, s. 9.

Suspension and removal of Judges and Magistrates.

26. All Judges of criminal Courts other than the High Courts, and all Magistrates, may be suspended or removed by the Local Government: Provided that such Judges and Magistrates as now are liable to be suspended or removed by the Governor General in Council shall continue to be so liable.

Act II, 1869, s. 9.

Suspension and removal of Justices of the Peace.

27. The Governor General in Council may suspend any Justice of the Peace appointed by him, and the Local Government may suspend or dismiss any Justice of the Peace appointed by it.

CHAPTER III.

Powers of Courts.

A.—Description of Offences cognizable by each Court.

Offences under Penal Code.

28. Any offence under the Indian Penal Code may be tried by the High Court or Court of Session or by any other Court by which such offence is shown in the seventh column of the second Schedule to be triable.

Act X, 1872, s. 8.

Offences under other laws.

29. Any offence under any other law shall, where any Court is mentioned in this behalf in such law, be tried by such Court; and when no Court is so mentioned, may be tried by the High Court or by any Court constituted under this Code:

Provided that no Magistrate of the second class shall try any such offence which is punishable with imprisonment for a term which may extend to three years, and no Magistrate of the third class shall try any such offence which is punishable with imprisonment for a term which may extend to one year.

Act X, 1872, s. 36.

Offences not punishable with death.

30. In the territories respectively administered by the Lieutenant-Governor of the Panjáb and the Chief Commissioners of Oudh, the Central Provinces, British Burma, Coorg and Assam, and in those parts of the other Provinces in which there are Deputy Commissioners or Assistant Commissioners, the Local Government may invest the District Magistrate with power to try as a Magistrate all offences not punishable with death.

B.—Sentences which may be passed by Courts of various Classes.

Act X, 1872, s. 15, paras. 2 and 17.

Sentence which High Court or Sessions Judges may pass.

31. A High Court may pass any sentence authorized by law.

A Sessions Judge, Additional Sessions Judge or Joint Sessions Judge may pass any sentence authorized by law; but any sentence of death passed by such Judge shall be subject to confirmation by the High Court.

An Assistant Sessions Judge may pass any sentence authorized by law except a sentence of death, transportation or imprisonment for a term exceeding seven years; but any sentence of imprisonment for a term exceeding three years passed by an Assistant Sessions Judge shall be subject to confirmation by the Sessions Judge. Act X, 1872, s. 18.

Sentences which Magistrates may pass.

32. The Courts of Magistrates may pass the following sentences, namely:— Act X, 1872, s. 20.

(*a*.) Courts of Presidency Magistrates and of Magistrates of the first class:	Imprisonment for a term not exceeding two years, including such solitary confinement as is authorized by law; Act IV, 1877, s. 11. Fine not exceeding one thousand rupees; Whipping.
(*b*.) Courts of Magistrates of the second class:	Imprisonment for a term not exceeding six months, including such solitary confinement as is authorized by law; Fine not exceeding two hundred rupees; Whipping.
(*c*.) Courts of Magistrates of the third class.	Imprisonment for a term not exceeding one month; Fine not exceeding fifty rupees.

The Court of any Magistrate may pass any lawful sentence, combining any of the sentences which it is authorized by law to pass.

Power to sentence to imprisonment in default of fine.

33. The Court of any Magistrate may award such term of imprisonment in default of payment of fine as is authorized by law: Act X, 1872, s. 20, Expl. s. 309, para. 3. See I. L. R. 2 Mad. 77.

Provided that the term is not in excess of the Magistrate's powers under this Code:

Proviso as to cases decided by a Magistrate.

Provided also that in no case decided by a Magistrate where imprisonment has been awarded as part of the substantive sentence shall the period of imprisonment awarded in default of payment of the fine exceed one-fourth of the period of imprisonment which such Magistrate is competent to inflict as punishment for the offence, otherwise than as imprisonment in default of payment of the fine. Act X, 1872, s. 309, para. 2. As to para. 3 thereof, see Act X, 1868. Act IV, 1877, s. 12, omitting paras. 1 & 2.

Higher powers of certain District Magistrates.

34. The Court of a District Magistrate specially empowered under section 30 may pass any sentence of imprisonment for a term not exceeding seven years, including such solitary confinement as is authorized by law, or of fine, or of whipping, or of any combination of these punishments authorized by law. Act X, 1872, s. 36.

But any sentence of imprisonment for a term exceeding three years passed by any such Court shall be subject to the confirmation of the Sessions Judge.

Sentence in cases of simultaneous conviction of several offences.

35. When a person is convicted, at one trial, of two or more distinct offences, the Court may sentence him, for such offences, to the several punishments prescribed therefor which such Court is competent to inflict: such punishments, when consisting of imprisonment or transportation, to commence the one after the expiration of the other in such order as the Court may direct. Act X, 1872, s. 314. Act X, 1875, s. 109. Act IV, 1877, s. 13.

It shall not be necessary for the Court, by reason only of the aggregate punishments for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court:

Maximum term of imprisonment.

Provided that in no case shall such person be sentenced to punishment for a longer period than fourteen years:

Provided also that, if the case is tried by a Magistrate (other than a Magistrate acting under section 34), the aggregate punishments shall not exceed twice the amount of punishment which he is, in the exercise of his ordinary jurisdiction, competent to inflict.

I. L. R. 1 Bom. 228.

For the purpose of confirmation or appeal, a combined sentence passed under this section in case of simultaneous convictions for several offences shall be deemed to be a single sentence.

C.—Ordinary and Additional Powers.

Act X, 1872, ss. 23, 24, 26, 28, 30.

Ordinary powers of Magistrates.

36. All District Magistrates, Sub-divisional Magistrates and Magistrates of the first, second and third class have the powers hereinafter respectively conferred upon them and specified in the third schedule. Such powers are called their "ordinary powers."

Act X, 1872, ss. 25, 26, 27

Additional powers conferrible on Magistrates.

37. In addition to his ordinary powers, any Magistrate of the first, second or third class may be invested by the Local Government or the District Magistrate, as the case may be, with any powers specified in the fourth schedule as powers with which a Magistrate of such class may be invested by the Local Government or the District Magistrate.

D.—Conferment, Continuance and Cancellation of Powers.

Act X, 1872, s. 28.

Mode of conferring powers.

38. In conferring powers under this Code, the Local Government may empower persons specially by name, or classes of officials generally by their official titles.

Act X, 1872, s. 56.

Continuance of powers of officers transferred.

39. Whenever any person holding an office in the service of Government who has been invested with any powers under this Code throughout any local area is transferred to an equal or higher office of the same nature within a like local area, he shall, unless the Local Government otherwise directs, or has otherwise directed, continue to exercise the same powers in the local area to which he is so transferred. I. L. R., 2 Calc., 117.

Act X, 1872, s. 54.

Powers may be varied or cancelled.

40. The Local Government may vary or cancel any powers conferred on any person under this Code.

PART III.

GENERAL PROVISIONS.

CHAPTER IV.

Of Aid and Information to the Magistrates and Police.

Act X, 1872, s. 91. Act IV, 1877, s. 247.

Public when to assist Magistrates and Police.

41. Every person is bound to assist a Magistrate or Police-officer demanding his aid, whether within or without the Presidency-towns,

(*a*) in the prevention of a breach of the peace, or of any injury attempted to be committed to any public property; New as to public property.

(*b*) in the taking of any other person whom such Magistrate or Police-officer is authorized to arrest, or

(*c*) in the suppression of a riot or affray.

Act X, s. 28. Act IV, s. 248.

Public to give information of certain offences.

42. Every person, whether within or without the Presidency-towns, aware of the commission of any offence punishable under the following sections of the Indian Penal Code (namely), 121, 121A, 122, 123, 124, 124A, 125, 126, 130, 302, 303, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 456, 457, 458, 459 and 460, shall, in the absence of reasonable excuse, the burden of proving which shall lie upon such person, give information of the same to the nearest Magistrate or to the officer in charge of the nearest Police-station.

Act X, 1872, s. 90.

Village-headmen, landholders and others bound to report certain matters.

43. Every village-headman, village-watchman, owner or occupier of land, or the agent of any such owner or occupier, and every Native officer employed in the collection of revenue or rent of land on the part of Government or the Court of Wards, shall forthwith communicate to the nearest Magistrate, or to the officer in charge of the nearest Police-station, any information which he may obtain respecting—

(*a*) the residence of any notorious receiver or vendor of stolen property in the village of which he is headman or watchman, or in which he owns or occupies land, or is agent, or collects revenue or rent, as the case may be;

(*b*) the resort to any place within the limits of such village of any person whom he knows, or reasonably suspects, to be a thug or robber;

(*c*) the commission of or intention to commit any non-bailable offence in or near such village;

(*d*) the occurrence therein of any sudden or unnatural death.

CHAPTER V.

Of Arrest, Escape and Retaking.

A.—Arrest generally.

Act X, 1872, s. 177.

44. In making an arrest, the Police-officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

Arrest how made.

Act X, 1872, s. 178, adding words as to attempt to evade.

If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such Police-officer or other person may use all means necessary to effect the arrest.

Resisting endeavour to arrest.

Act X, 1872, ss. 99, 179.

45. If any person acting under a warrant of arrest, or any Police-officer having authority to arrest, has reason to believe that the person to be arrested has entered into, or is within, any place, the person residing in, or in charge of, such place shall, on demand of such person acting as aforesaid or such Police-officer, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

Search of place entered by person sought to be arrested.

Act X, 1872, s. 100.

46. If ingress to such place cannot be obtained under section 45, it shall be lawful in any case for a person acting under a warrant, and in any case in which a warrant cannot be obtained without affording the person to be arrested an opportunity of escape, for a Police-officer, to enter such place and search therein, and

Procedure where ingress not obtainable.

Act X, 1872, s. 180.

in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if, after notification of his authority and purpose and demand of admittance duly made, he cannot otherwise obtain admittance.

Act X, 1872, s. 181, which applies only where person to be arrested is accused of an offence for which a warrant may issue.

Provided that, if any such place is an apartment in the actual occupancy of a woman not being the person to be arrested) who, according to the custom of her caste, does not appear in public, such person or Police-officer shall, before entering such apartment, give notice to such woman that she is at liberty to withdraw, and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it.

Breaking open zanána.

New.

47. Any Police-officer or other person authorized to make an arrest may break open any outer or inner door or window of any house in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein.

Power to break open doors for purposes of liberation

Act X, 1872, s. 182.

48. The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

No unnecessary restraint.

Act X, 1872, s. 387.

49. Whenever a person is arrested by a Police-officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail, but the person arrested cannot furnish bail, and

Search of arrested persons.

whenever a person is arrested without warrant and cannot legally be admitted to bail, or is unable to furnish bail,

the officer making the arrest or, when the arrest is made by a private person, the Police-officer to whom such private person makes over the person arrested, may search such person, and place in safe custody all articles, other than necessary wearing apparel, found upon him.

A list of such articles shall be forwarded with the daily diary or with the final report in the case.

New. Liv., p. 50.

50. The officer or other person making any arrest under this Code may take from the person arrested any offensive weapons which he has about his person, and shall deliver all weapons so taken to the Court or officer before which or whom the person making the arrest is required by this Code to produce the person arrested.

Power to seize offensive weapons.

B.—Arrest without Warrant.

Act X, 1872, s. 92, omitting clauses 1 and 3.

51. Any Police-officer may, without order from a Magistrate and without a warrant, arrest—

When Police may arrest without warrant.

firstly—any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made, or a reasonable suspicion exists of his having been so concerned;

Cf. Livingston, 503.

secondly—any person who has been proclaimed either under this Code or in a notification published in any official Gazette or otherwise duly promulgated by order of an officer of Government;

thirdly—any person found with property in his possession which may reasonably be suspected to be stolen property;

fourthly—any person who obstructs a Police-officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; and

Or Navy added.

fifthly—any person reasonably suspected of being a deserter from Her Majesty's Army or Navy.

Act X, 1872, s. 94.

52. Any officer in charge of a Police-station may, in like manner, arrest or cause to be arrested—

Arrest of vagabonds.

(*a*) any person found taking precautions to conceal his presence within the limits of such station

under circumstances which afford reason to believe that he is taking such precautions with a view to committing an offence; or

(*b*) any person within the limits of such station who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself; or

(*c*) any person who is by repute an habitual robber, house-breaker, thief, or an habitual receiver of stolen property knowing it to be stolen, or who is of a dangerous character.

Act X, 1872, s. 102.

53. When any officer in charge of a Police-station requires any officer subordinate to him to arrest without a warrant (otherwise than in his presence) any person who may lawfully be arrested by such subordinate officer without a warrant, he shall deliver to the officer required to make the arrest an order in writing, specifying the person to be arrested, and the offence for which the arrest is to be made.

Procedure when Police-officer deputes subordinate to arrest without warrant.

Act X, 1872, s. 93.

54. Any person who in the presence of a Police-officer commits or is accused of committing a non-cognizable offence, and refuses on demand of such officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, may be arrested or detained by such officer in order that his name or residence may be ascertained; and shall, within twenty-four hours from the arrest, be forwarded to the nearest Magistrate, unless, before the expiration of that time, his true name and residence are ascertained, in which case he shall be forthwith released.

Refusal to give name and residence.

Act X, 1872, s. 109.

55. For the purpose of arresting without warrant any person whom he is authorised to arrest under this chapter, a Police-officer may pursue such person into any place in British India.

Pursuit of offenders into other jurisdictions.

Act X, 1872, s. 106.

56. Any private person may arrest any person who, in his view, commits a non-bailable and cognizable offence;

Arrest by private persons.

2, 1872, 107. Crim. Code, 1.

and shall, without unnecessary delay, make over any person so arrested to a Police-officer; or in the absence of a Police-officer, take such person to the nearest Police-station.

Procedure on such arrest.

The Police shall deal with such person according to the provisions of section 51 or 54, as the case may be, and shall not detain him in custody unless he appears to be liable to arrest or detention under the section applicable.

57. A Police-officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before the Magistrate having jurisdiction in the case, or before the officer in charge of a Police-station.

Person arrested to be taken before Magistrate or officer in charge of Police-station.

Act X, 1872, s. 124.

58. No Police-officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

Person arrested not to be detained more than 24 hours.

Act X, 1872, s. 132.

59. Officers in charge of Police-stations shall report for orders to the District or Sub-divisional Magistrate the cases of all persons arrested without warrant within the limits of their respective stations, whether such persons have been admitted to bail or otherwise.

Police to report apprehensions.

Act IV, 1877, s. 70, para. 1.

60. No person who has been so arrested by a Police-officer shall be discharged except on his recognizance, with or without sureties, or under the special order of a Magistrate.

Discharge of person apprehended.

Act X, 1872, s. 108. Act IV, 1877, s. 15.

61. When any offence is committed in the presence of a Magistrate, he may order any person to arrest the offender and may thereupon, subject to the provisions herein contained as to bail, commit the offender to custody.

Offence committed in Magistrate's presence.

Act X, 1872, s. 166, clause 2. Act IV, 1877, s. 62.

62. Any Magistrate may at any time direct the arrest, in his presence, of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant.

Arrest in presence of Magistrate.

C.—Escape and Retaking.

Act XXV, 1861, s. 112. N. Y. Cr. Proc. Code, s. 186.

63. If a person in lawful custody escapes or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and retake him at any time and in any place in British India.

Power, on escape, to pursue and retake.

Act XXV, 1861, s. 112. N. Y. Cr. Proc. Code s. 186.

64. To retake the person so escaping or rescued, the person so pursuing may, after notice of his intention and refusal of admittance, and subject to the provisions of section 46, break open any outer or inner door or window of any house or place.

Power to break open door.

CHAPTER VI.

Of Processes to compel Appearance.

A.—Summons.

Act X, 1872, s. 152, omitting 'and sealed.' Act IV, 1877, s. 47.

65. Every summons issued by a Court under this Code shall be in writing signed by the presiding officer of such Court, or by such other officer as the High Court may from time to time by rule direct.

Form of summons.

Act X, 1872, s. 153, altered.

It shall ordinarily be served by an officer of the Court; but the Court issuing the summons may, if it thinks fit, direct it to be served by a Police-officer.

Summons by whom served.

Act X, 1872, s. 154. Act IV, 1877, s. 48.

66. If the person summoned is found, the summons shall be served on him personally by delivering or tendering the summons to him.

Summons how served.

Every person to whom a summons is so delivered or tendered shall, if so required by the serving officer, sign a receipt therefor, or countersign a copy thereof.

Signature of receipt for summons.

Act X, 1872, s. 154, 'or servant' added. Act IV, 1877, s. 49.

67. Where the person summoned cannot by the exercise of due diligence be found, the summons may be served by leaving it for him with some adult male member or servant of his family residing with him; and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefor, or countersign a copy thereof.

Service when person summoned cannot be found.

Act X, 1872, s. 155.

68. If the signature or countersignature mentioned in sections 66 and 67 cannot by the exercise of due diligence be obtained, the serving officer shall fix a copy of the summons on some conspicuous part of the house in which the person summoned ordinarily resides; and thereupon the summons shall be deemed to have been duly served.

Procedure when receipt cannot be obtained.

Act X, 1872, s. 158, proviso.

69. Where the person summoned is in the active service of Government or of a Railway Company, the Court issuing the summons shall send it to the head of the office in which such person is employed; and such head shall thereupon cause the summons to be served in manner provided by section 66.

Service on servant of Government or of Railway Company.

Act XXIII, 1840, s. 1. Act IV, 1877, s. 50.

70. When a Court desires that a summons issued by it shall be served at any place outside the local limits of its jurisdiction, it shall send such summons in duplicate to a Magistrate within the local limits of whose jurisdiction the person summoned resides or is, to be there served.

Service of summons outside local limits.

Act IV, 1877, s. 51.

71. When a summons issued by a Court is served outside the local limits of its jurisdiction, and in any case where the officer who has served a summons is not present at the hearing of the case, the service may be proved—

Proof of service in such cases and when serving officer not present.

(*a*) by a solemn declaration, purporting to be made before a Magistrate, that such summons has been served; or

(*b*) by a copy of the summons purporting to be countersigned by the person to whom it is delivered or tendered or with whom it is left; or

New.

(*c*) by a receipt under section 66 or 67.

The declaration mentioned in clause (*a*) may be endorsed on the copy of the summons and returned to the Court.

B.—Warrant of Arrest.

Act X, 1872, s. 159, amended. Act IV, 1877, s. 56, which does not require the seal. But see 9 Bomb. 157.

72. Every warrant for the arrest of an accused person issued by a Court shall be in writing under the hand and seal of the presiding officer.

Form of warrant of arrest.

Every such warrant remains in force until it is cancelled by the Court which issued it, or until it is executed.

Continuance of warrant of arrest.

Act X, 1872, s. 160. Act IV, 1877, s. 58.

73. Any Court issuing a warrant for the arrest of any person may in its discretion direct by endorsement on the warrant that, if such person execute a bond with sufficient sureties for his appearance before the Court on a specified day, the officer to whom the warrant is directed shall take such security and shall release such person from custody.

Court may direct security to be taken.

The endorsement shall state (*a*) the number of sureties, (*b*) the amount in which they and the person for whose arrest the warrant is issued are to be respectively bound, and (*c*) the day on which he is to appear before the Court.

Whenever security is taken under this section, the officer to whom the warrant is directed shall forward the bond to the Court.

Recognizance to be forwarded.

Act X, 1872, s. 161. Act IV, 1877, s. 56.

74. A warrant of arrest shall ordinarily be directed to one or more Police-officers, and, when issued by a Presidency Magistrate, shall always be so directed; but any other Court issuing such a warrant may, if its immediate execution is necessary and no Police-officer is immediately available, direct it to any other person or persons, and such person or persons shall execute the same:

Warrants to whom directed.

Provided that when a warrant is directed to more officers or persons than one, it may be executed by all, or by any one or more, of them.

Warrant to several persons.

Act X, 1872, s. 164. Act IV, 1877, s. 59.

75. A District Magistrate may direct a warrant to any landholder, farmer or manager of land within his district for the arrest of any escaped convict, proclaimed offender or person who has been accused of a non-bailable offence, and who has eluded pursuit.

Warrant may be directed to landholders, &c.

Act X, 1872, s. 162.

Such landholder, farmer or manager shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued is in, or enters on, his land or farm, or the land under his charge.

When the person against whom such warrant is issued is arrested, he shall be made over with the warrant to the nearest Police-officer, who shall cause him to be taken before the Magistrate having jurisdiction, unless security is taken under section 73.

Act X, 1872, s. 163.

76. When a warrant is directed to a person other than a Police-officer, any other person may aid in executing such warrant, if the person to whom it is directed is near at hand and acting in execution thereof.

Warrants directed to any person other than a Police-officer.

Act X, 1872, s. 166. Act IV, 1877, s. 60.

77. A warrant directed to any Police-officer may also be executed by any other Police-officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed.

Warrant directed to Police-officer.

Act X, 1872, s. 176.

78. The Police-officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested and, if so required, shall show him the warrant.

Notification of substance of warrant.

Act X, 1872, s. 183.

79. The Police-officer or other person executing a warrant of arrest shall (subject to the provisions of section 73 as to security) without unnecessary delay bring the person arrested before the Court before which he is required by this Code to produce him.

Person arrested to be brought before Court without delay.

Act X, 1872, s. 167. Act IV, 1877, s. 63.

80. A warrant of arrest may be executed at any place in British India.

Where warrant may be executed.

Act X, 1872, s. 168. Act IV, 1877, s. 64.

81. When a warrant is to be executed outside the local limits of the jurisdiction of the Court issuing the same, such Court may, instead of directing such warrant to a Police-officer, forward the same by post or otherwise to any Magistrate or Commissioner of Police within the local limits of whose jurisdiction it is to be executed.

Warrant forwarded to Magistrate for execution outside jurisdiction.

The Magistrate or Commissioner to whom such warrant is so forwarded shall endorse his name thereon, and cause it to be executed within the local limits of his jurisdiction.

Act IV, 1877, s. 64, paras. 5, 6, 7.

82. When a warrant directed to a Police-officer is to be executed beyond the local limits of the jurisdiction of the Court issuing the same, he may take it for endorsement either to a Magistrate or to a Police-officer not below the rank of an officer in charge of a station, within the local limits of whose jurisdiction the warrant is to be executed.

Warrant directed to police-officer for execution outside jurisdiction.

Such Magistrate or Police-officer shall endorse his name thereon, and such endorsement shall be sufficient authority to the Police-officer to whom the warrant is directed to execute the same within such limits, and the local Police shall if so required assist such officer in executing such warrant.

Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate or Police officer within the local limits of whose jurisdiction the warrant is to be executed will prevent such execution, the Police-officer to whom it is directed may execute the same without such endorsement in any place beyond the local limits of the jurisdiction of the Court which issued it.

83. When a warrant of arrest is executed outside the district in which it was issued, the person arrested shall, unless the Court which issued the warrant is within twenty miles, or is nearer than the Magistrate or Commissioner of Police within the local limits of whose jurisdiction the arrest was made, or unless security is taken under section 73, be taken before such Magistrate or Commissioner.

Procedure on arrest of person against whom warrant issued.

Act X, 1872, s. 170. Act IV, 1877, s. 65, para. 2.

84. Such Magistrate or Commissioner shall, if the person arrested appears to be the person intended by the Court which issued the warrant, direct his removal in custody to such Court, unless the offence is bailable, and such person is then ready and willing to give the security (if any) required under section 73, in which case the Magistrate or Commissioner shall take such security and forward the bond to the Court which issued the warrant.

Procedure by Magistrate before whom person arrested is brought.

C.—Proclamation and Attachment.

Act X, 1872, ss. 171 and 353. Act X, 1875, s. 82. Act IV, 1877, ss. 67 and 137. 10 Beng. App. 18.

85. If a Court has reason to believe that any person against whom a warrant has been issued by it is absconding or concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of such proclamation.

Proclamation for person absconding.

The proclamation shall be published as follows:—

(*a*) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(*b*) it shall be affixed on some conspicuous part of his ordinary place of abode, or on some conspicuous place of such town or village; and

(*c*) a copy thereof shall be affixed to some conspicuous part of the Court-house.

A statement by the Court to the effect that the proclamation was duly published on a specified day shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

New as to day of publication.

Act X, 1872, ss. 172 and 353. Act IV, 1877, ss. 68, 137.

86. The Court may order the attachment of any property, moveable or immoveable, or both, belonging to any such person.

Attachment of property of person absconding.

Such order shall authorize the attachment of any property belonging to such person within the district in which it is made; and it shall authorize the attachment of any property belonging to such person without such district, when endorsed by the District Magistrate within the local limits of whose jurisdiction such property is situate.

If the property ordered to be attached be immoveable, the attachment under this section shall, in the case of land paying revenue to Government, be made through the Collector of the District in which the land is situate, and in all other cases—

(*a*) by seizure; or

(*b*) by the appointment of a receiver; or

(*c*) by an order prohibiting the payment of rent to the absent person; or

(*d*) by all or any two of such methods, as the Court thinks fit.

If the person so believed to be absconding or concealing himself does not appear within the time specified in the proclamation, the property under attachment shall be at the disposal of Government; but it shall not be sold until the expiration of six months from the date of the attachment, unless it is of a perishable nature, or the Court considers that the sale would be for the benefit of the owner, in either of which cases the Court may cause it to be sold whenever it thinks fit.

Act X, 1872, ss. 173, 354. Act X, 1875, s. 83. Act IV, 1877, ss. 69, 138.

87. Restoration of attached property. If, within two years from the date of the attachment, any person whose property is or has been at the disposal of Government under the last paragraph of section 86 appears voluntarily or is apprehended and brought before the Magistrate having jurisdiction, and proves to the satisfaction of the Court by whose order the property was attached, that he did not abscond or conceal himself for the purpose of evading justice, such property, or, if the same has been sold, the nett proceeds of the sale, or if part only thereof has been sold, the nett proceeds of the sale and the residue of the property, shall, after satisfying thereout all costs incurred in consequence of the attachment, be delivered to him.

D.—Miscellaneous.

Act X, 1872, ss. 156, 352, 355. Act X, 1875, ss. 81, 84. Act IV, 1877, ss. 34, 36, 53, 135, 136, 217.

88. Issue of warrant in lieu of or in addition to summons. A Court may, in any case in which it is empowered by this Code to issue a summons for the appearance of any person, issue a warrant for his arrest—

(*a*) if either before the issue of such summons, or after the issue of the same but before the time fixed for his appearance, the Court sees reason to believe that he has absconded or will not obey the summons; or

(*b*) 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.

Act X of 1872, s. 476. Act IV, 1877, s. 140.

89. Power to take bond for appearance. When any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons or warrant is present in such Court, such officer may require such person to execute a bond with or without sureties for his appearance in such Court.

Act X, 1872, s. 208. Act IV, 1877, s. 124, para. 2.

90. Arrest on breach of bond for appearance. When any person who is bound by any bond taken under this Code to appear before a Court does not so appear, the officer presiding in such Court may issue a warrant directing that such person be arrested or produced before him.

Act X, 1872, ss. 158-185. Act IV, 1877, s. 52.

91. Provisions in this chapter generally applicable to summonses and warrants of arrest. The provisions contained in this chapter relating to a summons and warrant and their issue, service and execution shall, so far as may be, apply to every summons and every warrant of arrest issued under this Code.

CHAPTER VII.

OF PROCESSES TO COMPEL THE PRODUCTION OF DOCUMENTS AND OTHER MOVEABLE PROPERTY.

A.—Summons to produce.

Act X, 1872, s. 365. Act X, 1875, s. 86. Act IV, 1877, s. 144.

92. Summons to produce document or other thing. Whenever any Court or any officer in charge of a Police-station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court or officer may issue a summons to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it at the time and place stated in the summons.

New. Nothing in this section applies to a letter or telegram in the custody of the Postal or Telegraph Department.

Act X, 1872, s. 369, last sentence. Act IV, 1877, s. 146.

93. Procedure as to letters and telegrams. If any letter or telegram in the custody of the Postal or Telegraph Department is, in the opinion of any District Magistrate, Chief Presidency Magistrate, High Court or Court of Session, wanted for the purpose of any investigation, inquiry, trial or other proceeding under this Code, such Magistrate or Court may require such Department to deliver such letter or telegram to such person as such Magistrate or Court directs.

If any such letter is, in the opinion of any other Magistrate or of any Commissioner of Police, or District Superintendent of Police, wanted for any such purpose, he may require the Postal Department to cause search to be made for and to detain such letter, pending the orders of any such District Magistrate, Chief Presidency Magistrate or Court.

B.—Search-warrants.

Act X, 1872, s. 366. Act X, 1875, s. 87. Act IV, 1877, s. 145.

94. When search-warrant may be issued. Where there is reason to believe that a person to whom a summons under section 92 or a requisition under section 93, paragraph one, has been or might be addressed will not or would not produce the document or other thing as directed in such summons,

or where such document or other thing is not known to be in the possession of any person,

Act X, 1872, s. 368. Act IV, 1877, s. 15

or where the Court considers that the purposes of any inquiry, trial or other proceeding under this Code, will be served by a general search or inspection,

it may issue a search-warrant; and the person to whom such warrant is directed may search or inspect any place within the local limits of the jurisdiction of such Court.

Act X, 1872, s. 369, para. 1.

Nothing herein contained shall authorize any Magistrate, other than a District Magistrate, to

grant a warrant to search for a letter or telegram in the custody of the Postal or Telegraph authorities.

General warrant should not be the rule.

95. Power to restrict warrant. The Court may, if it thinks fit, specify in the warrant the particular place, building or part thereof to which only the search or inspection shall extend; and the person charged with the execution of such warrant shall then search or inspect only the place, building or part so specified.

Act X, 1872, ss. 370, 371, 372, 373, 375, 376, para. 1, Act IV, 1877, s. 161.

96. Direction, &c., of search-warrants. The provisions of sections 72, paragraph two, 74, 76, 77, 80, 81 and 82 shall, so far as may be, apply to all search-warrants issued under section 94.

Act X, 1872, s. 377. Act IV, 1877, s. 160.

97. Search of house suspected to contain stolen property, forged documents, &c. If a District Magistrate, Sub-divisional Magistrate, Presidency Magistrate or a Magistrate of the first class, upon information and after such inquiry as he thinks necessary, has reason to believe that any place is used for the deposit or sale of stolen property, or of property which has been fraudulently obtained,

or for the deposit or sale or manufacture of forged documents, false seals, or counterfeit stamps or coin, or instruments or materials for counterfeiting coin or for forging,

or that any forged documents, false seals or counterfeit Government stamps, or coin, or instruments or materials used for counterfeiting coin or for forging are kept or deposited in any place,

he may by his warrant authorize any Police-officer above the rank of a constable—

(*a*) to enter, with such assistance as may be required such place, and

(*b*) to search the same as specified in the warrant, and

(*c*) to take possession of any property, documents, seals, stamps or coins therein found which he reasonably suspects to be stolen, unlawfully obtained, forged, false or counterfeit, and also any such instruments and materials as aforesaid, and

(*d*) to convey such property, documents, seals, stamps, coins, instruments or materials before a Magistrate, or to guard the same on the spot until the offender is taken before a Magistrate, or otherwise to dispose thereof in some place of safety, and

(*e*) to take into custody and carry before a Magistrate every person found in such place who appears to have been privy to the deposit, sale or manufacture or keeping of any such property, documents, seals, stamps, coins, instruments or materials, knowing or having reasonable cause to suspect the said property to have been stolen or otherwise unlawfully obtained, or the said documents, seals, stamps, coins, instruments or materials to have been forged, falsified or counterfeited, or the said instruments or materials to have been or to be intended to be used for counterfeiting coin or for forging.

Act X, 1872, ss. 382, 384. Act IV, 1877, s. 162.

98. Persons in charge of closed place to allow search. Whenever any place liable to search or inspection under this chapter is closed, any person residing in, or being in charge of, such place shall, on demand of the officer or other person executing the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

Act X, 1872, s. 383. Act IV, 1877, ss. 163, 164.

If ingress into such place cannot be so obtained, the officer or other person executing the warrant may proceed in manner provided by section 46.

Act X, 1872, s. 385. Act IV, 1877, s. 165.

99. Search to be made in presence of witnesses. Before making a search under this chapter, the officer or other person about to make it shall call upon two or more respectable inhabitants of the locality in which the place to be searched is situate to attend and witness the search.

The search shall be made in their presence, but they shall not be required to attend the Court as witnesses unless specially summoned by it.

Occupant of place searched may attend. The occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search.

Act X, 1872, s. 386. Act IV, 1877, s. 166.

100. Mode of searching women. Whenever it is necessary to cause a woman to be searched, the search shall be made with strict regard to the customs of the country.

Act X, 1872, ss. 373, para. 2, 374.

101. Disposal of things found in search beyond jurisdiction. When, in the execution of a search-warrant at any place beyond the local limits of the jurisdiction of the Court which issued the same, the thing for which search is made is found, it shall, when such place is nearer to the Magistrate having jurisdiction therein than to such Court, be immediately taken before such Magistrate; and, unless there be good cause to the contrary, such Magistrate shall make an order authorizing it to be taken to such Court.

C.—Miscellaneous.

Act X, 1872, s. 367. Act X, 1875, s. 88. Act IV, 1877, s. 147.

102. Power to impound document produced. Any Court may, if it thinks fit, impound any document or other thing produced before it under this Code.

Act X, 1872, s. 378, para. 2.

103. Magistrate may direct search in his presence. Any Magistrate may direct a search to be made in his presence of any place for the search of which he is competent to issue a search-warrant.

PART IV.

PREVENTION OF OFFENCES.

CHAPTER VIII.

LAWFUL RESISTANCE.

New.

104. Lawful resistance to offences. Lawful resistance to the commission of an offence may be made by any person in the cases and to the extent in and to which he may exercise the right of private defence.

CHAPTER IX.

OF SECURITY FOR KEEPING THE PEACE AND FOR GOOD BEHAVIOUR.

A.—Security for keeping the Peace on Conviction.

Act X, 1872, ss. 489, 490. Act X, 1875, s. 140. Act IV, 1877, s. 208. Bond becomes void when conviction set aside, N. W. P., 1875, p. 376.

105. Whenever a person accused of rioting, assault or other breach of the peace, or with abetting the same, or with assembling armed men or taking other unlawful measures with the evident intention of committing the same, is convicted of such offence before a High Court, a Court of Session or the Court of a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate or a Magistrate of the first class,

Security for keeping the peace on conviction.

and such Court is of opinion that it is necessary to require such person to execute a bond for keeping the peace,

such Court may, at the time of passing sentence on such person, order him to execute a bond for a sum proportionate to his means, with or without sureties, for keeping the peace during such period not exceeding three years as it thinks fit to fix.

Act X, 1872, ss. 490, 493. Cf. s. 506. Act X, 1875, s. 141. Act IV, 1877, s. 209.

B.—Security for keeping the Peace in other Cases and Security for Good Behaviour.

Act X, 1872, s. 491, omitting the "explanation" Act IV, 1877 ss. 215, 231.

106. Whenever a Presidency Magistrate, a District Magistrate, a Sub-Divisional Magistrate or a Magistrate of the first class receives information that any person is likely to commit a breach of the peace, or to do any act that may probably occasion a breach of the peace within the local limits of such Magistrate's jurisdiction, or that there is within such limits a person who is likely to commit a breach of the peace or do any act as aforesaid in any place beyond such limits, the Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period not exceeding three years as the Magistrate thinks fit to fix.

Security for keeping the peace in other cases.

One year in Act X, 1872, s. 498.

Act X, 1872, s. 494.

107. When any Magistrate not empowered to proceed under section 106, or a Court of Session or High Court, has reason to believe that any person is likely to commit a breach of the peace or to do any act that may probably occasion a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by detaining such person in custody, such Magistrate or Court may issue a warrant for his arrest (if he is not already in custody), and may send him before a Magistrate empowered to deal with the case under section 106.

Procedure of Magistrate, &c., not empowered to act under section 106.

A Magistrate before whom a person is sent under this section may in his discretion detain such person in custody until the completion of the enquiry hereinafter prescribed.

Act X, 1872, ss. 504, 505, 506. Act IV, 1877, ss. 212, 213, 214, 231.

108. Whenever a Presidency Magistrate, District Magistrate, Sub-Divisional Magistrate or Magistrate of the first class receives information—

Security for good behaviour from vagrants and suspected persons.

(*a*) that any person is taking precautions to conceal his presence within the local limits of such Magistrate's jurisdiction, and that there is reason to believe that such person is taking such precautions with a view to committing an offence, or

(*b*) that there is within such limits a person who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself,

such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period not exceeding six months as the Magistrate thinks fit to fix.

Act X, 1872, ss. 505, 506. Act IV, 1877, ss. 213, 214, 231.

109. Whenever any such Magistrate receives information that any person within the local limits of his jurisdiction is by repute an habitual robber, housebreaker or thief, or an habitual receiver of stolen property knowing the same to have been stolen, or of a dangerous character,

Security for good behaviour from notorious offenders.

such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period not exceeding three years as the Magistrate thinks fit to fix.

Act X, 1872, s. 517. Act IV, 1877, s. 232.

110. The provisions of sections 108 and 109 do not apply to European British subjects in cases where they may be dealt with under the European Vagrancy Act, 1874.

Proviso as to European vagrants.

Act X, 1872, ss. 493, 509, 515. Act IV, 1877, s. 216, para. 1, 222.

111. When a Magistrate acting under section 106, section 108 or section 109 deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number of sureties (if any) required.

Order to be made.

Act X, 1872, s. 492, Expl. Act IV, 1877, s. 216, para. 2.

112. If the person in respect of whom such order is made is present in court, it shall be read over to him or, if he so desires, the substance thereof shall be explained to him in a language which he understands.

Procedure in respect of person present in Court.

Act X, 1872, ss. 494, 515.

113. If such person is not present in court, the Magistrate shall issue a summons requiring him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is to bring him, before the Court:

Summons or warrant in case of person not so present.

Act IV, 1877, s. 217 proviso. In bad livelihood cases Police can arrest without warrant.

Provided that, whenever it appears to such Magistrate, upon the report of a Police-officer or upon other information, that there is reason to fear the commission of a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the Magistrate may at any time issue a warrant for his arrest.

114. Every summons or warrant issued under section 113 shall be accompanied by a copy of the order made under section 111, and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with, or arrested under, the same.

Copy of order under section 111 to accompany summons or warrant.

Act X, 1872, s. 495. Act IV, 1877, s. 218.

115. The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called upon to shew cause why he should not be ordered to execute a bond for keeping the peace, and may permit him to appear by a pleader.

Power to dispense with personal attendance.

New. 1 O'Kin. 130.

116. When an order under section 111 has been read or explained to a person present in Court under section 112, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant issued under section 113, the Magistrate shall proceed to enquire into the truth of the information upon which he has acted.

Inquiry as to truth of information.

Such enquiry shall be made, as nearly as may be, where the order requires security for keeping the peace, in the manner hereinafter prescribed for conducting trials in summons-cases; and where the order requires security for good behaviour, in the manner hereinafter prescribed for conducting trials in warrant-cases, except that no charge need be framed.

Act X, 1872, s. 497. Act IV, 1877, s. 220.

117. If, upon such enquiry, it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the enquiry is made should execute a bond with or without sureties, the Magistrate shall make an order accordingly:

Order to give security.

Provided that no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 111:

O'Kin. 95.

Provided also that the amount of every bond shall be fixed with due regard to the circumstances of the case and the means of the person required to execute the same.

[illegible], 1872, [illegible] 496. [illegible]IV, 1877, s. 218.

118. If, on an inquiry under section 116, the Magistrate is not satisfied that there is occasion to bind over the person in respect of whom such enquiry is made to keep the peace, or to be of good behaviour, as the case may be, the Magistrate shall make an entry on the record to that effect, and, if such person is in custody only for the purposes of the enquiry, shall release him.

Discharge of person informed against.

C.—Proceedings in all Cases subsequent to Order to furnish Security.

Act X, 1872, s. 504, para. 2. Act IV, 1877, ss. 210, 224. I. L. R. 1 All. 666 n.

119. If any person in respect of whom an order requiring security is made under section 105 or section 117 is, at the time such order is made, sentenced to, or undergoing a sentence of, imprisonment, the period for which such security is required shall commence on the expiration of such sentence.

Commencement of period for which security is required.

In other cases such period shall commence on the date of such order.

Act X, 1872, s. 502, para. 6.

120. The bond to be executed by any such person shall bind him to keep the peace or to be of good behaviour to Her Majesty the Queen, Empress of India, and to all Her subjects, as the case may be, and in the latter case the commission or attempt to commit, or abetment of, any offence whatever, and wherever it may be committed, is a breach of the bond.

Contents of bond.

Act X. 1872, s. 516.

121. A Magistrate may refuse to accept any surety for good behaviour offered under this chapter, on the ground that such surety is an unfit person.

Power to reject sureties.

Act X. 1872, ss. 499, para. 3, 510. Act IV, 1877, s. 223.

122. If any person ordered to give security under section 105 or section 117 does not give such security on or before the date on which the period for which such security is to be given commences, he shall, except in the case next hereinafter mentioned, be committed to prison, or, if he is already in prison, be detained in prison until such period expires or until within such period he gives the security required.

Imprisonment in default of security.

Act X, 1872, ss. 507, 508. Act IV, 1877, s. 221.

When such person has been ordered by a Magistrate to give security for a period exceeding one year, such Magistrate shall, if such person does not give such security as aforesaid, issue a warrant directing him to be detained pending the orders of the Court of Session, or, if such Magistrate be a Presidency Magistrate, pending the orders of the High Court, and the proceedings shall be laid, as soon as conveniently may be, before such Court.

Proceedings when to be laid before High Court or Court of Session.

Such Court, after examining such proceedings and requiring any further information or evidence which it thinks necessary, may pass such order on the case as it thinks fit: Provided that the period (if any) for which any person is imprisoned for failure to give security shall not exceed three years.

Act X. 1872, s. 499, para. 3.

Imprisonment for failure to give security for keeping the peace shall be simple.

Kind of imprisonment.

Act X, 1872, s. 510, para. 3.

Imprisonment for failure to give security for good behaviour may be rigorous or simple as the Court or Magistrate in each case directs.

Act X, 1872, ss. 500, 511. Act IV, 1877, s. 225.

123. Whenever the District Magistrate or a Presidency Magistrate is of opinion that any person imprisoned for failing to give security under this chapter,

Power to release persons imprisoned for failing to give security.

whether by the order of such Magistrate or that of his predecessor in office, or of some subordinate Magistrate, may be released without hazard to the community or to any other person, he may order such person to be discharged.

Act X, 1872, s. 512.

'Whenever the District Magistrate or a Presidency Magistrate is of opinion that any person imprisoned for failing to give security under this chapter as ordered by the Court of Session or High Court may be safely released without such security, such Magistrate shall make an immediate report of the case for the orders of the Court of Session or High Court, as the case may be, and such Court may, if it thinks fit, order such person to be discharged.

Act X, 1872, ss. 500, 511. Act IV, 1877, s. 226.

124. Any surety for the peaceable conduct or good behaviour of another person may at any time apply to a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class to cancel the bond.

Discharge of sureties.

On such application being made, the Magistrate shall issue his summons or warrant, as he thinks fit, requiring the person for whom such surety is bound to appear or to be brought before him.

When such person appears or is brought before the Magistrate, such Magistrate shall cancel the bond, and shall order such person to give, for the unexpired portion of the term of such bond, fresh security of the same description as the original security. Every such order shall, for the purposes of sections 120, 121, 122 and 123, be deemed to be an order made under section 105 or section 117, as the case may be.

CHAPTER X.

UNLAWFUL ASSEMBLIES.

Act X, 1872, s. 480. Act XI, 1874, s. 43. Indian Penal Code, ss. 145, 151.

125. Any Magistrate or officer in charge of a Police-station, whether within or without the Presidency-towns, may command any unlawful assembly, or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

Assembly to disperse on command of Magistrate or Police-officer.

Act X, 1872, s. 481.

126. If, upon being so commanded, any such assembly does not disperse, any Magistrate or officer in charge of a Police-station, whether within or without the Presidency-towns, may proceed to disperse such assembly by force, and may require the assistance of any male person, not being an officer or soldier in Her Majesty's Army or a Volunteer enrolled under the Indian Volunteers Act, 1869, and acting as such, for the purpose of dispersing such assembly, and, if necessary, arresting and confining the persons who form part of it in order to disperse such assembly or that they may be punished according to law.

Use of civil force to disperse.

Volunteers added.

Act X, 1872, s. 482.

127. If any such assembly cannot be otherwise dispersed, and if it is necessary for the public security that it should be dispersed, the Magistrate of the highest rank who is present may cause it to be dispersed by military force.

Use of military force.

Act X, 1872, s. 484, adding volunteers.

128. When a Magistrate determines to disperse any such assembly by military force, he may require any officer in command of any soldiers in Her Majesty's Army or of any Volunteers enrolled under the Indian Volunteers Act, 1869, to disperse such assembly by such force, and to arrest and confine such persons forming part of it as the Magistrate may direct, or as it may be necessary to arrest and confine in order to disperse the assembly, or that they may be punished according to law.

Duty of officer commanding troops required by Magistrate to disperse assembly.

Every such officer shall obey such requisition in such manner as he thinks fit; but in so doing he shall use as little force, and do as little injury to person and property, as is consistent with dispersing the assembly and arresting and detaining such persons.

Act X, 1872, s. 487.

129. When the public security is manifestly endangered by any such assembly, and when no Magistrate can be communicated with, any commissioned officer of Her Majesty's Army may disperse such assembly by military force, and may arrest and confine any persons forming part of it in order to disperse such assembly, or that they may be punished according to law; but as soon as he can communicate the facts of the case to a Magistrate, he shall do so.

Power of commissioned military officers to disperse assembly.

Act X, 1872, s. 488.

130. No prosecution against any Magistrate, Military officer, Police-officer or soldier for any act purporting to be done under this chapter shall be instituted in any criminal Court, except with the sanction of the Governor General in Council or of the Local Government; and

Protection against prosecution for acts done under this chapter.

Act X, 1872, ss. 483, 485, 486.

(*a*) no Magistrate or Police-officer acting under this chapter in good faith;

(*b*) no officer acting under section 129 in good faith;

(*c*) no person doing any act in good faith in compliance with a requisition under section 126 or section 128, and

(*d*) no inferior officer or private soldier doing any act in obedience to any order which under military law he was bound to obey,

shall be deemed to have thereby committed an offence.

CHAPTER XI.

PUBLIC NUISANCES.

Act X, 1872, s. 521, substituting "highway" for "thoroughfare."

131. Whenever a District Magistrate, or Sub-divisional Magistrate or, when empowered by the Local Government in this behalf, a Magistrate of the first class, considers,

Conditional order for removal of nuisance.

on receiving a report or other information and on taking such evidence (if any) as he thinks fit,

that any unlawful obstruction or nuisance should be removed from any highway, navigable river or public place, or

that any trade or occupation, by reason of its being injurious to the health or physical comfort of the community, should be suppressed or removed, or

"Combustible" omitted.

that the construction of any building, or the disposal of any substance as likely to occasion conflagration or explosion, should be prevented or stopped, or

that any building is in such a state of weakness that it is likely to fall and thereby cause injury to persons passing by, and that its removal in consequence is necessary, or

that any tank or well adjacent to any highway should be fenced in such a manner as to prevent danger arising to the public,—

such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or owning, possessing or controlling such building substance, tank or well, as aforesaid, within a time to be fixed in the order,

to remove such obstruction or nuisance; or

to suppress or remove such trade or occupation; or

to prevent or stop the construction of such building; or

to remove it; or

to alter the disposal of such substance; or

to fence such tank or well, as the case may be, or

to appear before himself or some other Magistrate of the first or second class, at a time and place to be fixed by the order, and move to have the order set aside or modified in manner hereinafter provided.

No order duly made by a Magistrate under this section shall be called in question in any Civil Court.

EXPLANATION.—A "public place" includes property belonging to the State, camping grounds, and grounds left unoccupied for sanitary and recreative purposes.

Act X, 1872, s. 522.

132. The order shall, if practicable, be served on the person against whom it is made in manner herein provided for service of a summons.

Service or notification of order.

If such order cannot be so served, it shall be notified by proclamation, and a written notice thereof shall be stuck up at such place or places as may be fittest for conveying the information to such person.

Act X, 1872, s. 523.

133. The person against whom such order is made shall—

Person to whom order is addressed to obey,

(*a*) perform, within the time specified in the order, the act directed thereby; or

or shew cause or claim jury.

(*b*) appear in accordance with such order and either show cause against the same, or apply to such Magistrate to appoint a jury to try whether the same is reasonable and proper.

Act X, 1872, s. 525.

134. If such person does not perform such act or appear and shew cause or apply for the appointment of a jury as required by section 133, he shall be liable to the penalty prescribed in that behalf in section 188 of the Indian Penal Code; and the order shall be made absolute.

Consequence of his failing to do so.

Act X. 1872, ss. 525, 527. Act XI, 1874, s. 45.

135. If he appears and shews cause against the order, the Magistrate shall take evidence in the matter.

Procedure where he appears to shew cause.

I O'Kin. 486.

If the Magistrate is satisfied that the order is not reasonable and proper, no further proceedings shall be taken in the case.

If the Magistrate is not so satisfied, the order shall be made absolute.

Act X, 1872, s. 523, para. 2.

136. On receiving an application under section 133 to appoint a jury, the Magistrate shall—

Procedure where he claims jury.

(*a*) forthwith appoint a jury consisting of an uneven number of persons not less than five, of whom the foreman and one half of the remaining members shall be nominated by such Magistrate, and the other members by the applicant;

Act X, 1872, s. 524.

(*b*) summon such foreman and members to attend at such place and time as the Magistrate thinks fit; and

(*c*) fix a time within which they are to return their verdict.

Act X, 1872, ss. 523, 526.

137. If the jury or a majority of the jurors find that the order of the Magistrate is reasonable and proper as originally made, or subject to a modification which the Magistrate accepts, the Magistrate shall make the order absolute, subject to such modification (if any).

Procedure where jury finds Magistrate's order to be reasonable.

In other cases, no further proceedings shall be taken.

Act X, 1872, s. 525.

138. When an order has been made absolute under section 134, section 135, or section 137, the Magistrate shall give notice of the same to the person against whom the order was made and shall further require him to perform the act directed by the order within a time to be fixed in the notice, and inform him that, in case of disobedience, he will be liable to the penalty provided by section 188 of the Indian Penal Code.

Procedure on order being made absolute.

If such act is not performed within the time fixed, the Magistrate may cause it to be performed, and may recover the costs of performing it, either by the sale of any building, goods or other property removed by his order, or by the distress and sale of any other moveable property of such person within or without the local limits of the Magistrate's jurisdiction. If such other property is without such limits, the order shall authorize its attachment and sale when endorsed by the Magistrate within the local limits of whose jurisdiction the property to be attached is found.

Consequences of disobedience to order.

No suit shall lie in respect of anything reasonably done under this section. (Act X, 1872, s. 522, para. 4.)

139. If the applicant by neglect or otherwise prevents the appointment of the jury, or if from any cause the jury appointed do not return their verdict within the time fixed or within such further time as the Magistrate may in his discretion allow, the Magistrate may pass such order as he thinks fit, and such order shall be executed in the manner provided by section 138. (Act X, 1872, s. 523, para. 4.)

Procedure on failure to appoint jury or omission to return verdict.

140. If a Magistrate making an order under section 131 considers that immediate measures should be taken to prevent imminent danger or injury of a serious kind to the public, he may, whether a jury is to be, or has been, appointed or not, issue such an injunction to the person against whom the order was made as is required to obviate or prevent such danger or injury. (Act X, 1872, s. 528.)

Injunction pending inquiry.

In default of such person forthwith obeying such injunction, the Magistrate may himself use, or cause to be used, such means as he thinks fit to obviate such danger or to prevent such injury.

No suit shall lie in respect of anything reasonably done by a Magistrate under this section.

141. In cases where, in the opinion of a District Magistrate, a Sub-divisional Magistrate, or of any other Magistrate specially empowered by the Local Government or the District Magistrate to act under this section, a speedy remedy is desirable and the delay which would be occasioned by a resort to the procedure contained in section 131 and the next following sections would occasion a greater evil than that suffered by the person against whom the order was made, or would defeat the intention of this chapter, (Act X, 1872, s. 518. Expl. 1. 1 O'Kin. 58.)

Power to issue order absolute at once in urgent cases.

such Magistrate may, by a written order stating the material facts of the case and served in manner provided by section 132, direct any person to abstain from a certain act or to take certain order with certain property in his possession, or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed, or danger to human life, health or safety, or a riot or an affray. (Act X, 1872, s. 518. 1 Beng. Ap. Cr. 20.)

An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed be passed *ex parte*, and may in all cases be made upon such information as satisfies the Magistrate. (Act X, 1872, s. 518, Expl. II.)

An order under this section may be directed to a particular individual, or to the public generally when frequenting or visiting a particular place. (Act X, 1872, s. 518, Expl. III.)

Any Magistrate may rescind or alter any order made under this section by himself or by his predecessor in office. As to disobedience to such orders, see Penal Code, s. 188. (Act X, 1872, s. 318, Expl. IV.)

142. A Sub-divisional Magistrate or any other Magistrate empowered by the Local Government or the District Magistrate in this behalf may order any person not to repeat or continue a public nuisance. (Act X, 1872, s. 519. Penal Code, s. 291.)

Magistrate may prohibit repetition or continuance of public nuisances.

CHAPTER XII.

DISPUTES AS TO IMMOVEABLE PROPERTY.

143. Whenever a District Magistrate, Sub-Divisional Magistrate, or a Magistrate of the first class, is satisfied from a Police-report or other information that a dispute likely to cause a breach of the peace exists concerning any tangible immoveable property, or the boundaries thereof, within the local limits of his jurisdiction, he shall make an order in writing stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court, in person or by agent, within a time to be fixed by such Magistrate, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute. (Act X, 1872, s. 530. 3 Calc. 552. I. L. R. 3 Calc. 320.)

Procedure where dispute concerning land, &c., is likely to cause breach of peace.

The Magistrate shall then, without reference to the merits of the claims of any of such parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties and their respective witnesses, consider the effect of the evidence and, if possible, decide whether any and which of the parties is in possession of the said subject.

Inquiry as to possession.

If he decides that one of the parties is in possession of the said subject, he shall issue an order declaring such party to be entitled to retain possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction. (1 O'Kin. 136. 2 O'Kin. 67, 264.)

Party in possession to be continued until legally evicted.

144. If such Magistrate decides that none of the parties is in possession, or is unable to satisfy himself as to which of them is in possession, of the subject of dispute, he may attach it, until a competent Civil Court has determined the rights of the parties thereto, or the person entitled to possession thereof. (Act X, 1872, s. 531. 1 O'Kin. 86.)

Power to attach subject of dispute.

145. Whenever any such Magistrate is satisfied as aforesaid that a dispute likely to cause a breach of the peace exists concerning the right to do or prevent the doing of anything in or upon any tangible immoveable property situate within the local limits of his jurisdiction, he may inquire into the matter; and may, if it appears to him that such right exists, make an order permitting such thing to be done, or directing that such thing shall not be done, as the case may be, until the person objecting to such thing being done or claiming that such thing may (Act X, 1872, s. 532.)

Disputes concerning easements, &c.

be done, obtains the decision of a competent Civil Court, adjudging him to be entitled to prevent the doing of, or to do, such thing, as the case may be:

Provided that no order shall be passed under this section permitting the doing of anything where the right to do such thing is exerciseable at all times of the year, unless such right has been ordinarily exercised within three months next before the institution of the inquiry; or, where the right is exerciseable only at particular seasons, unless such right has been so exercised during the season next before the dispute.

146. Whenever a local inquiry is necessary for the purposes of this chapter, any District Magistrate or Sub-divisional Magistrate may depute any Magistrate subordinate to him to make the inquiry, and may furnish him with such instructions consistent with the law for the time being in force as may seem necessary for his guidance, and may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid. (Act X, 1872, s. 533.)

Local inquiry.

CHAPTER XIII.

PREVENTIVE ACTION OF THE POLICE.

147. Every Police-officer may interpose for the purpose of preventing, and shall to the best of his ability prevent, the commission of any cognizable offence. (Act X, 1872, s. 95.)

Police to prevent cognizable offences.

148. Every Police-officer receiving information of a design to commit any cognizable offence shall communicate such information to the Police-officer to whom he is subordinate, and to any other officer whom it may concern, to prevent or take cognizance of the commission of any such offence. (Act X, 1872, s. 96.)

Information of design to commit such offences.

149. A Police-officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if the commission of the offence cannot be otherwise prevented. (Act X, 1872, s. 97.)

Arrest to prevent such offences.

150. A Police-officer may of his own authority interpose to prevent any injury attempted to be committed in his view to any public property, moveable or immoveable, or the removal or injury of any public land-mark, or buoy or other mark used for navigation. (Act X, 1872, s. 98.)

Prevention of injury to public property.

151. Any officer in charge of a Police-station may, without a warrant, enter any place within the limits of such station for the purpose of inspecting or searching for any weights or measures, or instruments for weighing, used or kept therein, whenever he has reason to believe that there are in such place any weights, measures or instruments for weighing which are false. (Act X, 1872, s. [illegible])

Inspection of weights and measures.

If he finds in such place any weights, measures or instruments for weighing which are false, he may seize the same, and shall forthwith give information of such seizure to the Magistrate having jurisdiction.

PART V.

INFORMATION TO THE POLICE AND OF THEIR POWERS TO INVESTIGATE.

CHAPTER XIV.

152. Every information to an officer in charge of a Police-station shall be reduced into writing by or under his direction, and shall be signed by the person giving it; and the substance thereof shall be entered in a book to be kept by such officer in such form as the Local Government may prescribe in this behalf. (Act X, 1872, s. 112.)

Information to be reduced to writing.

153. When a complaint is made to an officer in charge of a Police-station of the commission within the limits of such station of a non-cognizable offence, he shall refer the complainant to the Magistrate. (Act X, 1872, s. 113.)

Complaint in non-cognizable cases.

No Police-officer shall investigate a non-cognizable case without the order of a Magistrate of the first or second class having power to try such case or commit the same for trial. (Act X, 1872, s. 110.)

Investigation into non-cognizable cases.

Any Police-officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as in a cognizable case.

154. Any officer in charge of a Police-station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to enquire into or try under the provisions of chapter XV relating to the place of inquiry or trial. (Act X, 1872, s. 109, *v. infra*, s. 181.)

Investigation into cognizable cases.

No proceeding of a Police-officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate. (Act X, 1872, s. 114, last para.)

155. If, from information received or otherwise, an officer in charge of a Police-station has reason to suspect the commission of an offence which he is empowered under section 154 to investigate, he shall send a report of the same to the nearest Magistrate having jurisdiction to receive Police-reports, and shall proceed in person, or shall depute one of his subordinate officers to proceed, to the spot to investigate the facts and circumstances of the case, and to take such measures as may be necessary for the discovery and arrest of the offender: (Act X, 1872, s. 114. See Nelson 109.)

Procedure where cognizable offence suspected.

Act X, 1872, s. 116.

Where local investigation dispensed with.

Provided that when any information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a Police-station need not proceed in person or depute a subordinate officer to make an investigation on the spot:

Act X, 1872, s. 117, para. 1.

Where Police-officer in charge sees no sufficient ground for investigation.

Provided also that, if it appear to the officer in charge of a Police-station that there is no sufficient ground for entering on an investigation, he shall not proceed to investigate the case.

Act X, 1872, s. 117, para. 2

Reports under section 155 how submitted.

156. Every report under section 155 shall, if the Local Government so directs, be submitted through such superior officer of Police as the Local Government, by general or special order, appoints in that behalf.

Such superior officer may give such instructions to the officer in charge of the Police-station as he thinks fit, and shall, after recording such instructions on such report, transmit the same without delay to the Magistrate having jurisdiction to receive Police-reports.

Act X, 1872, s. 115.

Power to make preliminary inquiry.

157. Such Magistrate, on receiving such report, may, if he thinks fit, at once proceed, or depute any Magistrate subordinate to him to proceed, to hold a preliminary inquiry into, or otherwise to dispose of, the case in manner provided in this Code.

Act X, 1872, s. 118.

Police-officer's power to require attendance of witnesses.

158. Any Police-officer making an investigation under this chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the circumstances of the case; and such person shall attend as so required.

Act X, 1872, ss. 119, 121.

Examination of witnesses by Police.

159. Any Police-officer making an investigation under this chapter may examine orally any person supposed to be acquainted with the facts and circumstances of the case, and may reduce into writing any statement made by the person so examined.

Such person shall be bound to answer all questions relating to such case put him by such officer other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

Act X, 1872, ss. 119, para. 3, 121.

Statements to Police not to be signed or admitted in evidence.

160. No statement made by any person under section 159 or by an accused person to the Police shall, if reduced into writing, be signed by the person making it, nor shall it be treated as part of the record or used as evidence against the accused person.

Act X, 1872, ss. 120, 184. Cf. Act I, 1872, s. 24.

No inducement to be offered to confess.

161. No Police-officer or other person in authority shall offer or make to an accused person any such inducement, threat or promise as is mentioned in the Indian Evidence Act, 1872, section 24.

But no Police-officer or other person shall prevent, by any caution or otherwise, an accused person from making any statement which he may be disposed to make of his own free will. Nelson, 113.

Act X, 1872, ss. 132, Act IV, 1877, s. 14.

Power to record statements and confessions.

162. Any Magistrate may record any statement made to him by any person, or any confession made to him by any accused person, in the course of an investigation under this chapter.

Such statements shall be recorded in the manner hereinafter prescribed for recording evidence. Such confessions shall be recorded, signed and certified in the manner provided in section 366, and shall then be forwarded to the Magistrate by whom the case is inquired into or tried. I. L. R. 1 Bom. 219.

No Magistrate shall record any such confession unless, upon questioning the person making it, he has reason to believe that it was made voluntarily; and he shall make a memorandum at the foot thereof to the following effect:—

"I believe that this confession was voluntarily made. It was read over to the person making it, and was admitted by him to be correct.

"(*Signed*) A. B.,
"*Magistrate.*"

Act X, 1872

Search by officer in charge of Police-station.

163. Whenever an officer in charge of a Police-station, or a Police-officer making an investigation, considers that the production of any thing is necessary to the conduct of an investigation into any offence which he is authorised to investigate, he may search, or cause search to be made, for the same, in any place within the limits of the station of which he is in charge, or to which he is attached.

Such officer shall, if practicable, conduct the search in person.

If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in writing, specifying the thing for which search is to be made, and the place to be searched; and such subordinate officer may thereupon search for such thing in such place.

The provisions of this Code as to search-warrants shall, so far as may be, apply to a search made under this section.

Act X, 1[illegible] s. 350.

When officer of Police-station may require another to issue search-warrant.

164. An officer in charge of a Police-station may require an officer in charge of another Police-station, whether in the same or a different district, to cause a search to be made in any place, in any case in which the former officer might cause such search to be made within the limits of his own station.

Such officer, on being so required, shall proceed according to the provisions of section 163, and shall forward the thing found, if any, to the officer at whose request the search was made.

Act X, 1872, s. 124.

Procedure when investigation is not completed in twenty-four hours.

165. When any investigation under this chapter has not been completed within the period of twenty-four hours fixed by section 58 and no special order has been passed under that section, and there are grounds for believing that the accusation is well-founded, the officer in charge of the Police-station shall forward the accused to the nearest Magistrate, with a statement of the offence for which he has been arrested, and such Magistrate, whether he has or has not jurisdiction to try the case, may authorise the detention of the accused. If he has not jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may forward the accused to a Magistrate having such jurisdiction.

A Magistrate authorizing detention under this section shall record in writing his reasons for so doing.

If such order be given by a Magistrate other than the District Magistrate or Sub-divisional Magistrate, he shall forward a copy of his order, with his reasons for making it, to the Magistrate to whom he is subordinate.

Act X, 1872, s. 123, clause 2.

Report of investigation by subordinate Police-officer.

166. When any subordinate Police-officer has made any investigation under this chapter, he shall report the result of such investigation to the officer in charge of the Police-station.

Act X, 1872, s. 125.

Release of accused when evidence deficient.

167. If, upon an investigation under this chapter, it appears to the officer in charge of the Police-station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear before the District Magistrate or Sub-divisional Magistrate, if and when so required.

Act X, 1872, ss. 123, 127, 130.

Case to be sent to Magistrate when evidence is sufficient.

168. If upon an investigation under this chapter it appears to the officer in charge of the Police-station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to the District Magistrate, or Sub-divisional Magistrate, or some Magistrate empowered to take cognizance of offences upon a police-report, or if the offence charged is bailable and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed.

When the officer in charge of a Police-station forwards an accused person to a Magistrate or takes security for his appearance before such Magistrate under this section, he shall at the same time send to such Magistrate any weapon or other article which it may be necessary to produce before him, and shall require the complainant, if any, and so many of the persons who appear to be acquainted with the circumstances of the case as may be necessary to execute a bond to appear before the Magistrate and prosecute or give evidence (as the case may be) in the matter of the charge against the accused.

If the Court of the District Magistrate or Sub-Divisional Magistrate be mentioned in the bond, it shall be held to include any Court to which such Magistrate may refer the case for inquiry or trial, provided notice of such reference be given to such complainant or witness.

The day fixed under this section shall be the day whereon the accused person is to appear, if security for his appearance has been taken, or the day on which he may be expected to arrive at the Court of the Magistrate, if he is to be forwarded in custody.

The officer in whose presence the bond is executed shall deliver a copy thereof to each of the persons who executed it, and shall then send the original with his report to the Magistrate having jurisdiction.

Act X, 1872, ss. 130, last para. 131, para. 1.

Police-officer not to accompany complainant or witnesses.

169. No Police-officer shall accompany the complainant or witnesses on his or their way to the Court of the Magistrate,

Complainants and witnesses not to be subjected to restraint.

and no complainant or witness shall be subjected to unnecessary restraint or inconvenience, or required to give any security for his appearance other than his own bond:

Act X, 1872, s. 131, para. 2.

Recusant complainant or witness may be forwarded in custody.

Provided that, if any complainant or witness refuses to attend or to execute the bond directed in section 168, the officer in charge of the Police-station may forward him under custody to the Magistrate, who may detain him in custody until he executes such recognizance, or until the hearing of the case is completed.

Act X, 1872, s. 126.

Daily record of proceedings in investigation.

170. Every Police-officer making an investigation under this chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

Any Criminal Court may send for the Police-diaries of a case under inquiry or trial in such Court, and may use such diaries to aid it in such inquiry or trial. Neither the accused nor his agents shall be entitled to call for them, nor shall he or they be entitled to see them merely because they are referred to by the Court; but if they are used by the Police-officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such Police-officer, the provisions of the Indian Evidence Act, 1872, sections 145 and 161, shall apply.

Act X, 1872, ss. 125, 127.

Report of Police-officer.

171. Every investigation under this chapter shall be completed without unnecessary delay, and, as soon as it is completed, the officer in charge of the Police-station shall forward to the Magistrate having jurisdiction a report in the form prescribed by

the Local Government, setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case, and stating whether the accused person has been forwarded in custody, or has been released on his bond, and, if so, whether with or without sureties.

Where a superior officer of Police has been appointed under section 156, the report shall be submitted through him, and he may, pending the orders of the Magistrate, give instructions as to the conduct of the investigation.

Act X, 1872, s. 133.

172. The officer in charge of a Police-station, on receiving information that a person—

Police to inquire and report on unnatural and sudden deaths.

(*a*) has been killed by another, or

(*b*) has suddenly died, or

(*c*) has committed suicide,

shall immediately give intimation thereof to the nearest Magistrate empowered to hold inquests, and shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises and other marks as may be found on the body and as may appear to have been caused by a cut or blow, and stating in what manner, or by what weapon or instrument, such marks appear to have been inflicted.

The report shall be signed by such Police-officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the District Magistrate or the Sub-divisional Magistrate.

When there is any doubt regarding the cause of death, the Police-officer shall forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other medical officer appointed in this behalf by the Local Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

In the territories respectively administered by the Governors of Fort St. George and Bombay in Council, investigations under this section may be made by the Head of the village, who shall then report the result to the nearest Magistrate authorized to hold inquests.

The following Magistrates are empowered to hold inquests, namely, any District Magistrate or Sub-divisional Magistrate, and any Magistrate specially empowered in this behalf by the Local Government or the District Magistrate.

Act X, 1872, s. 134.

173. An officer in charge of a Police-station may, by order in writing, summon two or more persons as aforesaid for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of the case. Any person so summoned shall be bound to attend and to answer all questions other than questions the answers to which would have a tendency to expose him to a criminal charge, or to a penalty or forfeiture.

Power to summon persons.

Penal Code, ss. 174, 179.

If the facts do not disclose a cognizable offence to which section 168 applies, such persons shall not be required by the Police-officer to attend a Magistrate's Court.

Act X, 1872, s. 135.

174. The nearest Magistrate empowered to hold inquests may, and, where necessary, shall, hold an inquiry into the cause of any such death, either instead of, or in addition to, the investigation held by the Police-officer; and if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence. The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any of the manners hereinafter prescribed, according to the circumstances of the case.

Inquiry into cause of such death by nearest Magistrate.

New, cl. Act IV, 1871, s. 11.

Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined.

Power to disinter corpse.

PART VI.

PROCEEDINGS IN PROSECUTIONS.

CHAPTER XV.

Of the Jurisdiction of the Criminal Courts in Inquiries and Trials.

A.—Place of Inquiry or Trial.

Act X, 1872, s. 63. Act IV, 1877, s. 18.

175. Every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed.

Ordinary place of inquiry and trial.

Act X, 1872, s. 63.

176. Notwithstanding anything contained in section 175, the Local Government may direct that any cases or class of cases committed for trial in any district may be tried in any Sessions Division:

Power to order cases to be tried in different Sessions divisions.

Act XI, 1874, s. 9.

Provided that such direction be not repugnant to any direction previously issued under the twenty-fourth and twenty-fifth of Victoria, chapter 104, section 15, or under this Code, section 536.

Act X, 1872, s. 65. Act IV, 1877, s. 19.

177. When a person is accused of the commission of any offence by reason of anything which has been done, and of any consequence which has ensued, such offence may be inquired into or tried by a Court within the local limits of whose jurisdiction any such thing has been done, or any such consequence has ensued.

Accused triable in district where act is done, or where consequence ensues.

Illustrations.

(*a*.) A is wounded in district X and dies in district Z. The offence of the culpable homicide of A may be inquired into and tried either in X or Z.

(*b*.) A is wounded in district X, and is, during ten days in district Y and during ten days more in district Z, unable in either Y or Z to follow his ordinary pursuits. The offence of causing grievous hurt to A may be inquired into and tried in X, Y or Z.

(*c*.) A is put in fear of injury in district X, and is thereby induced, in district Y, to deliver property to the person who put him in fear. The offence of extortion committed on A may be inquired into and tried either in X or Y.

Act X, 1872, s. 66. Act IV, 1877, s. 20.

178. When an act is an offence by reason of its relation to any other act which is also an offence, a charge of the first-mentioned offence may be inquired into and tried by a Court within the local limits of whose jurisdiction either act was done.

Place for trial where act is offence by reason of relation to other offence.

Illustrations.

(*a*.) A charge of abetment may be inquired into and tried either in the district in which the abetment was committed, or in the district in which the offence abetted was committed.

(*b*.) A charge of receiving or retaining stolen goods may be inquired into and tried either in the district in which the goods were stolen, or in any district in which any of them were at any time dishonestly received or retained.

(*c*.) A charge of wrongfully concealing a person known to have been kidnapped may be inquired into and tried in the district in which the wrongful concealing, or in the district in which the kidnapping, took place.

Act X, 1872, s. 67, illustration (*c*), s. 68. Act IV, 1877, s. 22.

179. The offence of being a thug, of murder as a thug, of dacoity, of dacoity with murder, of having belonged to a gang of dacoits, or of having escaped from custody, may be inquired into and tried by a Court within the local limits of whose jurisdiction the person charged is.

Being a thug or belonging to a gang of dacoits, escape from custody, &c.

Act X, 1872, s. 67, illustration (*c*).

The offence of criminal misappropriation or of criminal breach of trust may be inquired into and tried by a Court within the local limits of whose jurisdiction the property which is the subject of the offence was received by the accused person, or the offence was committed.

Criminal misappropriation and criminal breach of trust.

Act X, 1872, s. 67, illustration (*f*). I. L. R., 1 Mad. 17.

The offence of stealing an animal may be inquired into or tried by a Court within the local limits of whose jurisdiction such animal was stolen or was possessed by the thief or by any person who receives or detains the same knowing or having reason to believe it to be stolen.

Stealing an animal.

Act XVIII, 1862, ss. 29-35. Act X, 1872, s. 67. Act IV, 1877, s. 21.

180. When it is uncertain in which of several local areas an offence was committed, or

Place of inquiry or trial where scene of offence is uncertain;

where an offence is committed partly in one local area and partly in another, or

or not in one district only;

where an offence is a continuing one, and continues to be committed in more local areas than one, or

or offence is continuing;

where it consists of several acts done in different local areas,

or consists of several acts.

it may be inquired into and tried by a Court having jurisdiction over any such local area.

Act X, 1872, s. 67, illustration (*a*). I Mad. H. C. Rep. 193.

181. An offence committed whilst the offender is actually in the course of performing a journey or voyage may be inquired into and tried by a Court through or into the local limits of whose jurisdiction the offender, or the person against whom, or the thing in respect of which, the offence was committed, passed in the course of that journey or voyage.

Offence committed on a journey.

Act IV, 1877, s. 238. Act LII, 1860, repealed.

182. All offences against the provisions of any law for the time being in force relating to Railways, Telegraphs, the Post-office or Arms and Ammunition may be inquired into and tried in a Presidency-town, whether the offence is stated to have been committed within such town or not: provided that the offender and the witnesses necessary for his prosecution are to be found within such town.

Offences against Railway, Telegraph, Post-office and Arms Acts.

Act IV, 1877, s. 239.

Act X, 1872, s. 69. Act IV, 1877, s. 23.

183. Whenever any doubt arises as to the Court by which any offence should be inquired into or tried, the High Court within the local limits of whose appellate criminal jurisdiction the offender actually is, may decide by which Court the offence shall be inquired into or tried.

High Court to decide, in case of doubt, district where inquiry or trial shall take place.

Act X, 1872, s. 157. Act IV, 1877, s. 54.

184. When a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate or, if he is specially empowered in this behalf by the Local Government, a Magistrate of the first class, sees reason to believe that any person within the local limits of his jurisdiction has committed without such limits an offence which cannot, under the provisions of sections 175 to 182 (both inclusive), or any other law for the time being in force, be inquired into or tried within such local limits, but is under some law for the time being in force triable in British India, such Magistrate may inquire into the offence as if it had been committed within such local limits, and compel such person in manner hereinbefore provided to appear before him, and send him to the Magistrate having jurisdiction to enquire into or try such offence, or, if such offence is bailable, take bail for his appearance before such Magistrate.

Power to issue summons or warrant for offence committed beyond local jurisdiction.

Act X, 1872, s. 174. Act IV, 1877, s. 55.

Magistrate's procedure on arrest.

Act XXIII, 1840, s. 7.

When there are more Magistrates than one having such jurisdiction and the Magistrate acting under this section cannot satisfy himself as to the Magistrate to or before whom such person should be sent, or bound to appear, the case shall be reported for the orders of the High Court.

Act X, 1872, s. 175.

185. If the person has been arrested under a warrant issued under section 184 by a Magistrate other than a Presidency Magistrate or District Magistrate, such Magistrate shall send the person arrested to the District Magistrate, unless the Magistrate having jurisdiction to inquire into or try such offence issues his warrant for the arrest of such person, in which case the person arrested shall be delivered to the Police-officer executing such warrant, or shall be sent to the Magistrate by whom such warrant was issued.

Procedure where such warrant issued by Subordinate Magistrate.

If the offence which the person arrested is alleged or suspected to have committed is one which may be inquired into or tried by any Criminal Court in the same district other than that of the Magistrate acting under section 184, such Magistrate shall send such person to the District Magistrate or Sub-divisional Magistrate to whom such Court is immediately subordinate.

B.—Time of commencing Prosecutions.

186. There is no limitation of the time within which prosecutions for the offences mentioned in this section must be commenced:—

Prosecutions for which there is no limitation.

(*a*) offences against the State;
(*b*) offences relating to the Army and Navy;
(*c*) false evidence and offences against public justice;
(*d*) offences relating to coin and Government stamps;
(*e*) offences under the Indian Penal Code, sections 299 to 311 (both inclusive);
(*f*) offences under the same Code, sections 359 to 373 (both inclusive);
(*g*) offences under the same Code, sections 390 to 414 (both inclusive);
(*h*) offences under the same Code relating to documents and to trade-marks and property-marks; and
(*i*) offences under the same Code relating to marriage.

187. A prosecution for any of the offences mentioned in this section must be commenced within three years after the offence is committed:—

Limitation of three years.

(*a*) offences against the public tranquillity;
(*b*) offences by or relating to public servants;
(*c*) contempts of the lawful authority of public servants;
(*d*) offences against property, except those referred to in section 186, clause (*b*).

188. A prosecution for any other offence not expressly provided for by this chapter or by any special or local law must be commenced within six months after the offence is committed.

Limitation of six months.

189. The provisions contained in sections 186, 187 and 188 as to the offences therein mentioned or referred to, apply also to abetments of, and attempts to commit, those offences respectively.

Abetments and attempts.

190. In computing the period of limitation prescribed for any prosecution, the time during which the accused person has been absent from the jurisdiction of the Court having power under this Code to try him shall be excluded.

Exclusion of time during which accused is absent from jurisdiction.

Any person not surrendering himself pursuant to a proclamation duly made under this Code shall be deemed to be absent within the meaning of this section.

191. For the purpose of this chapter, a prosecution shall be deemed to commence when the summons or warrant is applied for, or when no such application is made, when the summons or warrant is issued; or when the person prosecuted is arrested without a warrant, when the arrest is made.

When prosecutions commence.

C.—Conditions requisite for Initiation of Proceedings.

192. Except as hereinafter provided, any Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, and any other Magistrate specially empowered in this behalf, may take cognizance of any offence—

Act X, 1872, ss. 140, 141. Act IV, 1877, ss. 25, 28.

Cognizance of offences by Magistrates.

(*a*) upon receiving a complaint of facts which constitute such offence;

(*b*) upon a Police-report of such facts;

(*c*) upon information received from any person other than a Police-officer, or upon his own knowledge or suspicion that such offence has been committed. Act X, 1872, s. 142, para. 1.

The Local Government, or the District Magistrate under the general or special orders of the Local Government, may specially empower any Magistrate to take cognizance under clause (*a*) of offences, and any Magistrate of the first or second class to take cognizance under clause (*b*) of offences.

The Local Government may empower any Magistrate of the first or second class to take cognizance under clause (*c*) of offences. Act X, 1872, ss. 23, 25, 27.

193. Any District Magistrate or Sub-divisional Magistrate may transfer any case, of which he has taken cognizance, for inquiry or trial to any Magistrate subordinate to him.

Transfer of cases by District or Sub-divisional Magistrates.

Any Magistrate subordinate to a District Magistrate or Sub-Divisional Magistrate may, to the full extent of the powers with which he has been invested under this Code, deal with any case of which such District Magistrate or Sub-Divisional Magistrate has taken cognizance and which he has transferred to such Subordinate Magistrate. Act X, 1872, s. 44. Act XI, 1874, s. 6.

Cognizance of cases transferred to Subordinate Magistrate.

194. Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction, unless the accused person has been committed by a Magistrate duly empowered in that behalf. Act X, 1872, s. 231. Act XI, 1874, s. 13.

Cognizance of offences by Courts of Session.

Additional Session Judges and Joint Sessions Judges shall try such cases only as the Local Government by general or special order directs them to try, or as the Sessions Judge of the Division makes over to them for trial. Act X, 1872, s. 17.

Assistant Sessions Judges shall try such cases only as the Sessions Judge of the Division makes over to them by general or special order. Act X, 1872, s. 18.

Assistant Sessions Judges.

195. The High Court may take cognizance of any offence upon a commitment made to it in manner hereinafter provided. Act X, 1875, s. 145.

Cognizance of offences by High Court.

Nothing herein contained shall be deemed to affect the provisions of any letters patent granted under the twenty-fourth and twenty-fifth of Victoria, chapter 104. Charter 1865, 24.

196. No Court shall take cognizance— Act X, 1872, s. 467. Act X, 1875, s. 133. Act IV, 1877, s. 40.

(*a*) of any offence described in sections 172 to 188 (both inclusive) of the Indian Penal Code, except with the sanction, or on the complaint, of the public servant concerned, or of his official superior.

Prosecution for contempts of lawful authority of public servants.

(*b*) of any offence described in section 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211 or 228 of the same Code, when such offence is committed before or against any Court, except with the sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate; Act X, 1872, s. 468. Act IV, 1877, s. 41. Court of Subordinate Judge is subordinate to that of District Judge. I. L. R., 2 Bom. 481.

Prosecution for certain offences against public justice.

(*c*) of any offence described in section 463, 471, 475 or 476 of the same Code, when such offence has been committed by a party to any proceeding in any Court in respect of a document given in evidence in such proceeding, except with the sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate. Act X, 1872, s. 469. Act IV, 1877, s. 42.

Prosecution for certain offences relating to documents given in evidence.

The sanction referred to in this section may be expressed in general terms, and need not name the accused person; but it shall, so far as practicable, specify the Court or other place in which, and the occasion on which, the offence was committed. Act X, 1872, s. 470, omitting the Explanation. Act X, 1875, s. 134. Act IV, 1877, s. 43. 11 Bom. 36, per West, J. No appeal from order according sanction, I. L. R. 1 All. [illegible]

Nature of sanction necessary.

Such sanction may be given at any time; and a sanction in respect of any offence referred to in this section shall authorise the Court taking cognizance of the case to amend the charge to one of any other such offence disclosed by the facts.

197. No Court shall take cognizance of any offence punishable under chapter VI of the Indian Penal Code, except section 127, or punishable under section 294A of the same Code, unless upon complaint made by order of, or under authority from, the Governor General in Council, the Local Government, or some officer empowered by the Governor General in Council in this behalf. Act X, 1872, s. 466. Act X, 1875, s. 131. Act IV, 1877, s. 38.

Prosecution for offences against the State.

198. No Court shall take cognizance of any offence of which any Judge, or any public servant not removable from his office without the sanction of the Government of India or the Local Government, is accused as such Judge or public servant, except with the previous sanction of the Government having power to order his removal, or of some officer empowered in this behalf by such Government, or of some Court or other authority to which such Judge or public servant is subordinate, and whose power to give such sanction has not been limited by such Government. Act X, 1872, s. 466. Act X, 1875, s. 132. Act IV, 1877, s. 39. Bomb. 68.

Prosecution of Judges and public servants.

Such Government may determine the person by whom, and the manner in which, the prosecution of such Judge or public servant is to be conducted, and may specify the Court before which the trial is to be held.

Power of Government as to prosecution.

199. No Court shall take cognizance of an offence falling under chapter XIX or XXI or under sections 493 to 496 (both inclusive) of the Indian Penal Code, except upon a complaint made. Act X, 1872, s. 142. Act IV, 1877, s. 29.

Prosecution for breach of contract, defamation and offences against marriage.

200. No Court shall take cognizance of an offence under section 497 or 498 of the Indian Penal Code, except upon a complaint made by the husband of the woman, or, in his absence, by some person who had care of such woman on his behalf at the time when such offence was committed. Act X, 1872, ss. 478, 479. Act IV, 1877, s. 45, Sch I, O'Kin. 524.

Prosecution for adultery.

CHAPTER XVI.

Of Complaints to Magistrates.

201. A Magistrate taking cognizance of a case on complaint shall at once examine the complainant upon oath or affirmation, and the examination shall be reduced into writing and shall be signed by the complainant, and also by the Magistrate: Act X, 1872, s. 144.

Examination of complainant.

Provided that, when the case has been transferred under section 193 and the Magistrate so transferring it has already examined the complainant, the Magistrate to whom it is so transferred shall not be bound to re-examine the complainant:

Provided also that where the Magistrate is a Presidency Magistrate, such examination may be on oath or affirmation or not as the Magistrate in each case thinks fit, and the Magistrate may, if he thinks fit, before the matter of the complaint is brought before him, require it to be reduced to writing. Act IV, 1877, s. 30.

202. If the Magistrate is not competent to entertain the complaint, he shall refer the complainant to a Magistrate having jurisdiction, and if the complaint has been made in writing, shall return it for presentation to the proper tribunal. Act X, 1872, s. 145.

Procedure by Magistrate not empowered to entertain complaint.

Act X, 1872, s. 146.

203. If any Magistrate other than a Presidency Magistrate sees reason to distrust the truth of a complaint which he is authorized to entertain, he may postpone the issuing of process for compelling the attendance of the person complained against, and may direct a previous inquiry or investigation to be made by means of any officer immediately subordinate to such Magistrate or of a Police-officer, or in such other mode as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint.

Postponement of issue of process.

If such inquiry or investigation is made by means of some person other than an officer exercising any of the powers of a Magistrate or a Police-officer, such person shall exercise all the powers conferred by this Code on an officer in charge of a Police-station, except that he shall not have power to arrest without warrant.

Act X, 1872, s.147, para. 1. Act IV, 1877, s. 32.

204. The Magistrate before whom a complaint is made may, if after examining the complainant there is in his judgment no sufficient ground for proceeding, dismiss the complaint.

Dismissal of complaint.

CHAPTER XVII.

Of the Commencement of Proceedings before Magistrates.

Act X, 1872, s. 147, para. 3, 148, 149. Act IV, 1877, ss. 27, 33, 34, 35.

205. If in the opinion of a Magistrate taking cognizance of a case there is sufficient ground for believing that any person has committed an offence, he shall, if the case appears to be one in which according to the fourth column of the second schedule a summons should issue in the first instance, issue his summons, or, if the case appear to be one in which according to that column a warrant should issue in the first instance, his warrant, for causing such person to appear or be brought at a certain time and place before such Magistrate or some other Magistrate having jurisdiction:

Issue of process.

Act X, 1872, s. 148, proviso, 150.

Provided that in any case in which a summons should be issued under the foregoing part of this section, if the Magistrate sees reason to believe that the accused is about to abscond or will not obey the summons, he may, after recording his reasons in writing, instead of issuing a summons, issue a warrant in the first instance for the arrest of such person.

Act X, 1872, s. 151. Act IV, 1877, s. 37.

206. Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused, and permit him to appear by his pleader.

Magistrate may dispense with personal attendance of accused.

But such Magistrate may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in manner hereinbefore provided. Act IV, 1877, s. 37.

CHAPTER XVIII.

Of Inquiry into Cases triable by the Court of Session or High Court.

Act X, 1872, s. 143, extended to High Court.

207. Any Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, Magistrate of the first class or any Magistrate empowered in this behalf by the Local Government may commit any person for trial to the Court of Session or High Court for any offence triable by such Court.

Power to commit for trial.

Act X, 1872, s. 189. Act IV, 1877, s. 81.

208. The following procedure shall be adopted in inquiries before Magistrates where the case is triable exclusively by a Court of Session or High Court or, in the opinion of the Magistrate, ought to be tried by such Court.

Procedure in inquiries preparatory to commitment.

Act X, 1872, ss. 190, 191, 2nd para. Act IV, 1877, s. 82.

209. The Magistrate shall, when the accused appears or is brought before him, proceed to hear the complainant (if any), and take in manner hereinafter provided all such evidence as may be produced in support of the prosecution or in behalf of the accused.

Taking of evidence produced.

Act X, 1872, ss. 357, 362. Act IV, 1877, s. 83, para. 2.

If the complainant or accused applies to the Magistrate to issue process to compel the attendance of any witness or the production of any document or other thing, the Magistrate shall issue such process unless, for reasons to be recorded in writing, he deems it unnecessary to do so.

Process for production of further evidence.

Act X, 1872, s.361, para. 3.

The Magistrate may, before summoning any witness on such application, require that his reasonable expenses incurred in attending for the purposes of the trial be deposited in Court.

Nothing in this section shall be deemed to require a Presidency Magistrate to record his reasons in writing.

At X, 1872, s. 195, omitting the explanations. Act IV, 1877, s. 87, omitting the explanations.

210. When the evidence referred to in section 209 and such other evidence (if any) as the Magistrate may of his own motion cause to be produced has been taken, and the Magistrate has examined the accused in regard to such matters connected with the accusation as the Magistrate thinks fit, such Magistrate shall, if he finds that there are not sufficient grounds for committing the accused person for trial, discharge him, unless it appears to the Magistrate that such person should be tried before himself or some other Magistrate, in which case he shall proceed accordingly.

When accused person to be discharged.

Act X, 1 ss. 196, Act IV, 1 s. 88. Act IV, 1 s. 89, ting p 3 and 4

211. When, upon such evidence being taken and such examination (if any) being made, the Magistrate finds that there are sufficient grounds for committing the accused for trial, he shall frame a charge under his hand, declaring with what offence the accused is charged.

When charge is to be framed.

Act X, 1872, s. 199. Act X, 1875, s. 13. Act IV, 1877, s. 90.

As soon as the charge has been framed, it shall be read and explained to the accused and a copy thereof shall, if he so require, be given to him free of cost.

Charge to be explained, and copy furnished, to accused.

Act X, 1872, s. 200. Act IV, 1877, s. 91.

212. The accused shall be required at once to give in, orally or in writing, a list of the persons (if any) whom he wishes to be summoned to give evidence on his trial.

List of witnesses for defence on trial.

The Magistrate may in his discretion allow the accused to give in any further list of witnesses at a subsequent time, and nothing in this section shall be deemed to preclude the accused from giving, at any time before his trial before the High Court, to the Clerk of the Crown a further list of the persons whom he wishes to be summoned to give evidence on such trial.

Further list.

Act X, 1872, s. 200. Act IV, 1877, s. 91.

213. The Magistrate may in his discretion summon and examine any witness named in any list given in to him under section 212.

Power of Magistrate to examine such witnesses.

Act X, 1872, ss.198, 200. Act IV, 1877, ss. 89, para. 1, 91.

214. When the accused on being required to give in a list under section 212 has declined to do so, or when he has given in such list and the witnesses (if any) included therein whom the Magistrate desires to examine have been summoned and examined under section 213, the Magistrate may make an order committing the accused for trial by the High Court or the Court of Session (as the case may be), and (unless the Magistrate is a Presidency Magistrate) recording the reasons for such commitment.

Order of commitment.

Act X, 1872, s. 197.

215. If any person (not being an European British subject) is accused before a Magistrate other than a Presidency Magistrate of having committed an offence conjointly with a European British subject who is about to be committed for trial, or to be tried, before the High Court on a similar charge, and the Magistrate finds that there are sufficient grounds for committing the accused for trial, he shall commit him to take his trial before the High Court, and not before the Court of Session.

Person charged in Mufassal jointly with European British subject.

X, 1872, 197, exation.

216. A commitment once made under section 214 or 215 by a competent Magistrate can be quashed by the High Court only, and only on a point of law.

Quashing commitments under section 214 or 215.

X, 1872, 368. 17, 1877, 92.

217. When the accused has given in any list of witnesses under section 212 and has been committed for trial, the Magistrate shall summon such of the witnesses included in the list as have not been compelled to appear before himself under section 213 to appear before the Court to which the accused has been committed:

Summons to witnesses for defence when accused is committed.

Provided that where such person has been committed to the High Court, the Magistrate may in his discretion leave such witnesses to be summoned by the Clerk of the Crown:

Act X, 1872, s. 359.

Provided also that if the Magistrate thinks that any witness is included in the list for the purpose of vexation or delay, or of defeating the ends of justice, the Magistrate may require the accused to satisfy him that there are reasonable grounds for believing that such witness is material, and if he is not so satisfied, may refuse to summon the witness, or before summoning him require such sum to be deposited as such Magistrate thinks necessary to defray the expense of obtaining the attendance of the witness.

Refusal to summon unnecessary witness unless deposit made.

I. L. R. 3, Calc. 582.

Act X, 1872, s. 360. Act IV, 1877, s. 93.

218. Complainants and witnesses for the prosecution and defence, whose attendance before the Court of Session or High Court is necessary, and who appear before the Magistrate, shall execute before him bonds binding themselves, to be in attendance when called upon at the Court of Session or High Court, to prosecute or to give evidence, as the case may be.

Bond of complainants and witnesses.

If any complainant or witness refuses to attend before the Court of Session or High Court, or to execute the recognizance above directed, the Magistrate may detain him in custody until he executes such bond, or until his attendance at the Court of Session or High Court is required, when the Magistrate shall send him in custody to the Court of Session or High Court, as the case may be.

Detention in custody in case of refusal to attend or to execute recognizance.

Act X, 1872, s. 201. Act X, 1875, s. 13.

219. When the enquiry is concluded, the accused shall, if he demands them a reasonable time before the trial, be furnished with copies of the depositions. Such copies shall be made at his expense unless the Magistrate sees fit to give them free of cost.

Copies of depositions.

Act X, 1872, s. 202.

220. When the accused is committed for trial, the Magistrate shall issue an order to such person as may be appointed by the Local Government in this behalf, notifying the commitment, and stating the offence in the same form as the charge, unless the Magistrate is satisfied that such person is already aware of the commitment and the form of the charge,

Commitment when to be notified.

Act XI, 1874, s. 15.

Act X, 1872, s. 198.

and shall send the charge, the record of the enquiry and any weapon or other moveable thing which is to be produced in evidence to the Court of Session or (where the commitment is made to the High Court) to the Clerk of the Crown or other officer appointed in this behalf by the High Court.

Charge, &c., to be forwarded to High Court.

The Charge.

Act X, 1872, s. 357, para. 2. Act IV, 1877, s. 91, para. 4.

221. The Magistrate may summon and examine supplementary witnesses after the commitment and before the commencement of the trial, and bind them over in manner hereinbefore provided to appear and give evidence.

Power to summon supplementary witnesses.

Such examination shall, if possible, be taken in the presence of the accused, and where the Magistrate is not a Presidency Magistrate, a copy of the evidence of such witnesses shall, if the accused so require, be given to him free of cost.

Act X, 1875, s. 26. Act IV, 1877, s. 89, para. 3.

222. Pending the trial, the Magistrate may, subject to the provisions of this Code regarding the taking of bail, commit the accused, by warrant, to custody in such jail as may from time to time be appointed by the Local Government in this behalf.

Custody of accused pending trial.

CHAPTER XIX.

Of the Charge.

Form of Charges.

Act X 1872, s. 439. Act IV, 1877, s. 94.

223. Every charge under this Code shall state the offence with which the accused is charged.

Charge to state offence.

If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

Specific name of offence sufficient description.

If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.

How stated where offence has no specific name.

The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.

The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

What implied in charges.

In the Presidency-towns the charge shall be written in English; elsewhere it shall be written either in English or in the language of the Court. If the language of the charge is not understood by the accused, the charge shall be interpreted to him in a language which he understands.

Language of charge.

Act X, 1875, s. 118. Act X, 1872, s. 439, last para. Act IV, 1877, s. 94, last para.

If the accused has been previously convicted of any offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which is to be awarded, the fact of the previous conviction must be stated in the charge. If such statement is omitted, it may be added at any time before sentence is passed, but not afterwards.

Previous conviction when to be set out.

Illustrations.

(*a.*) *A* is charged with the murder of *B*.

This is equivalent to a statement that *A*'s act fell within the definition of murder given in sections 299 and 300 of the Indian Penal Code; that it did not fall within any of the general exceptions of the same Code; and that it did not fall within any of the five exceptions to section 300; or that, if it did fall within exception 1, one or other of the three provisos to that exception applied to it.

(*b.*) *A* is charged, under section 326 of the Indian Penal Code, with voluntarily causing grievous hurt to *B*, by means of an instrument for shooting. This is equivalent to a statement that the case was not provided for by section 335 of the Indian Penal Code, and that the general exceptions did not apply to it.

(*c.*) *A* is accused of murder, cheating, theft, extortion, adultery or criminal intimidation, or using a false property-mark. The charge may state that *A* committed murder, or cheating, or theft, or extortion, or adultery, or criminal intimidation, or that he used a false property-mark, without reference to the definitions of those crimes contained in the Indian Penal Code; but the sections under which the offence is punishable must, in each instance, be referred to in the charge.

(*d.*) *A* is charged, under section 184 of the Indian Penal Code, with intentionally obstructing a sale of property offered for sale by the lawful authority of a public servant. The charge should be in these words.

Act X, 1872, s. 440. Act IV, 1877, s. 95.

224. The charge shall contain such particulars as to the time and place of the alleged offence, and the person (naming him) against whom, or the thing in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

Particulars as to time, place and person.

Act X, 1872, s. 441. Act IV, 1877, s. 96.

225. When the nature of the case is such that the particulars mentioned in sections 223 and 224 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.

When manner of committing offence must be stated.

Illustrations.

(*a.*) *A* is accused of the theft of a certain article at a certain time and place. The charge need not set out the manner in which the theft was effected.

(*b.*) *A* is accused of cheating *B* at a given time and place. The charge must set out the manner in which *A* cheated *B*.

(*c.*) *A* is accused of giving false evidence at a given time and place. The charge must set out that portion of the evidence given by *A* which is alleged to be false.

(*d.*) *A* is accused of obstructing *B*, a public servant, in discharge of his public functions at a given time and place. The charge must set out the manner in which *A* obstructed *B* in the discharge of his functions.

(*e.*) *A* is accused of the murder of *B* at a given time and place. The charge need not state the manner in which *A* murdered *B*.

(*f.*) *A* is accused of disobeying a direction of the law with intent to save *B* from punishment. The charge must set out the disobedience charged and the law infringed.

(*g.*) *A* is accused of dacoity. The charge should state that *A* conjointly with four or more others committed robbery and thereby committed dacoity.

The Charge.

Act XVIII 1862, s. 82.

226. In every charge words used in describing an offence shall be deemed to have been used in the sense attached to them respectively by the Indian Penal Code.

Words in charges taken in sense of Penal Code.

Act X, 1872, s. 443. Act X, 1875, s. 24. Act IV, 1877, s. 98.

227. No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission.

Effect of errors.

Illustrations.

(*a.*) *A* is charged, under section 242 of the Indian Penal Code with "having been in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit," the word "fraudulently" being omitted in the charge. Unless it appears that *A* was in fact misled by this omission, the error shall not be regarded as material.

(*b.*) *A* is charged with cheating *B*, and the manner in which he cheated *B* is not set out in the charge, or is set out incorrectly. *A* defends himself, calls witnesses, and gives his own account of the transaction. The Court may infer from this that the omission to set out the manner of the cheating is not material.

(*c.*) *A* is charged with cheating *B*, and the manner in which he cheated *B* is not set out in the charge. There were many transactions between *A* and *B*, and *A* had no means of knowing to which of them the charge referred, and offered no defence. The Court may infer from such facts that the omission to set out the manner of the cheating was, in this case, a material error.

(*d.*) *A* is charged with the murder of Khoda Baksh on the 21st January. In fact, the murdered person's name was Haidar Baksh, and the date of the murder was the 20th January. *A* was never charged with any murder but one, and had heard the inquiry before the Magistrate, which referred exclusively to the case of Haidar Baksh. The Court may infer from these facts that *A* was not misled, and that the error in the charge was immaterial.

(*e.*) *A* was charged with murdering Haidar Baksh on the 20th January and Khoda Baksh (who tried to arrest him for that murder) on the 21st January. When charged for the murder of Haidar Baksh, he was tried for the murder of Khoda Baksh. The witnesses present in his defence were witnesses in the case of Haidar Baksh. The Court may infer from this that *A* was misled, and that the error was material.

Act X, 1875, s. 7.

228. When any person is committed for trial before a High Court, the Clerk of the Crown, or, if there be not a Clerk of the Crown, a Judge of the High Court, shall, on receipt of the charge, peruse and consider it, and may, if it appears necessary or expedient so to do, alter or re-draw the same, having regard to the rules as to the form of charges contained in this Code.

Procedure on commitment to High Court.

Act X, 1875, s. 8. Act X, 1872, s. 446.

229. If a prisoner is committed to the Court of Session or High Court without any charge at all, the Court or (in the case of a High Court) the Clerk of the Crown or a Judge of the High Court may draw up a charge, having regard to the rules last aforesaid.

How Court of Session may deal with charge.

If a prisoner is committed upon a charge which the Court, upon reference to the proceedings before the committing Magistrate, considers improper, the Court may draw up a charge for any offence which it considers to be proved by the evidence taken before the committing Magistrate.

Act X, 1872, ss. 444, 445. Act X, 1875, ss. 9, 10. Act IV, 1877, ss. 99, 100.

230. Any Court may, upon the application of the accused, or of the prosecution, or upon its own motion, alter any charge at any time before judgment is pronounced, or, in the case of trials before the Court of Session or High Court, before the verdict of the jury is returned or the opinions of the assessors are expressed.

Magistrate may alter charge.

Every such alteration shall be read and explained to the accused.

Act X, 1872, s. 447. Act X, 1875, s. 11. Act IV, 1877, s. 101.

231. If the alteration is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence, the Court may in its discretion, after making such alteration, proceed with the trial as if the altered charge had been the original charge.

When trial may proceed immediately after alteration.

Act X, 1872, s. 448. Act X, 1875, s. 12. Act IV, 1877, s. 102.

232. If the alteration is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused in his defence, the Court may either direct a new trial, or suspend the trial for such period as may be necessary to enable him to make his defence to the altered charge; and after hearing his defence, the Court may if it thinks fit further adjourn the trial to admit of the appearance of any witness whose evidence the Court considers to be material to the case, or who the accused wishes to be summoned in his defence.

When new trial may be directed, or trial suspended.

Adjournment.

Act X, 1872, s. 449. Act X, 1875, s. 15, omitting 'during the trial,' Act IV, 1877, s. 103.

233. Whenever a charge is altered by the Court, the complainant and the accused shall be allowed to recall, and examine with reference to such alteration, any witness who may have been examined.

Recall of witnesses when charge altered.

Act X, 1872, s. 450. Act X, 1875, s. 16. Act IV, 1877, s. 104.

234. If the offence stated in the altered charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the altered charge is founded.

Stay of proceedings if prosecution of offence in altered charge require previous sanction.

Act X, 1872, s. 451.

235. If any Appellate Court, or the High Court in the exercise of its powers of revision, is of opinion that any person convicted of an offence was in fact misled in his defence by an error in the charge, it shall direct a new trial to be had upon a charge amended in whatever manner it thinks fit.

Effect of material error.

If the Court is of opinion that the facts of the case are such that no valid charge could be pre-

The Charge.

Act X, 1872, s. 357, para. 2. Act IV, 1877, s. 91, para. 4.

221. The Magistrate may summon and examine supplementary witnesses after the commencement of the trial, and bind them over in manner hereinbefore provided to appear and give evidence.

Power to summon supplementary witnesses.

Such examination shall, if possible, be taken in the presence of the accused, and where the Magistrate is not a Presidency Magistrate, a copy of the evidence of such witnesses shall, if the accused so require, be given to him free of cost.

Act X, 1875, s. 26. Act IV, 1877, s. 89, para. 3.

222. Pending the trial, the Magistrate may, subject to the provisions of this Code regarding the taking of bail, commit the accused, by warrant, to custody in such jail as may from time to time be appointed by the Local Government in this behalf.

Custody of accused pending trial.

CHAPTER XIX.

Of the Charge.

Form of Charges.

Act X 1872, s. 439. Act IV, 1877, s. 94.

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Charge to state offence.

If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

Specific name of offence sufficient description.

If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.

How stated where offence has no specific name.

The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.

The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

What implied in charges.

In the Presidency-towns the charge shall be written in English; elsewhere it shall be written either in English or in the language of the Court. If the language of the charge is not understood by the accused, the charge shall be interpreted to him in a language which he understands.

Language of charge.

Act X, 1875, s. 11b. Act X, 1872, s. 489, last para. Act IV, 1877, s. 94, last para.

If the accused has been previously convicted of any offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which is to be awarded, the fact of the previous conviction must be stated in the charge. If such statement is omitted, it may be added at any time before sentence is passed, but not afterwards.

Previous conviction when to be set out.

Illustrations.

(*a.*) *A* is charged with the murder of *B*.

This is equivalent to a statement that *A*'s act fell within the definition of murder given in sections 299 and 300 of the Indian Penal Code; that it did not fall within any of the general exceptions of the same Code; and that it did not fall within any of the five exceptions to section 300; or that, if it did fall within exception 1, one or other of the three provisos to that exception applied to it.

(*b*) *A* is charged, under section 326 of the Indian Penal Code, with voluntarily causing grievous hurt to *B*, by means of an instrument for shooting. This is equivalent to a statement that the case was not provided for by section 335 of the Indian Penal Code, and that the general exceptions did not apply to it.

(*c*.) *A* is accused of murder, cheating, theft, extortion, adultery or criminal intimidation, or using a false property-mark. The charge may state that *A* committed murder, or cheating, or theft, or extortion, or adultery, or criminal intimidation, or that he used a false property-mark, without reference to the definitions of those crimes contained in the Indian Penal Code; but the sections under which the offence is punishable must, in each instance, be referred to in the charge.

(*d*.) *A* is charged, under section 184 of the Indian Penal Code, with intentionally obstructing a sale of property offered for sale by the lawful authority of a public servant. The charge should be in those words.

Act X, 1872, s. 440. Act IV, 1877, s. 95.

224. The charge shall contain such particulars as to the time and place of the alleged offence, and the person (naming him) against whom, or the thing in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

Particulars as to time, place and person.

Act X, 1872, s. 441. Act IV, 1877, s. 96.

225. When the nature of the case is such that the particulars mentioned in sections 223 and 224 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.

When manner of committing offence must be stated.

Illustrations.

(*a*.) *A* is accused of the theft of a certain article at a certain time and place. The charge need not set out the manner in which the theft was effected.

(*b*.) *A* is accused of cheating *B* at a given time and place. The charge must set out the manner in which *A* cheated *B*.

(*c*.) *A* is accused of giving false evidence at a given time and place. The charge must set out that portion of the evidence given by *A* which is alleged to be false.

(*d*.) *A* is accused of obstructing *B*, a public servant, in discharge of his public functions at a given time and place. The charge must set out the manner in which *A* obstructed *B* in the discharge of his functions.

(*e*.) *A* is accused of the murder of *B* at a given time and place. The charge need not state the manner in which *A* murdered *B*.

(*f*.) *A* is accused of disobeying a direction of the law with intent to save *B* from punishment. The charge must set out the disobedience charged and the law infringed.

(*g*.) *A* is accused of dacoity. The charge should state that *A* conjointly with four or more others committed robbery and thereby committed dacoity.

The Charge.

Act XVIII 1862, s. 82.

226. In every charge words used in describing an offence shall be deemed to have been used in the sense attached to them respectively by the Indian Penal Code.

Words in charges taken in sense of Penal Code.

Act X, 1872, s. 443. Act X, 1875, s. 24. Act IV, 1877, s. 98.

227. No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission.

Effect of errors.

Illustrations.

(*a*.) *A* is charged, under section 242 of the Indian Penal Code, with "having been in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit," the word "fraudulently" being omitted in the charge. Unless it appears that *A* was in fact misled by this omission, the error shall not be regarded as material.

(*b*.) *A* is charged with cheating *B*, and the manner in which he cheated *B* is not set out in the charge, or is set out incorrectly. *A* defends himself, calls witnesses, and gives his own account of the transaction. The Court may infer from this that the omission to set out the manner of the cheating is not material.

(*c*.) *A* is charged with cheating *B*, and the manner in which he cheated *B* is not set out in the charge. There were many transactions between *A* and *B*, and *A* had no means of knowing to which of them the charge referred, and offered no defence. The Court may infer from such facts that the omission to set out the manner of the cheating was, in this case, a material error.

(*d*.) *A* is charged with the murder of Khoda Baksh on the 21st January. In fact, the murdered person's name was Haidar Baksh, and the date of the murder was the 20th January. *A* was never charged with any murder but one, and had heard the inquiry before the Magistrate, which referred exclusively to the case of Haidar Baksh. The Court may infer from these facts that *A* was not misled, and that the error in the charge was immaterial.

(*e*.) *A* was charged with murdering Haidar Baksh on the 20th January and Khoda Baksh (who tried to arrest him for that murder) on the 21st January. When charged for the murder of Haidar Baksh, he was tried for the murder of Khoda Baksh. The witnesses present in his defence were witnesses in the case of Haidar Baksh. The Court may infer from this that *A* was misled, and that the error was material.

X, 1875, 228. When any person is committed for trial before a High Court, the Clerk of the Crown, or, if there be not a Clerk of the Crown, a Judge of the High Court, shall, on receipt of the charge, peruse and consider it, and may, if it appears necessary or expedient so to do, alter or re-draw the same, having regard to the rules as to the form of charges contained in this Code.

Procedure on commitment to High Court.

X, 1875, & X, 1872, s. 446. 229. If a prisoner is committed to the Court of Session or High Court without any charge at all, the Court or (in the case of a High Court) the Clerk of the Crown or a Judge of the High Court may draw up a charge, having regard to the rules last aforesaid.

How Court of Session may deal with charge.

If a prisoner is committed upon a charge which the Court, upon reference to the proceedings before the committing Magistrate, considers improper, the Court may draw up a charge for any offence which it considers to be proved by the evidence taken before the committing Magistrate.

Act X, 1872, ss. 444, 445. Act X, 1875, ss. 9, 10. Act IV, 1877, ss. 99, 100.

230. Any Court may, upon the application of the accused, or of the prosecution, or upon its own motion, alter any charge at any time before judgment is pronounced, or, in the case of trials before the Court of Session or High Court, before the verdict of the jury is returned or the opinions of the assessors are expressed.

Magistrate may alter charge.

Every such alteration shall be read and explained to the accused.

Act X, 1872, s. 447. Act X, 1875, s. 11. Act IV, 1877, s. 101.

231. If the alteration is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence, the Court may in its discretion, after making such alteration, proceed with the trial as if the altered charge had been the original charge.

When trial may proceed immediately after alteration.

Act X, 1872, s. 448. Act X, 1875, s. 12. Act IV, 1877, s. 102.

232. If the alteration is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused in his defence, the Court may either direct a new trial, or suspend the trial for such period as may be necessary to enable him to make his defence to the altered charge; and after hearing his defence, the Court may if it thinks fit further adjourn the trial to admit of the appearance of any witness whose evidence the Court considers to be material to the case, or who the accused wishes to be summoned in his defence.

When new trial may be directed, or trial suspended.

Adjournment.

Act X, 1872, s. 449. Act X, 1875, s. 15, omitting 'during the trial.' Act IV, 1877, s. 103.

233. Whenever a charge is altered by the Court, the complainant and the accused shall be allowed to recall, and examine with reference to such alteration, any witness who may have been examined.

Recall of witnesses when charge altered.

Act X, 1872, s. 450. Act X, 1875, s. 16. Act IV, 1877, s. 104.

234. If the offence stated in the altered charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the altered charge is founded.

Stay of proceedings if prosecution of offence in altered charge require previous sanction.

Act X, 1872, s. 451.

235. If any Appellate Court, or the High Court in the exercise of its powers of revision, is of opinion that any person convicted of an offence was in fact misled in his defence by an error in the charge, it shall direct a new trial to be had upon a charge amended in whatever manner it thinks fit.

Effect of material error.

If the Court is of opinion that the facts of the case are such that no valid charge could be pre-

ferred against the accused in respect of the facts proved, it shall quash the conviction.

Illustration.

Act XI, 1874, s. 40. *A* is convicted of an offence under section 196 of the Indian Penal Code, upon a charge which omits to state that he knew the evidence which he corruptly used or attempted to use as true or genuine was false or fabricated. If the Court thinks it probable that *A* had such knowledge, and that he was misled in his defence by the omission from the charge of the statement that he had it, it shall direct a new trial upon an amended charge; but if it appears probable from the proceedings that *A* had no such knowledge, it shall quash the conviction.

Joinder of Charges.

Act X, 1872, s. 452. Act X, 1875, s. 17, adding "before the Magistrate." Act IV, 1877, s. 105.

236. There must be a separate charge for every distinct offence of which any person is accused before the Magistrate, and every such charge must be tried separately, except in the cases mentioned in sections 237, 238, 239 and 242.

Separate charges for distinct offences.

Illustration.

A is accused of a theft on one occasion, and of causing grievous hurt on another occasion. *A* must be separately charged and separately tried for the theft and the causing grievous hurt.

Act X, 1872, s. 453, omitting the Explanation. Act X, 1875, s. 18, adding "against the same person." I.L.R, 3 Calc. 540. Act IV, 1877, s. 106; cf. 24 & 25 Vic., c. 96, s. 5.

237. When a person is accused at the same time of more offences than one of the same kind, committed against the same person within one year of each other, he may be charged with, and tried at one trial for, any number of them not exceeding three.

More offences than one of same kind may be charged within a year of each other.

Act X, 1872, s. 454, omitting Illustration (*i*). Act X, 1875, s. 19. Act IV, 1877, s. 107.

238. I.—If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

I.—Trial of more than one offence.

II.—If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with each of the offences so committed; but he must not receive a punishment more severe than could be inflicted for any of such offences.

II.—One offence falling within two definitions.

III.—If several acts, of which one or more than one would by itself constitute an offence, form, when combined, a different offence, the person accused of them may be charged with every offence, or any of the different offences, which he may have committed; but he shall not receive for such offences, collectively, a punishment more severe than could be inflicted for any one of such offences.

III.—Acts severally constituting more than one offence, but collectively coming within one definition.

Illustrations.

to paragraph I—

(*a.*) *A* rescues *B*, a person in lawful custody, and in so doing causes grievous hurt to *C*, a constable in whose custody *B* was. *A* may be separately charged with, convicted of, and punished for, offences under sections 225 and 333 of the Indian Penal Code.

(*b.*) *A* has in his possession several seals knowing them to be counterfeit and intending to use them for the purpose of committing several forgeries punishable under section 466 of the Indian Penal Code. *A* may be separately charged with, convicted of, and punished for, the possession of each seal under section 473 of the Indian Penal Code.

(*c.*) *A*, with intent to cause injury to *B*, institutes a criminal proceeding against him, knowing that there is no just or lawful ground for such proceeding. *A* also falsely accuses *B* of having committed an offence knowing that there is no just or lawful ground for such charge. *A* may be separately charged with, convicted of, and punished for, two offences under section 211 of the Indian Penal Code.

(*d.*) *A*, with intent to cause injury to *B*, falsely accuse him of having committed an offence, knowing that there is no just or lawful ground for such charge. On the trial *A* gives false evidence against *B*, intending thereby to cause *B* to be convicted of a capital offence. *A* may be separately charged with, convicted of, and punished for, offences under sections 211 and 194 of the Indian Penal Code.

(*e.*) *A*, knowing that *B*, a female minor, has been kidnapped in order that she may be subjected to grievous hurt, wrongfully confines her and detains her against her will as a slave. *A* may be separately charged with, convicted of, and punished for, offences under sections 368 (read with 367) and 370 of the Indian Penal Code.

(*f.*) *A*, with six others, commits the offences of rioting, grievous hurt, and of assaulting a public servant, endeavouring in the discharge of his duty as such to suppress the riot. *A* may be separately charged with, convicted of, and punished for, offences under sections 147 and 325 and 152 of the Penal Code.

(*g.*) *A* threatens *B*, *C* and *D* at the same time with injury to their persons with intent to cause alarm to them. *A* may be separately charged with, convicted of, and punished for, each of the three offences under section 506 of the Indian Penal Code.

(*h.*) *A* intentionally causes the death of three persons by upsetting a boat. *A* may be separately charged with, convicted of, and punished for, each of the three offences under section 302 of the Indian Penal Code.

The separate charges referred to in illustrations (*a*) to (*h*) respectively may be tried at the same time.

to paragraph II—

(*i.*) *A* wrongfully strikes *B* with a cane. *A* may be separately charged with, and convicted of, offences under sections 352 and 323 of the Indian Penal Code; but the Presidency Magistrate who tries him may not inflict a more severe punishment than if he had convicted him under section 323 only.

(*j.*) *A* wrongfully kills a buffalo worth sixty rupees, belonging to *B*, and then moves the carcass in order to take it dishonestly out of *B*'s possession without *B*'s consent. *A* may be separately charged with, and convicted of, offences under sections 429 and 379 of the Indian Penal Code; but the Presidency Magistrate who tries him may not inflict a more severe punishment than if he had convicted him under section 429 only.

(*k.*) Several stolen sacks of corn are made over to *A* and *B*, who know they are stolen property. *A* and *B* thereupon voluntarily assist each other to conceal the sacks at the bottom of a grain-pit. *A* and *B* may be separately charged with, and convicted of, offences under sections 411 and 414 of the Indian Penal Code; but the Presidency Magistrate who tries them may not inflict a severer punishment than if he had convicted them under one of those sections only.

(*l.*) *A* dishonestly uses a forged document as genuine evidence, in order to convict *B*, a public servant, of an offence under section 167 of the Indian Penal Code. *A* may be separately charged with, and convicted of, offences under sections 471 (read with 466) and 196 of the same

Code; but the Presidency Magistrate who tries him may not inflict a severer punishment than if he had convicted him under one of those sections only.

to paragraph III—

(*m.*) *A* commits house-breaking by day with intent to commit adultery, and commits, in the house so entered, adultery with *B*'s wife. *A* may be separately charged with, and convicted of, offences under sections 454 and 497 of the Indian Penal Code; but the Presidency Magistrate who tries him may not inflict a severer punishment than if he had convicted him under section 497 only.

(*n.*) *A* commits robbery on *B*, and, in doing so, voluntarily causes hurt to him. *A* may be separately charged with, and convicted of, offences under sections 323, 392 and 394 of the Indian Penal Code; but the Presidency Magistrate who tries him may not inflict a severer punishment than if he had convicted him under section 392 or 394 only.

(*o.*) *A* entices *B*, the wife of *C*, away from *C*, with intent to commit adultery with *B*, and then commits adultery with her. *A* may be separately charged with, and convicted of, offences under sections 498 and 497 of the Indian Penal Code; but the Presidency Magistrate who tries him may not inflict a severer punishment than if he had convicted him under section 497 only.

Act X, 1872, s. 455. Act X, 1875, s. 20. Act IV, 1877, s. 108. N. W. P., 1875, p. 187.

239. If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences; and any number of such charges may be tried at once, or he may be charged in the alternative with having committed some one of the said offences.

Where it is doubtful what offence has been committed.

Illustration.

A is accused of an act which may amount to theft, or receiving stolen property, or criminal breach of trust or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust and cheating, or he may be charged with having committed theft, or receiving stolen property, or criminal breach of trust, or cheating.

1872, 1875, 1877.

240. If, in the case mentioned in section 239, the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of that section, he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

When a person is charged with one offence, he can be convicted of another.

Illustration.

A is charged with theft. It appears that he committed the offence of criminal breach of trust, or that of receiving stolen goods. He may be convicted of criminal breach of trust, or of receiving stolen goods (as the case may be), though he was not charged with such offence.

1872, 1875, 1877, 1882, sec. 3.

241. When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and part of the charge is not proved, but the part which is proved amounts to a different offence, he may be convicted of the offence which he is proved to have committed, though he was not charged with it.

When offence proved included in offence charged.

Illustration.

(*a.*) *A* is charged, under section 407 of the Indian Penal Code, with criminal breach of trust in respect of property entrusted to him as a carrier. It appears that he did commit criminal breach of trust under section 406 in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under section 406.

Act X, 1872, s. 458. Act X, 1875, s. 23. Act IV, 1877, s. 111.

242. When more persons than one are accused of the same offence, or of different offences committed in the same transaction, or when one person is accused of committing any offence, and another of abetment of, or attempt to commit, such offence, they may be charged and tried together or separately, as the Court thinks fit, and the provisions contained in the former part of this chapter shall apply to all such charges.

What persons may be charged jointly.

Illustrations.

(*a.*) *A* and *B* are accused of the same murder. *A* and *B* may be charged and tried together for the murder.

(*b.*) *A* and *B* are accused of a robbery, in the course of which *A* commits a murder with which *B* has nothing to do. *A* and *B* may be tried together on a charge, charging both of them with the robbery, and *A* alone with the murder.

(*c.*) *A* and *B* are both charged with a theft, and *B* is charged with two other thefts committed by him in the course of the same transaction. *A* and *B* may be both tried together on a charge, charging both with the one theft, and *B* alone with the two other thefts.

Act X, 1872, s. 459, omitting the first ten words. "In trials before Court of Session or High Court" and inserting "the complainant." Act X, 1875, s. 103. Act IV, 1877, s. 112. N.W.P.

243. When more charges than one are made against the same person, and when a conviction has been had on one or more of them, the complainant, or the officer conducting the prosecution, may, with the consent of the Court, withdraw, or such Court of its own accord may suspend the inquiry into, or trial of, the remaining charge or charges. Such withdrawal shall have the effect of an acquittal on such charge or charges.

Withdrawal of remaining charges on conviction on one of several charges.

CHAPTER XX.

Of the Trial of Summons-cases by Magistrates.

Act X, 1872, s. 208, paras. 1 and 2. Act IV, 1877, s. 114. Act X, 1872, s. 208. Act IV, 1877, s. 119.

244. The following procedure shall be observed by Magistrates in the trial of summons-cases.

Procedure in summons-cases.

245. When the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked if he has any cause to show why he should not be convicted.

Substance of accusation to be stated.

Act X, 1872, s. 208. Act IV, 1877, s. 120.

246. If the accused admits that he has committed the offence with which he is charged, his admission shall be recorded as nearly as possible in the words used by him; and if he shows no sufficient cause why he should not be convicted, the Magistrate shall convict him accordingly.

Conviction on admission of truth of accusation.

247. If the accused does not make such admission, the [illegible] shall proceed to hear the complainant (if any), and take all such evidence

Procedure when no such admission is made.

may be produced in support of the prosecution, and also to hear the accused and take all such evidence as he produces in his defence.

Act X, 1872, s. 361. Act IV, 1877, s. 142.

The Magistrate may, if he thinks fit, on the application of the complainant or accused, issue process to compel the attendance of any witness or the production of any document or other thing.

The Magistrate may, before summoning any witness on such application, require that his reasonable expenses incurred in attending for the purposes of the trial be deposited in Court.

Act X, 1872, s. 211, paras. 1 and 2. Act IV, 1877, s. 126.

248. If the Magistrate upon taking the evidence referred to in section 247 and such further evidence (if any) as he may, of his own motion, cause to be produced, and (if he thinks fit) examining the accused, finds the accused not guilty, he shall record an order of acquittal.

Acquittal.

If he finds the accused guilty, he shall pass sentence upon him according to law.

Sentence.

Act of 1877, s. 117, Nelson 206.

249. A Magistrate may, under section 246 or section 248, convict the accused of any offence triable under this chapter which, from the facts admitted or proved, he appears to have committed, whatever may be the nature of the complaint or summons.

Finding not limited by complaint or summons.

Act X, 1872, ss. 205, 212. Act IV, 1872, s. 118.

250. If the summons has been issued on complaint and upon the day appointed for the appearance of the accused or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks proper to adjourn the hearing of the case to some other day.

Non-appearance of complainant.

Act X, 1872, s. 210. Act IV, 1877, s. 125.

251. If a complainant, at any time before a final order is passed in any case under this chapter, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint, the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused.

Withdrawal of complaint.

252. The Magistrate may in his discretion, in any case instituted otherwise than upon complaint, stop the proceedings at any stage without pronouncing any judgment either of acquittal or conviction.

Power to stop proceedings when no complainant.

Act X, 1872, s. 209, paras. 1 and 2. Act IV, 1877, s. 242.

253. If in any case instituted upon complaint a Magistrate acquits the accused under section 248 or section 250, and is of opinion that the complaint was frivolous or vexatious, he may, in his discretion, by his order of acquittal, direct the complainant to pay to the accused, or to each of the accused where there are more than one, such compensation, not exceeding fifty rupees, as the Magistrate thinks fit.

Frivolous or vexatious complaints.

The sum so awarded shall be recoverable as if it were a fine; and if it cannot be so recovered, the complainant shall be imprisoned in the civil jail for such term, not exceeding thirty days, as the Magistrate directs, unless such sum is sooner paid.

Recovery of such compensation.

CHAPTER XXI.

OF THE TRIAL OF WARRANT-CASES BY MAGISTRATES.

Act X, 1872, s. 213.

254. The following procedure shall be observed by Magistrates in the trial of warrant-cases.

Procedure in warrant-cases.

See I. L. R., 3 Cal. 389.

255. When the accused appears or is brought before a Magistrate, such Magistrate shall proceed to hear the complainant (if any) and take all such evidence as may be produced in support of the prosecution.

Evidence for prosecution.

Act X, 1872, s. 362, para. 1. Act IV, 1877, s. 148, para. 1.

The Magistrate shall ascertain, from the complainant or otherwise, the names of any persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution, and shall summon to give evidence before himself such of them as he thinks necessary.

Act X, 1872, s. 215.

256. If upon taking all the evidence produced under section 255, and such examination (if any) of the accused as the Magistrate thinks necessary, he finds that no offence has been proved against the accused, the Magistrate shall discharge him.

Discharge of accused.

Act X, 1872, s. 216. Act XI, 1874, s. 16. Act IV, 1877, ss. 116, 122.

257. If when such evidence and examination have been wholly or partially taken, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this chapter, which such Magistrate is competent to try, and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

Charge to be framed when offence appears proved.

Act X, 1872, s. 217. Act IV, 1877, ss. 120, 122.

258. The charge shall then be read and explained to the accused, and he shall be asked whether he is guilty or has any defence to make.

Plea.

cf. Act X, 1872, ss. 237, 238.

If the accused pleads guilty, the Magistrate shall record the plea, and may in his discretion convict him thereon.

Act X, 1872, s. 218. Act IV, 1877, s. 121.

259. If the accused refuses to plead or does not plead, or claims to be tried, he shall be called upon to enter upon his defence and to produce his evidence, and shall, at any time while he is making his defence, be allowed to recall and cross-examine any witness for the prosecution present in the Court or its precincts.

Defence.

If the accused puts in any written statement, the Magistrate may file it with the record, but shall not be bound to do so.

Act X, 1872, s. 362. Act IV, 1877, s. 148, para 2. Cf. s. 255 and 209.

260. If the accused applies to the Magistrate to issue any process for compelling the attendance of any witness (whether he has or has not been previously examined in the case) or the production of any document or other thing, the Magistrate shall issue such process unless, for reasons to be recorded by him in writing, he considers that such application should be refused.

Process for production of evidence for defence.

The Magistrate may, before summoning any witness on such application, require that his reasonable expenses incurred in attending for the purposes of the trial be deposited in Court.

Act X, 1872, s. 220, omitting the explanation. Act IV, 1877, s. 126, first half.

261. If in any case under this chapter in which a charge has been framed the Magistrate finds the accused not guilty, he shall record an order of acquittal.

Acquittal.

If in any such case the Magistrate finds the accused guilty, he shall pass sentence upon him according to law.

Conviction.

Act X, 1872, s. 215, expl. 1. Contrast Act IV of 1877, s. 118; but see s. 133 of same.

262. When the proceedings have been instituted upon complaint and upon any day fixed for the hearing of the case the complainant is absent and the offence may be lawfully compounded, the Magistrate may, in his discretion, notwithstanding anything hereinbefore contained, at any time before the charge has been framed, discharge the accused.

Absence of complainant.

CHAPTER XXII.

OF SUMMARY TRIALS.

Power to try summarily.

263. Notwithstanding anything herein contained, the District Magistrate and any Magistrate of the first class specially empowered in this behalf by the Local Government may try in a summary way all or any of the following offences:—

3 Calc.

(*a*). Offences not punishable with death, transportation, whipping, or imprisonment for a term exceeding six months;

(*b*). Offences relating to weights and measures, under sections 264, 265 and 266 of the Indian Penal Code;

(*c*). Hurt, under section 323 of the same Code;

(*d*). Theft, under section 379 of the same Code, where the value of the property stolen does not exceed fifty rupees;

(*e*). Theft, under section 380 of the same Code, where the value of the property stolen does not exceed fifty rupees;

(*f*). Theft, under section 381 of the same Code, where the value of the property stolen does not exceed fifty rupees;

(*g*). Receiving stolen property, under section 411 of the same Code;

(*h*). Mischief, under section 427 of the same Code;

(*i*). House-trespass, under section 448 of the same Code;

(*j*). Insult with intent to provoke a breach of the peace, under section 504, and criminal intimidation, under section 505, of the same Code;

(*k*). Abetment of any of the foregoing offences;

(*l*). An attempt to commit any of the foregoing offences when such attempt is an offence.

Act X, 1872, s. 225.

264. The Local Government may confer on any Bench of Magistrates invested with the powers of a Magistrate of the second or third class power to try summarily all or any of the following offences:—

Power to invest Bench of Magistrates invested with less power.

(*a*). Offences against the Indian Penal Code, sections 277, 278, 279, 285, 286, 289, 290, 292, 293, 294, 323, 334, 336, 341, 352, 426 and 447;

(*b*). Offences against Municipal Acts, and the conservancy-clauses of Police Acts, punishable only with fine, or with imprisonment for a term not exceeding one month;

New.

(*c*). Abetment of any of the foregoing offences;

New.

(*d*). An attempt to commit any of the foregoing offences when such attempt is an offence.

Act X, 1872, s. 226.

265. In trials under this chapter, the procedure prescribed for summons-cases shall be followed in summons-cases, and the procedure prescribed for warrant-cases shall be followed in warrant-cases, except as hereinafter mentioned.

Procedure for summons and warrant-cases applicable with certain exceptions.

Act X, 1872, s. 227.

266. In cases where no appeal lies, the Magistrate or Bench of Magistrates need not record the evidence of the witnesses, or the reasons for passing the judgment, or frame a formal charge; but he or they shall enter in a register to be kept for the purpose the following particulars:—

Record in cases where there is no appeal.

(*a*) the serial number;

(*b*) the date of the commission of the offence;

(*c*) the date of the report or complaint;

(*d*) the name of the complainant (if any);

(*e*) the name, father's name and residence of the accused;

(*f*) the offence complained of or proved;

(*g*) the plea of the accused and his examination (if any);

(*h*) the finding, and, in the case of a conviction, a brief statement of the reasons therefor;

(*i*) the sentence, and

(*j*) the date on which the proceedings terminated.

267. In every case tried summarily by a Magistrate or Bench in which an appeal lies, such Magistrate or Bench shall, before passing sentence, record a judgment embodying the

Record in appealable cases.

substance of the evidence on which the conviction was had, and also the particulars mentioned in section 266.

Such judgment shall be the only record in cases coming within this section.

Act X, 1872, s. 229.

Language of judgment.

268. Records made under section 266 and judgments recorded under section 267 shall be written by the presiding officer, either in English or in the language of the Court, or, if the Court to which such presiding officer is immediately subordinate so directs, in such officer's mother-tongue.

Act X, 1872, s. 230.

Bench may be authorised to employ clerk.

The Local Government may authorize any Bench of Magistrates empowered to try offences summarily to prepare the aforesaid record or judgment by means of an officer appointed in this behalf by the Court to which such Bench is immediately subordinate, and the record or judgment so prepared shall be signed by each member of such Bench present taking part in the proceedings.

CHAPTER XXIII.

Of Trials before High Courts and Courts of Session.

A.—Preliminary.

Act X, 1875, s. 3.

"High Court" defined.

269. In this chapter the expression "High Court" means a High Court of Judicature established or to be established under the twenty-fourth and twenty-fifth of Victoria, chapter 104, and includes the Chief Court of the Panjáb, and such other Courts as the Governor General in Council may from time to time, by notification in the *Gazette of India*, declare to be High Courts for the purposes of this chapter.

Act X, 1875, s. 32.

Trials before High Court to be by jury.

270. All trials under this chapter before a High Court shall be by jury;

and, notwithstanding anything contained herein, all criminal cases transferred to a High Court under this Code or under the Letters Patent of any High Court established under the twenty-fourth and twenty-fifth of Victoria, chapter 104, the trial may, if the High Court so direct, be by jury.

Act X, 1872, s. 232.

Trials before Sessions Court to be by jury or with assessors.

271. All trials before a Court of Session shall be either by jury, or with the aid of assessors.

Act X, 1872, s. 233.

Local Government may order trials before Court of Session to be by jury.

272. The Local Government may by order in the official Gazette direct that the trial of all offences, or of any particular class of offences, before any Court of Session, shall be by jury in any district, and from time to time revoke or alter such order.

When the accused is triable at the same time for several offences of which some are and some are not triable by jury, he shall be tried by jury for each offence.

Act X, 1872, s. 235.

Trial before Court of Session to be conducted by Public Prosecutor.

273. In every trial before a Court of Session, the prosecution shall be conducted by a Public Prosecutor.

B.—Commencement of Proceedings.

Act X, 1872, s. 237.

Commencement of trial.

274. When the Court is ready to commence the trial, the accused shall appear or be brought before it, and the charge shall be read and explained to him, and he shall be asked whether he is guilty of the offence charged, or claims to be tried.

Act X, 1875, ss. 28 and 29.

Plea of guilty.

If the accused pleads guilty, the plea shall be recorded, and he may be convicted thereon.

Act X, 1872, s. 238. Act X, 1875, s. 30.

Refusal to plead or claim to be tried.

275. If the accused refuses to, or does not, plead, or if he claims to be tried, the Court shall proceed to choose jurors or assessors as hereinafter directed and to try the case:

Act X, 1872, s. 265. Act X, 1875, s. 34.

Trial by same jury or assessors of several offenders in succession.

Provided that, subject to the right of objection hereinafter mentioned, the same jury may try, or the same assessors may aid in the trial of, as many accused persons successively as the Court thinks fit.

Act X, 1875, s. 14. Query, extend to Sessions Judges.

Entry on unsustainable charge.

276. When any charge, or portion of a charge, appears to a Judge of the High Court, at any time before the commencement of the trial of the person charged, to be clearly unsustainable, such Judge may make on the charge an entry to that effect.

Effect of entry.

Such entry shall have the effect of staying proceedings upon the charge or portion of the charge, as the case may be.

C.—Choosing a Jury.

Act X, 1875, s. 33.

Number of jury.

277. In trials before the High Court the jury shall consist of nine persons.

Act X, 1872, s. 236.

In trials by jury before the Court of Session, the jury shall consist of such uneven number not being less than three, or more than nine, as the Local Government, by order applicable to any particular district or to any particular class of offences in that district, may from time to time direct.

Act X, 1872, s. 241.

Jury for trial of persons not Europeans or Americans before Court of Session.

278. In a trial by jury, before the Court of Session, of a person not being a European or an American, at least one half of the jury shall, if he so desires, consist of persons who are neither Europeans nor Americans.

Act ... Act ... Acts ... Court, Bombay, ...

Jurors to be chosen by lot.

279. The jurors shall be chosen by lot from the persons summoned to act as such—

in trials before the High Court, in such manner as that Court, and in trials before Sessions Courts,

in such manner as the Local Government may from time to time by rule direct:

Proviso.

Provided that—

Act X, 1875, s. 49.

Existing practice maintained.

1*st*, pending the issue under this section of rules for any Court, the practice now prevailing in such Court in respect to the choosing of jurors shall be followed.

Act X, 1872, s. 243. Act X, 1875, s. 35.

Persons not summoned when eligible.

2*nd*, in case of a deficiency of persons summoned, the number of jurors required may, with the leave of the Court, be chosen from such other persons as may be present; and

Act X, 1875, s. 38.

Trials before special jurors.

3*rd*, in the Presidency-towns—

(*a*) if the accused person is charged with having committed an offence punishable with death, or

(*b*) if in any other case a Judge of the High Court so directs,

the jurors shall be chosen from the special jury list hereinafter prescribed.

Act X, 1872, s. 243. Act X, 1875, s. 53.

Names of jurors to be called.

280. As each juror is chosen, his name shall be called aloud, and upon his appearance, the accused shall be asked if he objects to be tried by such juror.

Objection to jurors.

Objection may then be taken to such juror by the accused or by the prosecutor, and the grounds of objection shall be stated:

Act X, 1875, s. 47, para. 1.

Objection without grounds stated.

Provided that, in the High Court, objections without grounds stated shall be allowed to the number of eight on behalf of the Crown and eight on behalf of the person or all the persons charged.

Act X, 1872, ss. 244, 405. Act X, 1875, ss. 47, 54.

Grounds of objection.

281. Any objection taken to a juror on any of the following grounds, if made out to the satisfaction of the Court, shall be allowed:—

(*a*) some personal ground, such as alienage, infancy, old age, or deficiency in the qualification required by any law or rule having the force of law for the time being in force;

(*b*) his having by habit or religious vows relinquished all care of worldly affairs;

(*c*) his holding any office in or under the Court;

(*d*) his executing any duties of Police or being entrusted with Police-duties;

(*e*) his having been convicted of any offence which, in the opinion of the Court, renders him unfit to serve on the jury;

(*f*) some presumed or actual partiality in the juror;

Act X, 1872, s. ... Act X, 1875, s. ...

(*g*) inability to understand the language in which the evidence is given, or when such evidence is interpreted, the language in which it is interpreted;

(*h*) any other circumstance which, in the opinion of the Court, renders him improper as a juror.

Act X, 1872, s. 243, para 3. Act X, 1875, ss. 48, 55.

Decision of objection.

282. Every objection taken to a juror shall be decided by the Court, and such decision shall be final.

Act X, 1872, s. 243. Act X, 1875, s. 56.

Supply of place of juror against whom objection allowed.

If the objection is allowed, the place of such juror shall be supplied by any other juror attending in obedience to a summons and chosen in manner provided by section 279; or, if there is no such other juror present, then by any other person present in the Court whose name is on the list of jurors, or whom the Court considers a proper person to serve on the jury, provided that no objection to such juror or other person is taken under section 281 and allowed.

Act X, 1872, s. 246. Act X, 1875, s. 58.

Foreman of jury.

283. When the jurors have been chosen, they shall appoint one of their number to be foreman.

The foreman shall preside in the debates of the jury, deliver the verdict of the jury, and ask any information from the Court that is required by the jury or any of the jurors.

If a majority of the jury do not, within such time as the Judge thinks reasonable, agree in the appointment of a foreman, he shall be appointed by the Court.

New.

Swearing of jurors.

284. When the foreman has been appointed, the jurors shall be sworn under the Indian Oaths Act, 1873.

Act X, 1872, s. 254.

Procedure when juror ceases to attend.

285. If, in the course of a trial by jury, at any time before the return of the verdict, any juror, from any sufficient cause, is prevented from attending throughout the trial, or if any juror absents himself, and it is not possible to enforce his attendance,

(*a*) a new juror shall be added; or

(*b*) the jury shall be discharged and a new jury chosen; or

(*c*) with the consent of the prosecutor and the accused, the trial shall proceed with the remaining jurors.

In cases (*a*) and (*b*) the trial shall commence anew.

Act X, 1875, s. 99.

Discharge of jury in case of sickness of prisoner.

286. The Judge may also discharge the jury whenever the prisoner becomes incapable of remaining at the bar.

D.—Choosing Assessors.

Act X, 1872, s. 239.

Assessor how chosen.

287. When the trial is to be held with the aid of assessors, two or more shall be chosen, as the Judge thinks fit, from the persons summoned to act as such.

Act X, 1872, s. 259.

Procedure when assessor is unable to attend.

288. If, in the course of a trial with the aid of assessors, at any time prior to the finding, any assessor is, from any sufficient cause, prevented from attending throughout

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the trial, or absents himself, and it is not possible to enforce his attendance, the trial shall proceed with the aid of the other assessor or assessors.

If all the assessors are prevented from attending or absent themselves, the proceeding shall be stayed, and a new trial shall be held with the aid of fresh assessors.

E.—Trial to Close of Cases for Prosecution and Defence.

Act X, 1872, s. 247. Act XI, 1874, s. 19. Act X, 1875, s. 59.

Opening case for prosecution.

289. When the jurors or assessors have been chosen, the prosecutor shall open his case by reading from the Indian Penal Code or other law the description of the offence charged, and stating shortly by what evidence he expects to prove the guilt of the accused.

Examination of witnesses.

The prosecutor shall then examine his witnesses.

Act X, 1872, s. 248. Act X, 1875, s. 60.

Examination of accused before Magistrate to be evidence.

290. The examination of the accused before the committing Magistrate shall be tendered as evidence by the prosecutor, scrutinised by the presiding Judge and read as evidence.

Act X, 1872, s. 249. Act XI, 1874, s. 20. Act X, 1875, s. 75. 12 Ben. Appendix 16, 17. The exercise of this discretion may be reviewed on appeal, 11 Bomb. 282.

Evidence given at preliminary inquiry admissible.

291. The evidence of a witness duly taken in the presence of the accused before the committing Magistrate may, in the discretion of the presiding Judge, if such witness is produced, be treated as evidence in the case.

Act X, 1872, s. 251. Act X, 1875, s. 62.

Procedure after examination of witnesses for prosecution.

292. When the examination of the witnesses for the prosecution and the examination (if any) of the accused is concluded, the accused shall be asked whether he means to call witnesses.

In such case it is not necessary to ask the assessors their opinion—I. L. R. 1 All. 610 n.

If he says that he does not, the prosecutor may sum up his case; and if the Court wholly discredits the evidence for the prosecution, it may then, in a case tried with the aid of assessors, record a finding, or, in a case tried by a jury, direct the jury to return a verdict of not guilty.

If the accused says that he means to call witnesses, or if, on his saying that he does not mean to call witnesses, the prosecutor sums up his case and the Court believes, or merely doubts the truth of, the evidence for the prosecution, the Court shall call on the accused to enter on his defence.

Act X, 1872, s. 251. Act X, 1875, s. 62.

Defence.

293. The accused or his advocate, attorney or agent, may then open his case, stating the facts or law on which he intends to rely, and whether he thinks the evidence for the prosecution insufficient or inapplicable. He may then examine his witnesses, if any, and after their cross-examination and re-examination (if any) may sum up his case.

Act X, 1872, s. 363. Act X, 1875, s. 85. Act IV, 1877, s. 91.

Right of accused as to examination and summoning of witness.

294. The accused shall be allowed to examine any witness not previously named by him, if such witness is in attendance; but he shall not, except as provided in section 232, be entitled of right to have any witness summoned, other than the witnesses named in the list delivered to the Magistrate by whom he was committed for trial.

Act X, 1872, s. 252. Act X, 1875, s. 63.

Prosecutor's right of reply.

295. If any evidence is produced on behalf of the accused, the prosecutor shall be entitled to reply.

Act X, 1872, s. 253, omitting provision as to reconducting to Court. Act X, 1875, s. 64. Taken from Livingston, Art. 357.

View by jury or assessors.

296. Whenever the Court thinks that the jury or assessors should view the place in which the offence charged is alleged to have been committed, or any other place in which any other transaction material to the trial is alleged to have occurred, the Court shall make an order to that effect, and the jury or assessors shall be conducted in a body, under the care of an officer of the Court, to such place, which shall be shown to them by a person appointed by the Court.

Such officer shall not suffer any other person to speak to, or hold any communication with, any of the jury or assessors, and, unless the Court otherwise directs, they shall, when the view is finished, be immediately conducted back into Court.

Act X, 1872, s. 258. Act X, 1875, s. 69.

When juror or assessor may be examined.

297. If a juror or assessor is personally acquainted with any relevant fact, it is his duty to inform the Judge that such is the case, whereupon he may be sworn, examined, cross-examined and re-examined in the same manner as any other witness.

Act X, 1872, s. 260. Act X, 1875, s. 67.

Jury or assessors to attend at adjourned sitting.

298. If a trial is adjourned, the jury or assessors shall attend at the adjourned sitting, and at every subsequent sitting, until the conclusion of the trial.

Act X, 1875, s. 65.

Locking-up jury.

299. The High Court may from time to time make rules as to keeping the jury together during a trial before such Court lasting for more than one day, and, subject to such rules, the presiding Judge may order whether and in what manner the jurors shall be kept together under the charge of an officer of the Court, or whether they shall be allowed to return to their respective homes.

F.—Conclusion of Trial in Cases tried by Jury.

Act X, s. 255. Act X, s. 90.

Charge to jury.

300. In cases tried by jury, when the case for the defence, and the prosecutor's reply, if any, are concluded, the Court shall proceed to charge the jury, summing up the evidence for the prosecution and defence, and laying down the law by which the jury are to be guided.

Act X, s. 256. Act X, s. 91.

Duty of Judge.

301. In such cases, it is the duty of the Judge—

(*a*) to decide all questions of law, and especially all questions as to the relevancy of facts which it is proposed to prove, the admissibility of evidence or the propriety of questions asked by or on behalf of the parties which may arise in the course of the trial, and, in his discretion, to prevent the production of inadmissible evidence, whether it is or is not objected to by the parties;

(*b*) to decide upon the meaning and construction of all documents given in evidence at the trial;

(*c*) to decide upon all matters of fact which it may be necessary to prove in order to enable evidence of particular matters to be given;

(*d*) to decide whether any question which arises is for himself or for the jury, and upon this point his decision shall be final.

The Judge may, if he thinks proper, in the course of his summing up, express to the jury his opinion upon any question of fact, or upon any question of mixed law and fact, relevant to the proceeding.

Illustrations.

(*a.*) It is proposed to prove a statement made by a person not called as a witness under circumstances which render evidence of his statement admissible.

It is for the Judge, and not for the jury, to decide whether the existence of those circumstances has been proved.

(*b.*) It is proposed to give secondary evidence of a document the original of which is alleged to have been lost or destroyed.

It is the duty of the Judge to decide whether the original has been lost or destroyed.

Act X, 1872, s. 257. Act X, 1875, s. 98.

Duty of jury.

302. It is the duty of the jury—

(*a*) to decide which view of the facts is true, and then to return the verdict which under such view ought, according to the direction of the Judge, to be returned;

(*b*) to determine the meaning of all technical terms and words used in an unusual sense which it may be necessary to determine, whether such words occur in documents or not;

(*c*) to decide all questions which according to law are to be deemed questions of fact;

(*d*) to decide whether general indefinite expressions do or do not apply to particular cases, unless such expressions refer to legal procedure, or unless their meaning is ascertained by law, in either of which cases it is the duty of the Judge to decide their meaning.

Illustrations.

(*a.*) A is tried for the murder of B.

It is the duty of the Judge to explain to the jury the distinction between murder and culpable homicide, and to tell them under what views of the facts A ought to be convicted of murder, or of culpable homicide, or to be acquitted.

It is the duty of the jury to decide which view of the facts is true, and to return a verdict in accordance with the direction of the Judge, whether that direction is right or wrong, and whether they do or do not agree with it.

(*b.*) The question is whether a person entertained a reasonable belief on a particular point,—whether work was done with reasonable skill or due diligence.

Each of these is a question for the jury.

Act X, 1872, s. 256. Act X, 1875, s. 72.

Retirement to consider.

303. In cases tried by jury, after the Judge has finished his charge, the jury may retire to consider their verdict.

Except with the leave of the Court, no person other than a juror shall speak to, or hold any communication with, any member of such jury.

Act X, 1872, s. 263. Act X, 1875, s. 94.

Delivery of verdict.

304. When the jury have considered their verdict, the foreman shall inform the Judge what is their verdict, or what is the verdict of a majority.

Act X, 1872, s. 263, para. 3. Act X, 1875, s. 96.

Procedure where jury differ.

305. If the jury are not unanimous, the Judge may require them to retire for further consideration. After such a period as the Judge considers reasonable, the jury may deliver their verdict, although they are not unanimous.

Act X, 1872, s. 263, para. 2. Act X, 1875, s. 95.

Verdict to be given on each charge. Judge may question jury.

306. The jury shall return a verdict on all the charges on which the accused is tried, and the Judge may ask them such questions as are necessary to ascertain what their verdict is.

Act X, 1872, s. 263, para. 2, last sentence.

Questions and answers to be recorded.

Such questions and the answers to them shall be recorded.

New. Dears. C. C. 229.

Amending verdict.

307. When a wrong verdict is delivered, the jury may, before or immediately after it is recorded, amend the verdict, and it shall stand as ultimately amended.

Act X, 1875, ss. 97, 98.

Verdict in High Court when to prevail.

308. When in a case tried before a High Court the jury are unanimous in their opinion, or when as many as six are of one opinion and the Judge agrees with them, the Judge shall give judgment in accordance with such opinion.

When in any such case the jury are satisfied that they will not be unanimous, but six of them are of one opinion, the foreman shall so inform the Judge.

Discharge of jury in other cases.

If the Judge disagrees with the majority, he shall at once discharge the jury.

If there are not so many as six who agree in opinion, the Judge shall, after the lapse of such time as he thinks reasonable, discharge the jury.

Act X, 1872, s. 263, para. 4.

Verdict in Sessions Court when to prevail.

309. When in a case tried before the Court of Session the Judge does not think it necessary to express disagreement with the verdict of the jurors or of a majority of the jurors, he shall give judgment accordingly.

Act XI, 1874, s. 21.

If the accused is acquitted, the Judge shall record judgment of acquittal. If the accused is convicted, the Judge shall pass sentence on him according to law.

Act X, 1872, s. 263, last para. Act XI, 1874, s. 21. I. L. R. 2 Bomb. 19. The direction must be complete, I. L. R. 2 Bomb. 685.

Procedure where Judge disagrees with verdict.

310. If in any such case the Judge disagrees with the verdict of the jurors, or of a majority of the jurors, on all or any of the charges on which the accused has been tried, so completely that he considers it necessary for the ends of justice to submit the case to the High Court, he shall submit the case accordingly, record-

ing the grounds of his opinion and, when the verdict is one of acquittal, stating the offence which he considers to have been committed. I. L. R., 3 Calc. 623.

Whenever the Judge submits a case under this section, he shall not record judgment of acquittal or of conviction on any of the charges on which the accused has been tried, but he may either remand the accused to custody, or admit him to bail.

The High Court shall deal with the case so submitted as it would deal with an appeal; but it may acquit or convict the accused of any offence of which the jury could have convicted him upon the charge framed and placed before it; and if it convict him, may pass such sentence as might have been passed by the Court of Session. See Markby J., in I. L. R., 3 Calc. 192.

G.—Re-trial of Accused after Discharge of Jury.

Act X, 1875, s. 100.

311. Whenever the jury is discharged, the accused shall be detained in custody or on bail (as the case may be), and shall be tried by another jury, unless the Judge considers that he should not be re-tried, in which case the Judge shall make an entry to that effect on the charge, and such entry shall operate as an acquittal.

Re-trial of accused after discharge of jury.

H.—Conclusion of Trial in Cases tried with Assessors.

Act X, 1872, ss. 255, 261, 262.

312. When in a case tried with the aid to assessors, the case for the defence and the prosecutor's reply (if any) are concluded, the Court shall require each of the assessors to state his opinion orally, and shall record such opinion.

Delivery of opinion of assessors.

The Judge shall then give judgment; but in doing so shall not be bound to conform to the opinion of the assessors.

Judgment.

I.—List of Jurors for High Court and summoning Jurors for that Court.

Act X, 1875, s. 39.

313. The jurors' book for the year current when this Code comes into force shall be taken as containing a correct list of persons liable to serve as jurors under this chapter;

Jurors' book.

and those persons whose names are entered in the said book as being liable to serve on special juries only shall be deemed to be persons privileged and liable to serve only as special jurors under this chapter during the year for which the said list has been prepared.

Act X, 1875, s. 40.

314. The names of not more than two hundred persons shall at any one time be entered in the special jurors' list.

Number of special jurors.

Act X, 1875, s. 41.

All persons whose names are entered in the special jurors' list shall be exempted from serving on any other than special juries, but so long only as their names are contained in such list.

Exemption of special jurors.

Act X, 1875, s. 42.

315. The Clerk of the Crown shall, before the first day of April in each year, and subject to such rules as the High Court from time to time prescribes, prepare—

Lists of common and special jurors.

(*a*) a list of all persons liable to serve as common jurors; and

(*b*) a list of persons liable to serve as special jurors only.

Regard shall be had, in the preparation of the latter list, to the property, character and education of the persons whose names are entered therein.

No persons shall be entitled to have his name entered in the special jurors' list merely because he may have been entered in the special jurors' list for a previous year.

The Governor General in Council may exempt any salaried officer of Government from serving as a juror.

Act X, 1875, s. 43.

The Clerk of the Crown shall, subject to such rules as aforesaid, have full discretion to prepare the said lists as seems to him to be proper, and there shall be no appeal from, or review of, his decision.

Discretion of officer preparing lists.

Act X, 1875, s. 44.

316. Preliminary lists of persons liable to serve as common jurors and as special jurors, respectively, signed by the Clerk of the Crown, shall be published once in the local official Gazette before the fifteenth day of April next after their preparation.

Publication of preliminary lists.

Revised lists of persons liable to serve as common jurors and special jurors, respectively, signed as aforesaid, shall be published once in the local official Gazette before the first day of May next after their preparation.

Copies of the said lists shall be affixed to some conspicuous part of the Court-house.

Act X, 1875, s. 45.

317. Out of the persons named in the revised lists aforesaid, there shall be summoned for each sessions at least twenty-seven of those who are liable to serve on special juries, and fifty-four of those who are liable to serve on common juries.

Number of jurors to be summoned.

No persons shall be so summoned more than once in six months unless the number cannot be made up without him.

If, during the continuance of any sessions, it appears that the number of persons so summoned is not sufficient, such number as may be necessary of other persons liable to serve as aforesaid shall be summoned for such sessions.

Supplementary summons.

Act X, 1875, s. 50.

318. Whenever a High Court has given notice of its intention to hold sittings at any place outside the Presidency-towns for the exercise of its original criminal jurisdiction, the

Summoning jurors outside the Presidency-towns.

Court of Session at such place shall, subject to any direction which may be given by the High Court, summon a sufficient number of jurors from its own list in the manner hereinafter prescribed for summoning jurors to the Court of Session.

Act X, 1875, s. 51.

319. In addition to the persons so summoned as jurors, the said Court of Session shall, if it think needful, after communication with the Commanding Officer, cause to be summoned such number of commissioned and non-commissioned officers in Her Majesty's army resident within ten miles of its place of sitting, as the Court considers to be necessary to make up the juries required for the trial of persons charged with offences before the High Court as aforesaid.

Military jurors.

All officers so summoned shall be liable to serve on such juries notwithstanding anything contained in this Code; but no such officer shall be summoned whom his Commanding Officer desires to have excused on the ground of urgent military duty, or for any other special military reason.

Act X, 1875, s. 46.

320. Any person summoned under section 317, 318 or 319, who without lawful excuse fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Judge, or fails to attend after an adjournment of the Court after being ordered to attend, shall be deemed guilty of a contempt and be liable by order of the Judge to such fine as he thinks fit; and, in default of payment of such fine, to imprisonment in the civil jail until the fine is paid.

Failure of jurors to attend.

J.—List of Jurors and Assessors for Court of Session, and summoning Jurors and Assessors for that Court.

Act X, 1872, s. 400.

321. The Sessions Judge and the Collector of the District, or such other officer as the Local Government appoints in this behalf, shall prepare and make out in alphabetical order a list of persons residing within ten miles from the place where trials before the Court of Session are held, or within such other distance as the Local Government directs, who are capable of serving as jurors or assessors, qualified in the judgment of the Sessions Judge and Collector or other officer as aforesaid to serve as such, and not exempt under section 327.

List of jurors and assessors.

The list shall contain the name, place of abode and quality or business of every such person; and if the person is a European or an American, the list shall mention the race to which he belongs.

Act X, 1872, s. 401, para. 1.

322. Copies of such list shall be stuck up in the office of the Collector or other officer as aforesaid, and in the Court-houses of the District Magistrate and of the District Court, and in some conspicuous place in the town or towns in or near which the persons named in the list reside.

Publication of list.

Act X, 1872, s. 401, para. 2.

323. To every such copy shall be subjoined a notice stating that objections to the list will be heard and determined by the Sessions Judge and Collector or other officer as aforesaid, at the Sessions Court-house, and at a time to be mentioned in the notice.

Objections to list.

Act X, 1872, s. 402.

324. For the hearing of such objections, the Sessions Judge shall sit with the Collector or other officer as aforesaid, and shall, at the time and place mentioned in the notice, revise the list and hear the objections (if any) of persons interested in the amendment thereof, and shall strike out the name of any person not suitable in their judgment to serve as a juror or as an assessor, or who may avail himself of the exemption from service given by section 327, and insert the name of any person omitted from the list whom they deem qualified for such service.

Revision of list.

In the event of a difference of opinion between the Collector or other officer as aforesaid and the Sessions Judge, the name of the proposed juror or assessor shall be omitted from the list.

A copy of the revised list shall be signed by the Sessions Judge and Collector or other officer as aforesaid and sent to the Court of Session.

Any order of the Sessions Judge and Collector or other officer as aforesaid in preparing and revising the list shall be final.

Act X, 1872, s. 403.

325. The list so prepared and revised shall be again revised once in every year.

Annual revision of list.

The list so revised shall be deemed a new list, and shall be subject to all the rules hereinbefore contained as to the list originally prepared.

Act X, 1872, s. 404.

326. All male persons between the ages of twenty-one and sixty resident within the local limits of the jurisdiction of the Court of Session, except those next hereinafter mentioned, shall be deemed capable of serving as jurors and assessors, and shall be liable to be summoned accordingly.

Jurors and assessors.

Act X, 1872, s. 406.

327. The following persons are exempt from liability to serve as jurors or as assessors, namely:—

Exemptions.

(*a*). Officers in civil employ superior in rank to a District Magistrate;

(*b*). Judges and other Judicial Officers;

(*c*). Commissioners and Collectors of Revenue or Customs;

(*d*). Persons engaged in the Preventive Service in the Customs Department;

(*e*). Persons engaged in the collection of the revenue whom the Collector thinks fit to exempt on the ground of official duty;

(*f*). Persons actually officiating as priests or ministers of their respective religions;

(*g*). Persons in Her Majesty's Army except when, by any law in force for the time being, they are specially made liable to serve as jurors or assessors;

(*h*). Surgeons and others who openly and constantly practise the medical profession;

(*i*). Persons employed in the Post-office and Telegraph Departments;

(*j*). Persons exempted by the Local Government from liability to serve as jurors, and persons exempted from personal appearance in Court under the provisions of the Code of Civil Procedure, sections 640 and 641.

Person exempted not bound to avail himself of his right.

The exemption from service given by this section is a right of which each person exempted may avail himself or not as he thinks fit.

Act X, 1872, s. 407.

Court to summon jurors.

328. The Sessions Judge shall ordinarily, three days at least before the time fixed for holding the sessions, send a letter to a Magistrate requesting him to summon as many persons named in the said revised list as seem to the Judge to be needed for trials by jury and trials with the aid of assessors at the said sessions, the number to be summoned not being less than double the number required for any case about to be tried at such sessions.

The names of the persons to be summoned shall be drawn by lot in open Court, excluding those on the revised list who have served within six months, unless the number cannot be made up without them; and the names so drawn shall be specified in the said letter.

Act X, 1872, s. 410.

Power to summon another set of jurors or assessors.

329. The Court of Session may direct jurors or assessors to be summoned at other periods than the period specified in section 328, when the number of trials before the Court renders the attendance of one set of jurors or assessors for a whole session oppressive, or whenever for other reasons such direction is found to be necessary.

Act X, 1872, s. 409, para. 1.

Form and service of summons.

330. Every summons to a juror or assessor shall be in writing, and shall require his attendance as a juror or assessor, as the case may be, at a time and place to be therein specified.

Act X, 1872, s. 411.

When officer of Government may be excused.

331. If any person summoned to serve as a juror or assessor be in the service of Government or of a Railway Company, the Court may excuse his attendance if it appear, on the representation of the head of the office in which he is employed, that he cannot serve as a juror or assessor, as the case may be, without inconvenience to the public service.

Act X, 1872, s. 412.

Court may excuse attendance of juror or assessor.

332. The Court of Session may for reasonable cause excuse any juror or assessor from attendance at any particular session.

Act X, 1872, s. 413.

List of jurors or assessors attending.

333. At each session, the said Court shall cause to be made a list of the names of those who serve as jurors or assessors at such session.

Such list shall be kept with the revised list of the jurors and assessors prepared under section 324.

A reference shall be made in the margin of the said revised list to each of the names which are mentioned in the list prepared under this section.

Act X, 1872, s. 414.

Penalty for non-attendance of juror or assessor.

334. Any person summoned to attend as a juror or as an assessor who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Court, or fails to attend after an adjournment of the Court after being ordered to attend, shall be liable, by order of the Court of Session, to a fine not exceeding one hundred rupees.

Such fine shall be levied by the District Magistrate by attachment and sale of any moveable property belonging to such juror or assessor within the local limits of the jurisdiction of the Court making the order.

In default of recovery of the fine by such attachment and sale, such juror or assessor may be imprisoned in the civil jail for the term of fifteen days, unless such fine is paid before the end of the said term.

K.—Special Provisions for High Courts.

Act X, 1875, s. 146. Cf. s. 262, *supra*.

Power of Advocate General to stay prosecution

335. At any stage of any trial before a High Court under this Code before the return of the verdict, the Advocate General may, if he thinks fit, inform the Court on behalf of Her Majesty that he will not further prosecute the defendant upon the charge; and thereupon all proceedings on such charge against the defendant shall be stayed, and he shall be discharged of and from the same. But such discharge shall not amount to an acquittal.

Act X, 1876, s. 4.

Time of holding sittings.

336. For the exercise of its original criminal jurisdiction, every High Court shall hold sittings on such days and at such convenient intervals as the Chief Justice of such Court from time to time appoints.

Act X, 1876, s. 5.

Place of holding sittings.

337. The High Court shall hold its sittings at the place at which it now holds them, or at such other place (if any) as the Governor General in Council in the case of the High Court at Fort William, and as the Local Government in the case of the other High Courts, may direct.

But it may from time to time, in the case of the High Court at Fort William, with the consent of the Governor General in Council, in all other cases with the consent of the Local Government, hold sittings at such other places within the local limits of its appellate jurisdiction as the High Court appoints.

Notice of sittings.

Such officer as the Chief Justice directs shall give notice beforehand in the local official Gazette of all sittings intended to be held for the exercise of

the original criminal jurisdiction of the High Court.

Act X, 1875, s. 27.

Intermediate custody of European British subjects.

338. The High Court may direct that all European British subjects committed or bailed for trial by it within certain specified districts or during certain specified periods of the year shall be tried at the ordinary place of sitting of the Court,

or direct that they shall be tried at a particular place named.

CHAPTER XXIV.

Of Tender of Pardon in Cases triable by the High Court or Court of Session.

Act X, 1872, s. 347. Act IV, 1877, s. 150.

Tender of pardon to accomplice.

339. The District Magistrate, a Presidency Magistrate, any Magistrate of the first class inquiring into the case, or, with the sanction of the District Magistrate, any Magistrate duly empowered to commit to the Court of Session, may, with the view of obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, any offence specified in the second schedule as triable exclusively by the Court of Session or High Court, tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to such offence, and to every other person concerned in the perpetration thereof.

Every person accepting a tender under this section shall be examined as a witness in the case.

Such person, if not on bail, shall be detained in custody until the termination of the trial.

Every Magistrate, other than a District Magistrate or a Presidency Magistrate, who tenders a pardon under this section, shall record his reasons for so doing; and when he has made such tender and examined the accused person, he shall not try the case himself, although the offence which the accused person appears to have committed may be triable by such Magistrate.

Act X, 1872, s. 348, omitting "as a Court of Session." Act X, 1875, s. 77.

Power to direct tender of pardon.

340. At any time after committal, but before judgment is passed, the High Court or Court of Session may, with the view of obtaining on the trial the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, any such offence, tender, or direct the committing Magistrate to tender, a pardon on the same condition to such person.

Act X, 1872, s. 349. Act X, 1875, s. 78. Act IV, 1877, s. 151.

Commitment of person to whom pardon has been tendered.

341. Where a pardon has been tendered under section 339 or 340, if before the trial it appears to the Court making or directing the tender, or to the Magistrate, that any person who has accepted such tender has, either by wilfully concealing anything essential or by giving false evidence, not complied with the condition on which the tender was made, such Court or Magistrate may commit him for trial for the offence in respect of which the pardon was so tendered, or for any other offence of which he appears to have been guilty in connection with the same matter.

The statement made by a person under pardon may be given in evidence against him when the pardon has been withdrawn under this section.

CHAPTER XXV.

General Provisions as to Inquiries and Trials.

Act X, 1872, ss. 186, paras. 1 and 2. Act XI, 1874, s. 13. Act X, 1875, s. 31. Act IV, 1877, s. 130. Act X, 1872, s. 186, para. 3. Act X, 1875, s. 130. Act IV, 1877, s. 131.

Right of accused to be defended.

342. Every person accused before any criminal Court may of right be defended by a pleader.

Procedure where accused does not understand proceedings.

343. If the accused, though not insane, cannot be made to understand the proceedings, the Court may proceed with the inquiry or trial; and in the case of a Court other than a High Court, if such inquiry results in a commitment, or if such trial results in a conviction, the proceedings shall be forwarded to the High Court with a report of the circumstance of the case, and the High Court shall pass thereon such order as it thinks fit.

Act X, 1872, ss. 193, 250, 342. Act X, 1875, s. 61. Act IV, 1877, ss. 5, 145. 1 O'Kin. 436.

Power to examine the accused.

344. At any stage of any inquiry or trial the Court may, without previously warning the accused, put such questions to him as the Court considers necessary.

Act X, 1875, s. 343, see Act I, 1872, s. 114, ill. (*h*).

The accused shall not render himself liable to punishment for refusal to answer such questions, or for giving false answers to them; but the Court shall draw such inference from such refusal or false answers as it thinks just.

Act X, 1872, s. 193.

The answers given by the accused may be put in evidence against him, not only in such inquiry or trial, but also in any other inquiry into, or trial for, any other offence which such answer may tend to show he has committed.

Act X, 1872, s. 345.

No oath or affirmation shall be administered to the accused.

Act X, 1872, s. 344. Act IV, 1877, s. 149.

No influence to be used to induce disclosures.

345. Except as provided in section 339, no influence, by means of any promise or threat or otherwise, shall be used to an accused person to induce him to disclose or withhold any matter within his knowledge.

Act X, 1872, ss. 194, paras. 1 and 3, 208, para. 1, 210, 264.

Power to postpone or adjourn proceedings.

346. If, from the absence of a witness or any other reasonable cause, it becomes necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial,

Act X, 1875, s. 66. Act IV, 1877, ss. 86, 124. Acts 17 & 12 Vic., c. 42, s. 21.

the Court may, by order, from time to time, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and by a warrant, or to the like effect, remand the accused if in custody:

Remand.

Provided that no Magistrate shall remand an accused person to custody under this section for a period exceeding fifteen days at a time.

Every order made under this section by a Court other than a High Court shall be in writing signed by the presiding Judge.

EXPLANATION.—If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

Reasonable cause for remand.

Act X, 1872, s. 188. Act X, 1875, s. 151. Act IV, 1877, s. 133. Compare N. Y. Crim. Proc. Code, s. 731.

347. In the case of offences which may lawfully be compounded, the injured person may compound the offence out of Court, or in Court, with the permission of the Magistrate or presiding Judge. Such composition shall have the effect of an acquittal of the accused.

Compounding offences.

EXPLANATION.—The following offences, and no others, may be lawfully compounded:—

New.

(*a*) offences relating to the human body, except offences under the Indian Penal Code, sections 299 to 311 (both inclusive) and sections 359 to 373 (both inclusive);

(*b*) criminal breach of contracts of service;

(*c*) defamation;

(*d*) criminal intimidation, insult and annoyance;

(*e*) offences against property, except offences under the Indian Penal Code, sections 390 to 414 (both inclusive);

(*f*) offences relating to documents, trade-marks and property-marks, except offences under the same Code, sections 463 to 477 (both inclusive);

(*g*) adultery and other offences relating to married women, under the same Code, sections 497 and 498;

(*h*) offences against Municipal and Cantonment Acts, and the conservancy-clauses of Police Acts;

(*i*) abetment of any of the foregoing offences;

(*k*) an attempt to commit any of the foregoing offences when such attempt is an offence.

Act X, 1872, s. 45.

348. If, in the course of an inquiry or trial before a Magistrate in any district outside the Presidency-towns, the evidence appears to him to warrant a presumption that the case is one which should be tried or committed for trial by some other Magistrate in such district, he shall stay proceedings and submit the case, with a brief report explaining its nature, to any Magistrate to whom he is subordinate, or to such other Magistrate, having jurisdiction, as the District Magistrate directs.

Procedure of Mufassal Magistrate in cases which he cannot dispose of.

Madras H. C. ruling cited Nelson, 63.

The Magistrate to whom the case is submitted shall, if so empowered, either try the case himself, or refer it to any officer subordinate to him having jurisdiction, or commit the accused for trial.

In any such case, such Magistrate or other officer as aforesaid shall examine the parties and witnesses, and shall proceed in all respects as if no proceedings had been held in any other Court.

Act X, 1872, s. 221. Act IV, 1877, s. 127.

349. If in any trial before a Magistrate it appears to him at any stage of the proceedings before signing judgment that the case is one which ought to be tried by the Court of Session or High Court, and he is empowered to commit for trial, he shall stop further proceedings and commit the accused under the provisions hereinbefore contained.

Procedure when after commencement of trial Magistrate finds case should be committed.

If such Magistrate is not empowered to commit for trial, he shall proceed under section 348.

Act X, 1872, s. 315. Act IV, 1877, s. 128.

350. Whoever, having been convicted of an offence punishable under chapter XII or XVII of the Indian Penal Code with imprisonment for a term of three years or upwards, is again accused of any offence punishable under either of those chapters with imprisonment for a term of three years or upwards, shall ordinarily, if the Magistrate before whom he is accused considers him an habitual offender, be committed to the Court of Session or High Court, as the case may be:

Trial of persons previously convicted of offences against coinage, stamp-law and property.

Provided that, in districts in which the District Magistrate has been invested with powers under section 30, the accused person may be placed on his trial before such Magistrate.

Proviso.

Act X, 1872, s. 46, inserting "different in kind from or"

351. Whenever a Magistrate of the second or third class, having jurisdiction, is of opinion upon concluding a trial that the accused is guilty, and that he ought to receive a punishment different in kind from, or more severe than, that which such Magistrate is empowered to inflict, he may record the finding and, instead of passing sentence, submit his proceedings, and forward the accused to the District Magistrate or Sub-divisional Magistrate to whom he is subordinate.

Procedure when Magistrate cannot pass sentence sufficiently severe.

The Magistrate to whom the proceedings are submitted may, if he thinks fit, examine the parties and recall and examine any witness who has already given evidence in the case; and may call for and take any further evidence, and shall pass such judgment, sentence or order in the case as he thinks fit, and as is according to law: Provided that he shall not inflict a punishment more severe than he is empowered to inflict under sections 32 and 33.

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Act X, 1872, ss. 328 and 329. Act IV, 1877, s. 156.

352. Whenever any Magistrate, after having heard the whole or any part of the evidence in an inquiry or trial, ceases to exercise jurisdiction therein, and is succeeded by another Magistrate who has and who exercises such jurisdiction, the Magistrate so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself; or he may re-summon the witnesses and re-commence the enquiry or trial:

Conviction on evidence partly recorded by one Magistrate and partly by another.

Provided that the accused may, when the second Magistrate commences his proceedings, demand that the witnesses be re-summoned and re-heard, in which case the inquiry or trial shall be re-commenced:

Provided also that the High Court, or, in cases tried by Magistrates subordinate to the District Magistrate, the District Magistrate may, without appeal, set aside any conviction passed on evidence not wholly recorded by the Magistrate before whom the conviction was had, if such Court or District Magistrate is of opinion that the accused has been materially prejudiced thereby; and may order a new inquiry or trial.

Nothing in this section applies to cases in which proceedings have been stayed under section 348.

Act X, 1872, s. 104.

353. Any person attending a criminal Court, although not upon an arrest or summons, may be detained by such Court for the purpose of examination, for any offence of which such Court can take cognizance and which, from the evidence, he may appear to have committed, and may be proceeded against as though he had been arrested or summoned.

Detention of offenders attending Court.

When the detention takes place in the course of an inquiry under chapter XVIII, or after a trial has been begun, the proceedings in respect of such person shall be commenced afresh and the witnesses re-heard.

Act X, 1872, s. 167. Act X, 1875, s. 150. Act IV, 1877, s. 152.

354. The place in which any criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed an open Court, to which the public generally may have access, so far as the same can conveniently contain them:

Courts to be open.

Provided that the presiding Judge may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court.

CHAPTER XXVI.

OF THE MODE OF TAKING AND RECORDING EVIDENCE IN INQUIRIES AND TRIALS.

Act X, 1872, s. 191, para. Act IV, 1878, s. 26, para.

355. Except as otherwise expressly provided, all evidence taken under chapters XVIII, XX, XXI, XXII and XXIII shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in presence of his pleader.

Evidence to be taken in presence of accused.

Act X, 1872, s. 332.

356. In inquiries and trials (other than summary trials) under this Code by or before a Magistrate (other than a Presidency Magistrate) or Sessions Judge, the evidence of the witnesses shall be recorded in the following manner.

Manner of recording evidence in Mufassal.

Act X, 1872, s. 333.

357. In summons-cases tried before a Magistrate, other than a Presidency Magistrate, and in cases of the offences mentioned below when tried by a Magistrate of the first or second class, the Magistrate shall make a memorandum of the substance of the evidence of each witness as the examination of the witness proceeds.

Record in summons-cases, and in trials of certain offences by first and second class Magistrates.

Such memorandum shall be written and signed by the Magistrate with his own hand, and shall form part of the record.

If the Magistrate is prevented from making a memorandum as above required, he shall record the reason of his inability to do so, and shall cause such memorandum to be made in writing from his dictation in open Court, and shall sign the same; and such memorandum shall form part of the record.

The offences above referred to are—

Act X, 1872, s. 222.

(1). Offences relating to weights and measures, under sections 264, 265 and 266 of the Indian Penal Code;

(2). Hurt, under section 323 of the same Code;

(3). Theft, under section 379 of the same Code, where the value of the property stolen does not exceed fifty rupees;

(4). Theft, under section 380 of the same Code, where the value of the property stolen does not exceed fifty rupees;

(5). Theft under section 381 of the same Code, where the value of the property stolen does not exceed fifty rupees;

(6). Receiving stolen property, under section 411 of the same Code;

(7). Mischief, under section 427 of the same Code;

(8). House-trespass, under section 448 of the same Code;

(9). Criminal intimidation, under sections 504 and 506 of the same Code;

(10). Abetment of any of the foregoing offences;

(11). Attempt to commit (when such attempt is an offence) any of the foregoing offences.

Act X, 1872, s. 334.

358. In all other trials before Courts of Session and Magistrates (other than Presidency Magistrates) and in all inquiries under chapter XVIII, the evidence of each witness shall be taken down in writing in the language of the

Record in other cases in the Mufassal.

No exception of cases in which no appeal lies 11 Beng. Appx. 6.

Court, by the Magistrate or Sessions Judge, or in his presence and hearing and under his personal direction and superintendence, and shall be signed by the Magistrate or Sessions Judge.

Evidence given in English.

When the evidence of such witness is given in English, the Magistrate or Sessions Judge may take it down in that language with his own hand, and, unless the accused is familiar with English, or the language of the Court is English, an authenticated translation of such evidence in the language of the Court shall form part of the record.

Memorandum when evidence not taken down by the Magistrate or Judge himself.

In cases in which the evidence is not taken down in writing by the Magistrate or Sessions Judge, he shall, as the examination of each witness proceeds, make a memorandum of the substance of what such witness deposes, and such memorandum shall be written and signed by the Magistrate or Sessions Judge with his own hand, and shall form part of the record.

If the Magistrate or Sessions Judge is prevented from making a memorandum as above required, he shall record the reason of his inability to make it.

Act X, 1872, s. 335.

Language of record of evidence.

359. The Local Government may direct that in any district or part of a district, or in proceedings before any Court of Session, or before any Magistrate or class of Magistrates, the evidence shall in the cases referred to in section 358 be taken down by the Sessions Judge or Magistrate with his own hand and in his mother-tongue, unless he is prevented by any sufficient reason from taking down the evidence of any witness, in which case he shall record the reason of his inability to do so, and shall cause the evidence to be taken down in writing from his dictation in open Court.

The evidence so taken down shall be signed by the Sessions Judge or Magistrate, and shall form part of the record:

Provided that, if the mother-tongue of the Sessions Judge or Magistrate is not English or the language of the Court, the Local Government may direct him to take down the evidence in the English language, or in the language of the Court.

Act X, 1872, s. 336.

Option to Magistrate in cases under section 357.

360. In cases of the kind mentioned in section 357, the Magistrate may, if he thinks fit, take down the evidence of any witness in the manner provided in section 358, or, if within the local limits of the jurisdiction of such Magistrate, the Local Government has made the order referred to in section 359, in the manner provided in the same section.

Act X, 1872, s. 338.

Mode of recording evidence under section 358 or 359.

361. Evidence taken under section 358 or 359 shall not ordinarily be taken down in the form of question and answer, but in the form of a narrative.

The Magistrate or Sessions Judge may in his discretion take down, or cause to be taken down, any particular question and answer, if there appears any special reason for so doing, or if the prosecutor or the accused, or his pleader so requires.

Act X, 1872 s. 339.

Procedure in regard to such evidence when completed.

362. As the evidence of each witness taken under section 358 or 359 is completed, it shall be read over to him in the presence of the accused if in attendance, or of his pleader, when his personal attendance is dispensed with and he appears by pleader, and shall, if necessary, be corrected.

If the witness deny the correctness of any part of the evidence when the same is read over to him, the Magistrate or Sessions Judge may, instead of correcting the evidence, make a memorandum thereon of the objection made to it by the witness, and shall add such remarks as he thinks necessary.

If the evidence be taken down in a language different from that in which it has been given, and the witness does not understand the language in which it is taken down, he may require his evidence as taken down to be interpreted to him in the language in which it was given, or in a language which he understands.

Act X, 1872, s. 340.

Interpretation of evidence to accused or his agent.

363. Whenever any evidence is given in a language not understood by the accused and he is present in person, it shall be interpreted to him in open Court in a language understood by him.

If he appears by pleader and the evidence is given in a language other than the language of the Court, and not understood by the pleader, it shall be interpreted to such pleader in that language.

When documents are put in for the purpose of formal proof, it shall be in the discretion of the Court to interpret as much thereof as appears necessary.

Act X, 1872, s. 335. Act IV, 1877, s. 115.

Record of evidence in Presidency Magistrates' Courts.

364. In every case in which a Presidency Magistrate imposes a fine exceeding two hundred rupees, or imprisonment for a term exceeding six months, he shall either take down the evidence of the witnesses with his own hand, or cause it to be taken down in writing from his dictation in open Court. All evidence so taken down shall be signed by the Magistrate and shall be part of the record.

Act X, 1872, s. 338. Act IV, 1877, s. 115.

Evidence so taken down shall ordinarily be recorded in the form of a narrative, but the Magistrate may in his discretion take down, or cause to be taken down, any particular question or answer.

Sentences passed under section 35 on the same occasion shall, for the purposes of this section, be considered as one sentence.

Act X, 1872, s. 341.

Remarks respecting demeanour of witness.

365. Every Sessions Judge or Magistrate recording the evidence of a witness shall record such remarks as he thinks material respecting the demeanour of such witness whilst under examination.

Act X, 1872, s. 346. Act IV, 1877, ss. 84, 123.

Examination of accused how recorded.

366. Whenever the accused is examined by any Magistrate or by any Court other than a High Court established by Royal Charter, the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full, and shall be shown or read to him, and he shall be at liberty to explain or add to his answers.

When the whole is made conformable to what he declares is the truth, the examination shall be signed by the accused and the Magistrate or Judge of such Court, and such Magistrate or Judge shall certify under his own hand that it was taken in his presence and in his hearing, and contains a full and true account of the statement made by the accused.

In cases in which the examination of the accused is not recorded by the Magistrate or Judge himself, he shall be bound, unless he is a Presidency Magistrate, as the examination proceeds, to make a memorandum thereof in the language of the Court or in English, if he is sufficiently acquainted with the latter language; and such memorandum shall be written and signed by the Magistrate or Judge with his own hand, and shall be annexed to the record. If the Magistrate or Judge is unable to make a memorandum as above required, he shall record the reason of such inability.

If the Court of Session or High Court finds that the provisions of this section have not been fully complied with by a Magistrate committing any person for trial to such Court, it shall take evidence that such person duly made the statement recorded: and unless the error injures the accused as to his defence on the merits, it shall not affect the admissibility of such statement.

Act X, 1872, s. 337. Act VIII, 1877, s. 4, Chief Court.

Record of evidence in High Court.

367. Every High Court established by Royal Charter and the Chief Court of the Panjáb may from time to time by general rule prescribe the manner in which evidence shall be taken down in cases coming before the Court in the exercise of its ordinary or its extraordinary original criminal jurisdiction, and the Judges of such Court shall take down the evidence or the substance thereof in accordance with the rule (if any) so prescribed.

CHAPTER XXVII.

Of the Judgment.

Act VIII, 1859, s. 183. Act X, 1872, s. 462.

Mode of delivering judgment.

368. The judgment in every trial in any criminal Court of original jurisdiction shall be pronounced in open court either immediately or at some subsequent time of which due notice shall be given to the parties or their pleaders; and the accused shall, if in custody, be brought up, or if not in custody shall be required to attend, to hear judgment delivered, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only, in which case it may be pronounced in the presence of his pleader.

Act X, 1872, s. 463. cf. Act X, 1877, s. 200.

Language of judgment.

369. Every such judgment shall, except as otherwise expressly provided by this Code, be written by the presiding officer of the Court in the language of the Court, or in English, or in the presiding officer's mother-tongue, and shall contain the point or points for determination, the decision thereon, and the reasons for the decision, and shall be dated and signed by the presiding officer in open court the time of pronouncing it.

Act X, 1872, s. 464. cf. Act VIII, 1859, s. 185.

Contents of judgment.

It shall specify the offence (if any) of which, and the section of the Indian Penal Code or other law under which, the accused is convicted, and the punishment (if any) to which he is sentenced.

Act X, 1872, s. 461.

Judgment in alternative.

When the conviction is under the Indian Penal Code, and it is doubtful under which of two sections, or under which of two parts of the same section, of that Code the offence falls, the Court shall distinctly express the same, and pass judgment in the alternative, according to section 72 of the same Code.

If it be a judgment of acquittal, it shall direct that the accused be set at liberty.

Act X, 1872, s. 287, para. 2.

If the accused is convicted of an offence punishable with death, and the Court sentences him to any punishment other than death, the Court shall in its judgment state the reason why sentence of death was not passed:

Act X, 1872, s. 255, last para., and 464.

Provided that, in trials by jury, the Court need not write a judgment, but the Court of Session shall record the heads of the charge to the jury.

Act X, 1872, s. 321. Act X, 1875, s. 113.

Sentence of death.

370. When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.

Act X, 1872, s. 464, second sentence.

Court not to alter judgment.

371. No Court when it has signed its judgment shall alter or review the same.

Act IV, 1877, s. 114.

372. Instead of recording a judgment in manner hereinbefore provided, a Presidency Magistrate shall record the following particulars:—

Presidency Magistrate's judgment.

(*a*) the serial number of the case;

(*b*) the date of the commission of the offence;

(*c*) the name of the complainant (if any);

(*d*) the name of the accused person;

(*e*) the offence complained of or proved;

(*f*) the plea of the accused and his examination (if any);

(*g*) the final order;

(*h*) the date of such order; and

Act IV, 1877, s. 126.

(*i*) in all cases in which the Magistrate inflicts imprisonment, or fine exceeding two hundred rupees, or both, a brief statement of the reasons for the conviction.

Act XI, 1874, s. 41.

373. The judgment shall be explained to the accused, and on his application a copy of the judgment or, when he so desires, a translation in his own language, if practicable, or in the language of the Court, shall be given to him without delay, and free of cost.

Judgment to be explained and copy given to accused.

When the accused is sentenced to death by a Sessions Judge, such Judge shall further inform him of the period within which, if he wishes to appeal, his appeal should be preferred.

Case of person sentenced to death.

374. The original judgment shall be filed with the record of proceedings, and where the original is recorded in a different language from that of the Court, a translation thereof into the language of the Court shall be added to such record.

Judgment to be translated.

Act X, 1872, s. 302.

375. In cases tried by the Court of Session, the Court shall forward a copy of its judgment to the District Magistrate within the local limits of whose jurisdiction the trial was held.

Court of Session to send copy of judgment to District Magistrate.

CHAPTER XXVIII.

Of the Submission of Sentences for Confirmation.

Act X, 1872, s. 287, para. 1.

376. When the Court of Session passes sentence of death, the proceedings shall be submitted to the High Court, and the sentence shall not be executed unless it is confirmed by the High Court.

Sentence of death to be submitted by Court of Session.

Act X, 1872, s. 289.

377. If when such proceedings are submitted the High Court thinks that additional evidence upon any point bearing upon the guilt or innocence of the convicted person is necessary, it may direct such evidence to be taken.

Power to direct additional evidence on such reference.

Such evidence shall not be taken in the presence of jurors or assessors, and unless the High Court otherwise directs, the presence of the convicted person may be dispensed with when the same is taken.

The result of such evidence shall be certified to the High Court.

Act X, 1872, s. 288.

378. In any case submitted under section 376, whether tried with the aid of assessors or by jury, the High Court may confirm the sentence, or pass any other sentence warranted by law, or may annul the conviction, and order a new trial on the same or an amended charge, or may acquit the accused person.

Power of High Court to confirm sentence or annul conviction.

Act X, 1872, s. 290.

379. In every case so submitted, the confirmation of the sentence or any new sentence or order passed by the High Court, shall, when such Court consists of two or more Judges, be signed by at least two of them.

Confirmation or new sentence to be signed by two Judges.

New.

380. When any such case is heard before a bench of Judges and such Judges are equally divided, the case, with their opinions thereon, shall be laid before another Judge, and such Judge, after such examination and hearing as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion.

Procedure in case of difference of opinion.

Act X, 1872, s. 301, para. 1.

381. In cases submitted by the Court of Session to the High Court for the confirmation of a sentence of death, the proper officer of the High Court shall, without delay, after the order of confirmation or other order has been made by the High Court, send a copy of the order, under the seal of the High Court, and attested with his official signature, to the Court of Session.

Procedure in cases submitted to High Court for confirmation.

Act X, 1872, ss. 18 and 36. Act XI, 1874, s. 8.

382. When a sentence passed by an Assistant Sessions Judge or by a District Magistrate acting under section 34 is submitted to a Sessions Judge for confirmation, such Sessions Judge may either confirm, modify or annul such sentence or the finding on which the same is based, or if he thinks further enquiry or additional evidence upon any point bearing upon the guilt or innocence of the accused to be necessary, he may direct such inquiry or evidence to be made or taken.

Confirmation of sentence of Assistant Sessions Judge or Magistrate acting under section 34.

Unless the High Court otherwise directs, the presence of the convicted person may be dispensed with when such evidence is taken; and when the sentence has been submitted by an Assistant Sessions Judge, such evidence shall not be taken in the presence of jurors or assessors.

CHAPTER XXIX.

Of Execution.

Act X, 1872, s. 301, para. 2.

383. When a sentence of death passed by a Court of Session is submitted to the High Court for confirmation, such Court of Session shall, on receiving the order of the

Execution of order passed under section 378.

High Court thereon, cause such order to be carried into effect by issuing a warrant or taking such other steps as may be necessary.

Act X, 1872, s. 306. Act X, 1875, s. 114, adding "to transportation for life."

384. If a woman sentenced to death be found by the Civil Surgeon to be pregnant, the High Court shall order the execution of the sentence to be postponed, and may commute the sentence to transportation for life.

Postponement of capital sentence on pregnant woman.

Act X, 1872, s. 302A. Act XI, 1874, s. 32. Act IV, 1877, s. 183.

385. Where the accused is sentenced to transportation or imprisonment in cases other than those provided for by section 383, the Court shall forthwith forward him with a warrant to the jail in which he is to be confined.

Execution of sentences of transportation or imprisonment in other cases.

As to subsidiary jails, see Nelson, 200. Act X, of 1872, s. 88.

386. Every person for whose imprisonment a warrant is issued under sections 383 or 385 shall be confined in such jail or other place as the Local Government directs in his behalf.

Sentence of imprisonment where to be carried out.

Act X, 1872, s. 303. Act X, 1875, ss. 103, 104. Act IV, 1877, s. 184.

387. Every warrant for the execution of a sentence of imprisonment, shall be directed to the officer in charge of the jail or other place in which the prisoner is, or is to be, confined.

Direction and form of warrant for execution.

Act X, 1872, s. 304. Act X, 1875, s. 104.

388. When the prisoner is to be confined in a jail, the warrant shall be lodged with the jailor, if he is at the jail and if he is not at the jail, with his deputy.

Warrant with whom to be lodged.

If the jailor has no deputy, the warrant may be lodged with any officer in charge of the jail for the time being.

Act X, 1872, s. 307. Act X, 1875, s. 105. Act IV, 1877, s. 185.

389. Whenever an offender is sentenced to pay a fine, the Court passing the sentence may in its discretion issue a warrant for the levy of the amount by distress and sale of any moveable property belonging to the offender, although the sentence directs that, in default of payment of the fine, the offender shall be imprisoned.

Execution of sentence of fine.

Such warrant may be executed within the local limits of the jurisdiction of such Court, and it shall authorize the distress and sale of any such property without such limits, when endorsed by the District Magistrate within the local limits of whose jurisdiction such property is found.

Act IV, 1877, s. 186.

390. When a Court issues a warrant under section 389, it may, instead of at once ordering the offender to be imprisoned under section 64 of the Indian Penal Code, release him on his executing a bond with or without sureties, as the Court thinks fit, conditioned for his appearance before such Court on the day appointed for the return to such warrant, such day not being more than eight days from the time of executing the bond.

Detention of offender until return made to distress-warrant.

Act X, 1872, s. 307, last sentence. Act IV, 1877, s. 185, last sentence.

391. The warrant may be issued either by any Judge or Magistrate who, if the case had been tried by him, might have imposed the fine, or by his successor in office.

Who may issue warrant.

Act X, 1872, s. 302A, last sentence. Act IV, 1877, s. 183.

392. Where the accused is sentenced to whipping only, the sentence shall be executed at such place and time as the Court may direct.

Execution of sentence of whipping only.

Act X, 1872, s. 310. Act IV, 1877, s. 187.

393. When the accused is sentenced to whipping in addition to imprisonment in a case which is subject to appeal, the whipping shall not be inflicted until fifteen days from the date of the sentence or, if an appeal be made within that time, until the sentence is confirmed by the appellate Court: but the whipping shall be inflicted immediately on the expiry of the fifteen days or, in case of an appeal, immediately on the receipt of the order of the appellate Court confirming the sentence.

Execution of sentence of whipping, in addition to imprisonment.

Act XI, 1874, s. 33.

The whipping shall be inflicted in the presence of the officer in charge of the jail: unless the Judge or Magistrate orders it to be inflicted in his own presence.

Act X, 1872, s. 311, para. 1. Act X, 1875, s. 108. Act IV, 1877, s. 188.

394. In the case of a person of or over sixteen years of age, whipping shall be inflicted with such instrument, in such mode, and on such part of the person, as the Local Government directs; and in the case of a person under sixteen years of age, it shall be inflicted in the way of school-discipline with a light ratan.

Mode of inflicting punishment.

Act X, 1872, s. 311, para. 2.

395. In no case, if the cat-o'-nine-tails be the instrument employed, shall whipping exceed one hundred and fifty lashes, or if the ratan be employed, shall such punishment exceed thirty stripes.

Limit of number of stripes.

Act IV, 1877, s. 190.

No sentence of whipping shall be executed by instalments.

Not to be executed by instalments.

Act X, 1872, s. 312. Act XI, 1874, s. 33. Act X, 1875, s. 108. Act IV, 1877, s. 189.

396. The punishment of whipping shall not be inflicted, unless a Medical Officer, if present, certifies, or, if there is not a Medical Officer present, unless it appears to the Magistrate or officer present, that the offender is in a fit state of health to undergo such punishment.

Whipping not to be inflicted if offender not in fit state of health.

Act XI, 1874, s. 33.

If, during the execution of a sentence of whipping, a Medical Officer certifies, or it appears to the Magistrate or officer present, that the offender is not in a fit state of health to undergo the remainder of the sentence, the whipping shall be finally stopped.

Stay of execution.

Act X, 1872, s. 313. Act X, 1875, s. 108. Act IV, 1877, s. 191.

397. In any case in which, under section 396, a sentence of whipping is, wholly or partially, prevented from being executed, the offender shall be kept

Procedure if punishment cannot be inflicted under the last section.

in custody till the Court which passed the sentence can revise it; and the said Court may, at its discretion, either remit such sentence, or sentence the offender in lieu of whipping, or in lieu of so much of the sentence of whipping as was not executed, to imprisonment for any period, which may be in addition to any other punishment to which he may have been sentenced for the same offence:

Provided that the whole period of imprisonment to which such offender is sentenced shall not exceed that to which he is liable by law, or that which the Court is competent to award.

Act X, 1872, s. 316. Act X, 1875, s. 110. Act IV, 1877, s. 192.

398. When sentence is passed under this Code on an escaped convict, such sentence, if of death, fine or whipping, shall take effect immediately, and if of imprisonment, penal servitude or transportation, shall take effect according to the following rules, that is to say:—

Execution of sentence on escaped convicts.

If the new sentence is severer in its quality than the sentence which such convict was undergoing when he escaped, the new sentence shall take effect immediately.

When the new sentence is not severer in its quality than the sentence the convict was undergoing when he escaped, the new sentence shall take effect after he has suffered imprisonment, penal servitude or transportation, as the case may be, for a further period equal to that which, at the time of his escape, remained unexpired of his former sentence.

Explanation.—For the purpose of this section—

(*a*) a sentence of transportation or penal servitude shall be deemed severer than a sentence of imprisonment;

(*b*) a sentence of imprisonment with solitary confinement shall be deemed severer than a sentence of the same description of imprisonment without solitary confinement; and

(*c*) a sentence of rigorous imprisonment shall be deemed severer than a sentence of simple imprisonment with or without solitary confinement.

Act X, 1872, s. 317. Act X, 1875, s. 111. Act IV, 1877, s. 193.

399. When a person already undergoing a sentence of imprisonment, penal servitude or transportation is sentenced to imprisonment, penal servitude or transportation, such imprisonment, penal servitude or transportation shall commence at the expiration of the imprisonment, penal servitude or transportation to which he has been previously sentenced:

Sentence on offender already sentenced for another offence.

Provided that if he is undergoing a sentence of imprisonment, and the sentence on such subsequent conviction be one of transportation, the Court may, in its discretion, direct that the latter sentence shall commence immediately, or at the expiration of the imprisonment to which he has been previously sentenced.

400. Nothing in section 398 or section 399 shall be held to excuse any person from any part of the punishment to which he is liable upon his former or subsequent conviction.

Act X, 1872, s. 317, last sentence.

Saving as to sections 398 and 399.

401. When any person under the age of sixteen years is sentenced by any Criminal Court to imprisonment for any offence, the Court may direct that such person, instead of being imprisoned in a criminal jail, shall be confined in any reformatory established by the Local Government as a fit place for confinement, in which there are means of suitable discipline and of training in some branch of useful industry, or which is kept by a person willing to obey such rules as the Government prescribes with regard to the discipline and training of persons confined therein.

Act X, 1872, s. 317. Act X, 1875, s. 112. Act V of 1876 has not yet come into force anywhere except—

Confinement of youthful offenders in reformatories.

All persons confined under this section shall be subject to the rules so prescribed.

CHAPTER XXX.

Of Suspensions, Remissions and Commutations of Sentences.

402. When any person has been sentenced to punishment for an offence, the Governor General in Council, or the Local Government, may at any time, without conditions, or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

Act X, 1872, s. 322, para. 1.

Power to suspend or remit sentences.

Whenever an application is made to the Governor General in Council or the Local Government for the suspension or remission of a sentence, the Governor General in Council or the Local Government, as the case may be, may require the presiding Judge of the Court before which the conviction was had to furnish without delay a statement of the facts proved on the trial, and of any facts having reference to the propriety of granting or refusing the application.

New.

If the person in whose favour a sentence has been suspended or remitted fails to fulfil the conditions prescribed by the Governor General in Council or the Local Government, the Governor General in Council or the Local Government, as the case may be, may cancel such suspension or remission whereupon such person may, if at large, be arrested by any police officer without warrant and remanded by any Magistrate to undergo the unexpired portion of the sentence.

Act X, 1872, s. 322, para. 2.

Nothing herein contained shall be deemed to interfere with the right of Her Majesty to grant pardons, reprieves, respites, or remissions of punishment.

Act X, 1872, s. 322, para. 3.

403. The Governor General in Council, or the Local Government, may without the consent of the person sentenced, commute

Power to commute punishment.

any one of the following sentences for any other mentioned after it:—

death, transportation, penal servitude, imprisonment.

CHAPTER XXXI.

Of previous Acquittals or Convictions.

Act X, 1872, s. 460. Act X, 1875, s. 117. Act IV, 1877, s. 113. Cf. N. Y. Code of Crim. Proc., s. 13. Form of plea under this section, N. W. P., 1875, p. 373.

404. A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under section 239, or for which he might have been convicted under section 240.

Person once convicted or acquitted not to be tried for same offence.

A person convicted or acquitted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under section 238, paragraph one.

A person acquitted or convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that for which he was acquitted or convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was acquitted or convicted.

A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed, if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

Act X, 1872, s. 215, expl. 2. Act X, 1875, s. 14.

Explanation.—The dismissal of a complaint, the discharge of the accused or any entry made upon a charge under section 276 is not an acquittal for the purposes of this section.

Illustrations.

(*a.*) *A* is tried upon a charge of theft as a servant and acquitted. He cannot afterwards be charged with theft as a servant, or, upon the same facts, with theft simply, or with criminal breach of trust.

(*b.*) *A* is tried upon a charge of murder and acquitted. There is no charge of robbery; but it appears from the facts that *A* committed robbery at the time when the murder was committed; he may afterwards be charged with, and tried for, robbery.

(*c.*) *A* is tried for an assault and convicted. The person assaulted afterwards dies. *A* may be tried again for culpable homicide.

(*d.*) *A* is tried, under section 270 of the Indian Penal Code, for malignantly doing an act likely to spread the infection of a disease dangerous to life, and is acquitted. The act so done afterwards causes a person permanently to lose his eyesight. *A* may be charged, under section 235 of the same Code, with voluntarily causing grievous hurt to that person.

(*e.*) *A* is charged before the Court of Session and convicted of the culpable homicide of *B*. *A* may not afterwards be tried on the same facts for the murder of *B*.

(*f*) *A* is charged by a Magistrate of the first class with, and convicted by him of, voluntarily causing hurt to *B*. *A* may not afterwards be tried for voluntarily causing grievous hurt to *B* on the same facts, unless the case comes within paragraph three of this section.

(*g.*) *A* is charged by a Presidency Magistrate with, and convicted by him of, theft of property from the person of *B*. *A* may be subsequently charged with, and tried for, robbery on the same facts.

(*h.*) *A*, *B* and *C* are charged by a Magistrate of the first class with, and convicted by him of, robbing *D*. *A*, *B* and *C* may afterwards be charged with, and tried for, dacoity on the facts.

PART VII.

OF APPEAL, REFERENCE AND REVISION.

CHAPTER XXXII.

Of Appeals.

Act X, 1872, s. 267.

405. Any person required by a Magistrate, other than the District Magistrate or a Presidency Magistrate, to give security for good behaviour under section 117 may appeal to the District Magistrate.

Appeal from order requiring security for good behaviour.

Act X, 1872, s. 266, omitting "or to a Magistrate of first class empowered."

406. Any person convicted on a trial held by any Magistrate of the second or third class, or any person sentenced by a Sub-divisional Magistrate of the second class under section 351, may appeal to the District Magistrate.

Appeal from sentence of Magistrate of the second or third class.

Act X, 1872, s. 47, para. 2.

The District Magistrate may refer any appeal under this section, or any class of such appeals, to any Magistrate of the first class subordinate to him and empowered by the Local Government to hear such appeals, and may withdraw from any such Magistrate any appeal so referred.

Transfer of appeals to first class Magistrate.

Act X, 1872, s. 269.

407. Any person convicted on a trial held by the District Magistrate or other Magistrate of the first class, or any person sentenced under section 351 by a Magistrate of the first class, may appeal to the Court of Session:

Appeal from sentence of Magistrate of the first class.

Act X, 1872, s. 270.

Provided that when a District Magistrate passes a sentence in exercise of powers conferred by section 34, and such sentence has been submitted to the Court of Session under section 382, the appeal shall lie to the High Court:

Act X, 1872, s. 79.

Provided also that any European British subject so convicted may at his option appeal either to the High Court or the Court of Session.

Act X, 1872, s. 270.

408. Any person convicted by an Assistant Sessions Judge may, when the sentence is not submitted for confirmation to the Sessions Judge, appeal to the Sessions Judge, except in the case of an European British subject, when the appeal shall lie to the High Court.

Appeal from sentences of Assistant Sessions Judge not requiring confirmation.

409. An appeal to the Court of Session or Sessions Judge shall be heard by the Sessions Judge or by an Additional or Joint Sessions Judge.

Appeals to Court of Session how heard.

Act X, 1872, ss. 80, 270, 271. Act XI, 1874, s. 22.

410. Any person convicted on a trial held by a Sessions Judge, or Additional or Joint Sessions Judge, or convicted by an Assistant Sessions Judge, where the case has been submitted by the Sessions Judge under section 382, may appeal to the High Court.

Appeal from sentence of Sessions Court.

Act IV, 1877, s. 167.

411. Any person convicted on a trial held by a Presidency Magistrate may appeal to the High Court if the Magistrate has sentenced him to imprisonment for a term exceeding six months or to fine exceeding two hundred rupees.

Appeal from sentence of Presidency Magistrates.

Act X, 1872, s. 273, last para. Act IV, 1872, s. 167.

412. Notwithstanding anything hereinbefore contained, where an accused person has been convicted by a Court of Session or a Presidency Magistrate on his own plea, there shall be no appeal except as to the extent or legality of the sentence.

No appeal in certain cases when accused pleads guilty.

Act X, 1872, s. 273.

413. Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in cases in which a Court of Session or the District Magistrate or other Magistrate of the first class passes a sentence of imprisonment not exceeding one month only, or of fine not exceeding fifty rupees only, or of whipping only.

No appeal in petty cases.

Act X, 1872, s. 274.

414. Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in cases tried summarily in which a Magistrate empowered to act under section 263 passes a sentence of imprisonment not exceeding three months only, or of fine not exceeding two hundred rupees only, or of whipping only.

No appeal from certain summary convictions.

Act X, 1872, s. 274, para. 2.

415. An appeal may be brought against any sentence referred to in section 413 or 414 by which any two or more of the punishments therein mentioned are combined; but not against any sentence which would not otherwise be liable to appeal, because the person convicted is ordered to find security to keep the peace.

Proviso to sections 413 and 414.

Act XI, 1874, s. 24.

EXPLANATION.—A sentence of imprisonment in default of payment of fine is not a sentence by which two or more punishments are combined within the meaning of this section.

Act X, 1872, s. 274.

416. Nothing in sections 413 and 414 applies to appeals from sentences passed on European British subjects under chapter XXXIV.

Saving of sentences on European British subjects.

Act X, 1872, s. 272. Act IV, 1877, s. 168, para. 1.

417. The Local Government may direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal, dismissal or discharge.

Appeal on behalf of Government in case of acquittal, &c.

Act X, 1872, s. 271, last para. Compare Act X, 1877, s. 541.

418. An appeal may lie on a matter of fact as well as a matter of law except where the conviction was in a trial by jury, in which case the appeal shall be admissible on a matter of law only.

Appeal on what matters admissible.

Act X, 1872, ss. 285, 286. Act X, 1877, s. 480.

419. No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force.

Unless otherwise provided, no appeal to lie from judgment or order of Criminal Court.

Act X, 1872, ss. 275, 276. Act IV, 1877, s. 169.

420. Every appeal shall be made in the form of a petition in writing presented by the appellant, and every such petition shall be accompanied by a copy of the judgment or order appealed against, and in cases tried by a jury a copy of the heads of the charge recorded under section 369.

Petition of appeal.

Act X, 1872, s. 277. Act IV, 1877, s. 171.

421. If the appellant is in jail, he may present his petition of appeal, and the copy of the judgment or order appealed against, to the officer in charge of the jail, who shall thereupon forward such petition and copy to the proper Appellate Court.

Procedure when appellant in jail.

Act X, 1872, s. 278. Act IV, 1877, s. 172, omitting last sentence.

422. On receiving the petition and copy under section 420 or section 421, the Appellate Court shall peruse the same, and if it considers that there is no sufficient ground for interfering, it may reject the appeal summarily. Provided that no appeal presented under section 420, shall be dismissed unless the appellant or his pleader has had a reasonable opportunity of being heard in support of the same.

Summary rejection of appeal.

Before rejecting an appeal under this section, the Court may call for the record of the case, but shall not be bound to do so.

Act X, 1872 ss. 62, 269 para. 2, 279 Act IV, 1877 s. 173.

423. If the Appellate Court does not reject the appeal summarily, it shall cause notice to be given to the appellant and the Public Prosecutor of the time and place at which such appeal will be heard, and shall furnish the Public Prosecutor with a copy of the grounds of appeal;

Notice of appeal.

and in cases of appeals under section 417, the Appellate Court shall cause a like notice to be given to the accused.

Act XI, 1874, s. 27.

Act X, 1872, s. 280. Act IV, 1877, ss. 174, 176.

424. The Appellate Court shall then send for the record of the case and, after perusing the same and hearing the appellant or his pleader, if he appears, and the Public Prosecutor if he appears, may, if it considers there is no sufficient ground for interfering, reject the appeal or may—

Powers of Appellate Court in disposing of appeal.

(*a*) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be retried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

(*b*) in an appeal from an order of discharge or dismissal, reverse such order and direct that further inquiry be made;

Act X, 1872, s. 284.

(*c*) in an appeal from a conviction (1) reverse the finding and sentence, and order the accused to be discharged or retried by a Court of competent jurisdiction subordinate to such Appellate Court, or (2) alter the finding, or enhance or reduce the sentence with or without altering the finding, or (3) alter the nature of the sentence with or without such enhancement or reduction and with or without altering the finding;

(*d*) in an appeal from any other order, alter or reverse such order:

Provided that, if the appeal is from the sentence of a Magistrate, the Appellate Court shall not inflict a greater punishment for the offence which, in the opinion of the Appellate Court, the appellant has committed than might have been inflicted for such offence by a Presidency Magistrate or a Magistrate of the first class:

Provided also that nothing herein contained shall authorise the Court to alter or reverse the verdict of a jury, unless it is of opinion that such verdict is erroneous owing to a misdirection by the Judge.

425. The rules contained in chapter XXVII as to the judgment of a Criminal Court of original jurisdiction shall apply, so far as may be practicable, to the judgment of any Appellate Court other than a High Court.

Judgments of subordinate Appellate Courts.

Act X, 1872, s. 281, and sec. 297, para. 8, in case of Court of Revision. Act IV, 1877, s. 175.

426. Pending any appeal by a convicted person, the Appellate Court may order that the execution of the sentence or order appealed against be suspended and, if he is in confinement, that he be released on bail.

Suspension of sentence pending appeal. Release of appellant on bail.

When the appellant is ultimately sentenced to imprisonment, the time during which he is so released shall be excluded in computing the term of his imprisonment.

Act IV, 1877, s. 168, para. 3, I. L. R. I. Calc. 281.

427. When an appeal is presented under section 417, the High Court may order the accused person to be arrested and brought before it, and may commit him to prison pending the disposal of the appeal or admit him to bail.

Arrest of accused in appeals under section 417.

Act X, 1872, s. [illegible] Act IV, 1877, s. 176.

428. In dealing with any appeal under this chapter, the Appellate Court, if it thinks additional evidence to be necessary, may either take such evidence itself, or may direct it to be taken by a Magistrate.

Appellate Court may take further evidence or direct it to be taken.

When the additional evidence is taken by the Magistrate, he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

Unless the Appellate Court otherwise directs, the appellant or his pleader shall be present when the additional evidence is taken; but such evidence shall not be taken in the presence of jurors or assessors.

Act X, 1872, s. 271B. Act XI, 1874, s. 22.

429. When the Judges composing the Court of appeal are equally divided, the case, with their opinions thereon, shall be laid before another Judge of the same Court, and such Judge, after such examination and hearing as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion.

Procedure where Judges of Court of appeal, &c., are equally divided.

Act X, 1872, s. 285.

430. Judgments and orders passed by an Appellate Court upon appeal shall be final, except in the cases provided for in section 417 and chapter XXXIII.

Finality of orders on appeal.

I. L. R., 2 Bom. 564.

431. Every appeal under this chapter finally abates on the death of the appellant or, in the case of an appeal under section 417, on the death of the accused.

Abatement of appeals.

CHAPTER XXXIII.

OF REFERENCE AND REVISION.

Act IV, 1877, s. 240.

432. A Presidency Magistrate may, if he thinks fit, refer for the opinion of the High Court any question of law which arises in the hearing of any case pending before him, or may give judgment in any such case subject to the decision of the High Court on such reference; and, pending such decision, may either commit the accused to jail or release him on bail to appear for judgment when called upon.

Reference by Presidency Magistrate to High Court.

Act IV, 1877, s. 241.

433. When a question has been so referred, the High Court shall pass such order thereon as it thinks fit, and shall cause a copy of such order to be sent to the Magistrate by whom the reference was made, who shall dispose of the case conformably to the said order.

Disposal of case according to decision of High Court.

The High Court may direct by whom the costs of such reference shall be paid.

Direction as to costs.

Act X, 1875, s. 101. Qy confine to Chartered Courts and Chief Court.

434. When any person has, in a trial before a Judge of a High Court acting in the exercise of its original criminal jurisdiction, been convicted of an offence, the Judge, if he thinks fit, may reserve and refer for the decision of a Court consisting of two or more Judges of such Court any question of law which has arisen in the course of the trial of such person, and the determination of which would affect the event of the trial.

Power to reserve questions arising in original jurisdiction of High Court.

If the Judge reserves any such question, the person convicted shall, pending the decision thereon, be remanded to jail or, if the Judge thinks fit, be admitted to bail,

Procedure when question reserved.

and the High Court shall have power to review the case, or such part of it as may be necessary, and finally determine such question, and thereupon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgment and sentence as the High Court thinks fit.

Act X,1872, ss. 294, 295. 12 Beng. 258.

435. The High Court or any Court of Session or District Magistrate may call for and examine the record of any proceeding before any inferior Criminal Court situate within the local limits of its or his jurisdiction for the purpose of satisfying itself or himself as to the legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of the proceedings of such inferior Court.

Power to call for records of inferior Courts.

Act X,1872, s. 520, I would omit. See I. L. R. 2 Calc. 295, from which it appears that the High Court cannot interfere even under section 15 of the High Court Act.

Orders made under sections 141 and 142 are not proceedings within the meaning of this section.

Act X, 1872, s. 296, paras. 2 and 3. Act XI, 1874, s. 29. 10 Beng. 289.

436. When on examining the record of any case under section 435 the Court of Session or District Magistrate considers that such case is triable exclusively by the Court of Session, and that an accused person has been improperly discharged by the inferior Court, the Court of Session or District Magistrate may direct him to be committed for trial upon the matter of which he has been, in the opinion of the Court of Session or District Magistrate, improperly discharged:

Power to order commitment.

O'Kin. 93.

Provided that the accused has had an opportunity of shewing cause to such Court or Magistrate why the committal should not be made:

Act XI, 1874, s. 29.

Provided also that, if such Court or Magistrate thinks that the evidence shows that some other offence has been committed by the accused, such Court or Magistrate may direct the inferior Court to inquire into such offence.

Act X, 1872, s. 298. Act XI, 1874, s. 31.

437. On examining any record under section 435, the Court of Session may direct the District Magistrate by himself or by any of the Magistrates subordinate to him, or the District Magistrate may direct any subordinate Magistrate, to make further inquiry into any complaint which has been dismissed under section 204.

Power to order inquiry.

Act X, 1872, s. 296, para. 1.

438. The Court of Session or District Magistrate may, if it or he thinks fit, on examining under section 435 the record of any proceeding, report for the orders of the High Court the results of such examination.

Report to High Court.

Act X, 1872, s. 297. 1 L. R. 2 Calc. 113. I. All. I, 139. 1 Bomb. 125; Nelson 287. 1 O'Kin. 84. This will empower High Court to reduce amount of forfeited recognizances? 2 O'K. 408.

439. In the case of any proceeding the record of which has been called for by itself, or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 424, 426, 427 and 428, and when the Judges composing the Court of revision are equally divided, the case shall be disposed of in manner provided by section 429.

High Court's powers of revision.

440. No party has any right to be heard either personally or by pleader before any High Court when exercising its powers of revision; but the High Court may, if it thinks fit, when exercising such powers, hear any party either personally or by pleader.

Act X, 1872, s. 297, last para.

Optional with Court to hear parties.

441. When the record of any proceeding of any Presidency Magistrate is called for by the High Court under section 435, the Magistrate may submit with the record a statement setting forth the grounds of his decision or order and any facts which he thinks material to the issue; and the Court shall consider such statement before overruling or setting aside the said decision or order.

Act IV, 1877, s. 182.

Statement by Magistrate of grounds of his decision to be considered by High Court.

442. Whenever a case is revised by the High Court under this chapter, it shall certify its decision or order to the Court by which the finding, sentence or order was recorded or passed. If the finding, sentence or order was recorded or passed by a Magistrate other than the District Magistrate, the certificate shall be sent through the District Magistrate.

Act X, 1872, s. 299.

Order on revision to be certified to lower Court or District Magistrate.

The Court or Magistrate to which the High Court certifies its order shall thereupon make such orders as are conformable to the decision of the High Court and, if necessary, the record shall be amended in accordance therewith.

PART VIII.

SPECIAL PROCEEDINGS.

CHAPTER XXXIV.

CRIMINAL PROCEEDINGS AGAINST EUROPEANS AND AMERICANS.

443. No charge against a European British subject shall be inquired into or tried by any Magistrate, unless he is a Justice of the Peace, and (except in the case of a Presidency Magistrate) unless he is a Magistrate of the first class and a European British subject.

Act X, 1872, s. 74.

Magistrates who may inquire into and try charges against European British subjects.

444. No charge against a European British subject shall be tried by any Sessions Court unless the presiding Judge is a European British subject.

Sessions Judge to be an European British subject.

445. Nothing in section 443 or section 444 shall prevent any Magistrate from taking cognizance of an offence committed by any European British subject in any case in which he could take cognizance of a like offence if committed by another person:

Act X, 1872, ss. 72, 488.

Cognizance of offence committed by European British subject.

Provided that if he issues any process for the purpose of compelling the appearance of a European British subject accused of an offence, such process

Act X of 1872.

shall be made returnable before a Magistrate having jurisdiction to inquire into or try the case.

Act X, 1872, s. 73.

446. Notwithstanding anything contained in section 32, or section 34, no Magistrate other than a Presidency Magistrate shall pass any sentence on a European British subject other than imprisonment for a term which may extend to three months, or fine which may extend to one thousand rupees, or both.

Sentences which may be passed by mufassal Magistrates.

Act X, 1872, ss. 75, 438.

447. When a European British subject is accused of an offence before a Magistrate, and such offence cannot, in the opinion of such Magistrate, be adequately punished by him, and is not punishable with death or with transportation for life, such Magistrate shall, if he thinks that the accused ought to be committed, commit him to the Court of Session or, in the case of a Presidency Magistrate, to the High Court.

When commitment is to be to Court of Session and to High Court.

Act XI, 1874, s. 12.

When the offence complained of is punishable with death or transportation for life, the commitment shall be to the High Court.

448. Where any person committed to the High Court under section 447 is charged with several offences of which one is punishable with death or transportation for life and the others with a less punishment, and the High Court considers that he should not be tried for the offence punishable with death or transportation, the High Court may nevertheless try him for the other offence.

Trial for offences of which one is, and the others are not, punishable with death or transportation.

Act X, 1872, s. 76.

449. Sessions Judges, Additional Sessions Judges or Joint Sessions Judges, and, when specially empowered in this behalf by the Local Government, Assistant Sessions Judges who have been Assistant Sessions Judges for not less than three years, may pass on European British subjects any lawful sentence of imprisonment for a term which may extend to one year, or fine, or both.

Sentences which may be passed by Court of Session.

If at any stage of the proceedings in a Sessions Court, before the signing of the judgment, the presiding Judge thinks that the offence which appears to be proved cannot be adequately punished by such a sentence, he shall record his opinion to that effect and transfer the case to the High Court. Such Judge may either himself bind over, or direct the committing Magistrate to bind over, the complainant and witnesses to appear before the High Court.

Procedure when Sessions Judge finds his powers inadequate.

Act X, 1872, s. 77.

450. If the Judge of the Sessions Division within which the offence is ordinarily triable is not a European British subject, the case shall be reported by the committing Magistrate for the orders of the High Court.

Procedure when Sessions Judge is not a European British subject.

451. In trials of European British subjects before a High Court or Court of Session, if before the first juror is called and accepted or the first assessor is appointed, as the case may be, any such subject requires to be tried by a mixed jury, or by a mixed set of assessors, not less than half the number of the jurors or assessors shall be Europeans or Americans, or both Europeans and Americans.

Act X, 1872, s. 78. Act X, 1875, s. 35.

Mixed jury for trial of European British subjects.

452. In any case in which a European British subject is accused jointly with a person not being an European British subject, and such European British subject is committed for trial before a High Court or Court of Session, such persons may be tried together, and the procedure on the trial shall be the same as it would have been had the European British subject been tried separately:

Act X, 1875, s. 36.

Trial of European British subject and Native jointly accused.

Provided that, if the European British subject requires under section 451 to be tried by a mixed jury, or by a mixed set of assessors, and the person not being a European British subject requires that he shall be tried separately, the latter person shall be tried separately in accordance with the provisions of chapter XXIII.

Act X, 1875, s. 37.

When Native may claim separate trial.

453. When any person claims to be dealt with as a European British subject, he shall state the grounds of such claim to the Magistrate before whom he is brought for the purposes of the inquiry or trial; and such Magistrate shall inquire into the truth of such statement, and allow the person making it a reasonable time within which to prove that it is true, and shall then decide whether he is or is not a European British subject, and shall deal with him accordingly. If any such person is convicted by such Magistrate and appeals from such conviction, the burden of proving that the Magistrate's decision was wrong shall lie upon him.

Act X, 1872, s. 83.

Procedure on claim of European British subject to be dealt with as such.

When any such person is committed by the Magistrate for trial before the Court of Session, and such person again before such Court claims to be dealt with as a European British subject, such Court shall after such further enquiry if any, as it thinks fit, decide whether he is or is not a European British subject, and shall deal with him accordingly. If he is convicted by such Court and appeals from such conviction, the burden of proving that the Court's decision was wrong shall lie upon him.

When the Court before which any person is tried decides that he is not a European British subject, such decision shall form a ground of appeal from the sentence or order passed in such trial.

454. If a European British subject does not claim to be dealt with as such by the Magistrate before whom he is tried or by whom he is committed, or if, when such claim

Act X, 1872, s. 84.

Failure to plead status a waiver.

has been made before and disallowed by the committing Magistrate, it is not again made before the Court to which he is committed, he shall be held to have waived his privilege as such European British subject, and shall not assert it in any subsequent stage of the same case.

Act X, 1872, s. 85.

Unless the Magistrate has reason to believe that any person brought before him is not a European British subject, the Magistrate shall ask such person whether he is such a subject or not.

455. Where a person who is not a European British subject is dealt with under this chapter as such, and does not object, the inquiry, commitment or trial (as the case may be) shall not, by reason of such dealing, be invalid.

Trial under this chapter of person not a European British subject.

Act X, 1872, s. 81.

456. Any European British subject who is detained in custody by any person, and who considers such detention unlawful, may apply to the High Court which would have jurisdiction over him in respect of any offence committed by him at the place where he is detained, or to which he would be entitled to appeal from any conviction for any such offence, for an order directing the person detaining him to bring him before the High Court to abide such further order as it may pass.

Right of European British subject under detention to apply for order to produce his person.

Act X, 1872, s. 81.

457. The High Court, if it thinks fit, may, before issuing such order, inquire on affidavit or otherwise, into the grounds on which it is applied for, and grant or refuse such application; or it may issue the order in the first instance and, when the person applying for it is brought before it, it may make such further order in the case as it thinks fit, after such inquiry (if any) as it thinks necessary.

Procedure on such application.

Act X, 1872, s. 81.

458. The High Court may issue such orders throughout the territories within the local limits of its appellate criminal jurisdiction, and such other territories as the Governor General in Council may from time to time direct.

Territories throughout which High Court may issue such orders.

Act XXII, 1870, ss. 2 & 4.

459. Unless there be something repugnant in the context, all enactments heretofore or hereafter made by the Governor General in Council, which confer summary jurisdiction over offences, shall be deemed to apply to European British subjects, although such persons be not expressly referred to therein.

Application of Acts conferring summary jurisdiction.

Nothing in this section shall be deemed to authorize any court to exceed the limits prescribed by this chapter as to the amount of punishment which it may inflict on an European British subject, or to confer jurisdiction on any Magistrate not being a Justice of the Peace or on any Magistrate outside the Presidency Towns not being an European British subject.

Act X, 1872, s. 234.

460. In every case in which an European (not being an European British subject) or an American is the accused person, or one of the accused persons, not less than half the number of Jurors or Assessors shall, if practicable and if such European or American so desires, be Europeans, or Americans.

Jury for trial of Europeans or Americans.

Act X, 1872, s. 242.

461. Whenever an European or American is charged before the Court of Session jointly with a person of any other race, and claims to be tried by a jury consisting of at least one-half of Europeans and Americans, such person shall, if he so desires, be tried separately.

Jury when European or American charged jointly with one of another race.

Act X, 1872, s. 408.

462. When a trial is to be held before the Court of Session in which the accused person, or one of the accused persons, is entitled to be tried by a jury constituted under the provisions of section 451, or section 460, the Court shall, three days at least before the day fixed for holding such trial, cause to be summoned, in the manner hereinafter prescribed, as many European and American jurors as are required for the trial.

Summoning and empannelling jurors under section 451, or 460.

The Court shall also at the same time in like manner cause to be summoned the same number of other persons named in the revised list, unless such number of such other persons has been already summoned for trials by jury at that session.

From the whole number of persons returned, the jurors who are to constitute the jury shall be chosen by lot in the manner prescribed in section 279, until a jury containing the proper number of Europeans or Americans, or a number approaching thereto as nearly as possible, has been obtained.

463. Criminal proceedings against European British subjects, Europeans not being European British subjects, and Americans before the Court of Session and High Court, shall, except as otherwise expressly provided, be conducted according to the provisions of chapter XXIII.

Conduct of criminal proceedings against European British subjects.

CHAPTER XXXV.

Lunatics.

Act X, 1872, s. 423. Act IV, 1877, s. 194.

464. When any person accused of an offence before a Magistrate holding an inquiry or a trial appears to such Magistrate to be of unsound mind and incapable of making his defence,

Procedure in case of accused being lunatic.

the Magistrate shall inquire into the fact of such unsoundness, and shall cause such person to be examined by the Civil Surgeon of the district or such other medical officer as the Local Government directs, and thereupon shall examine such Surgeon or other officer as a witness, and shall reduce the examination into writing.

If such Magistrate is of opinion that the accused is of unsound mind, he shall postpone further proceedings in the case.

Act X, 1872, s. 425. Act X, 1875, s. 120.

465. If any person committed for trial before a Court of Session or a High Court appears to the Court at his trial to be of unsound mind and incapable of making his defence, the Court shall, in the first instance, try the fact of such unsoundness and incapacity and, if satisfied of the fact, shall pass judgment accordingly, and thereupon the trial shall be postponed.

Procedure in case of person committed before Court of Session or High Court being lunatic.

Act XI, 1874, s. 39.

The trial of the fact of the unsoundness of mind and incapacity of the accused shall be deemed to be part of his trial before the Court.

Act X, 1872, s. 426. Act X, 1875, s. 121. Act IV, 1877, s. 196.

466. Whenever an accused person is found to be of unsound mind and incapable of making his defence, the Magistrate or Court, as the case may be, if the offence of which such person is accused is bailable, may release him on sufficient security being given that he shall be properly taken care of, and shall be prevented from doing injury to himself or to any other person, and for his appearance when required before the Magistrate or Court or such officer as the Magistrate or Court appoints in this behalf.

Release of lunatic pending investigation or trial.

If the offence is not bailable, or if sufficient security is not given, the Magistrate or Court shall report the case to the Local Government, and the Local Government may order such person to be confined in a Lunatic Asylum or other suitable place of safe custody, and the Magistrate or Court shall give effect to such order.

Custody of lunatic.

I. L. R. 2 Calc. 356.

Act X, 1872, s. 427. Act X, 1875, s. 122. Act IV, 1877, s. 197.

467. Whenever an inquiry or trial is postponed under section 464 or section 465, the Magistrate or Court, as the case may be, may at any time resume the inquiry or trial, and require the accused to appear or be brought before such Magistrate or Court.

Resumption of inquiry or trial.

When the accused has been released under section 466, and the sureties for his appearance produce him to the officer whom the Magistrate or Court appoints in this behalf, the certificate of such officer that the accused is capable of making his defence shall be receivable in evidence.

Act X, 1872, s. 428. Act X, 1875, s. 123. Act IV, 1877, s. 198.

468. If, when the accused appears or is again brought before the Magistrate or the Court, as the case may be, the Magistrate or Court considers him capable of making his defence, the inquiry or trial shall proceed.

Procedure on accused appearing before Magistrate or Court.

If the Magistrate or Court considers the accused person to be still incapable of making his defence, the Magistrate or Court shall again act according to the provisions of section 464 or section 465, as the case may be.

Act X, 1872, s. 424. Act IV, 1877, s. 195.

469. When the accused appears to be of sound mind at the time of inquiry or trial, and the Magistrate is satisfied from the evidence given before him that there is reason to believe that the accused committed an act which, if he had been of sound mind, would have been an offence, and that he was at the time when the act was committed, by reason of unsoundness of mind, incapable of knowing the nature of the act or that it was contrary to law, the Magistrate shall proceed with the case and, if the offence be triable exclusively by the Court of Session or High Court, send the accused for trial before the Court of Session or High Court, as the case may be.

When accused appears to have been insane.

Act X, 1872, s. 429. Act X, 1875, s. 124. Act IV, 1877, s. 199. 39 & 40 Geo. III, c. 94. *Reg.* v. *Macnaughten*, 10 Cl. & Fin. 200.

470. Whenever any person is acquitted upon the ground that, at the time at which he is alleged to have committed an offence, he was, by reason of unsoundness of mind, incapable of knowing the nature of the act alleged as constituting the offence complained of, or that it was contrary to law, the judgment of acquittal shall state specially whether he committed the act or not.

Judgment of acquittal on ground of lunacy.

Act X, 1872, s. 430. Act X, 1875, s. 125. Act IV, 1877, s. 200.

471. Whenever such judgment states that the accused person committed the act alleged, the Magistrate or Court before whom or which the trial has been held shall, if such act would, but for the incapacity found, have constituted an offence, order such person to be kept in safe custody in such place and manner as the Magistrate or Court thinks fit, and shall report the case for the order of the Local Government.

Person acquitted on such ground to be kept in safe custody.

The Local Government may order such person to be confined in a Lunatic Asylum, jail or other suitable place of safe custody.

Act X, 1872, s. 432. Act X, 1875, s. 127. Act IV, 1877, s. 202.

472. When any person is confined under the provisions of section 466 or section 471, the Inspector General of Prisons, if such person is confined in a jail, or the visitors of the Lunatic Asylums or any two of them, if he is confined in a Lunatic Asylum, may visit him in order to ascertain his state of mind; and he shall be visited once at least in every six months by such Inspector General or by two of such visitors as aforesaid; and such Inspector General or visitors shall make a special report to the Local Government as to the state of mind of such person.

Lunatic prisoners to be visited by Inspector General.

Act X, 1872, s. 431. Act X, 1875, s. 126. Act IV, 1877, s. 201.

473. If such person is confined under the provisions of section 466, and such Inspector General or visitors shall certify that, in his or their opinion, such person is capable of making

Procedure where lunatic prisoner is reported capable of making his defence.

his defence, he shall be taken before the Magistrate or Court, as the case may be, at such time as the Magistrate or Court appoints, and the Magistrate or Court shall deal with such person under the provisions of section 468; and the certificate of such Inspector General or visitors as aforesaid shall be receivable as evidence.

Act X, 1872, s. 433. Act X, 1875, s. 128. Act X, 1877, s. 203.

474. If such person is confined under the provisions of section 466 or section 471, and such Inspector General or visitors shall certify that, in his or their judgment, he may be discharged without danger of his doing injury to himself or to any other person, the Local Government may thereupon order him to be discharged, or to be detained in custody, or to be transferred to a public Lunatic Asylum if he has not been already sent to such an Asylum, and in case it orders him to be transferred to an Asylum, may appoint a commission, consisting of a judicial officer and two medical officers, whereof the chief medical officer attached to the Asylum shall be one.

Procedure where lunatic confined under section 466 or 471 is declared fit to be discharged.

The said commission shall make formal inquiry into the state of mind of such person, taking such evidence as is necessary, and shall report to the Local Government, who may order his discharge or detention as it thinks fit.

Act X, 1872, s. 434. Act X, 1875, s. 129. Act IV, 1877, s. 204.

475. Whenever any relative or friend of any person confined under the provisions of section 466 or section 471 desires that he shall be delivered over to his care and custody, the Local Government, upon the application of such relative or friend, and on his giving security to the satisfaction of such Government that the person delivered shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, may order such person to be delivered to such relative or friend.

Delivery of lunatic to care of relative.

Whenever such person is so delivered, it shall be upon condition that he shall be produced for the inspection of such officer and at such times as the Local Government directs.

The provisions of sections 472 and 474 shall, *mutatis mutandis*, apply to persons delivered under the provisions of this section; and the certificate of the inspecting officer appointed under this section shall be dealt with as a certificate under section 474.

CHAPTER XXXVI.

Proceedings in Case of certain Offences affecting the Administration of Justice.

Act X, 1872, s. 471, 477. Act X, 1875, s. 135. Act IV, 1877, s. 44, omitting last para. I. L. R. 1 Cal. 454. I. L. R. 1 All. 131, 193. cf. 14 & 15 Vic., c. 100, s. 19. 2 O'Kin. 217.

476. When any Court is of opinion that there is ground for enquiring into any offence referred to in section 196, and committed before it or brought under its notice in the course of a judicial proceeding, such Court, after making any preliminary inquiry that may be necessary may send the case for enquiry to any Magistrate having power to try or commit for trial the accused for such offence, and may send the accused in custody, or take sufficient security for his appearance, before such Magistrate; and may bind over any person to appear and give evidence on such trial or enquiry.

Procedure in cases mentioned in section 196.

Such Magistrate shall thereupon proceed according to law, and may, if he is authorised to transfer cases under section 193, transfer the enquiry to some other competent Magistrate, instead of completing the inquiry himself.

Act X, 1872, s. 472. *Reg.* V. *Nomal*, 4 Beng. App. Crim. Jur. 11.

477. A Court of Session may charge a person for any offence referred to in section 196 and committed before it, or brought under its notice in the course of a judicial proceeding, and may commit, or admit to bail and try, such person upon its own charge.

Power of Session Court as to such offences committed before itself.

Such Court may direct the Magistrate to cause the attendance of any witnesses for the purposes of the trial.

Act X, 1872, s. 474, para. 1 and 2.

478. When any such offence is committed before any Civil Court, or brought under the notice of any Civil Court in the course of a judicial proceeding and such case is triable exclusively by the High Court or Court of Session, or such Civil Court thinks that it ought to be tried by the High Court or Court of Session, such Civil Court may, instead of sending the case under section 476 to a Magistrate for enquiry, itself complete the enquiry, and commit or hold to bail the accused person to take his trial before the High Court or Court of Session, as the case may be.

Power of Civil Courts to complete investigation and commit to Sessions Court.

Act X, 1872, s. 476.

For the purposes of an enquiry under this section, the Civil Court may exercise all the powers of a Magistrate; and its proceedings in such enquiry shall be conducted as nearly as may be in accordance with the provisions of chapter XVIII, and shall be deemed to have been held by a Magistrate.

Act X, s. 475.

479. When any such commitment is made by a Civil Court, the Court shall send the charge with the order of commitment and the record of the case to the Presidency Magistrate, District Magistrate or other Magistrate authorised to commit for trial; and such Magistrate shall bring the case before the High Court or Court of Session, as the case may be, together with the witnesses for the prosecution and defence.

Procedure of Civil Court in such cases.

Act X, s.

480. When any such offence as is described in section 175, 178, 179, 180, or 228 of the Indian Penal Code is committed in the view or presence of any Court, the Court may cause the offender, whether he is a European British subject or not, to be detained in custody; and at any time before the rising of the Court on the

Procedure in certain cases of contempt.

Act X, s. Act IV, s.

same day may*, if it thinks fit, take cognizance of the offence and sentence the offender to fine not exceeding two hundred rupees and, in default of payment, to imprisonment in the civil jail for a term which may extend to one month, unless such fine be sooner paid.

* Pollard's case, L. R. 2 P. C. 106.

481. In every such case, the Court shall record the facts constituting the offence, with the statement (if any) made by the offender, as well as the finding and sentence.

Record in such cases.

If the offence is under section 228 of the Indian Penal Code, the record must show the nature and stage of the judicial proceeding in which the Court interrupted or insulted was sitting, and the nature of the interruption or insult offered.

New. 13 Bengal Appendix 40.

482. A Registrar appointed under the Indian Registration Act, 1877, shall be deemed to be a Civil Court within the meaning of section 480.

Registrar to be deemed a Civil Court within Section 480.

Act X, 1872, s. 436, para. 1. Act IV, 1877, s. 206.

483. If the Court in any case considers that a person accused of any of the offences referred to in section 480 and committed in its view or presence should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, or such Court is for any other reason of opinion that the case should not be disposed of under section 480, such Court, after recording the facts constituting the offence and the statement of the accused as hereinbefore provided, may forward the case to a Magistrate having jurisdiction to try the same, and may require security to be given for the appearance of such accused person before such Magistrate or, if sufficient security is not given, shall forward such person under custody to such Magistrate.

Procedure where Court considers that case should not be dealt with under section 480.

The Magistrate to whom any person is forwarded under this section shall proceed to hear the complaint against him in manner hereinbefore provided.

Act X, 1872, s. 437. Act IV, 1877, s. 207.

484. When any Court has under section 480 or 483 adjudged an offender to punishment, or forwarded him to a Magistrate for trial, for refusing or omitting to do anything which he was lawfully required to do, or for any intentional insult or interruption, the Court may in its discretion discharge the offender or remit the punishment on his submission to the order or requisition of such Court, or on apology being made to its satisfaction.

Discharge of offender on submission or apology.

Act X, 1872 ss. 856, 864. Act X, 1875, s. 89. Act IV, 1877, s. 141.

485. If any witness before a Court refuses to answer such questions as are put to him or to produce any document in his possession or power which the Court requires him to produce, and does not offer any reasonable excuse for such refusal, such Court may sentence him to simple imprisonment, or commit him to the custody of an

Imprisonment or committal of person refusing to answer or produce document.

officer of the Court, for any term not exceeding seven days, unless in the meantime such person consents to be examined and to answer; after which, in the event of his persisting in his refusal, he may be dealt with according to the provisions of section 480 or 483, and in the case of a High Court shall be deemed guilty of a contempt.

Omitting by warrant under his hand and seal.

Act X, 1872, s. 438.

486. Any person convicted by any Court under section 480 or section 485 may appeal to the Court to which decrees or orders made in such Court are ordinarily appealable.

Appeals from convictions in contempt-cases.

Sections 420, 421, 422, 426 and 428 shall apply to appeals under this section, and the Appellate Court may alter or reverse the finding or sentence appealed against, and may if it sees fit enhance any punishment that has been awarded.

An appeal from such conviction by a Small Cause Court may be made to the Court of Session for the Sessions Division within which such Court is situate.

New.

An appeal from such conviction by any officer as Registrar appointed as aforesaid may, when such officer is also Judge of a Civil Court, be made to the Court to which it would, under the preceding portion of this section, be made if such conviction were a conviction by such officer in his capacity as such Judge, and in other cases may be made to the Inspector-General of Registration.

Act X, 1872, s. 473. I. L. R. 1 Bomb. 330. 1 All. 166, 625. 7 Mad. XVI. App. Pro. See I. L. R. 1 Mad. 338. I. L. R. 1 All. 625.

487. Except as provided in sections 477, 480, and 485, no Judge or Magistrate other than a Judge of a High Court, the Recorder of Rangoon, and the Presidency Magistrates, shall try any person for any offence referred to in section 196, when such offence is committed before himself or brought under his notice in a judicial proceeding.

Judge or Magistrate not to try offences referred to in section 481 when committed before himself.

Nothing in section 476 or 483 shall prevent a Magistrate empowered to commit to the Court of Session or High Court from committing any case to such Court, or shall prevent a Presidency Magistrate from himself disposing of any case instead of sending it for enquiry to another Magistrate.

CHAPTER XXXVII.

Of the Maintenance of Wives and Children.

Act X, 1872, s. 536. Act IV, 1877, s. 234.

488. If any person having sufficient means neglects or refuses to maintain his wife or his legitimate or illegitimate child unable to maintain itself, the District Magistrate, a Presidency Magistrate, a Sub-Divisional Magistrate, or a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, at such monthly rate, not exceeding fifty rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate from time to time directs.

Order for maintenance of wives and children.

Such allowance shall be payable from the date of the order.

If any person so ordered wilfully neglects to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in manner hereinbefore provided for levying fines, and may sentence such person, for each month's allowance remaining unpaid, to imprisonment for any term not exceeding one month:

Enforcement of order.

Provided that, if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her; and may make an order under this section notwithstanding such offer, if he is satisfied that such person is living in adultery, or that he has habitually treated his wife with cruelty.

Proviso.

No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

Act X, 1872, s. 537. Act IV, 1877, s. 235.

489. The Magistrate may, on proof of a change in the circumstances of any person receiving or ordered, under section 488, to pay a monthly allowance, his wife or child, may make such alteration in the allowance ordered as the Magistrate thinks fit, provided the monthly rate of fifty rupees be not exceeded.

Alteration in allowance.

Act X, 1872, s. 538. Act IV, 1877, s. 236.

490. A copy of the order of maintenance shall be given without payment to the person in whose favour it is made, or to his guardian, if any; and such order shall be enforceable by any Magistrate in any place where the person against whom it is made may be, on such Magistrate being satisfied as to the identity of the parties and the non-payment of the allowance due.

Enforcement of order of maintenance.

CHAPTER XXXVIII.

STATE-PRISONERS.

Ben. Reg. III, 1818, s. 2. Mad. Reg. II, 1819, s. 2. Bombay Reg. XXV of 1827, preamble and section 1.

491. Whenever, for all or any of the reasons of State hereinafter mentioned, the Governor General in Council, the Governor of Fort St. George in Council, or the Governor of Bombay in Council is of opinion that any person should be placed under personal restraint, without any immediate view to ulterior judicial proceedings, a warrant of commitment under the authority of the Governor General in Council, the Governor of Fort St. George in Council or the Governor of Bombay in Council (as the case may be) and under the hand of one of the Secretaries to Government, shall be issued to the officer in whose custody such person (hereinafter called a State-prisoner) is to be placed.

Procedure in placing persons under restraint as State-prisoners.

The reasons above referred to are as follows:—

(*a*) the maintenance of the alliances formed by the British Government with foreign powers;

(*b*) the preservation of tranquillity in the territories of Native Princes and States entitled to its protection;

(*c*) the security of the British dominions from foreign hostility or internal commotion.

Act III, 1858, s. 2.

492. Such warrant shall authorize the detention of the State-prisoner therein mentioned in any fortress, jail or other place within British India.

Form and effect of warrant.

Ben. Reg. III, 1818, s. 5. Mad. Reg. II, 1819, s. 5. Bombay Reg. XXV, 1827, s. 5, clause 2.

493. The officer in whose custody any State-prisoner has been placed under this chapter or under any enactment repealed by this Code, shall forward, with such observations as he thinks necessary, to the Government under whose authority such prisoner was so placed, every representation which he may from time to time be desirous of submitting to such Government.

Representations made by State-prisoners to be submitted to Government.

Ben. Reg. III 1818, s. 6. Mad. Reg. II, 1819, s. 6. Bombay Reg. XXV, 1827, s. 5, clause 1.

494. Every officer in whose custody any State-prisoner is placed shall, as soon after taking such prisoner into his custody as may be practicable, report to such Government whether the degree of confinement to which the State-prisoner is subjected seems likely to injure his health, and whether the allowance fixed for his support is adequate to the supply of his own wants and those of his family then with him according to their rank in life.

Report to Government regarding nature of confinement, health and allowances of State-prisoners.

Ben. Reg. III, 1818, s. 9. Mad. Reg. II, 1819, s. 9. Bombay Reg. XXV, 1827, s. 7.

495. Whenever the Governor General in Council, the Governor of Fort St. George in Council or the Governor of Bombay in Council for any of the reasons mentioned in section 491, considers it necessary to attach the lands of any proprietor without any previous decision of a Court of justice or other judicial proceeding, he shall direct the District Magistrate within the local limits of whose jurisdiction the lands are situate to attach such lands, and they shall be attached accordingly:

Attachment of lands by order of Government.

Ben. Reg. II[illegible] 1818, s. 10. Mad. Reg. [illegible] 1819, s. [illegible] Bombay Reg. XXV, 1827, s. 8.

496. The lands so attached shall be held under the management of the Collector, and shall be administered in the same manner as the estates of disqualified proprietors under the superintendence of Government.

Lands attached to be placed under management,

Such lands shall not be liable to be sold in execution of decrees of the Civil Courts, or for the realization of fines or otherwise, so long as they are so held under attachment, without the consent of the Government and the proprietor.

and not to be sold in execution.

Bom. Reg. varies.

But the whole or any part of the annual nett proceeds of such lands may, if the Government so directs, be applied to the satisfaction of the decrees of the Civil Courts against the proprietor.

Government to arrange for satisfying decrees.

Ben. Reg. III, 1818, s. 11. Mad. Reg. II, 1819, s. 11. Bom. Reg. XXV, 1827.

497. Whenever the Government by whose direction such lands were attached, is of opinion that the circumstances which rendered necessary the attachment have ceased to operate, and that the management of the lands can be committed to the proprietor without public hazard or inconvenience, such Government shall direct the Collector to release the lands from attachment, to adjust the accounts of the collection during the period in which they have been superintended by Government and to pay over to the proprietor the nett proceeds of the lands which have accumulated during the attachment.

Procedure where Government orders release of land from attachment.

Act XXXIV, 1850, s. 1. Act III, 1858, s. 3.

498. The warrant of commitment of any State-prisoner under this chapter may be directed to the Superintendent of the jail in any Presidency-town, or to the Commandant of any fortress, or to the officer in charge of any jail or other place, in which it is deemed expedient that such State-prisoner be confined, in any part of British India; and such warrant shall authorize the detention of such State-prisoner in the jail, fortress or other place therein mentioned.

Officers to whom warrant of commitment of State-prisoner may be directed.

Act III, 1858, s. 5.

499. The Governor General in Council may order the removal of any State-prisoner confined under this chapter or any enactment repealed by this Code from any jail, fortress or place in which he may be confined to any other jail, fortress or place of confinement within British India.

Removal of State-prisoners from one place of confinement to another.

Act XI, 1857, s. 6. Bom. Reg. XXV, 1827, chapter. 1, s. 1.

500. Nothing in this chapter applies to European British subjects.

Saving of European British subjects.

CHAPTER XXXIX.

DIRECTIONS OF THE NATURE OF A HABEAS CORPUS.

X, 1875, 148.

501. Any of the High Courts of Judicature at Fort William, Madras and Bombay may, whenever it thinks fit, direct—

Power to issue directions of the nature of a *habeas corpus*.

(*a*) that a person within the limits of its ordinary original criminal jurisdiction be brought up before the Court to be dealt with according to law;

(*b*) that a person illegally or improperly detained in public or private custody within such limits be set at liberty;

(*c*) that a prisoner detained in any gaol situate within such limits be brought before the Court to be there examined as a witness in any matter pending or to be inquired into in such Court;

(*d*) that a prisoner detained as aforesaid be brought before a Court-martial or any Commissioners acting under the authority of any Commission from the Governor General in Council for trial, or to be examined touching any matter depending before such Court-martial or Commissioners respectively;

(*e*) that a prisoner within such limits be removed from one custody to another for the purpose of trial;

(*f*) that the body of a defendant within such limits may be brought in on the Sheriff's return of *cepi corpus* to a writ of attachment.

Each of the said High Courts may from time to time frame rules to regulate the procedure in cases under this section.

Nothing in this section applies to State-prisoners detained under chapter XXXVIII or under any enactment hereby repealed.

PART IX.

SUPPLEMENTARY PROVISIONS.

CHAPTER XL.

OF THE PUBLIC PROSECUTOR.

Power to appoint public prosecutors.

502. The Governor General in Council or the Local Government may appoint officers, to be called Public Prosecutors, who shall perform their functions in all or any cases or specified classes of cases in any local area, outside the Presidency-towns.

In any case committed for trial to the Court of Session, the District Magistrate, or, subject to the control of the District Magistrate, the Subdivisional Magistrate, may, in the absence of the Public Prosecutor, or where no Public Prosecutor has been appointed, appoint any other person, not being an officer of Police, to act as Public Prosecutor.

Act X, 1872, s. 60.

503. The Public Prosecutor may appear and plead without any written authority before any Court, in which any case of which he has charge is under inquiry, trial or appeal; and if any private person instructs a pleader to prosecute in any Court any person in any such case, the Public Prosecutor shall conduct the prosecution, and the pleader so instructed shall act therein under his directions.

Public Prosecutor may plead in all Courts in cases under his charge.

Pleaders, privately instructed, to be under his direction.

Act X, 1872, s. 61.

504. The Public Prosecutor may, with the consent of the Court, withdraw any charge against any person in any such case, and upon such withdrawal, if it is made whilst the case is under inquiry, the accused shall be discharged. If it is made when he is under trial, he shall be acquitted: provided that the charge is withdrawn, in cases tried by jury, before the return of the verdict, and in other cases, before the judgment is pronounced.

Effect of withdrawal of charge by Public Prosecutor.

New.

Act X, 1872, s. 59. Act XI, 1874, s. 8. Act IV, 1877, s. 129.

505. Any Magistrate inquiring into or trying any case may permit any person to conduct the prosecution; but no person, other than the Advocate General, Standing Counsel, Government Solicitor, or public prosecutor, shall be entitled to do so without such permission.

Permission to conduct prosecution.

Any person conducting the prosecution may do so personally or by a pleader.

CHAPTER XLI.

Of Bail.

Act X, 1872, ss. 388, 393, 194, para. 2; also ss. 128 and 204. Act IV, 1877, ss. 70, 74. N. W. P., 1874, p. 371.

506. When any person is arrested or detained by a Police-officer without warrant for a bailable offence, or appears or is brought before a Court accused of any such offence, and is prepared at any time while in the custody of such Police-officer or at any stage of the proceedings before such Court to give bail, such person shall be released on bail: Provided that such officer or Court, if he or it thinks fit, may, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided.

Bail to be taken in case of bailable offence.

Act X, 1872, ss. 128, 389. Act IV, 1877, s. 71.

507. When any person accused of any non-bailable offence is arrested or detained without warrant by a Police-officer, or appears or is brought before a Court, he shall not be released on bail if there appear reasonable grounds for believing that he has been guilty of the offence of which he is accused.

When bail shall not be taken in case of non-bailable offence.

If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there is not reasonable ground for believing that such person has committed such offence, but that there is sufficient ground for further inquiry into his guilt, the accused person shall be released on bail pending such inquiry.

When it may be.

Any Court may, at any subsequent stage of any proceeding under this Code, cause any person who has been released under this section to be arrested, and may commit him to custody.

Act X, 1872, s. 390. Act X, 1875, s. 136. I. L. R. 1 All. 151.

508. The High Court or Court of Session may in any case, whether there be an appeal on conviction or not, direct that any accused person be admitted to bail, or that the bail required by a Police-officer or Magistrate be reduced.

Power to direct admission to bail or reduction of bail.

Bail to be taken under this chapter shall not be excessive.

Act X, 1872, s. 391. Act IV, 1877, s. 72.

509. Before any person is released on bail or released on his own bond, a bond for such sum of money as the Police-officer or Court, as the case may be, thinks sufficient shall be executed by such person, and when he is released on bail, by one or more sufficient sureties, conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the Police-officer or Court as the case may be.

Bond of accused and sureties.

If the case so require, the bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session or other Court to answer the charge.

Act X, 1872, s. 394. Act IV, 1877, s. 73.

510. As soon as the bond has been executed, the accused shall be released; and when he is in jail, the Court admitting him to bail shall issue an order of release to the officer in charge of the jail, and such officer on receipt of the order shall release him.

Discharge from custody.

Act X, 1872, s. 392. Act IV, 1877, s. 75.

511. If, through mistake or fraud, insufficient sureties have been taken, or if they afterwards become insufficient, the Court may issue a warrant of arrest directing that the accused person be brought before it, and may order him to find sufficient sureties, and on his failing so to do may commit him to jail.

Power to order sufficient bail when that first taken is insufficient.

Act X, 1872, s. 395. Act IV, 1877, s. 76.

512. All or any sureties for the attendance and appearance of a person released on bail may at any time apply to a Magistrate to discharge the bond either wholly or so far as relates to the applicants.

Discharge of sureties.

On such application being made, the Magistrate shall issue his warrant of arrest, directing that the person so released be brought before him.

On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Magistrate shall direct the bond to be discharged either wholly or so far as relates to the applicants, and shall call upon such person to find other sufficient sureties, and if he fails to do so, may commit him to jail.

CHAPTER XLII.

Of Commissions for the Examination of Witnesses.

Act X, 1872, s. 330, paras. 1 and 2. Act X, 1875, s. 76, para. 1, omitting provision where witness is in Native State. Act IV, 1877, s. 157. Act IV, 1877, s. 168.

513. Whenever, in the course of an inquiry or trial or other proceeding under this Code, it appears to a Presidency Magistrate, a Court of Session or the High Court that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, such Magistrate or Court may dispense with such attendance and may issue a commission to any District Magistrate or Magistrate of the first class, within the local limits of whose jurisdiction such witness resides, to take the evidence of such witness.

When attendance of witness may be dispensed with.

Issue of commission and procedure thereunder.

The Magistrate to whom the commission is issued, or, if he is the District Magistrate, such Magistrate of the first class as he appoints in this behalf, shall proceed to the place where such witness is, or shall summon such witness before him, and shall take his evidence in the same manner, and may for this purpose exercise the same powers, as in trials of warrant-cases under this Code.

Act XI, 1874, s. 35. Act X, 1875, s. 76, para. 4.

514. If the witness is within the local limits of the jurisdiction of any Presidency Magistrate, the Magistrate or Court issuing the commission may direct the same to the said Presidency Magistrate, who thereupon may compel the attendance of, and examine, such witness as if he were a witness in a case pending before himself.

Commission in case of witness being within Presidency-town.

Nothing in this section shall be deemed to affect the power of the High Court to issue commissions under the thirty-ninth and fortieth of Victoria, chapter 46, section 3.

1879, s. [illegible]

515. The parties to any proceeding under this Code in which a commission is issued may respectively forward any interrogatories in writing which the Magistrate or Court directing the commission may think relevant to the issue, and the Magistrate to whom the commission is directed shall examine the witness upon such interrogatories.

Parties may examine witness.

Such parties may appear before such Magistrate by advocate, attorney or pleader, or if not in custody, in person, and may examine, cross-examine and re-examine (as the case may be) the said witness.

Act X, 1872, s. 330, para. 5.

516. Whenever, in the course of a trial before any Magistrate other than a Presidency Magistrate, it appears that a commission ought to be issued for the examination of a witness whose evidence is necessary for the ends of justice, such Magistrate shall apply to the Court of Session to which he is subordinate, stating the reasons for the application; and such Court may either issue a commission in the manner hereinbefore provided or reject the application.

Power of mufassal Magistrate to apply for issue of commission.

Act X, 1872, s. 330, para. 6. Act X, 1875, s. 76, para. 6.

517. After any commission issued under section 513 or section 516 has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the Court out of which it issued; and the commission, the return thereto and the deposition of such witness shall be open at all reasonable times to inspection of the parties, and may, subject to all just exceptions, be read in evidence in the case by either party, and shall form part of the record.

Return of commission.

N. Y. Crim. Proc. Code, s. 708.

518. In every case in which a commission is directed under section 513 or section 516, the inquiry or trial may be stayed for a specified time reasonably sufficient for the execution and return of the commission.

Stay of inquiry or trial.

CHAPTER XLIII.

Special Rules of Evidence.

Act X, 1872, s. 323. Act X, 1875, s. 71. Act IV, 1877, s. 152.

519. The deposition of a Civil Surgeon or other medical witness, duly taken and duly attested by a Magistrate, may be given in evidence in any inquiry, trial or other proceeding under this Code, although the deponent is not called as a witness.

Deposition of medical witness.

The Court may, if it thinks fit, summon and examine such deponent as to the subject-matter of his deposition.

Power to summon medical witness.

Act X, 1872, s. 325. Act X, 1875, s. 72. Act IV, 1877, s. 153.

520. Any document purporting to be a report under the hand of the Chemical Examiner or Assistant Chemical Examiner to Government, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.

Report of Chemical Examiner.

The Court may presume that the signature to any such document is genuine, and that the person signing it held the office which he purported by such signature to hold at the time when he signed the document.

Presumption as to signature.

The High Court or a Presidency Magistrate may, if it or he thinks fit, summon and examine such Chemical Examiner or Assistant Chemical Examiner as to the subject-matter of his said report.

Power to summon Chemical Examiner.

Act XVIII, 1862, s. 27. Not in Act X of 1872.

521. In proving the existence of circumstances as a defence under the second, third, fifth, sixth, seventh, eighth, ninth or tenth Exception to section 499 of the Indian Penal Code, good faith shall be presumed until the contrary appears.

Good faith to be presumed in certain cases.

Act X, 1872, ss. 326, 515, last clause. Act X, 1875, s. 119. Act IV, 1877, ss. 154, 230.

522. A previous conviction or acquittal may be proved in any inquiry, trial or other proceeding under this Code—

Previous conviction or acquittal how proved.

(*a*) by an extract certified, under the hand of the officer having the custody of the records of the Court in which such conviction or acquittal was had to be a copy of the sentence or order; or

(*b*) in case of a conviction, either by a certificate signed by the officer in charge of the jail in which the punishment or any part thereof was inflicted, or by production of the warrant of commitment, under which the punishment was suffered.

Act X, 1872, s. 327. Act X, 1875, s. 74. Act IV, 1877, s. 155.

523. If it be proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court competent to try or commit for trial such person for the offence complained of may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions, and any such deposition may, on the arrest of such person, be put in on his trial for the offence with which he is charged, if the attendance of the deponent cannot be procured.

Record of evidence in absence of accused.

CHAPTER XLIV.

PROVISIONS AS TO BONDS.

Act X, 1872, s. 399. Act X, 1875, s. 139. Act IV, 1877, s. 80.

524. When any person is required by any Court or officer to execute a bond with or without sureties, such Court or officer may, except in the case of a bond for good behaviour, permit him to deposit a sum of money or Government promissory notes to such amount as the Court or officer may fix in lieu of executing such bond.

Deposit instead of recognizance.

Act X, 1872, ss. 396, 397, 398, 502, paras. 1 to 5, 503, 514. Act X, 1875, ss. 137, 138. Act IV, 1877, ss. 77, 78, 79, 226, 229.

525. Whenever it is proved before the Court by which a bond under this Code has been taken, or before the Court of a Presidency Magistrate or Magistrate of the first class, that such bond has been forfeited, such Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof, or to show cause why it should not be paid.

Procedure on forfeiture of bond.

If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same by issuing a warrant for the attachment and sale of the movable property belonging to such person.

Such warrant may be executed within the local limits of the jurisdiction of the Court which issued it; and it shall authorise the distress and sale of any movable property belonging to such person without such limits, when endorsed by the District Magistrate within the local limits of whose jurisdiction such property is found.

If such penalty be not paid and cannot be recovered by such attachment and sale, the person so bound shall be liable, by order of the Court which issued the warrant, to imprisonment in the civil jail for a term which may extend to six months.

The Court may at its discretion remit any portion of the penalty mentioned and enforce payment in part only.

Act X, 1872, s. 398, penultimate para.

526. All orders passed under section 525 by any Magistrate other than a Presidency Magistrate or District Magistrate shall be appealable to the District Magistrate, or, if not so appealed, may be revised by him.

Appeals from, and revision of, orders under section 525.

Act X, 1875, s. 138, last para.

527. The High Court or Court of Session may direct any Magistrate to levy the amount due on a bond to appear and attend at such High Court or Court of Session.

Power to direct levy of amount due on certain recognizances.

Act X, 1872, s. 418. Act X, 1875, s. 115. Act IV, 1877, ss. 243 & 244. Act XI, 1874, s. 38, High Court Rules. *Bombay Government Gazette*, 13th Sept., 1877, p. 838. Qy. add provisions of 24 & 25 Vic. c. 96, s. 100 as to restoring stolen property on conviction of theft not without sale in market overt, and of 30 & 31 Vic., c. 35, s. 10, as to payment to innocent purchaser of stolen property or money found on convicted thief, and execution and amount of proceeds of sale, and application and restitution of stolen property.

CHAPTER XLV.

OF THE DISPOSAL OF PROPERTY PRODUCED UNDER THIS CODE.

528. When an inquiry or trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal of any document or other property produced before it regarding which any offence appears to have been committed, or which has been used for the commission of any offence, or which has been produced as evidence in such inquiry or trial.

Order for disposal of property regarding which offence committed.

When a High Court or a Court of Session makes such order and cannot through its own officers conveniently deliver the property to the person entitled thereto, such Court may direct that the order be carried into effect by the committing Magistrate.

EXPLANATION.—In this section the term "property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in

the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange whether immediately or otherwise.

Act X, 1872, s. 419.

529. Any Court of appeal, confirmation, reference or revision may direct any such order passed by a Court subordinate thereto to be stayed pending consideration by the former Court, and may modify, alter or annul such order.

Stay of such order.

Act X, 1872, s. 420.

530. The order passed by any Court under section 528 or 529 may be in the form of a reference of the property to the District Magistrate or to a Sub-divisional Magistrate, who shall in such cases deal with it as if the property had been seized by the Police, and the seizure had been reported to him in the manner hereinafter mentioned

Order may take form of reference to District Magistrate.

Livingston, p. 480.

531. On a conviction under the Indian Penal Code, section 292, 293, 501 or 502, the Court may order all the copies of the thing in respect of which the conviction was had, and which remain in the possession or power of the person convicted, to be destroyed.

Destruction of libellous and other matter.

The Court may in like manner, on a conviction under the Indian Penal Code, sections 272, 273, 274 or 275, order the food, drink drug or medical preparation in respect of which the conviction was had to be destroyed.

Act X, 1872, s. 534. Act X, 1875, s. 142. Act IV, 1877, s. 233.

532. Whenever a person is convicted of using criminal force, and it appears to the Court that, by such force, any person has been dispossessed of any immoveable property, the Court may order such person to be restored to the possession of the same.

Power to restore possession of immoveable property.

No such order shall prejudice any right or interest to or in such immoveable property which any person may be able to establish in a civil suit.

Act X, 1872, s. 415. Act IV, 1877, s. 244.

533. The seizure by any Police-officer of property alleged or suspected to have been stolen or found under circumstances which create suspicion of the commission of any offence, shall be forthwith reported to a Magistrate, who shall thereupon make such order as he thinks fit respecting the delivery of such property to its owner, or if such owner cannot be ascertained, respecting the custody and production of such property.

Procedure by Police upon seizure of stolen property.

Act X, 1872, s. 416.

If the owner of such property is known, the Magistrate shall order it to be delivered to him on such condition (if any) as the Magistrate thinks fit. If the owner of such property is unknown, the Magistrate may detain it, and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto to appear before him and establish his claim within six months from the date of such proclamation.

Procedure where owner of property seized unknown.

Act X, 1872, s. 417. Act IV, 1877, s. 244.

534. If no person within such period establishes his claim to such property, and if the person in whose possession such property was found is unable to show that it was legally acquired by him, such property shall be at the disposal of the Government, and may be sold under the orders of the Presidency Magistrate, District Magistrate or Sub-divisional Magistrate or of a Magistrate of the first class empowered by the Local Government in this behalf.

Procedure where no claimant appears within six months.

In the case of every order passed under this section, an appeal shall be allowed to the Court to which appeals against sentences of the Court passing such order would lie.

535. If the owner of such property is unknown or absent, and such property is of a perishable nature, or the Magistrate is of opinion that its sale would be for the benefit of the owner, the Magistrate may at any time direct it to be sold; and the provisions of sections 533 and 534 shall, as nearly as may be, apply to the net proceeds of such sale.

Power to sell perishable property.

CHAPTER XLVI.

OF THE TRANSFER OF CRIMINAL CASES.

Act X, 1872, s. 64. Act X, 1875, s. 147.

536. Whenever it is made to appear to the High Court—

High Court may transfer case, or itself try it.

(*a*) that a fair and impartial enquiry or trial cannot be had in any criminal Court subordinate thereto, or

(*b*) that some question of law of unusual difficulty is likely to arise, or

(*c*) that a view of the place in or near which any offence has been committed may be required for the satisfactory enquiry into or trial of the same, or

(*d*) that an order under this section will tend to the general convenience of the parties or witnesses—

it may order—

(1) that any offence be enquired into or tried by any Court not empowered under sections 175 to 182, but in other respects competent to enquire into or try such offence;

(2) that any particular criminal case or appeal, or class of such cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction, or

(3) that any particular criminal case or appeal be transferred to and tried before itself.

When the High Court withdraws for trial before itself any case from any Court other than the Court of a Presidency Magistrate, it shall except as provided in section 270, observe in such

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trial the same procedure which that Court would have observed if the case had not been so withdrawn.

I. L. R., 1 Calc. 223. Every application for the exercise of the power conferred by this section shall be made by motion which shall, except when the applicant is the Advocate General, be supported by affidavit or affirmation.

Archb. 88. When an accused person makes an application under this section, the High Court may direct him to execute a bond conditioned that he will, if convicted, pay the costs of the prosecutor.

Act IV, 1877, s. 181. Every accused person making any such application shall give to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of the application unless at least twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

Notice to Public Prosecutor of application under this section.

Act X, 1872, s. 64 A. Act XI, 1874, s. 11. **537.** Whenever it appears to the Governor General in Council that the transfer next hereinafter mentioned will promote the ends of justice or tend to the general convenience of parties or witnesses, he may, by notification in the *Gazette of India*, direct the transfer of any particular criminal case or appeal from one High Court to another High Court, or from any Criminal Court subordinate to one High Court to any other Criminal Court of equal or superior jurisdiction subordinate to another High Court.

Power of Government of India to transfer criminal cases and appeals.

The Court to which such case or appeal is transferred shall deal with the same as if it had been originally instituted in, or presented to, such Court.

Act X, 1872, s. 47. **538.** Any District Magistrate or Sub-divisional Magistrate may withdraw any case from, or recall any case which he has made over to any Magistrate subordinate to him, and may inquire into or try such case himself, or refer it for inquiry or trial to any other such Magistrate competent to inquire into or try the same.

Magistrate may withdraw or refer cases.

Act XI, 1874, s. 6.

Act X, 1872, s. 48. The Local Government may authorize the District Magistrate to withdraw from the Magistrates subordinate to him either such classes of cases as he thinks proper, or particular classes of cases.

Power to authorize District Magistrates to withdraw classes of cases.

CHAPTER XLVII.

Of irregular Proceedings.

Act X, 1872, s. 32. Nelson, p. 54. **539.** If any Magistrate empowered by law to do under certain circumstances any of the following things, namely:—

Irregularities which do not vitiate proceedings.

(*a*) to issue a search-warrant, under section 97;

(*b*) to order, under section 153, the Police to investigate an offence;

(*c*) to hold an inquest under section 174;

(*d*) to issue process, under section 184, for the apprehension of a person within the local limits of his jurisdiction who has committed an offence outside such limits; or

(*e*) to take cognizance of an offence under section 192, clause (*a*) or clause (*b*);

(*f*) to transfer a case under section 193;

(*g*) to withdraw a case and try it himself under section 538;

by mistake or accident does that thing in the absence of any of the requisite circumstances, his proceedings shall not be set aside merely on the ground of such absence.

Irregularities which vitiate proceedings. **540.** If any Magistrate, not being empowered by law in this behalf, does any of the following things (namely),— Act X, 1872, s. 34.

(*a*) passes a sentence under section 351, on proceedings recorded by another Magistrate;

(*b*) takes cognizance under section 192, clause (*c*) of an offence;

(*c*) attaches and sells property under section 86;

(*d*) tries an offender summarily;

(*e*) decides an appeal;

(*f*) calls under section 435 for proceedings;

(*g*) issues a search-warrant for a letter in the Post-office, or a telegram in the Telegraph Department;

(*h*) revises under section 526 an order passed under section 525;

(*i*) demands security to keep the peace;

(*j*) discharges bonds to keep the peace;

(*k*) demands security for good behaviour;

(*l*) discharges a person lawfully bound to be of good behaviour;

(*m*) makes an order under section 131 as to a local nuisance;

(*n*) issues an order under section 141.

(*o*) prohibits under section 142 the repetition or continuance of a public nuisance;

(*p*) makes an order under chapter XII;

(*q*) makes an order for maintenance, or

(*r*) sells property under section 534 or section 535;

his proceedings shall be void.

Proceedings in wrong place. **541.** No finding, sentence or order of any criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceeding in the course of which it was arrived at or passed, took place in a wrong Sessions Division, District Sub-division or other local area, unless it appears that some party to such proceeding was prejudiced in the conduct of his case by such error. Act X, 1872, s. 70. Act IV, 1877, s. 24.

When irregular commitments may be validated. **542.** If any Magistrate or other authority purporting to exercise powers duly conferred, but not being so conferred, commits an accused person to take his trial before a Court of Session or High Court, the Court to which the commitment is made may, after perusal of the proceedings accept the commitment if it considers that the accused has not been prejudiced, unless objection was made on behalf either of the accused or of the prosecution to the jurisdiction of such Magistrate or other authority during the inquiry and before the order of commitment. Act X, 1872, s. 33. Act X, 1872, s. 35.

If such Court considers that the accused was prejudiced, or if such objection as aforesaid was so made, it shall quash the commitment, and direct a fresh inquiry by a competent Magistrate.

Omission to ask question prescribed by section 454, clause 2. **543.** An omission to ask any person whether he is a European British subject in a case to which the second clause of section 454 applies shall not affect the validity of any proceeding.

Act X, 1872, s. 216, Expln. I. **544.** No finding or sentence pronounced or passed shall be deemed invalid merely on the ground that no charge was framed, unless, in the opinion of the Court of appeal or revision, a failure of justice has been occasioned thereby.

Effect of omission to prepare charge.

Act X, 1872, s. 216. Expln. II. If the Court of appeal or revision thinks that a failure of justice has been occasioned by an omission to frame a charge, it shall order that a charge shall be framed, and that the trial be recommenced from the point immediately after the framing of the charge.

Act X, 1872, s. 293, Explanation. **545.** If an offence triable with the aid of assessors is tried by a jury, the trial shall not on that ground be invalid.

Trial by jury of offences triable with assesors.

If an offence triable by a jury is tried with the aid of assessors, the trial shall not on that ground only be invalid, unless the objection is taken before the Court records its finding.

Trial with assessors of offences triable by jury.

Act XI, 1874, s. 41. **546.** No error or defect in any judgment shall invalidate the proceedings where such error or defect is in a matter not affecting the merits of the case.

Errors in judgment.

Act X, 1872, ss. 283, 300 11 & 12 Vic., c. 43, s. 9. Act IV, 1877, ss. 117, 177. I. L. R., 1 All. 610. **547.** Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered on appeal or revision on account of any error or omission in the complaint or summons or in the charge, or in the proceedings during trial, or any misdirection in any charge to a jury, unless such error or omission or misdirection has occasioned a failure of justice either by affecting the due conduct of the prosecution, or by injuring the accused person as to his defence on the merits.

Finding or sentence when reversible by reason of error or omission in charge or proceedings.

Act IV, 1877, ss. 31, 178. 11 Bomb. 288. Subject as last aforesaid, no irregularity in the proceedings prior to the commencement of the trial is a sufficient ground for reversing any sentence or order passed in a trial properly held.

Distress not illegal nor distrainer a trespasser for defect of form in proceedings. **548.** No distress made under this Code shall be deemed unlawful, nor shall any person making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, writ of distress or other proceedings relating thereto. Act IV, 1877, s. 185, para. 5.

CHAPTER XLVIII.

Miscellaneous.

Courts and persons before whom affidavits may be sworn. **549.** Affidavits and affirmations to be used before any High Court or any officer of such Court may be sworn and affirmed before such Court or the Clerk of the Crown, or any Commissioner or other person appointed by such Court for that purpose, or any Judge or Commissioner for taking affidavits in any Court of Record in British India, or any Commissioner to administer oaths in Chancery in England or Ireland, or any Magistrate authorized to take affidavits or affirmations in Scotland. Act X, 1875, s. 149.

Power to summon material witness, or examine person present. **550.** Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness or examine any person in attendance, though not summoned as a witness; or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person, if his evidence appears to it essential to the just decision of the case. Act X, 1872, ss. 192 & 351. Act X, 1875, s. 80. Act IV, 1877, ss. 85 & 134.

Power to order prisoner in jail to be brought up for examination. **551.** Notwithstanding anything contained in the Prisoners Testimony Act, 1869, any Presidency Magistrate desirous of examining, as a witness or accused person, in any case pending before him, any person confined in any jail within the local limits of his jurisdiction, may issue an order to the officer in charge of the said jail requiring him to bring such prisoner in proper custody, at a time to be therein named, to the Magistrate for examination. Act IV, 1877, s. 139.

The officer so in charge, on receipt of such order, shall act in accordance therewith, and shall provide for the safe custody of the prisoner during his absence from the jail for the purpose aforesaid.

Interpreter to be bound to interpret truthfully. **552.** When the services of an interpreter are required by any Criminal Court for the interpretation of any evidence or statement, he shall be bound to state the true interpretation of such evidence or statement. Act X, 1875, s. 70. Act X, 1877, s. 422.

Expenses of complainants and witnesses. **553.** Subject to any rules made by the Local Government with the previous sanction of the Governor General in Council, any Criminal Court may order payment, on the part of Government, of the reasonable expenses of any Act X, 1872, s. 421. Act X, 1875, s. 116. Act IV, 1877, s. 244.

complainant or witness attending for the purposes of any enquiry, trial or other proceeding before such Court under this Code.

Act X, 1872, s. 308. Act X, 18 75 s. 106. Act IV, 1877, s. 186.

554. Whenever a criminal Court, under any law in force for the time being, imposes a fine or confirms in appeal or revision a sentence of fine, or a sentence of which fine forms a part, the Court may order the whole or any part of the fine to be applied—

Power of Court to pay expenses or compensation out of fine.

(*a*) in defraying expenses properly incurred in the prosecution;

(*b*) in compensation for the injury caused by the offence complained of, where substantial compensation could, in the opinion of the Court, be recovered by civil suit.

If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

Act X, 1872, s. 322, para. 5. Act XI, 1874, s. 34.

555. Whenever any fine is imposed on any person for any offence, the Governor General in Council or the Local Government may (subject to the provisions of section 554) direct that the whole or any part of the fine be applied in defraying the expenses properly incurred in the prosecution.

Power of Government to pay expenses out of fine.

Act X, 1872, s. 308, last para. Act. X, 1875, s. 106, last para. 22 Suth. W R. Civil Rulings, 336.

556. At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum which may have been paid as compensation under section 554.

Payments to be taken into account in subsequent suit.

Act X, 1872, s. 276, Act XI, 1872, s. 25. Act IV, 1877, s. 170.

557. If any person affected by a judgment or order passed by a Criminal Court desires to have a copy of the Judge's charge to the jury or of any order or deposition or other part of the record, he shall, on applying for such copy, be furnished therewith: provided that he pay for the same, unless the Court, for some special reason, thinks fit to furnish it free of cost.

Copies of Proceedings.

Ben. Reg. XX of 1825.

558. When any officer or soldier or other person subject to any Act of Parliament for the time being in force for the punishment of mutiny and desertion in the army, and who is serving with any body of troops in Her Majesty's service at any place situate more than one hundred and twenty miles from the towns of Calcutta, Madras and Bombay, respectively, is accused of having committed any offence punishable under the Indian Penal Code, and which if committed in England would be punishable by the criminal law there, any Magistrate before whom such officer, soldier or other person is brought shall, unless the Governor General in Council otherwise directs, deliver him, together with a statement of the offence of which he is accused, to the commanding officer of the regiment, corps or detachment to which he belongs, or to the commanding officer of the nearest military station, for the purpose of being brought for trial before a Court-martial.

Delivery to Military authorities of persons subject to the Mutiny Act.

Every Magistrate shall, on receiving a written application for that purpose by the commanding officer of any body of troops stationed or employed at any such place, use his utmost endeavours to apprehend and secure any such officer, soldier or other person accused of an offence.

Apprehension of such persons.

Any person appointed to conduct the proceedings of a Court-martial held under any such Act may send the Magistrate within the local limits of whose jurisdiction persons required to attend before such Court-martial reside any process to compel the attendance of such persons; and the Magistrate shall aid in the execution of such process and of all other processes issued by such Courts-martial.

Enforcement of process for attendance of witnesses before Courts-martial.

Act X, 1872, s. 137.

559. Police-officers superior in rank to officers in charge of a Police-station may exercise the same powers, within the District or sub-division to which they are appointed, as may be exercised by officers in charge of Police-stations within the limits of their respective stations.

Powers of superior officers of Police.

Act IV, 1877, s. 17.

560. Upon complaint made to a Presidency Magistrate on oath of the abduction or unlawful detention of a woman, or of a female child under the age of fourteen years, for any unlawful purpose, he may make an order for the immediate restoration of such woman to her liberty, or of such female child to her husband, parent, guardian or other person having the lawful charge or government of such child, and may compel compliance with such order, using force if necessary.

Power to compel restoration of abducted females in Presidency-town.

Act IV, 1877, s. 242, omitting provision as to complaints which is provided for elsewhere.

561. Whenever any person causes a Police-officer to arrest another person in a Presidency-town, if it appears to the Magistrate by whom the case is heard that there was no sufficient ground for causing such arrest, the Magistrate may award such compensation, not exceeding fifty rupees, to be paid by the person so causing the arrest to the person so arrested for his loss of time and expenses in the matter, as the Magistrate thinks fit.

Compensation to person groundlessly given in charge in Presidency-town.

In such cases, if more persons than one are arrested or complained against, the Magistrate may, in like manner, award to each of them such compensation, not exceeding fifty rupees, as such Magistrate thinks fit.

All compensation awarded under this section may be recovered as if it were a fine, and if it cannot be so recovered, the person by whom it is payable should be imprisoned in the civil jail for such term not exceeding thirty days as the Magistrate directs, unless such sum is sooner paid.

Act X, 1827, ss. 292, 293.

562. With the previous sanction of the Local Government, every High Court not established by Royal Charter may from time to time—

Power of certain High Courts to make rules.

(*a*) make rules for keeping all books, entries and accounts to be kept in all criminal Courts subordinate to it, and for the preparation and transmission of any returns or statements to be prepared and submitted by such Courts; and

(*b*) frame forms for every proceeding in the said Courts for which it thinks that a form should be provided;

(*c*) make rules for regulating its own practice and proceedings and the practice and proceedings of all criminal Courts subordinate to it:

Provided that such rules and forms be not inconsistent with this Code or any other law in force for the time being.

All rules made under this section shall be published in the official Gazette.

563. Subject to the power conferred by section 562 and by the twenty-fourth and twenty-fifth of Victoria, chapter 104, section 15, the forms set forth in the fifth schedule hereto annexed, with such variation as the circumstances of each case require, shall be used for the respective purposes therein mentioned.

Forms.

Act X, 1872, s. 337.

564. The Local Government may determine what, for the purposes of this Code, shall be held to be the language of each Court, other than the High Court, established within the territories administered by such Government.

Power to decide language of the Court.

565. All powers conferred by this Code on the Local Government may be exercised from time to time as occasion requires.

Powers of Local Government exercisable from time to time.

Act X, 1872, ss. 3 & 539. Act IV, 1877 ss. 5 & 237.

566. The procedure prescribed by this Code shall be followed, so far as may be, in all cases pending in any criminal Court when this Code comes into force and in all miscellaneous criminal cases and proceedings instituted in any Court.

Pending cases and miscellaneous proceedings.

SCHEDULE I.

ENACTMENTS REPEALED.

(*a*).—*Statutes.*

Year, reign and chapter	Title.	Extent of repeal.
13 Geo. III, chapter 63	An Act for establishing certain Regulations for the better management of the affairs of the East India Company as well in India as in Europe	Section 38.

(*b*).—*Acts.*

Number and year.	Subject.	Extent of repeal.
XXIII of 1840 ...	Execution of process	So much as has not been repealed.
XXXIV of 1850 ...	State-Prisoners	The whole.
III of 1858 ...	State-Prisoners	So much as has not been repealed.
XLV of 1860 ...	Penal Code	The illustrations to section 214.
XVIII of 1862 ...	Criminal Procedure, Supreme Courts ...	So much as has not been repealed.
II of 1869 ...	Justices of the Peace	So much as has not been repealed.
XXII of 1870 ...	Application to European British subjects of Acts conferring summary jurisdiction.	So much as has not been repealed.
IV of 1872 ...	Panjáb Laws	So far as it relates to Bengal Regulations III of 1818 and XX of 1825.
X of 1872 ...	The Code of Criminal Procedure ...	So much as has not been repealed.
XI of 1874 ...	Amending the Code of Criminal Procedure	The whole.
XV of 1874 ...	Laws Local Extent	So far as it relates to Acts XXXIV of 1850 and III of 1858, and to Bengal Regulations III of 1818 and XX of 1825, Madras Regulation II of 1819, and Bombay Regulation XXV of 1827.
X of 1875 ...	High Courts' Criminal Procedure ...	The whole Act, except section 144 and so much of section 146 as relates to informations.
XVII of 1875 ...	Burma Courts	So much of section 98 as relates to Bengal Regulation III of 1818.
XX of 1875 ...	Central Provinces Laws	So far as relates to Bengal Regulations III of 1818 and XX of 1825.
XVIII of 1876 ...	Oudh Laws	Ditto.
IV of 1877 ...	Presidency Magistrates	The whole.

SCHEDULE I—*continued.*

ENACTMENTS REPEALED—(*continued*).

(*c*).—*Regulations.*

Number and year.	Subject.	Extent of repeal.
Bengal Regulation III of 1818.	State-Prisoners	So much as has not been repealed.
Bengal Regulation XX of 1825.	Jurisdiction of Courts Martial... ...	Ditto.
Madras Regulation II of 1819.	State-Prisoners	Ditto.
Bombay Regulation XXV of 1827.	Ditto	Ditto.
III of 1872 ...	Sontal Parganas Settlement	So far as relates to Acts XXXIV of 1850, XXXVII of 1850, III of 1858 and X of 1872, and to Bengal Regulation III of 1818.
IX of 1874 ...	Arakan Hills District Laws	So far as relates to Acts XXXIV of 1850, XXXVII of 1850, III of 1858, II of 1869, X of 1872 and XI of 1874, and to Bengal Regulation III of 1818.
II of 1877 ...	Ajmer Laws	So far as relates to Bengal Regulations III of 1818 and XX of 1825.

SCHEDULE II.

TABULAR STATEMENT OF OFFENCES.

EXPLANATORY NOTE.—The entries in the second and sixth columns of this schedule, headed respectively "Offence" and "Punishment under the Indian *Penal Code*," are not intended as definitions of the offences and punishments described in the several corresponding sections of the Indian Penal Code, or even *as abstracts* of those sections, but merely as references to the subject of the section, the number of which is given in the first column.

CHAPTER V.—OF ABETMENT.

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
109	Abetment of any offence, if the act abetted is committed in consequence, and where no express provision is made for its punishment.	May arrest without warrant, if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.	According as the offence abetted is bailable or not.	The same punishment as for the offence abetted.	By the Court by which the offence abetted is triable.
110	Abetment of any offence, if the person abetted does the act with a different intention from that of the abettor.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
	When one act is abetted and a different act is done, subject to the proviso.	Ditto ...	Ditto ...	Ditto ...	The same punishment as for the offence intended to be abetted.	Ditto.
111	When an effect is caused by the act abetted different from that intended by the abettor.	Ditto ..	Ditto ...	Ditto ...	The same punishment as for the offence committed.	Ditto.
113	If abettor is present when offence is committed.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
114	Abetment of an offence punishable with death or transportation for life, if the offence be not committed in consequence of the abetment.	Ditto ...	Ditto ...	Not bailable ...	Imprisonment of either description for 7 years and fine.	Ditto.
115	If an act which causes harm be done in consequence of the abetment.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 14 years and fine.	Ditto.
116	Abetment of an offence punishable with imprisonment, if the offence be not committed in consequence of the abetment.	Ditto ...	Ditto ...	According as the offence abetted is bailable or not.	Imprisonment extending to quarter part of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.
	If the abettor or the person abetted be a public servant whose duty it is to prevent the offence.	Ditto ...	Ditto ...	Ditto ...	Imprisonment extending to half of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.

SCHEDULE II—*continued.*

CHAPTER V.—OF ABETMENT—(*continued*).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
117	Abetting the commission of an offence by the public, or by more than ten persons.	May arrest without warrant, if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.	According as the offence abetted is bailable or not.	Imprisonment of either description for 3 years, or fine, or both.	By the Court by which the offence abetted is triable.
118	Concealing a design to commit an offence punishable with death or transportation for life, if the offence be committed.	Ditto ...	Ditto ...	Not bailable ...	Imprisonment of either description for 7 years and fine.	Ditto.
	If the offence be not committed ..	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.
119	A public servant concealing a design to commit an offence which it is his duty to prevent, if the offence be committed.	Ditto ...	Ditto ...	According as the offence abetted is bailable or not.	Imprisonment extending to half of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.
	If the offence be punishable with death or transportation.	Ditto ...	Ditto ...	Not bailable ...	Imprisonment of either description for 10 years.	Ditto.
	If the offence be not committed ...	Ditto ...	Ditto ...	According as the offence abetted is bailable or not.	Imprisonment extending to quarter part of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.
120	Concealing a design to commit an offence punishable with imprisonment, if the offence be committed.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
	If not committed	Ditto ...	Ditto ...	Ditto ...	Imprisonment extending to one-eighth part of the longest term, and of the description, provided for the offence, or fine, or both.	Ditto.

CHAPTER VI.—OFFENCES AGAINST THE STATE.

121	Waging or attempting to wage war, or abetting the waging of war, against the Queen.	Shall not arrest without warrant.	Warrant ...	Not bailable ...	Death, or transportation for life, and forfeiture of property.	Court of Session.
121A	Conspiring to commit certain offences against the State.	Ditto ...	Ditto ...	Ditto ...	Transportation for life or any shorter term, or imprisonment of either description for 10 years.	Ditto.
122	Collecting arms, &c., with the intention of waging war against the Queen.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and forfeiture of property.	Ditto.
123	Concealing with intent to facilitate a design to wage war.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
124	Assaulting Governor General, Governor, &c., with intent to compel or restrain the exercise of any lawful power.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
124A	Exciting, or attempting to excite, disaffection.	Ditto ...	Ditto ...	Ditto ...	Transportation for life or for any term and fine, or imprisonment of either description for 3 years and fine, or fine.	Ditto.
125	Waging war against any Asiatic Power in alliance or at peace with the Queen, or abetting the waging of such war.	Ditto ...	Ditto ...	Ditto ...	Transportation for life and fine, or imprisonment of either description for 7 years and fine, or fine.	Ditto.

SCHEDULE II—*continued.*

CHAPTER VI.—OFFENCES AGAINST THE STATE—(*concluded*).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
126	Committing depredation on the territories of any Power in alliance or at peace with the Queen.	Shall not arrest without warrant.	Warrant ...	Not bailable ...	Imprisonment of either description for 7 years and fine, and forfeiture of certain property.	Court of Session.
127	Receiving property taken by war or depredation mentioned in sections 125 and 126.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
128	Public servant voluntarily allowing prisoner of State or War in his custody to escape.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
129	Public servant negligently suffering prisoner of State or War in his custody to escape.	Ditto ...	Ditto ...	Bailable ...	Simple imprisonment for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
130	Aiding escape of, rescuing or harbouring, such prisoner, or offering any resistance to the recapture of such prisoner.	Ditto ...	Ditto ...	Not bailable ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.

CHAPTER VII.—OFFENCES RELATING TO THE ARMY AND NAVY.

131	Abetting mutiny, or attempting to seduce an officer, soldier or sailor from his allegiance or duty.	May arrest without warrant.	Warrant ...	Not bailable ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.
132	Abetment of mutiny, if mutiny is committed in consequence thereof.	Ditto ...	Ditto ...	Ditto ...	Death, or transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
133	Abetment of an assault by an officer, soldier or sailor on his superior officer, when in the execution of his office.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
134	Abetment of such assault, if the assault is committed.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
135	Abetment of the desertion of an officer, soldier or sailor.	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
136	Harbouring such an officer, soldier or sailor who has deserted.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
137	Deserter concealed on board merchant-vessel, through negligence of master or person in charge thereof.	Shall not arrest without warrant.	Summons ...	Ditto ...	Fine of 500 rupees ...	Ditto.
138	Abetment of act of insubordination by an officer, soldier or sailor, if the offence be committed in consequence.	May arrest without warrant.	Warrant ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Ditto.
140	Wearing the dress or carrying any token used by a soldier, with intent that it may be believed that he is such a soldier.	Ditto ...	Summons ...	Ditto ...	Imprisonment of either description for 3 months, or fine of 500 rupees, or both	Any Magistrate.

CHAPTER VIII.—OFFENCES AGAINST THE PUBLIC TRANQUILLITY.

143	Being member of an unlawful assembly...	May arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 6 months, or fine, or both.	Any Magistrate.

SCHEDULE II—*continued.*

CHAPTER VIII.—OFFENCES AGAINST THE PUBLIC TRANQUILLITY—(*continued*).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
144	Joining an unlawful assembly armed with any deadly weapon.	May arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.
145	Joining or continuing in an unlawful assembly, knowing that it has been commanded to disperse.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
147	Rioting	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
148	Rioting armed with a deadly weapon ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
149	If an offence be committed by any member of an unlawful assembly, every other member of such assembly shall be guilty of the offence.	According as arrest may be made without warrant for the offence or not.	According as a warrant or summons may issue for the offence.	According as the offence is bailable or not.	The same as for the offence ...	By the Court by which the offence is triable.
150	Hiring, engaging or employing persons to take part in an unlawful assembly.	May arrest without warrant.	According to the offence committed by the person hired, engaged or employed.	Ditto ...	The same as for a member of such assembly, and for any offence committed by any member of such assembly.	Ditto.
151	Knowingly joining or continuing in any assembly of five or more persons after it has been commanded to disperse.	Ditto ...	Summons ...	Bailable ...	Imprisonment of either description for 6 months, or fine, or both.	Any Magistrate.
152	Assaulting or obstructing public servant when suppressing riot.	Ditto ...	Warrant ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
153	Wantonly giving provocation with intent to cause riot, if rioting be committed.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Any Magistrate.
	If not committed	Ditto ...	Summons ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Ditto.
154	Owner or occupier of land not giving information of riot, &c.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Fine of 1,000 rupees	Presidency Magistrate or Magistrate of the first or second class.
155	Person for whose benefit or on whose behalf a riot takes place not using all lawful means to prevent it.	Ditto ...	Ditto ...	Ditto ...	Fine	Ditto.
156	Agent of owner or occupier for whose benefit a riot is committed not using all lawful means to prevent it.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
157	Harbouring persons hired for an unlawful assembly.	May arrest without warrant.	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Ditto.

SCHEDULE II—*continued.*

CHAPTER VIII.—OFFENCES AGAINST THE PUBLIC TRANQUILLITY—(*concluded*).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
158	Being hired to take part in an unlawful assembly or riot.	May arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 6 months, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
	Or to go armed	Ditto ...	Warrant ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
160	Committing affray	Shall not arrest without warrant.	Summons ...	Ditto ...	Imprisonment of either description for 1 month, or fine of 100 rupees, or both.	Any Magistrate.

CHAPTER IX.—OFFENCES BY OR RELATING TO PUBLIC SERVANTS.

161	Being or expecting to be a public servant, and taking a gratification other than legal remuneration in respect of an official act.	Shall not arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
162	Taking a gratification in order by corrupt or illegal means to influence a public servant.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
163	Taking a gratification for the exercise of personal influence with a public servant.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first class.

164	Abetment by public servant of the offences defined in the last two preceding clauses with reference to himself.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
165	Public servant obtaining any valuable thing, without consideration, from a person concerned in any proceeding or business transacted by such public servant.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
166	Public servant disobeying a direction of the law with intent to cause injury to any person.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 year, or fine, or both.	Ditto.
167	Public servant framing an incorrect document with intent to cause injury.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
168	Public servant unlawfully engaging in trade.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
169	Public servant unlawfully buying or bidding for property.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 2 years, or fine, or both, and confiscation of property, if purchased.	Ditto.
170	Personating a public servant ...	May arrest without warrant.	Warrant ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.

SCHEDULE II—*continued.*

CHAPTER IX.—OFFENCES BY OR RELATING TO PUBLIC SERVANTS—(*concluded*).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
171	Wearing garb or carrying token used by public servant with fraudulent intent.	May arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 3 months, or fine of 200 rupees, or both.	Any Magistrate.
	CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.					
172	Absconding to avoid service of summons or other proceeding from a public servant.	Shall not arrest without warrant.	Summons ...	Bailable ...	Simple imprisoment for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
	If summons or notice require attendance in person, &c., in a Court of justice.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
173	Preventing the service or the affixing of any summons or notice, or the removal of it when it has been affixed, or preventing a proclamation.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
	If summons, &c., require attendance in person, &c., in a Court of justice.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
174	Not obeying a legal order to attend at a certain place in person or by agent, or departing therefrom without authority.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
	If the order require personal attendance, &c., in a Court of justice.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
175	Intentionally omitting to produce a document to a public servant by a person legally bound to produce or deliver such document.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Court in which the offence is committed, subject to the provisions of chapter XXXVI or, if not committed in a Court, a Presidency Magistrate or Magistrate of the first or second class.
	If the document is required to be produced in or delivered to a Court of justice.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
176	Intentionally omitting to give notice or information to a public servant by a person legally bound to give such notice or information.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
	If the notice or information required respects the commission of an offence, &c.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
177	Knowingly furnishing false information to a public servant.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
	If the information required respects the commission of an offence, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.

SCHEDULE II—*continued.*

CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS—(*continued*).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
178	Refusing oath when duly required to take oath by a public servant.	Shall not arrest without warrant.	Summons ...	Bailable ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Court in which the offence is committed, subject to the provisions of chapter XXXVI of this Code, or, if not committed in a Court, a Presidency Magistrate or Magistrate of the first or second class.
179	Being legally bound to state truth, and refusing to answer questions.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
180	Refusing to sign a statement made to a public servant when legally required to do so.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 3 months, or fine of 500 rupees, or both.	Ditto.
181	Knowingly stating to a public servant on oath as true that which is false.	Ditto ...	Warrant ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.

182	Giving false information to a public servant in order to cause him to use his lawful power to the injury or annoyance of any person.	Ditto ...	Summons ...	Ditto ...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
183	Resistance to the taking of property by the lawful authority of a public servant.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
184	Obstructing sale of property offered for sale by authority of a public servant.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 month, or fine of 500 rupees, or both.	Ditto.
185	Bidding by a person under a legal incapacity to purchase it for property at a lawfully authorized sale, or bidding without intending to perform the obligations incurred thereby.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description of 1 month, or fine of 200 rupees, or both.	Ditto.
186	Obstructing public servant in discharge of his public functions.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Ditto.
187	Omission to assist public servant when bound by law to give such assistance.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Ditto.
	Wilfully neglecting to aid a public servant who demands aid in the execution of process, the prevention of offences, &c.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 500 rupees, or both.	Ditto.
188	Disobedience to an order lawfully promulgated by a public servant, if such disobedience causes obstruction or annoyance or injury to persons lawfully employed.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Ditto.
	If such disobedience causes danger to human life, health or safety, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.

SCHEDULE II—*continued.*

CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS—(*concluded*).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
189	Threatening a public servant with injury to him, or one in whom he is interested, to induce him to do or forbear to do any official act.	Shall not arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
190	Threatening any person to induce him to refrain from making a legal application for protection from injury.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Ditto.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.

193	Giving or fabricating false evidence in a judicial proceeding.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	Giving or fabricating false evidence in any other case.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.
194	Giving or fabricating false evidence with intent to cause any person to be convicted of a capital offence.	Ditto ...	Ditto ...	Not bailable ...	Transportation for life, or rigorous imprisonment for 10 years and fine.	Court of Session.
	If innocent person be thereby convicted and executed.	Ditto ...	Ditto ...	Ditto ...	Death, or as above ...	Ditto.
195	Giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation or imprisonment for more than seven years.	Ditto ...	Ditto ...	Ditto ...	The same as for the offence ...	Ditto.
196	Using in a judicial proceeding evidence known to be false or fabricated.	Ditto ...	Ditto ...	According as the offence of giving such evidence is bailable or not.	The same as for giving or fabricating false evidence.	Court of Session, Presidency Magistrate or Magistrate of the first class.
197	Knowingly issuing or signing a false certificate relating to any fact of which such certificate is by law admissible in evidence.	Ditto ...	Ditto ...	Bailable ...	The same as for giving false evidence	Ditto.
198	Using as a true certificate one known to be false in a material point.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
199	False statement made in any declaration which is by law received as evidence.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
200	Using as true any such declaration known to be false.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
201	Causing disappearance of evidence of an offence committed, or giving false information touching it to screen the offender, if a capital offence.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
	If punishable with transportation or imprisonment for ten years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.

SCHEDULE II—*continued.*

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—(*continued*).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
	If punishable with less than 10 years' imprisonment.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment for quarter of the longest term, and of the description, provided for the offence, or fine, or both.	By a Presidency Magistrate or Magistrate of the first class, or by the Court by which the offence is triable.
202	Intentional omission to give information of an offence by a person legally bound to inform.	Ditto ...	Summons ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
203	Giving false information respecting an offence committed.	Ditto ...	Warrant ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
204	Secreting or destroying any document to prevent its production as evidence.	Ditto ...	Ditto ...	Ditto ...	Ditto	Presidency Magistrate or Magistrate of the first class.
205	False personation for the purpose of any act or proceeding in a suit or criminal prosecution, or for becoming bail or security.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
206	Fraudulent removal or concealment, &c., of property to prevent its seizure as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
207	Claiming property without right, or practising deception touching any right to it, to prevent its being taken as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
208	Fraudulently suffering a decree to pass for a sum not due, or suffering decree to be executed after it has been satisfied.	Ditto ...	Ditto ...	Ditto ...	Ditto	Presidency Magistrate or Magistrate of the first class.
209	False claim in a Court of justice ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years and fine.	Ditto.
210	Fradulently obtaining a decree for a sum not due, or causing a decree to be executed after it has been satisfied.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
211	False cnarge of offence made with intent to injure.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
	If offence charged be capital, or punishable with transportation for life, or imprisonment for 7 years or upwards.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
212	Harbouring an offender, if the offence be capital.	May arrest without warrant.	Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.

SCHEDULE II—*continued.*

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—(*continued*).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
	If punishable with transportation for life, or with imprisonment for 10 years.	May arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If punishable with imprisonment for 1 year and not for 10 years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment for quarter of the longest term, and of the description, provided for the offence, or fine, or both.	By a Presidency Magistrate or Magistrate of the first class, or by the Court by which the offence is triable.
213	Taking gift, &c., to screen an offender from punishment, if the offence be capital.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
	If punishable with transportation for life or with imprisonment for 10 years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If with imprisonment for less than 10 years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment for quarter of the longest term, and of the description, provided for the offence, or fine, or both.	By a Presidency Magistrate or Magistrate of the first class, or by the Court by which the offence is triable.
214	Gift made to cause restoration of property in consideration of screening offender, if the offence be capital.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
	If punishable with transportation for life, or with imprisonment for 10 years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If with imprisonment for less than 10 years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment for quarter of the longest term, and of the description, provided for the offence, or fine, or both.	By a Presidency Magistrate or Magistrate of the first class, or by the Court by which the offence is triable.
215	Taking gift to help to recover movable property of which a person has been deprived by an offence, without causing apprehension of offender.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years or fine, or both.	Presidency Magistrate or Magistrate of the first class.
216	Harbouring an offender who has escaped from custody, or whose apprehension has been ordered, if the offence be capital.	May arrest without warrant.	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If punishable with transportation for life, or with imprisonment for 10 years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.
	If with imprisonment for 1 year, and not for 10 years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment for quarter of the longest term, and of the description, provided for the offence, or fine, or both.	By a Presidency Magistrate or Magistrate of the first class, or by the Court by which the offence is triable.

SCHEDULE II—*continued.*

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—(*continued*).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
217	Public servant disobeying a direction of law with intent to save persons from punishment, or property from forfeiture.	Shall not arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
218	Public servant framing an incorrect record or writing with intent to save person from punishment, or property from forfeiture.	Ditto ...	Warrant ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session.
219	Public servant in a judicial proceeding making and pronouncing an order, report, verdict or decision which he knows to be contrary to law.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Ditto.
220	Commitment for trial or confinement by a person having authority, who knows that he is acting contrary to law.	Ditto ...	Ditto ...	Ditto ...	Ditto ditto ditto ...	Ditto.
221	Intentional omission to apprehend on the part of a public servant bound by law to apprehend an offender, if the offence be capital.	Ditto ..	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, with or without fine.	Ditto.
	If punishable with transportation for life, or imprisonment for 10 years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, with or without fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If with imprisonment for less than 10 years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, with or without fine.	Presidency Magistrate or Magistrate of the first or second class.
222	Intentional omission to apprehend on the part of a public servant bound by law to apprehend person under sentence of a Court of justice, if under sentence of death.	Ditto ...	Ditto ...	Not bailable ...	Transportation for life, or imprisonment of either description for 14 years, with or without fine.	Court of Session.
	If under sentence of transportation for life, or imprisonment or penal servitude for 10 years or upwards.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, with or without fine.	Ditto.
	If under sentence of imprisonment for less than 10 years.	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
223	Escape from confinement negligently suffered by a public servant.	Ditto ...	Summons ...	Ditto ...	Simple imprisonment for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
224	Resistance or obstruction by a person to his lawful apprehension.	May arrest without warrant.	Warrant ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
225	Resistance or obstruction to the lawful apprehension of another person, or rescuing him from lawful custody.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

SCHEDULE II—*continued.*

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—(*concluded*).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
	If charged with an offence punishable with transportation for life, or imprisonment for 10 years.	May arrest without warrant.	Warrant ...	Not bailable ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If charged with a capital offence ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, or fine.	Court of Session.
	If the person is sentenced to transportation for life, or to transportation, penal servitude or imprisonment for 10 years or upwards.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
	If under sentence of death	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
225A	Escape, or attempt to escape, from custody for failing to furnish security for good behaviour.	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for one year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
226	Unlawful return from transportation ...	Ditto ...	Ditto ...	Not bailable ...	Transportation for life, and fine and rigorous imprisonment for 3 years before transportation.	Court of Session.
227	Violation of condition of remission of punishment.	Shall not arrest without warrant.	Summons ...	Ditto ...	Punishment of original sentence, or if part of the punishment has been undergone, the residue.	By the Court by which the original offence was triable.
228	Intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding.	Ditto ...	Ditto ...	Bailable ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Court in which the offence is committed, subject to the provisions contained in chapter XXXVI of this Code.
229	Personation of a juror or assessor ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first class.

CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.

231	Counterfeiting, or performing any part of the process of counterfeiting, coin.	May arrest without warrant.	Warrant ...	Not bailable ...	Imprisonment of either description for 7 years and fine.	Court of Session.
232	Counterfeiting, or performing any part of the process of counterfeiting, the Queen's coin.	Ditto ...	Ditto ...	Ditto ...	Transportation for life or imprisonment of either description for 10 years and fine.	Ditto ...
233	Making, buying or selling instrument for the purpose of counterfeiting coin.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
234	Making, buying or selling instrument for the purpose of counterfeiting the Queen's coin.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.

SCHEDULE II—*continued.*

CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS—(*continued*).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
235	Possession of instrument or material for the purpose of using the same for counterfeiting coin.	May arrest without warrant.	Warrant ...	Not bailable ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If Queen's coin	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Court of Session.
236	Abetting in India the counterfeiting out of British India of coin.	Ditto ...	Ditto ...	Ditto ...	The punishment provided for abetting the counterfeiting of such coin within British India.	Ditto.
237	Import or export of counterfeit coin, knowing the same to be counterfeit.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
238	Import or export of counterfeits of the Queen's coin, knowing the same to be counterfeit.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.
239	Having any counterfeit coin known to be such when it came into possession, and delivering, &c., the same to any person.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
240	The same with respect to the Queen's coin.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
241	Knowingly delivering to another any counterfeit coin as genuine which, when first possessed, the deliverer did not know to be counterfeit.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine of ten times the value of the coin counterfeited, or both.	Presidency Magistrate or Magistrate of the first or second class.
242	Possession of counterfeit coin by a person who knew it to be counterfeit when he became possessed thereof.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
243	Possession of Queen's coin by a person who knew it to be counterfeit when he became possessed thereof.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
244	Persons employed in a Mint causing coin to be of a different weight or composition from that fixed by law.	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session.
245	Unlawfully taking from a Mint any coining instrument.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
246	Fraudulently diminishing the weight or altering the composition of any coin.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
247	Fraudulently diminishing the weight or altering the composition of the Queen's coin.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
248	Altering appearance of any coin with intent that it shall pass as a coin of a different description.	Ditto ...	Ditto ..	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.

SCHEDULE II—*continued.*

CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS—(*concluded*).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
249	Altering appearance of the Queen's coin with intent that it shall pass as a coin of a different description ...	May arrest without warrant.	Warrant ...	Not bailable ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
250	Delivery to another of coin possessed with the knowledge that it is altered ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Ditto.
251	Delivery of Queen's coin possessed with the knowledge that it is altered ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
252	Possession of altered coin by a person who knew it to be altered when he became possessed thereof ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.
253	Possession of Queen's coin by a person who knew it to be altered when he became possessed thereof ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Ditto.
254	Delivery to another of coin as genuine which, when first possessed, the deliverer did not know to be altered ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine of ten times the value of the coin.	Presidency Magistrate or Magistrate of the first or second class.
255	Counterfeiting a Government stamp ...	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for 10 years and fine.	Court of Session.
256	Having possession of an instrument or material for the purpose of counterfeiting a Government stamp ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years.	Ditto.
257	Making, buying or selling instrument for the purpose of counterfeiting a Government stamp.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
258	Sale of counterfeit Government stamp ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
259	Having possession of a counterfeit Government stamp.	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session, Presidency Magistrate or Magistrate of the first class.
260	Using as genuine a Government stamp known to be counterfeit.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Ditto.
261	Effacing any writing from a substance bearing a Government stamp, or removing from a document a stamp used for it with intent to cause wrongful loss to Government	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Ditto.
262	Using a Government stamp known to have been before used.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
263	Erasure of mark denoting that stamp has been used.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.

CHAPTER XIII.—OFFENCES RELATING TO WEIGHTS AND MEASURES.

264	Fraudulent use of false instrument for weighing.	Shall not arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

SCHEDULE II—*continued.*

CHAPTER XIII.—OFFENCES RELATING TO WEIGHTS AND MEASURES—(*concluded*).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
	Fraudulent use of false weight or measure	Shall not arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
266	Being in possession of false weights or measures for fraudulent use.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
267	Making or selling false weights or measures for fraudulent use.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
	CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS.					
269	Negligently doing any act known to be likely to spread infection of any disease dangerous to life.	May arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 6 months, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
270	Malignantly doing any act known to be likely to spread infection of any disease dangerous to life.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
271	Knowingly disobeying any quarantine rule	Shall not arrest without warrant.	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Ditto.
272	Adulterating food or drink for man, intended for sale, so as to make the same noxious.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Ditto.
273	Selling any food or drink as food and drink for man knowing the same to be noxious.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
274	Adulterating any drug or medical preparation intended for sale so as to lessen its efficacy, or to change its operation, or to make it noxious.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
275	Offering for sale or issuing from a dispensary any drug or medical preparation known to have been adulterated.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
276	Knowingly selling or issuing from a dispensary any drug or medical preparation as a different drug or medical preparation.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
277	Defiling the water of a public spring or reservoir.	May arrest without warrant.	Ditto ...	Ditto ...	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.
278	Making atmosphere noxious to health ...	Shall not arrest without warrant.	Ditto ...	Ditto ...	Fine of 500 rupees	Ditto.
279	Driving or riding on a public way so rashly or negligently as to endanger human life, &c.	May arrest without warrant.	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Ditto.
280	Navigating any vessel so rashly or negligently as to endanger human life, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto	Presidency Magistrate or Magistrate of the first or second class.
281	Exhibition of a false light, mark or buoy	Ditto ...	Warrant ...	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Court of Session.

SCHEDULE II—*continued.*

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE DECENCY AND MORALS—(*concluded*).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
282	Conveying for hire any person by water, in a vessel in such a state, or so loaded, as to endanger his life ...	May arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
283	Causing danger, obstruction or injury in any public way or line of navigation.	Ditto ...	Ditto ...	Ditto ...	Fine of 200 rupees ...	Ditto.
284	Dealing with any poisonous substance so as to endanger human life, &c.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Ditto.
285	Dealing with fire or any combustible matter so as to endanger human life, &c.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto	Any Magistrate.
286	So dealing with any explosive substance...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
287	So dealing with any machinery ...	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto	Presidency Magistrate or Magistrate of the first or second class.
288	A person omitting to guard against probable danger to human life by the fall of any building over which he has a right entitling him to pull it down or repair it.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
289	A person omitting to take order with any animal in his possession, so as to guard against danger to human life, or of grievous hurt from such animal.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto	Any Magistrate.
290	Committing a public nuisance ...	Shall not arrest without warrant.	Ditto ...	Ditto ...	Fine of 200 rupees	Ditto.
291	Continuance of nuisance after injunction to discontinue.	May arrest without warrant.	Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
292	Sale, &c., of obscene books, &c. ...	Ditto ...	Warrant ...	Ditto ...	Imprisonment of either description for 3 months, or fine, or both.	Ditto.
293	Having in possession obscene book, &c., for sale or exhibition.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
294	Obscene songs	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
295A	Keeping a lottery-office	Shall not arrest without warrant.	Summons ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Any Magistrate.
	Publishing proposals relating to lotteries	Ditto ...	Ditto ...	Ditto ...	Fine of 1,000 rupees	Ditto.

CHAPTER XV.—OFFENCES RELATING TO RELIGION.

295	Destroying, damaging, or defiling a place of worship or sacred object with intent to insult the religion of any class of persons.	May arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

SCHEDULE II—*continued.*

CHAPTER XV.—OFFENCES RELATING TO RELIGION—(*concluded*).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
296	Causing a disturbance to an assembly engaged in religious worship.	May arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
297	Trespassing in a place of worship or sepulchre, disturbing funeral with intention to wound the feelings or to insult the religion of any person, or offering indignity to a human corpse.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
298	Uttering any word or making any sound in the hearing, or making any gesture, or placing any object in the sight, of any person, with intention to wound his religious feeling.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto	Ditto.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.

Offences affecting Life.

302	Murder	May arrest without warrant.	Warrant ...	Not bailable ...	Death, transportation for life and fine	Court of Session.
303	Murder by a person under sentence of transportation for life.	Ditto ...	Ditto ...	Ditto ...	Death	Ditto.
304	Culpable homicide not amounting to murder, if act by which the death is caused is done with intention of causing death, &c.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
	If act is done with knowledge that it is likely to cause death, but without any intention to cause death, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years, or fine, or both.	Ditto.
304A	Causing death by rash or negligent act ...	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for two years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
305	Abetment of suicide committed by a child, or insane or delirious person, or an idiot, or a person intoxicated.	Ditto ...	Ditto ...	Not bailable ...	Death, or transportation for life, or imprisonment for 10 years and fine.	Court of Session.
306	Abetting the commission of suicide ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
307	Attempt to murder ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
	If such act cause hurt to any person ...	Ditto ...	Ditto ...	Ditt ...	Transportation for life, or as above...	Ditto.
308	Attempt to commit culpable homicide ...	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for 3 years, or fine, or both.	Ditto.
	If such act cause hurt to any person ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Ditto.
309	Attempt to commit suicide ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for one year and fine.	Presidency Magistrate or Magistrate of the first or second class.
311	Being a thug ...	Ditto ...	Ditto ...	Not bailable ...	Transportation for life and fine ...	Court of Session.

SCHEDULE II—*continued.*

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—(*continued*).

Of the Causing of Miscarriage; of Injuries to Unborn Children; of the Exposure of Infants; and of the Concealment of Births.

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
312	Causing miscarriage	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session.
	If the woman be quick with child ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
313	Causing miscarriage without woman's consent.	Ditto ...	Ditto ...	Not bailable ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
314	Death caused by an act done with intent to cause miscarriage.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
	If act done without woman's consent ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or as above.	Ditto.
315	Act done with intent to prevent a child being borne alive, or to cause it to die after its birth.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years, or fine, or both.	Ditto.
316	Causing death of a quick unborn child by an act amounting to culpable homicide.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
317	Exposure of a child under 12 years of age by parent or person having care of it, with intention of wholly abandoning it.	May arrest without warrant.	Ditto ...	Bailable ...	Imprisonment of either description for 7 years, or fine, or both.	Ditto.
318	Concealment of birth by secret disposal of dead body.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
	Of Hurt.					
323	Voluntarily causing hurt	* May arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Any Magistrate.
324	Voluntarily causing hurt by dangerous weapons or means.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
325	Voluntarily causing grievous hurt ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
326	Voluntarily causing grievous hurt by dangerous weapons or means.	Ditto ...	Ditto ...	Not bailable ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
327	Voluntarily causing hurt to extort property or a valuable security, or to constrain to do an illegal act which may facilitate the commission of an offence.	Ditto ...	Warrant ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Court of Session.
328	Administering stupefying drug with intent to cause hurt.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

* See Act XI of 1874, section 46.

SCHEDULE II—*continued.*

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—(*continued*).

Of Hurt—concluded.

1 Section.	2 Offence.	3 Where the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
329	Voluntarily causing grievous hurt to extort property or a valuable security, or to constrain to do an illegal act which may facilitate the commission of an offence.	May arrest without warrant.	Warrant ...	Not bailable ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.
330	Voluntarily causing hurt to extort confession or information, or to compel restoration of property, &c.	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for 7 years and fine.	Ditto.
331	Voluntarily causing grievous hurt to extort confession or information, or to compel restoration of property, &c.	Ditto ...	Ditto ...	Not bailable ...	Imprisonment of either description for 10 years and fine.	Ditto.
332	Voluntarily causing hurt to deter public servant from his duty.	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
333	Voluntarily causing grievous hurt to deter public servant from his duty.	Ditto ...	Ditto ...	Not bailable ...	Imprisonment of either description for 10 years and fine.	Court of Session.
334	Voluntarily causing hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.	Ditto ...	Summons ...	Bailable ...	Imprisonment of either description for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
335	Causing grievous hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 4 years, or fine of 2,000 rupees, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
336	Doing any act which endangers human life or the personal safety of others ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 months, or fine of 250 rupees, or both.	Any Magistrate.
337	Causing hurt by an act which endangers human life, &c. ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine of 500 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
338	Causing grievous hurt by an act which endangers human life, &c. ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine of 1,000 rupees, or both.	Ditto.
	Of wrongful Restraint and wrongful Confinement.					
341	Wrongfully restraining any person ...	May arrest without warrant.	Summons ...	Bailable ...	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
342	Wrongfully confining any person ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
343	Wrongfully confining for three or more days ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.

SCHEDULE II—*continued.*

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—(*continued*).

Of wrongful Restraint and wrongful Confinement—(concluded).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
344	Wrongfully confining for ten or more days.	May arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
345	Keeping any person in wrongful confinement, knowing that a writ has been issued for his liberation.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, in addition to imprisonment under any other section.	Ditto.
346	Wrongful confinement in secret ...	May arrest without warrant.	Ditto ...	Ditto ...	Ditto	Ditto.
347	Wrongful confinement for the purpose of extorting property, or constraining to an illegal act, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.
348	Wrongful confinement for the purpose of extorting confession or information, or of compelling restoration of property, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto Ditto ...	Court of Session, Presidency Magistrate or Magistrate of the first class.

Of Criminal Force and Assault.

352	Assault or use of criminal force otherwise than on grave provocation.	Shall not arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.
353	Assault or use of criminal force to deter a public servant from discharge of his duty.	May arrest without warrant.	Warrant ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
354	Assault or use of criminal force to a woman with intent to outrage her modesty.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
355	Assault or criminal force with intent to dishonour a person, otherwise than on grave and sudden provocation.	Shall not arrest without warrant.	Summons ...	Ditto ...	Ditto	Ditto.
356	Assault or criminal force in attempt to commit theft of property worn or carried by a person.	May arrest without warrant.	Warrant ...	Not bailable ...	Ditto	Any Magistrate.
357	Assault or use of criminal force in attempt wrongfully to confine a person.	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Ditto.
358	Assault or use of criminal force on grave and sudden provocation.	Shall not arrest without warrant.	Summons ...	Ditto ...	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Ditto.

Of Kidnapping, Forcible Abduction, Slavery and forced Labour.

363	Kidnapping	May arrest without warrant.	Warrant ...	Not bailable ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.

SCHEDULE II—*continued.*

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—(*concluded*).

Of Kidnapping, Forcible Abduction, Slavery and forced Labour—(concluded).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
364	Kidnapping or abducting in order to murder.	May arrest without warrant.	Warrant ...	Not bailable ...	Transportation for life, or rigorous imprisonment for 10 years and fine.	Court of Session.
365	Kidnapping or abducting with intent secretly and wrongfully to confine a person.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
366	Kidnapping or abducting a woman to compel her marriage or to cause her defilement, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
367	Kidnapping or abducting in order to subject a person to grievous hurt, slavery, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
368	Concealing or keeping in confinement a kidnapped person.	Ditto ...	Ditto ...	Ditto ...	Punishment for kidnapping or abduction.	Ditto.
369	Kidnapping or abducting a child with intent to take property from the person of such child.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
370	Buying or disposing of any person as a slave.	Shall not arrest without warrant.	Ditto ...	Bailable ...	Ditto	Ditto.
371	Habitual dealing in slaves	May arrest without warrant.	Ditto ...	Not bailable ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.

372	Selling or letting to hire minor for the purpose of prostitution ..	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
373	Buying or obtaining possession of a minor for the same purpose ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
374	Unlawful compulsory labour ...	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for 1 year, or fine, or both.	Any Magistrate.
	Of Rape.					
376	Rape	May arrest without warrant.	Warrant ...	Not bailable ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.
	Of Unnatural Offences.					
377	Unnatural offences	May arrest without warrant.	Warrant ...	Not bailable ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.
	CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY.					
	Of Theft.					
379	Theft	May arrest without warrant.	Warrant ...	Not bailable ...	Imprisonment of either description for 3 years, or fine, or both.	Any Magistrate.
380	Theft in a building, tent or vessel ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.

SCHEDULE II—*continued.*

CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY—(*continued*).

Of Theft—(concluded).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
381	Theft by clerk or servant of property in possession of master or employer.	May arrest without warrant.	Warrant ...	Not bailable ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
382	Theft, preparation having been made for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, in order to the committing such theft or to retiring after committing it, or to retaining property taken by it.	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for 10 years and fine.	Court of Session.
	Of Extortion.					
384	Extortion	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
385	Putting or attempting to put in fear of injury, in order to commit extortion.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
386	Extortion by putting a person in fear of death or grievous hurt.	Ditto ...	Ditto ...	Not bailable ...	Imprisonment of either description for 10 years and fine.	Court of Session
387	Putting or attempting to put a person in fear of death or grievous hurt, in order to commit extortion.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
388	Extortion by threat of accusation of an offence punishable with death, transportation for life, or imprisonment for 10 years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
	If the offence threatened be an unnatural offence.	Ditto ...	Ditto ...	Ditto ...	Transportation for life	Ditto.
389	Putting a person in fear of accusation of offence punishable with death, transportation for life, or with imprisonment for 10 years, in order to commit extortion.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
	If the offence be an unnatural offence ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life	Ditto.
	Of Robbery and Dacoity.					
392	Robbery	May arrest without warrant.	Warrant ...	Not bailable ...	Rigorous imprisonment for 10 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If committed on the highway between sunset and sunrise.	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for 14 years and fine.	Ditto.
393	Attempt to commit robbery ...	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for 7 years and fine.	Ditto.

SCHEDULE II—*continued.*

CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY—(*continued*).

Of Robbery and Dacoity—(concluded).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
394	Person voluntarily causing hurt in committing or attempting to commit robbery, or any other person generally concerned in such robbery.	May arrest without warrant.	Warrant ...	Not bailable ...	Transportation for life, or rigorous imprisonment for 10 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
395	Dacoity	Ditto ..	Ditto ...	Ditto ...	Ditto	Court of Session
396	Murder in dacoity	Ditto ...	Ditto ...	Ditto ...	Death, transportation for life, or rigorous imprisonment for 10 years and fine.	Ditto.
397	Robbery or dacoity with attempt to cause death or grievous hurt.	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for not less than 7 years.	Ditto.
398	Attempt to commit robbery or dacoity when armed with deadly weapon.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
399	Making preparation to commit dacoity ...	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for 10 years and fine.	Ditto.
400	Belonging to a gang of persons associated for the purpose of habitually committing dacoity.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or as above...	Ditto.
401	Belonging to a wandering gang of persons associated for the purpose of habitually committing thefts.	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for 7 years and fine.	Ditto.
	Being one of five or more persons assembled for the purpose of committing dacoity.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
	Of Criminal Misappropriation of Property.					
403	Dishonest misappropriation of movable property, or converting it to one's own use.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.
404	Dishonest misappropriation of property, knowing that it was in possession of a deceased person at his death, and that it has not since been in the possession of any person legally entitled to it.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
	If by clerk or person employed by deceased	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
	Of Criminal Breach of Trust.					
406	Criminal breach of trust	May arrest without warrant.	Warrant ...	Not bailable ...	Imprisonment of either description for 3 years, or fine, or both ...	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
407	Criminal breach of trust by a carrier, wharfinger, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.

SCHEDULE II—*continued.*

CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY—(*continued*).

Of Criminal Breach of Trust—(concluded).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
408	Criminal breach of trust by a clerk or servant.	May arrest without warrant.	Warrant ...	Not bailable ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
409	Criminal breach of trust by public servant or by banker, merchant or agent, &c.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.

Of the Receiving of Stolen Property.

411	Dishonestly receiving stolen property, knowing it to be stolen.	May arrest without warrant.	Warrant ...	Not bailable ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
412	Dishonestly receiving stolen property, knowing that it was obtained by dacoity.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or rigorous imprisonment for 10 years and fine.	Court of Session.
413	Habitually dealing in stolen property ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
414	Assisting in concealment or disposal of stolen property, knowing it to be stolen.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.

Of Cheating.

417	Cheating	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
418	Cheating a person whose interest the offender was bound, either by law or by legal contract, to protect.	Ditto ...	Ditto ...	Ditto ..	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
419	Cheating by personation	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
420	Cheating and thereby dishonestly inducing delivery of property, or the alteration or destruction of a valuable security.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.

SCHEDULE II—*continued.*

CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY—(*continued*).

Of Fraudulent Deeds and Dispositions of Property.

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
421	Fraudulent removal or concealment of property, &c., to prevent distribution among creditors.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
422	Fraudulently preventing from being made available for his creditors a debt or demand due to the offender.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
423	Fraudulent execution of deed of transfer containing a false statement of consideration.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
424	Fraudulent removal or concealment of property of himself or any other person, or assisting in the doing thereof, or dishonestly releasing any demand or claim to which he is entitled.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
	Of Mischief.					
426	Mischief	Shall not arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 3 months, or fine, or both.	Any Magistrate.
427	Mischief, and thereby causing damage to the amount of 50 rupees or upwards.	Ditto ...	Warrant ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
428	Mischief by killing, poisoning, maiming or rendering useless any animal of the value of 10 rupees or upwards.	* May arrest without warrant.	Ditto ...	Ditto ...	Ditto	Ditto.
429	Mischief by killing, poisoning, maiming or rendering useless any elephant, camel, horse, &c., whatever may be its value, or any other animal of the value of 50 rupees or upwards.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 5 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
430	Mischief by causing diminution of supply of water for agricultural purposes, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
431	Mischief by injury to public road, bridge, river or navigable channel, and rendering it impassable or less safe for travelling or conveying property.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
432	Mischief by causing inundation or obstruction to public drainage attended with damage.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
433	Mischief by destroying or moving or rendering less useful a light-house or sea-mark, or by exhibiting false lights.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Court of Session.

SCHEDULE II—*continued.*

CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY—(*continued*).

Of Mischief—(concluded).

Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
434	Mischief by destroying or moving, &c., a landmark fixed by public authority.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
435	Mischief by fire or explosive substance, with intent to cause damage to amount of 100 rupees or upwards.	May arrest without warrant.	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
436	Mischief by fire or explosive substance with intent to destroy a house, &c.	Ditto ...	Ditto ...	Not bailable ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
437	Mischief with intent to destroy or make unsafe a decked vessel or a vessel of 20 tons burden.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
438	The mischief described in the last section when committed by fire or any explosive substance.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
439	Running vessel ashore with intent to commit theft, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
440	Mischief committed after preparation made for causing death or hurt, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Ditto.

Of Criminal Trespass.

447	Criminal trespass	May arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.
448	House-trespass	Ditto ...	Warrant ...	Ditto ...	Imprisonment of either description for 1 year, or fine of 1,000 rupees or both.	Ditto.
449	House-trespass in order to the commission of an offence punishable with death.	Ditto ...	Ditto ...	Not bailable ...	Transportation for life, or rigorous imprisonment for 10 years and fine.	Court of Session.
450	House-trespass in order to the commission of an offence punishable with transportation for life.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
451	House-trespass in order to the commission of an offence punishable with imprisonment.	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for 2 years and fine.	Any Magistrate.
	If the offence is theft	Ditto ...	Ditto ...	Not bailable ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
452	House-trespass, having made preparation for causing hurt, assault, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
453	Lurking house-trespass or house-breaking	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years and fine.	Presidency Magistrate or Magistrate of the first or second class.

SCHEDULE II—*continued*.

CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY—(*concluded*).

Of Criminal Trespass—(concluded).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
454	Lurking house-trespass or house-breaking in order to the commission of an offence punishable with imprisonment.	May arrest without warrant.	Warrant ...	Not bailable ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
	If the offence is theft	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
455	Lurking house-trespass or house-breaking after preparation made for causing hurt, assault, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session, Presidency Magistrate or Magistrate of the first class.
456	Lurking house-trespass or house-breaking by night.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for three years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
457	Lurking house-trespasss or house-breaking by night in order to the commission of an offence punishable with imprisonment.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for five years and fine.	Ditto.
	If the offence is theft	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 14 years and fine.	Ditto.
458	Lurking house-trespass or house-breaking by night, after preparation made for causing hurt, &c. ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session, Presidency Magistrate or Magistrate of the first class.
459	Grievous hurt caused whilst committing lurking house-trespass or house-breaking	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.
460	Death or grievous hurt caused by one of several persons jointly concerned in house-breaking by night, &c. ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
461	Dishonestly breaking open or unfastening any closed receptacle containing or supposed to contain property ...	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
462	Being entrusted with any closed receptacle containing or supposed to contain any property, and fraudulently opening the same ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.

CHAPTER XVIII.—OF OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY-MARKS.

465	Forgery	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for 2 years, or fine, or both.	Court of Session.

SCHEDULE II—*continued.*

CHAPTER XVIII.—OF OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY-MARKS—(*continued*)

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
466	Forgery of a record of a Court of justice or of a Register of births, &c., kept by a public servant.	Shall not arrest without warrant.	Warrant ...	Not bailable ...	Imprisonment of either description for 7 years and fine.	Court of Session.
467	Forgery of a valuable security, will, or authority to make or transfer any public security, or to receive any money, &c.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
	When the valuable security is a promissory note of the Government of India.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Ditto.
468	Forgery for the purpose of cheating ...	Shall not arrest without warrant.	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
469	Forgery for the purpose of harming the reputation of any person, or knowing that it is likely to be used for that purpose.	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for 3 years and fine.	Ditto.
471	Using as genuine a forged document which is known to be forged.	Ditto ...	Ditto ...	Ditto ...	Punishment for forgery ...	Ditto.
	When the forged document is a promissory note of the Government of India.	May arrest without warrant.	Ditto ...	Not bailable ...	Ditto ...	Ditto.
472	Making or counterfeiting a seal, plate, &c., with intent to commit a forgery punishable under section 467 of the Indian Penal Code, or possessing with like intent any such seal, plate, &c., knowing the same to be counterfeit.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 7 years and fine.	Ditto.
473	Making or counterfeiting a seal, plate, &c., with intent to commit a forgery punishable otherwise than under section 467 of the Indian Penal Code, or possessing with like intent any such seal, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto. ...
474	Having possession of a document, knowing it to be forged, with intent to use it as genuine.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto. ...
	If the document is a valuable security or will.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or as above...	Ditto. ...
475	Counterfeiting a device or mark used for authenticating documents described in section 467 of the Indian Penal Code, or posssessing counterfeit marked material.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto. ...
476	Counterfeiting a device or mark used for authenticating documents other than those described in section 467 of the Indian Penal Code, or possessing counterfeit marked material.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto. ...
477	Fraudulently destroying or defacing, or attempting to destroy or deface, or secreting, a will, &c.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 7 years and fine.	Ditto. ...
	Of Trade and Property-Marks.					
482	Using a false trade or property-mark with intent to deceive or injure any person.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for one year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

SCHEDULE II—*continued.*

CHAPTER XVIII.—OF OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY-MARKS—(*concluded*).

Of Trade and Property-Marks—(concluded).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
483	Counterfeiting a trade or property-mark used by another, with intent to cause damage or injury.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
484	Counterfeiting a property-mark used by a public servant, or any mark used by him to denote the manufacture, quality, &c., of any property.	Ditto ...	Summons ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
485	Fraudulently making or having possession of any die, plate, or other instrument for counterfeiting any public or private property or trade-mark.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Ditto ...
486	Knowingly selling goods marked with a counterfeit property or trade-mark.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
487	Fraudulently making a false mark upon any package or receptable containing goods, with intent to cause it to be believed that it contains goods which it does not contain, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
488	Making use of any such false mark ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
489	Removing, destroying or defacing any property-mark with intent to cause injury ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
	CHAPTER XIX.—OF THE CRIMINAL BREACH OF CONTRACTS OF SERVICE.					
490	Being bound by contract to render personal service during a voyage or journey, or to convey or guard any property or person, and voluntarily omitting to do so	Shall not arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description, for 1 month, or fine of 100 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
491	Being bound to attend on, or supply the wants of, a person who is helpless from youth, unsoundness of mind or disease, and voluntarily omitting to do so ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 months, or fine of 200 rupees, or both.	Ditto.
492	Being bound by a contract to render personal service for a certain period at a distant place to which the employé is conveyed at the expense of the employer, and there voluntarily deserting the service or refusing to perform the duty ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description, for 1 month, or fine of double the expense incurred, or both.	Ditto.
	CHAPTER XX.—OFFENCES RELATING TO MARRIAGE.					
493	A man by deceit causing a woman not lawfully married to him to believe that she is lawfully married to him, and to cohabit with him in that belief ...	Shall not arrest without warrant.	Warrant. ...	Not bailable ...	Imprisonment of either description, for 10 years and fine.	Court of Session.

SCHEDULE II—*continued.*

CHAPTER XX.—OFFENCES RELATING TO MARRIAGE—(*concluded*).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
494	Marrying again during the life-time of a husband or wife ...	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for 7 years and fine.	Court of Session.
495	Same offence with concealment of the former marriage from the person with whom subseqent marriage is contracted	Ditto ...	Ditto ...	Not bailable ...	Imprisonment of either description for 10 years and fine.	Ditto.
496	A person with fraudulent intention going through the ceremony of being married, knowing that he is not thereby lawfully married ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
497	Adultery ..	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for 5 years, or fine, or both.	Ditto.
498	Enticing or taking away or detaining with a criminal intent a married woman	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

CHAPTER XXI.—OF DEFAMATION.

500	Defamation	Shall not arrest without warrant.	Warrant ...	Bailable ...	Simple imprisonment for 2 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
501	Printing or engraving matter knowing it to be defamatory.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
502	Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter.	Ditto ...	Ditto ..	Ditto ...	Ditto	Ditto.

CHAPTER XXII.—OF CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE.

504	Insult intended to provoke a breach of the peace.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.
505	False statement, rumours, &c., circulated with intent to cause mutiny or offences against the public peace.	Ditto ...	Ditto ...	Not bailable ...	Ditto	Presidency Magistrate or Magistrate of the first or second class.
506	Criminal intimidation ...	Ditto ...	Ditto ...	Bailable ...	Ditto	Ditto.
	If threat be to cause death or grievous hurt, &c.	Ditto ...	Ditto ..	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
507	Criminal intimidation by anonymous communication or having taken precaution to conceal whence the threat comes.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, in addition to the punishment under above section.	Ditto.
508	Act caused by inducing a person to believe that he will be rendered an object of Divine displeasure.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

SCHEDULE II—*continued.*

CHAPTER XXII.—OF CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE—(*concluded*).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not	6 Punishment under the Indian Penal Code.	7 By what Court triable.
509	Uttering any word or making any gesture intended to insult the modesty of a woman.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Simple imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
510	Appearing in a public place, &c., in a state of intoxication, and causing annoyance to any person.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 24 hours, or fine of 10 rupees, or both.	Any Magistrate.

CHAPTER XXIII.—OF ATTEMPTS TO COMMIT OFFENCES.

511	Attempting to commit offences punishable with transportation or imprisonment, and in such attempt doing any act towards the commission of the offence.	According as the offence is one in respect of which the Police may arrest without warrant or not.	According as the offence is one in respect of which a summons or warrant shall ordinarily issue.	According as the offence contemplated by the offender is bailable or not.	Transportation or imprisonment not exceeding half of the longest term, and of the description, provided for the offence, or fine, or both.	By the Court by which the offence attempted is triable.

OFFENCES AGAINST OTHER LAWS.

If punishable with death, transportation or imprisonment for seven years or upwards.	May arrest without warrant.	Warrant ...	Not bailable ...	... ...	According to the provisions of section 29 of this Code.
If punishable with imprisonment for three years and upwards but less than seven.	Ditto ...	Ditto ...	Ditto ...	... ...	
If punishable with imprisonment for less than three years.	Shall not arrest without warrant.	Summons ...	Bailable ...	... ...	
If punishable with fine only ...	Ditto ...	Ditto ...	Ditto ...	... ...	

SCHEDULE III.

ORDINARY POWERS OF MUFASSAL MAGISTRATES.

I.—Ordinary Powers of Magistrates of the Third Class.

(1.) Power to arrest an offender in the presence of the Magistrate, sect. 62.
(2.) Power to endorse a warrant, or to order the removal of an accused person arrested under a warrant, sects. 81, 82 & 84.
(3.) Power to issue proclamations in cases judicially before him, sect. 85.
(4.) Power to attach and sell property in cases judicially before him, sect. 86.
(5.) Power to endorse a search-warrant and order delivery of thing found, sects. 96 & 101.
(6.) Power to record confessions or statements during a Police-investigation, sect. 162.
(7.) Power to authorize detention of a person during a Police-investigation, sect. 165.
(8.) Power to detain an accused person found in Court, sect. 353.
(9.) Power to sell perishable property of a suspicious character, sect. 535.

II.—Ordinary Powers of Magistrates of the Second Class.

(1.) The ordinary powers of a Magistrate of the third class.
(2.) Power to order the Police to investigate an offence in cases in which the Magistrate has jurisdiction to try or commit for trial, sect. 153.

III.—Ordinary Powers of Magistrates of the First Class.

(1.) The ordinary powers of a Magistrate of the second class.
(2.) Power to issue search-warrants otherwise than in course of an inquiry, sect. 97.
(3.) Power to require security to keep the peace, sect. 106.
(4.) Power to require security for good behaviour, sects 108 and 109.
(5.) Power to make orders, &c., in possession-cases, sects. 143, 144, 145.
(6.) Power to commit for trial.
(7.) Power to make orders of maintenance, sects. 488 & 489.

IV.—Ordinary Powers of Sub-Divisional Magistrates.

(1.) The ordinary powers of a Magistrate of the first class.
(2.) Power to make orders as to local nuisance, sect. 131.
(3.) Power to make order under sect. 141.
(4.) Power to make orders prohibiting repetitions of nuisances, sect. 142.
(5.) Power to hold inquests, sect. 172.
(6.) Power to issue process for person within jurisdiction who has committed an offence outside the jurisdiction, sect. 184.
(7.) Power to receive Police-reports, sect. 192.
(8.) Power to entertain complaints, sect. 192.
(9.) Power to entertain cases without complaint, 192.
(10.) Power to transfer cases to a Subordinate Magistrate, sect. 193.
(11.) Power to pass sentence on proceedings recorded by a Subordinate Magistrate, sect. 351.
(12.) Power to sell property alleged or suspected to have been stolen, &c., sect. 534.
(13.) Power to withdraw cases other than appeals, and to try or refer them for trial, sect. 538.

V.—Ordinary Powers of District Magistrates.

(1.) The ordinary powers of a Sub-Divisional Magistrate, being a Magistrate of the first class.
(2.) Power to direct warrants to landholders, sect. 75.
(3.) Power to issue search-warrants for letters in Post-office, sect. 94.
(4.) Power to discharge persons bound to be of good behaviour, sect. 123.
(5.) Power to try summarily, sect. 263.
(6.) Power to quash convictions in certain cases, sect. 352.
(7.) Power to withdraw or refer appeals from convictions by Magistrates of the second and third classes, sect. 406.
(8.) Power to hear appeals from convictions by Magistrates of the second and third classes, sect. 406.
(9.) Power to call for proceedings, sect. 435.
(10.) Power to revise orders passed under sects. 525 & 526.

SCHEDULE IV.

ADDITIONAL POWERS WITH WHICH MUFASSAL MAGISTRATES MAY BE INVESTED.

POWERS WITH WHICH A MAGISTRATE OF THE FIRST CLASS MAY BE INVESTED	BY THE LOCAL GOVERNMENT	(1). Power to make orders as to local nuisances, section 131: (2). Power to make orders under section 141: (3). Power to make orders prohibiting repetitions of nuisances, section 142: (4). Power to hold inquests, section 172: (5). Power to issue process for person within jurisdiction who has committed an offence outside the jurisdiction, section 184: (6). Power to entertain complaints, section 192: (7). Power to receive Police-reports, section 192: (8). Power to entertain cases without complaint, section 192: (9). Power to try summarily, section 263: (10). Power to hear appeals from convictions by Magistrates of the second and third classes, section 406: (11). Power to sell property alleged or suspected to be stolen, &c., section 534:
	BY THE MAGISTRATE OF THE DISTRICT	(1). Power to make orders under section 141: (2). Power to make orders prohibiting repetitions of nuisances, section 142: (3). Power to hold inquests, section 172 (4). Power to entertain complaints, section 192: (5). Power to receive Police-reports, section 192:
POWERS WITH WHICH A MAGISTRATE OF THE SECOND CLASS MAY BE INVESTED	BY THE LOCAL GOVERNMENT	(1). Power to commit for trial: (2). Power to make orders under section 141: (3). Power to make orders prohibiting repetitions of nuisances, section 142: (4). Power to hold inquests, section 172: (5). Power to entertain complaints, section 192: (6). Power to receive Police-reports, section 192: (7). Power to entertain cases without complaint, section 192:
	BY THE MAGISTRATE OF THE DISTRICT	(1). Power to make orders under section 141: (2). Power to make orders prohibiting repetitions of nuisances, section 142: (3). Power to hold inquests, section 172: (4). Power to entertain complaints, section 192: (5). Power to receive Police-reports, section 192:

SCHEDULE IV—*concluded.*

POWERS WITH WHICH A MAGISTRATE OF THE THIRD CLASS MAY BE INVESTED	BY THE LOCAL GOVERNMENT	(1). Power to commit for trial : (2). Power to make orders under section 141 : (3). Power to make orders prohibiting repetitions of nuisances, section 142 : (4). Power to hold inquests, section 172 : (5). Power to entertain complaints, section 192 :
	BY THE MAGISTRATE OF THE DISTRICT	(1). Power to make orders under section 141 : (2). Powers to make orders prohibiting repetitions of nuisances, section 142 : (3). Power to hold inquests, section 172 : (4). Power to entertain complaints, section 192 :

SCHEDULE V.

FORMS.

I.—SUMMONS TO AN ACCUSED PERSON.

(*See section 65.*)

To
of

WHEREAS your attendance is necessary to answer to a charge of (*state shortly the offence charged*), you are hereby required to appear in person (*or by authorized agent, as the case may be*) before the (*Magistrate*) of on the day of . Herein fail not.

Dated the day of

(*Seal.*)

(*Signature.*)

II.—WARRANT OF ARREST.

(*See section 72.*)

To (*name and designation of the person or persons who are to execute the warrant*).

WHEREAS of stands charged with the offence of (*state the offence*), you are hereby directed to apprehend the said , and to produce him before me. Herein fail not.

(*Seal.*)

(*Signature.*)

This warrant may be endorsed as follows :—

If the said shall give bail himself in the sum of , w
one surety in the sum of (*or two sureties each in the sum of*
to appear before me on the day of , he may be released.

Dated this day of 18 .

(*Signature.*)

III.—RECOGNIZANCE AND BAIL-BOND AFTER ARREST UNDER A WARRANT.

(*See section 84.*)

I, (*name*), of , being brought before the Magistrate of the District of (*or as the case may be*) under a warrant issued to compel my appearance to answer to the

SCHEDULE V—*continued.* FORMS.

charge of , do hereby bind myself to appear in the Court of on the day of next to answer to the said charge, and, in case of my making default herein, I bind myself to forfeit to Her Majesty the sum of rupees .

Dated this day of 18 .

(*Signature.*)

I do hereby declare myself surety for the abovesaid of , that he shall attend before at in the Court of on the day of next to answer to the charge on which he has been arrested; and, in case of his making default therein, I hereby bind myself to forfeit to Her Majesty the sum of rupees

Dated this day of 18 .

(*Signature.*)

IV.—PROCLAMATION REQUIRING THE APPEARANCE OF A PERSON ACCUSED.

(*See section 85.*)

WHEREAS complaint has been made before me that (*name, description and address*) has committed (*or is suspected to have committed*) the offence of , punishable under section of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (*name*) cannot be found ; and whereas it has been shewn to my satisfaction that the said (*name*) has absconded (*or is concealing himself to avoid the service of the said warrant*) ;

Proclamation is hereby made that the said of is required to appear before this Court (*or before me*) to answer the said complaint within days from this date.

Dated this day of 18 .

(*Seal.*)

(*Signature.*)

V.—PROCLAMATION REQUIRING THE ATTENDANCE OF A WITNESS.

(*See section 85.*)

WHEREAS complaint has been made before me that (*name, description and place of residence*) has committed (*or is suspected to have committed*) the offence of (*mention the offence concisely*) and a warrant has been issued to compel the attendance of (*name, description and address of the witness*) before this Court to be examined touching on the matter of the said complaint; and whereas it has been returned to the said warrant that the said (*name of witness*) cannot be served, and it has been shown to my satisfaction that he has absconded (*or is concealing himself to avoid the service of the said warrant*) ;

Proclamation is hereby made that the said (*name*) is required to appear before the Court of on the day of next at o'clock, to be examined touching , the offence complained of.

Dated this day of 18 .

(*Seal.*)

(*Signature.*)

VI.—ORDER OF ATTACHMENT.

(*See section 86.*)

To the Police-officer in charge of the Police-station at

WHEREAS a warrant has been duly issued to compel the attendance of (*name, description and address*) to testify concerning a complaint pending before this Court, and it has been returned to the said warrant that it cannot be served; and whereas it has been shown to my satisfaction that he has absconded (*or is concealing himself to avoid the service of the said warrant*) ; and thereupon a proclamation was duly issued and published requiring the said to appear and give evidence at the time and place mentioned therein, and he has failed to appear ;

This is to authorize and require you to attach by seizure the moveable property belonging to the said to the value of rupees (*see sections and*) which you may find within the District of and to hold the said property under attachment

FORMS SCHEDULE V—*continued.*

pending the further order of this Court, and to return this warrant with an endorsement certifying the manner of its execution.

Dated this day of 18 .

(*Seal.*) (*Signature.*)

WARRANT OF ATTACHMENT TO COMPEL APPEARANCE.

(*See section* .)

To (*name and designation of the person or persons who is or are to execute the warrant*).

WHEREAS complaint has been made before me that (*name, description and address*) has committed (*or is suspected to have committed*) the offence of punishable under section of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (*name*) cannot be found ; and whereas it has been shown to my satisfaction that the said (*name*) has absconded (*or is concealing himself to avoid the service of the said warrant*), and thereupon a Proclamation has been duly issued and published requiring the said to appear to answer the said charge within days ; and whereas the said is possessed of the following property other than the land paying revenue to Government in the village (*or town*) of , in the District of , *viz.*, , and an order has been made for the attachment thereof ;

You are hereby required to attach the said property by seizure, and to hold the same under attachment pending the further order of this Court, and to return this warrant with an endorsement certifying the manner of its execution.

Dated this day of 18 .

(*Seal.*)

(*Signature.*)

ORDER AUTHORIZING AN ATTACHMENT BY THE DEPUTY COMMISSIONER AS COLLECTOR.

(*See section 86.*)

To the Deputy Commissioner of the District of

WHEREAS complaint has been made before me that (*name, description and address*) has committed (*or is suspected to have committed*) the offence of punishable under section of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (*name*) cannot be found ; and whereas it has been shown to my satisfaction that the said (*name*) has absconded (*or is concealing himself to avoid the service of the said warrant*), and thereupon a Proclamation has been duly issued and published requiring the said to appear to answer the said charge within days, but he has not appeared ; and whereas the said is possessed of certain land paying revenue to Government in the village (*or town*) of in the District of ;

You are hereby authorized and requested to cause the said land to be attached, and to be held under attachment pending the further order of this Court, and to certify without delay what you may have done in pursuance of this order.

Dated this day of 18 .

(*Seal.*)

(*Signature.*)

VII.—WARRANT IN THE FIRST INSTANCE TO BRING UP A WITNESS.

(*See section 88.*)

To (*name and designation of the Police-officer or other person or persons to execute the warrant*).

WHEREAS complaint has been made before me that of has (*or is suspected to have*) committed the offence of (*mention the offence concisely*), and it appears likely that (*name and description of witness*) can give evidence concerning the said complaint ; and whereas I have good and sufficient reason to believe that he will not attend as a witness on the hearing of the said complaint unless compelled to do so ;

This is to authorize and require you to serve the said (*name*) with this warrant, and to bring him before this Court on the day of , using no unnecessary violence or forceable restraint for that purpose, to be examined touching the offence complained of.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

SCHEDULE V—*continued.* FORMS.

VIII.—WARRANT TO SEARCH AFTER INFORMATION OF A PARTICULAR OFFENCE.

(*See section 95.*)

To (*name and designation of the Police-officer or other person or persons to execute the warrant*).

WHEREAS information has been laid (*or complaint has been made*) before me of the commission (*or suspected commission*) of the offence of (*mention the offence concisely*), and it has been made to appear to me that the production of (*specify the thing clearly*) is essential to the enquiry now being made (*or about to be made*) into the said offence (*or suspected offence*) ;

This is to authorize and require you to search for the said (*the thing specified*) in the (*describe the house or place, or part thereof, to which the search is to be confined*), and, if found, to produce the same forthwith before this Court : returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

IX.—WARRANT TO SEARCH SUSPECTED PLACE OF DEPOSIT.

(*See section 97.*)

To (*name and designation of a Police-officer above the rank of a Constable*).

WHEREAS information has been laid before me, and on due enquiry thereupon had I have been led to believe that the house (*describe the house or other place*) is used as a place for the deposit (*or sale*) of stolen property (*or, if for either of the other purposes expressed in the section, state the purpose in the words of the section*) ;

This is to authorize and require you to enter the said house (*or other place*) with such assistance as shall be required, and to use, if necessary, reasonable force for that purpose, and to search every part of the said house (*or other place, or, if the search is to be confined to a part, specify the part clearly*) and to seize and take possession of any property (*or documents, or stamps, or seals, or coins, as the case may be*)—[Add *when the case requires it*) and also of any instruments and materials which you may reasonably believe to be kept for the manufacture of forged documents, or counterfeit stamps, or false seals, or counterfeit coin (*as the case may be*),] and forthwith to bring before this Court such of the said things as may be taken possession of, returning this warrant with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

X.—BOND TO KEEP THE PEACE.

(*See section 105*).

WHEREAS I, (*name*), inhabitant of (*place*), have been called upon to enter into a bond to keep the peace for the term of , I hereby bind myself not to commit a breach of the peace or do any act that may probably occasion a breach of the peace during the said term ; and in case of my making default therein, I hereby bind myself to forfeit to Her Majesty the sum of rupees .

Dated this day of 18 .

(*Signature.*)

XI.—FORM OF BOND FOR GOOD BEHAVIOUR.

(*See sections 108 and 109.*)

WHEREAS I, (*name*), inhabitant of (*place*), have been called upon to enter into a bond to be of good behaviour to Her Majesty the Queen and to all her subjects for the term of (*state the period*), I hereby bind myself to be of good behaviour to Her Majesty and to all her subjects during the said term ; and in case of my making default therein, I bind myself to forfeit to Her Majesty the sum of rupees.

Dated this day of 18 .

(*Seal.*)

(*Signature.*)

FORMS. SCHEDULE V—*continued.*

XII.—SUMMONS ON INFORMATION OF A PROBABLE BREACH OF THE PEACE.

(*See section 113.*)

To of

WHEREAS it has been made to appear to me by credible information that (*state the substance of the information*) and that you are likely to commit a breach of the peace (*or by which act a breach of the peace will probably be occasioned*), you are hereby required to attend in person (*or by a duly authorized agent*) at the Magistrate's Office at on the day of 18 , at ten o'clock in the forenoon, to shew cause why you should not be required to enter into a bond for rupees (*when sureties are required add*) and also to give security by the bond of one (*or two as the case may be*) sureties in the sum of rupees (*each if more than one*), that you will keep the peace for the term of

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

XIII.—WARRANT OF COMMITMENT ON FAILURE TO FIND SECURITY TO KEEP THE PEACE.

(*See section 122.*)

To (*name and designation of Police-officer*) and to the Superintendent (*or Keeper*) of the Civil Jail at

WHEREAS (*name and place*) appeared before me in person (*or by his authorized agent*) on the day of in obedience to a summons calling upon him to shew cause why he should not enter into a bond for rupees with one surety (*or a bond with two sureties each in rupees*), that he the said (*name*) would keep the peace for the period of months; and whereas an order was then made requiring the said (*name*) to enter into and find such security (*state the security ordered when it differs from that mentioned in the summons*), and he has failed to comply with the said order;

This is to authorize and require you the said (*name of Police Constable*) to take and deliver, or cause to be taken and delivered, the said (*name*) to the Superintendent (*or Keeper*) of the said Civil Jail, and you the said Superintendent (*or Keeper*) to receive the said (*name*) into your custody together with this warrant, and him safely to keep in the said Jail for the said period of (*term of imprisonment*) unless he shall in the meantime comply with the said order by himself and his sureties entering into the said bond, in which case the same shall be received, and the said (*name*) released; and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

XIV.—WARRANT OF COMMITMENT ON FAILURE TO FIND SECURITY FOR GOOD BEHAVIOUR.

(*See section 122.*)

To (*name and designation of Police-officer*) and to the Superintendent (*or Keeper*) of the Civil Jail at

WHEREAS it has been made to appear to me that (*name and description*) has been and is lurking within the District of having no ostensible means of subsistence (*or, and that he is unable to give any satisfactory account of himself*);

or

WHEREAS evidence of the general character of (*name and description*) has been adduced before me and recorded from which it appears that he is by repute a robber (*or house-breaker, &c., as the case may be*);

or

WHEREAS evidence of the general character of (*name and description*) has been adduced before me and recorded from which it appears that he is by habit a robber (*or house-breaker, &c., as the case may be*);

And whereas an order has been recorded stating the same and requiring the said (*name*) to furnish security for his good behaviour for the term of (*state the period*) by entering into a bond with one surety (*or two or more sureties as the case may be*) himself for rupees , and the said surety (*or such of the said sureties*) for rupees , and the said (*name*) has failed to comply with the said order, and for such default has been adjudged imprisonment for (*state the term*) unless the said security be sooner furnished;

SCHEDULE V—*continued.* FORMS.

This is to authorize and require you the said (*name of Police-officer*) to take and deliver or cause to be taken and delivered the said (*name*) to the Superintendent (*or Keeper*) of the said Civil Jail, and you the said Superintendent (*or Keeper*) to receive the same (*name*) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (*term of imprisonment*), unless in the meantime he shall be prepared to furnish the said security, and in that event forthwith to cause him to be brought before the Court to be dealt with according to law; and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

XV.—WARRANT TO DISCHARGE A PERSON IMPRISONED ON FAILURE TO GIVE SECURITY.

(*See section 123.*)

To (*the Superintendent or Keeper*) of the Jail at (*or other officer in whose custody the person is*).

WHEREAS (*name and description of prisoner*) was committed to your custody under warrant of this Court, dated the day of , and has since with his surety (*or sureties*) duly entered into a recognizance,

or

and sufficient cause has been shewn to me for his release from further imprisonment,

or

and there have appeared to me sufficient grounds for the opinion that he can be released without any hazard to the community;

This is to authorize and require you forthwith to discharge the said (*name*) from your custody.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

XVI.—ORDER FOR THE REMOVAL OF NUISANCES.

(*See section 131.*)

To (*name, description and place of residence*).

WHEREAS it has been made to appear to me that you have caused an obstruction (*or nuisance*) to persons using the public roadway (*or other public place*), which, &c. (*describe the road or public place*), by, &c. (*state what it is that causes the obstruction or nuisance*), and that such obstruction (*or nuisance*) still exists;

or

WHEREAS it has been made to appear to me that you are carrying on as owner, or manager, the trade or occupation of (*state the particular trade and the place where it is carried on*), and that the same is injurious to the public health (*or comfort*) by reason (*state briefly in what manner the injurious effects are caused*), and should be suppressed or removed to a different place;

or

WHEREAS it has been made to appear to me that you are the owner (*or are in possession of or have the control over*) a certain tank (*or well*) adjacent to the public passage (*describe the thoroughfare*), and that the safety of the public is endangered by reason of the said tank (*or well*) being without a fence (*or insecurely fenced*);

or

WHEREAS, &c., &c. (*as the case may be*);

I do hereby direct and require you within (*state the time allowed*) to remove (*state what is required to be done to abate the nuisance*) or to appear at in the Court of on the day of next, and to show cause why this order should not be enforced;

or

I do hereby direct and require you within (*state the time allowed*) to cease carrying on the said trade or occupation at the said place, and not again to carry on the same, or to remove the said trade from the place where it is now carried on to (*specify the more suitable place by a limit of distance or local description*), or to appear, &c.;

or

I do hereby direct and require you within (*state the time allowed*) to put up a sufficient fence (*state the kind of fence and the part to be fenced*), or to appear, &c.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

FORMS

SCHEDULE V—*continued.*

XVII.—MAGISTRATE'S ORDER CONSTITUTING A JURY.

(*See section 136.*)

WHEREAS on the day of 18 , an order was issued to (*name*) requiring him (*state the effect of the order*) ; and whereas the said (*name*) has applied to me by a petition bearing date the day of for an order appointing a Jury to try whether the said recited order is reasonable and proper, I do hereby appoint (*the names, &c., of the five or more Jurors*) to be the Jury, to try and decide the said question, and do require the said Jury to report their decision within days from the date of this order at my office at

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

XVIII.—MAGISTRATE'S NOTICE AND PEREMPTORY ORDER AFTER THE FINDING BY A JURY.

(*See section 138.*)

To (*name, description and residence*).

I HEREBY give you notice that the Jury duly appointed on the petition presented by you on the day of have found that the order issued on the day of requiring you (*state substantially the requisition in the order*) is reasonable and proper, and I hereby direct and require you to obey the said order within (*state the time allowed*) on peril of the penalty provided by the Indian Penal Code for disobedience thereto.

Given under my hand and the seal of the Court, this day of 18

(*Seal.*) (*Signature.*)

XIX.—INJUNCTION TO PROVIDE AGAINST IMMINENT DANGER PENDING ENQUIRY BY JURY.

(*See section 140.*)

To (*name, description and residence*).

WHEREAS the enquiry by a Jury appointed to try whether my order issued on the day of , 18 is reasonable and proper is still pending, and it has been made to appear to me that the nuisance mentioned in the said order is attended with so imminent serious danger to the public as to render necessary immediate measures to prevent such danger, I do hereby, under the provisions of section of the Code of Criminal Procedure, direct and enjoin you forthwith to (*state plainly what is required to be done as a temporary safeguard*), pending the result of the local enquiry by the Jury.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

XX.—MAGISTRATE'S ORDER TO PREVENT OBSTRUCTION, RIOT, &c.

(*See section 141.*)

To (*name, description and place of residence*).

WHEREAS it has been made to appear to me that you are in possession (*or have the management*) of (*describe clearly the property*), and that, in digging a drain on the said land, you are about to throw or place a portion of the earth and stones dug up upon the adjoining public road, so as to occasion risk of obstruction to persons using the road;

or

WHEREAS it has been made to appear to me that you and a number of other persons (*mention the class of persons*) are about to meet and proceed in a religious procession along the public street, &c. (*as the case may be*), and that such procession is likely to lead to a riot or an affray ;

or

WHEREAS, &c., &c. (*as the case may be*) ; I do hereby order you not to place or permit to be placed any of the earth or stone dug from your land in any part of the said road ; or

I do hereby prohibit the procession passing along the said street, and strictly warn and enjoin you not to take any part in such procession (*or as the case recited may require*).

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

SCHEDULE V—*continued.* FORMS.

XXI.—MAGISTRATE'S ORDER PROHIBITING THE REPETITION, &c., OF A NUISANCE.

(*See section 142.*)

To (*name, description and place of residence*).

WHEREAS it has been made to appear to me that, &c. (*state the proper recital guided by Form No. XX*) ;

I do hereby strictly order and enjoin you not to repeat the said nuisance by again placing or causing or permitting to be placed, &c. (*as the case may be*).

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

XXII.—MAGISTRATE'S ORDER DECLARING PARTY ENTITLED TO RETAIN POSSESSION OF LAND, &c., IN DISPUTE.

(*See section 143.*)

IT appearing to me, on the grounds duly recorded, that a dispute, likely to induce a breach of the peace, existed between (*describe the parties by name and residence, or residence only, if the dispute be between bodies of villagers*) concerning certain (*state concisely the subject of dispute*) situate within the local limits of my jurisdiction, all the said parties were called upon to give in a written statement of their respective claims as to the fact of actual possession of the said (*the subject of dispute*) and being satisfied by due enquiry had thereupon, without reference to the merits of the claim of either of the said parties to the legal right of possession, that the claim of actual possession by the said (*name or names or description*) is true,

I do decide and declare that he is (*or they are*) in possession of the said (*the subject of dispute*) and entitled to retain such possession until ousted by due course of law, and do strictly forbid any disturbance of his (*or their*) possession in the meantime.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

XXIII.—WARRANT OF ATTACHMENT IN THE CASE OF A DISPUTE AS TO THE POSSESSION OF LAND, &c.

(*See section 144.*)

To the Police-officer in charge of the Police-station at .

WHEREAS it has been made to appear to me that a dispute likely to induce a breach of the peace existed between (*describe the parties concerned by name and residence, or residence only, if the dispute be between bodies of villagers*) concerning certain (*state concisely the subject of dispute*) situate within the limits of my jurisdiction, and the said parties were thereupon duly called upon to state in writing their respective claims as to the fact of actual possession of the said (*the subject of dispute*), and whereas, upon due enquiry in the said claims, I have decided that neither of the said parties was in possession of the said (*the subject of dispute*) ;

This is to authorize and require you to attach the said (*the subject of dispute*) by taking and keeping possession thereof, and to hold the same under attachment until the decree or order of a competent Court determining the rights of the parties, or the claim to possession shall have been obtained ; and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

XXIV.—MAGISTRATE'S ORDER PROHIBITING THE DOING OF ANY THING ON LAND OR WATER.

(*See section 145.*)

A DISPUTE having arisen concerning the right of use of (*state concisely the subject of dispute*) situate within the limits of my jurisdiction, the possession of which land (*or* water) is claimed exclusively by (*describe the person or persons*), and it appearing to me, on due enquiry into the same, that the said land (*or* water) has been open to the enjoyment of such use by the public (*or if by an individual or class of persons, describe him or them*), and (*if the use can be enjoyed throughout the year*) that the said use has been ordinarily enjoyed within three months of the

FORMS. SCHEDULE V—*continued.*

institution of the said enquiry (*or, if the use is enjoyable only at particular seasons, say: "during the last of the seasons at which the same is capable of being enjoyed"*);

I do order that the said (*the claimant or claimants of possession*), or any one in their interest, shall not take (*or* retain) possession of the said land (*or* water) to the exclusion of the enjoyment of the right of use aforesaid, until he (*or they*) shall obtain the decree or order of a competent Court adjudging him (*or them*) to be entitled to exclusive possession.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

XXV.—BOND AND BAIL-BOND ON A PRELIMINARY ENQUIRY BEFORE A POLICE-OFFICER.

(*See section 167.*)

I, (*name*), of , being charged with the offence of and after enquiry required to appear before the Magistrate of

or

and after enquiry called upon to enter into my own recognizance to appear when required , do hereby bind myself to appear at in the Court of on the day of next (*or on such day as I may hereafter be required to attend*) to answer further to the said charge, and, in case of my making default herein, I bind myself to forfeit to Her Majesty the Queen, Empress of India the sum of rupees .

Dated this day of 18 .

(*Signature.*)

I hereby declare myself (*or we jointly and severally declare ourselves and each of us*) surety (*or sureties*) for the above-said that he shall attend at , in the Court of , on the day of next (*or on such day as he may hereafter be required to attend*); further, to answer to the charge pending against him, and in case of his making default herein, I hereby bind myself to forfeit to Her Majesty the Queen, Empress of India the sum of rupees .

Dated this day of 18 .

(*Signature.*)

XXVI.—BOND TO PROSECUTE OR GIVE EVIDENCE.

(*See section 168.*)

I, (*name*), of (*place*), do hereby bind myself to appear at , in the Court of , at o'clock on the day of next, and then and there to prosecute (*or, as the case may be, to prosecute and give evidence, or to give evidence*) in the matter of a charge of against one A. B., and, in case of making default herein, I bind myself to forfeit to Her Majesty the sum of rupees .

Dated this day of 18 .

(*Signature.*)

XXVII.—NOTICE OF COMMITMENT BY MAGISTRATE OR GOVERNMENT PLEADER.

(*See section 220.*)

The Magistrate of hereby gives notice that he has committed one for trial at the next Sessions; and the Magistrate hereby instructs the Government Pleader to conduct the prosecution of the said case.

The charge against the accused is that, &c. (*state the offence as in the charge*).

Dated this day of 18 .

(*Signature.*)

XXVIII.—CHARGES.

(*See sections 223, 224, 225.*)

(I).—CHARGES WITH ONE HEAD.

(*a*). I, [*name and office of Magistrate, &c.*], hereby charge you, [*name of accused person*], as follows:—

On Penal Code, section 121. (*b*). That you, on or about the day of , at , waged war against Her Majesty the Queen, Empress of India, and thereby committed an offence punishable under section 121 of the Indian Penal Code, and within the cognizance of the Court of Session [*when the charge is framed by a Presidency Magistrate, for* Court of Session, *substitute* High Court].

(*c*). And I hereby direct that you be tried by the said Court on the said charge.

[*Signature and seal of the Magistrate.*]

FORMS. SCHEDULE V—*continued.*

[*To be substituted for* (*b*):—]

On section 124. (2). That you, on or about the day of , at , with the intention of inducing the Honourable *A. B.*, Member of the Council of the Governor General of India, to refrain from exercising a lawful power as such Member, assaulted such Member, and thereby committed an offence punishable under section 124 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

On section 161. (3). That you, being a public servant in the Department, directly accepted from [*state the name*], for another party [*state the name*], a gratification, other than legal remuneration, as a motive for forbearing to do an official act, and thereby committed an offence punishable under section 161 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 304. (4). That you, on or about the day of , at , committed culpable homicide not amounting to murder, causing the death of , and thereby committed an offence punishable under section 304 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 306. (5). That you, on or about the day of , at , abetted the commission of suicide by *A. B.*, a person in a state of intoxication, and thereby committed an offence punishable under section 306 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 325. (6). That you, on or about the day of , at , voluntarily caused grievous hurt to , and thereby committed an offence punishable under section 325 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 392. (7). That you, on or about the day of , at , committed robbery, an offence punishable under section 392 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 395. (8). That you, on or about the day of , at , committed dacoity, an offence punishable under section 395 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 166. (9). That you, on or about the day of , at , did [*or* omitted to do, *as the case may be*] , such conduct being contrary to the provisions of Act , section , and was known by you to be prejudicial to , and thereby committed an offence punishable under section 166 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 193. (10). That you, on or about the day of , at , in the course of the trial of , before , stated in evidence that " ," which statement you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under section 193 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

[*In cases tried by Magistrates, substitute* "within my cognizance" *for* "within the cognizance of the Court of Session." *In* (*d*) *omit* "by the said Court."]

(II).—CHARGES WITH TWO OR MORE HEADS.

(*a*). I, [*name and office of Magistrate, &c.*], hereby charge you, [*name of accused person*], as follows:—

On sections 241 and 242. (*b*) *First.*—That you, on or about the day of at , knowing a coin to be counterfeit, delivered the same to another person, by name *A. B.*, as genuine, and thereby committed an offence punishable under section 241 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

Secondly.—That you, on or about the day of , at , knowing a coin to be counterfeit, attempted to induce another person, by name *A. B.*, to receive it as

FORMS. SCHEDULE V—*continued.*

genuine, and thereby committed an offence punishable under section 242 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

(*c*). And I hereby direct that you be tried by the said Court on the said charge.

[*Signature and seal of the Magistrate.*]

On sections 302 and 304.

For (*b*) *First.*—That you, on or about the day of , at , committed murder by causing the death of , and thereby committed an offence punishable under section 302 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

Secondly.—That you, on or about the day of , at , by causing the death of , committed culpable homicide, and thereby committed an offence punishable under section 304 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On sections 379 and 382.

For (*b*) *First.*—That you, on or about the day of , at , committed theft, and thereby committed an offence punishable under section 379 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

Secondly.—That you, on or about the day of , at , committed theft, having made preparation for causing death to a person in order to the committing of such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

Thirdly.—That you, on or about the day of , at , committed theft, having made preparation for causing restraint to a person in order to the effecting of your escape after the committing of such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

Fourthly.—That you, on or about the day of , at , committed theft, having made preparation for causing fear of hurt to a person in order to the retaining of property taken by such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

Alternative charges on section 193.

For (*b*) That you, on or about the day of , at , in the course of the enquiry into before , stated in evidence that " ," and that you, on or about the day of at , in the course of the trial of , before , stated in evidence that " ," one of which statements you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under section 193 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

In trials before Magistrates, substitute " within my cognizance " *for* " within the cognizance of the Court of Session " *and omit* " by the said Court. "

XXIX.—WARRANT OF COMMITMENT ON A SENTENCE OF IMPRISONMENT OR FINE IF PASSED BY A MAGISTRATE.

(*See sections 248 and 261.*)

To (*name and designation of Police Constable*) and to the Superintendent (*or Keeper*) of the Jail at

WHEREAS on the day of 18 (*name of prisoner*) the (*1st, 2nd, 3rd, as the case may be*) prisoner in case No. of the calendar for 18 was convicted before me (*name and official designation*) of the offence of (*mention the offence or offences concisely*) under section (*or sections*) of the Penal Code (*or of Act*), and was sentenced to (*state the punishment fully and distinctly*) ;

This is to authorize and require you the said (*name of Police Constable*) to take and deliver, or cause to be taken and delivered, the said, (*name of offender*) to the Superintendent (*or Keeper*) of the said jail, and you the said (*Superintendent or Keeper*) to receive the said (*prisoner's name*) into your custody in the said jail together with this warrant, and there carry the aforesaid sentence into execution according to law.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

SCHEDULE V—*continued.* FORMS.

XXX.—WARRANT OF IMPRISONMENT ON FAILURE TO RECOVER AMENDS BY DISTRESS.

(*See section 253.*)

To (*name and designation of Police Constable*) and to the Superintendent (*or Keeper*) of the Civil Jail at

WHEREAS (*name and description*) has brought against (*name and description of the accused person*) the complaint that (*mention it concisely*) and the same has been dismissed as frivolous and vexatious, and the order of dismissal awards payment by the said (*name of complainant*) of the sum of rupees as amends; and whereas the said sum has not been paid and cannot be recovered by distress of the moveable property of the said (*name of complainant*) and an order has been made for his imprisonment in jail for the period of days, unless the aforesaid sum be sooner paid;

This is to authorize and require you the said (*name of Police Constable*) to take and deliver, or cause to be taken and delivered, the said (*name*) to the Superintendent (*or Keeper*) of the said Civil Jail, and you the said Superintendent (*or Keeper*) to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (*term of imprisonment*) unless the said sum be sooner paid, and on the receipt thereof forthwith to set him at liberty : returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

XXXI.—SUMMONS TO A WITNESS.

(*See sections 65 and 255.*)

To of

WHEREAS complaint has been made before me that of has (*or is suspected to have*) committed the offence of (*state the offence concisely with time and place*) and it appears to me that you are likely to give material evidence for the prosecution ;

You are hereby summoned to appear before this Court on the day of next at ten o'clock in the forenoon, to testify what you know concerning the matter of the said complaint, and not to depart thence without leave of the Court ; and you are hereby warned that if you shall without just excuse neglect or refuse to appear on the said date, a warrant will be issued to compel your attendance.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

XXXII.—WARRANT OF COMMITMENT ON A SENTENCE OF IMPRISONMENT OR FINE IF PASSED BY A MAGISTRATE.

(*See section 261.*)

To (*name and designation of Police Constable*) and to the Superintendent (*or Keeper*) of the Jail at

WHEREAS on the day of 18 , (*name of prisoner*) the (*1st, 2nd, 3rd, as the case may be*) prisoner in case No. of the Calendar for 18 was convicted before me (*name and official designation*) of the offence of (*mention the offence or offences concisely*) under section (*or sections*) of the Penal Code (*or of Act*), and was sentenced to (*state the punishment fully and distinctly*) ;

This is to authorize and require you the said (*name of Police Constable*) to take and deliver or cause to be taken and delivered, the said (*name of offender*) to the Superintendent (*or Keeper*) of the said jail, and you the said (*Superintendent or Keeper*) to receive the said (*prisoner's name*) into your custody in the said jail together with this warrant, and there carry the aforesaid sentence into execution according to law.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

FORMS.

SCHEDULE V—*continued.*

XXXIII.—PRECEPT TO MAGISTRATE TO SUMMON JURORS AND ASSESSORS.

(*See section 328.*)

To the Magistrate of

WHEREAS a Criminal Session is appointed to be held in the Court-house at on the day of next, and the names of the persons herein stated have been duly drawn by lot from among those named of the revised list of jurors and assessors furnished to this Court, you are hereby required to summon the said persons to attend at the said Court of Session at 10 A. M. on the said date, and, within such date, to certify that you have done so in pursuance of this precept.

(*Here enter the names of Jurors and Assessors.*)

Given under my hand and the Seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

XXXIV.—SUMMONS TO JUROR OR ASSESSOR.

(*See section 330.*)

To (*name*) of (*place*).

PURSUANT to a precept directed to me by the Court of Session of requiring your attendance as an Assessor (*or Juror*) at the next Criminal Session, you are hereby summoned to attend at the said Court of Session at ten o'clock in the forenoon on the day of next.

Given under my hand and seal of office, this day of 18 .

(*Seal.*)

(*Signature.*)

XXXV.—WARRANT OF COMMITMENT UNDER SENTENCE OF DEATH.

(*See section 369.*)

To (*the Superintendent or Keeper*) of the Jail at

WHEREAS at the Sessions held before me on the day of 18 , (*name of prisoner*), the (*1st, 2nd, 3rd, as the case may be*) prisoner in case No. of the calendar, at the said Session, was duly convicted of the offence of culpable homicide amounting to murder under section of the Penal Code, and sentenced to suffer death, subject to the confirmation of the said sentence by the Court of Court ;

This is to authorize and require you, the said (*Superintendent or Keeper*), to receive the said (*prisoner's name*) into your custody in the said Jail, together with this warrant, and him there safely keep until you shall receive the further warrant or order of this Court, carrying into effect the order of the said Court.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

XXXVI.—WARRANT OF EXECUTION ON A SENTENCE OF DEATH.

(*See section 383.*)

To the Superintendent (*or Keeper*) of the Jail at

WHEREAS (*name of prisoner*) the (*1st, 2nd, 3rd, as the case may be*) prisoner in case No. of the calendar, at the Sessions held before me on the day of 18 , has been by a warrant of this Court, dated the day of , committed to your custody under sentence of death, and whereas the order of the Court of confirming the said sentence has been received by this Court;

This is to authorize and require you the said Superintendent (*or Keeper*) to carry the said sentence into execution by causing the said to be hanged by the neck until be dead, at the usual time and place of execution, and to return this warrant to the Court with an endorsement certifying that the sentence has been executed.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

FORMS.

SCHEDULE V—*continued.*

XXXVII.—WARRANT AFTER A COMMUTATION OF A SENTENCE.

(*See section 384.*)

To the Superintendent (*or Keeper*) of the Jail at

WHEREAS at a Session held on the day of 18, (*name of prisoner*) the (*1st, 2nd, or 3rd, as the case may be*) prisoner in case No. of the calendar, at the said Sessions, was convicted of the offence of , punishable under section of the Indian Penal Code, and sentenced to , and was thereupon committed to your custody; and whereas by the order of the Court of Court (*a duplicate of which is hereunto annexed*) the punishment adjudged by the said sentence has been commuted to the punishment of transportation for life (*or as the case may be*) ;

This is to authorize and to require you, the said (*Superintendent or Keeper*), safely to keep the said (*prisoner's name*) in your custody in the said Jail, as by law is required, until he shall be delivered over by you to the proper authority and custody for the purpose of his undergoing the punishment of transportation under the said order,

or

if the mitigated sentence is one of imprisonment, say after the words "custody in the said Jail," and there to carry into execution the punishment of imprisonment under the said order according to law.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

XXXVIII.—WARRANT TO LEVY A FINE BY DISTRESS AND SALE.

(*See section 389.*)

To (*name and designation of the Police-officer or other person, or persons, to execute the warrant*).

WHEREAS (*name and description of the offender*) was on the day of 18 , convicted before me of the offence of (*mention the offence concisely*) and sentenced to pay a fine of rupees , and whereas the said (*name*), although required to pay the said fine, hath not paid the same or any part thereof;

This is to authorize and require you to make distress by seizure of any moveable property belonging to the said (*name*) which may be found within the District of ; and, if within (*state the number of days or hours allowed*) next after such distress the said sum shall not be paid (*or forthwith*), to sell the moveable property distrained, or so much thereof as shall be sufficient to satisfy the said fine; returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

XXXIX.—WARRANT OF COMMITMENT IN CERTAIN CASES OF CONTEMPT WHEN A FINE IS IMPOSED.

(*See section 480.*)

To (*name and designation of Police Constable*) at the Police-station of and to (*name*) the Superintendent (*or Keeper*) of the Civil Jail at

WHEREAS at a Court holden before me on this day (*name and description of the offender*) in the presence (*or view*) of the Court committed wilful contempt, for that he

Applicable to a case under section 175 of the Penal Code.

(*a*) being legally bound (*state whether in obedience to the summons or order of the Court, or how otherwise*) to produce (*or deliver up*) a certain (*specify the document*) to the Court (*if to a particular officer so state*), intentionally omitted to produce or deliver up the said (*document specified*) when required to do so;

Applicable to a case under section 178 of the Penal Code.

(*b*) being legally required by the Court to bind himself by an oath (*or solemn affirmation*) duly administered to state the truth as a witness on the hearing of a suit (*or if not a suit as the fact may be*), wilfully refused to take such oath (*or solemn affirmation*) without alleging any just excuse for such refusal;

Aplicable to a case under section 179 of the Penal Code.

(*c*) being a witness in (*state the suit or enquiry or other proceeding as the case may be*), and legally bound by an oath (*or solemn affirmation*) duly administered to state the truth, wilfully refused to give answer to a question (*or questions*) put to him by the Court touching

FORMS. SCHEDULE V—*continued.*

the subject-matter of the said suit (*or other proceeding*) without alleging any just cause for such refusal;

(*d*) being legally required by the Court (*or if by a duly empowered Ministerial Officer so state*) to sign a written record of the statements made by him as a witness on the hearing of a suit (*or if not a suit, as the fact may be*) wilfully refused to sign the same when required so to do, without alleging any just cause for such refusal;

Applicable to a case under section 180 of the Penal Code.

(*e*) wilfully insulted me whilst sitting in Court and engaged in the hearing of (*state the judicial proceeding*) or wilfully caused an interruption during the sitting of the Court, and whilst I was engaged in the hearing of (*state the judicial proceeding*) by (*mention concisely the conduct causing the contempt.*)

Applicable to a case under section 228 of the Penal Code.

And whereas for such his contempt the said (*name of offender*) has been adjudged by the Court to pay a fine of rupees or in default to suffer imprisonment for the space of (*state the number of months or days*);

This is to authorize and require you, the said (*name of Police Constable*), to take and deliver, or cause to be taken and delivered, the said (*name of offender*) to the Superintendent (*or Keeper*) of the said Civil Jail, and you, the said Superintendent (*or Keeper*) of the said Civil Jail, to receive the said (*name of offender*) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (*term of imprisonment*) unless the said fine be sooner paid; and on the receipt thereof, forthwith to set him at liberty, returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

XL.—MAGISTRATE'S WARRANT OF COMMITMENT FOR REFUSING TO ANSWER WHERE THERE IS NO FINE.

(*See section 485.*)

To (*name and designation of Police Constable*) at the Police-station of

WHEREAS (*name and description*) being summoned (*or brought before this Court*) as a witness and this day required to give evidence on an enquiry into an alleged offence refused to answer a certain question (*or questions*) put to him touching the said alleged offence, and duly recorded without alleging any just excuse for such refusal, and for his contempt has been adjudged detention in custody for (*term of detention adjudged*);

This is to authorize and require you to take the said (*name*) into custody, and him safely keep in the Lock-up of the said station for the space of days unless in the meantime he shall consent to be examined and to answer the questions asked of him, and on the last of the said days, or forthwith on such consent being known, to bring him before this Court to be dealt with according to law; returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

XLI.—SESSIONS JUDGE'S WARRANT OF COMMITMENT FOR REFUSING TO ANSWER.

(*See section 480.*)

To (*name and designation of the Police Constable at the Police-station of*)

WHEREAS (*name and description*) being a witness in case No. of the calendar of cases for trial at the Court of Session holden before me on this day, and being required by the Court to answer a certain question (*or questions*) put to him on the hearing of the said case, and duly recorded has refused to answer the said question (*or questions*) without alleging any just excuse for such refusal, and for his contempt has been adjudged detention in custody, for (*term of detention adjudged*); This is to authorize and require you to take the said (*name*) into custody, and him safely to keep in the lock-up of the said station for the space of days, unless in the meantime he shall consent to be examined, and to answer the question (*or questions*) asked of him, and on the last of the said days, or forthwith on such consent being known, to bring him before this Court to be dealt with according to law; returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

SCHEDULE V—*continued.* FORMS

XLII.—WARRANT OF IMPRISONMENT ON FAILURE TO PAY MAINTENANCE.

(*See section 488.*)

To (*name and designation of Police Constable*) and to the Superintendent (*or Keeper*) of the Jail at

WHEREAS (*name, description and address*) has been proved before me to be possessed of sufficient means to maintain his wife (*name*) [*or his child* (*name*)], who is by reason of (*state the reason*) unable to maintain (*herself or himself*) and to have neglected (*or refused*) to do so, and an order has been duly made requiring the said (*name*) to allow to his said wife (*or child*) for maintenance the monthly sum of rupees , and whereas it has been further proved that the said (*name*) in wilful disregard of the said order has failed to pay rupees , being the amount of the allowance for the month (*or months*) of : And thereupon an order was made adjudging him to undergo simple (*or rigorous*) imprisonment in the said jail for the period of ;

This is to authorize and require you the said (*name of Police-officer*) to take and deliver, or cause to be taken and delivered, the said (*name*) to the Superintendent (*or Keeper*) of the said Civil Jail, and you the said Superintendent (*or Keeper*) to receive the said (*name*) into your custody in the said jail, together with this warrant, and there carry the said order into execution according to law; returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

XLIII.—WARRANT TO ENFORCE THE PAYMENT OF MAINTENANCE BY DISTRESS AND SALE.

(*See section 488.*)

To (*name and designation of the Police-officer or other person to execute the warrant*).

WHEREAS (*name and description and address*) has been proved before me to be possessed of sufficient means to maintain his wife (*name*) [or his child (*name*)], who is by reason of (*state the reason*) unable to maintain (*herself or himself*), and to have neglected (*or refused*) to do so, and an order has been duly made requiring the said (*name*), to allow to his said wife (*or child*) for maintenance the monthly sum of rupees , and whereas it has been further proved that the said (*name*) in wilful disregard of the said order has failed to pay rupees , being the amount of the allowance for the month (*or months of*);

This is to authorize and require you to make distress by seizure of any moveable property belonging to the said (*name*) which may be found within the district of , and if within (*state the number of days or hours allowed*) next after such distress the said sum shall not be paid (*or forthwith*), to sell the moveable property distrained, or so much thereof as shall be sufficient to satisfy the said sum; returning this warrant with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

XLIV.—WARRANT OF COMMITMENT UNDER SECTION 492.

To the (*here insert the officer's designation*).

WHEREAS the Governor General (*or* the Governor of Fort St. George, *or* the Governor of Bombay, *as the case may be*) in Council, for good and sufficient reasons, has seen fit to determine that (*here insert the State-prisoner's name*) shall be placed under personal restraint at (*here insert the name of the place*), you are hereby required, in pursuance of that determination, to receive the person above-named into your custody, and to deal with him in conformity to the orders of the Governor General (*or* the Governor) in Council, and the provisions of the Code of Criminal Procedure, chapter XXXVIII.

Fort William (*or as the case may be*), the

By order of the Governor General (*or* the Governor) in Council.

A. B.,

Secretary (*or Chief Secretary*) to Government.

FORMS SCHEDULE V—*continued.*

XLV.—BOND AND BAIL-BOND ON A PRELIMINARY ENQUIRY BEFORE A MAGISTRATE.

(*See sections 506, 509.*)

I, (*name*), of (*place*), being brought before the Magistrate of (*as the case may be*) charged with the offence of , and required to give security for my attendance in his Court and at the Session Court, if required, do bind myself to attend at the Court of the said Magistrate on every day of the preliminary enquiry into the said charge, and should the case be sent for trial by the Session Court to be, and appear, before the said Court when called upon to answer the charge against me, and in case of my making default herein, I bind myself to forfeit to Her Majesty the sum of rupees .

Dated this day of 18 .

(*Signature.*)

I hereby declare myself (*or we jointly or severally declare ourselves and each of us*) surety for the said (*name*) that he shall attend at the Court of on every day of the preliminary enquiry into the offence charged against him, and should the case be sent for trial by the Session Court, that he shall be and appear before the said Court to answer the charge against him, and in case of his making default therein, I bind myself to forfeit to Her Majesty the Empress the sum of rupees .

Dated this day of 18 .

(*Signature.*)

XLVI.—WARRANT TO DISCHARGE A PERSON IMPRISONED ON FAILURE TO GIVE SECURITY.

(*See section 510.*)

To (*the Superintendent or Keeper*) of the Jail at (*or other Officer in whose custody the person is*).

WHEREAS (*name and description of prisoner*) was committed to your custody under warrant of this Court, dated the day of , and has since with his surety (*or sureties*) duly executed a bond,

or

and sufficient cause has been shewn to me for his release from further imprisonment,

or

and there have appeared to me sufficient grounds for the opinion that he can be released without any hazard to the community;

This is to authorize and require you forthwith to discharge the said (*name*) from your custody.

Given under my hand and the seal of the Court, this day of 18 .

(*Signature.*)

XLVII.—WARRANT OF ATTACHMENT TO ENFORCE A BOND.

(*See section 525.*)

To (*the Police-officer in charge*) of the Police-station at

WHEREAS (*name, description and address of person*) has failed to appear on (*mention the occasion*) pursuant to his recognizance, and has by such default forfeited to Her Majesty the Empress the sum of rupees (*the penalty in the bond*);

This is to authorize and require you to attach any moveable property of the said (*name*) that you may find within the district of by seizure and detention, and if the said amount be not paid within three days to sell the property so attached or so much of it as may be sufficient to realize the amount aforesaid, and to make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

FORMS SCHEDULE V—*continued.*

XLVIII.—NOTICE TO SURETY ON BREACH OF A BOND.

To of

WHEREAS on the day of 18 , you became surety for (*name*) of (*place*), that he should appear before this Court on the day of , and bound yourself in default thereof to forfeit the sum of rupees to Her Majesty the Empress; and whereas the said (*name*) has failed to appear before this Court, and by reason of such default you have forfeited the aforesaid sum of rupees , you are hereby required to pay the said penalty or shew cause, within days from this date, why payment of the said sum should not be enforced against you.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

XLIX.—NOTICE TO SURETY OF FORFEITURE OF BOND FOR GOOD BEHAVIOUR.

To of

WHEREAS on the day of 18 , you became surety by a bond for (*name*) of (*place*) that he would keep the peace for the period of , and bound yourself in default thereof to forfeit the sum of rupees to Her Majesty the Empress; and whereas the said (*name*) has been convicted of the offence of (*mention the offence concisely*) committed since you became such surety, whereby your security-bond has become forfeited;

You are hereby required to pay the said penalty of rupees , or to show cause within days, why it should not be paid.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

L.—WARRANT OF ATTACHMENT AGAINST A SURETY.

To

WHEREAS (*name, description and address*) has bound himself as surety for the appearance of (*mention the condition of the bond*), and the said (*name*) has made default, and thereby forfeited to Her Majesty the Empress the sum of rupees (*the penalty in the bond*);

This is to authorize and require you to attach any moveable property of the said (*name*) which you may find within the district of by seizure and detention. If the said amount be not paid within three days, to sell property so attached, or so much of it as may be sufficient to realize the amount aforesaid, and make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

LI.—WARRANT OF COMMITMENT OF THE SURETY OF AN ACCUSED PERSON ADMITTED TO BAIL.

To (*name and designation of Police-officer*) and the Superintendent (*or Keeper*) of the Civil Jail at

WHEREAS (*name and description of surety*) has bound himself as a surety for the appearance of (*state the condition of the bond*), and the said (*name*) has therein made default whereby the penalty mentioned in the said bond has been forfeited to Her Majesty the Empress; and whereas the said (*name of surety*) has, on due notice to him, failed to pay the said sum or shew any sufficient cause why it should not be enforced against him, and the same cannot be recovered by attachment and sale of moveable property of his, and an order has been made for his confinement in Jail for (*specify the period*);

This is to authorize and require you the said (*name of Police-officer*) to take and deliver, or cause to be taken and delivered, the said (*name*) to the Superintendent (*or Keeper*) of the said Civil Jail, and you the said Superintendent (*or Keeper*) to receive the said (*name*) into your custody with this warrant and him safely to keep in the said Jail for the said (*term of imprisonment*), and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

FORMS SCHEDULE V—*continued.*

LII.—NOTICE OF FORFEITURE OF A BOND TO KEEP THE PEACE TO THE PRINCIPAL.

To (*name, description and address*).

WHEREAS on the day of 18 , you entered into a bond (*or recognizance*) not to commit, &c. (*as in the bond or recognizance*), and proof of the forfeiture of the same has been given before me and duly recorded;

You are hereby called upon to pay the said penalty of rupees or to shew cause before me within days, why payment of the same should not be enforced against you.

Dated this day of 18 .

(*Seal.*)

(*Signature.*)

LIII.—WARRANT TO ATTACH THE PROPERTY OF THE PRINCIPAL ON BREACH OF A BOND TO KEEP THE PEACE.

To (*name and designation of Police-officer*) at the Police-station of

WHEREAS (*name and description*) did on the day of 18 , enter into a bond for the sum of rupees , binding himself not to commit a breach of the peace, &c. (*as in the bond*), and proof of the forfeiture of the said bond or recognizance has been given before me and duly recorded; and whereas notice has been given to the said (*name*) calling upon him to shew cause why the said sum should not be paid, and he has failed to do so or to pay the said sum;

This is to authorize and require you to attach by seizure moveable property belonging to the said (*name*) to the value of rupees which you may find within the district of , and if the said sum be not paid within to sell the property so attached, or so much of it as may be sufficient to realize the same; and to make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

LIV.—WARRANT OF IMPRISONMENT ON BREACH OF A BOND TO KEEP THE PEACE.

To (*name and designation of Police-officer*) and to the Superintendent (*or Keeper*) of the Civil Jail at

WHEREAS proof has been given before me and duly recorded that (*name and description*) has committed a breach of the bond or recognizance entered into by him to keep the peace whereby he has forfeited to Her Majesty the Empress the sum of rupees ; and whereas the said (*name*) has failed to pay the said sum or to shew cause why the said sum should not be paid, although duly called upon to do so, and payment thereof cannot be enforced by attachment of his moveable property, and an order has been made for the imprisonment of the said (*name*) in the Civil Jail for the period of (*term of imprisonment*);

This is to authorize and require you the said (*name of Police-officer*) to take and deliver, or cause to be taken and delivered, in the said (*name*) to the Superintendent (*or Keeper*) of the said Civil Jail; and you the said Superintendent (*or Keeper*) to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (*term of imprisonment*); and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

LV.—WARRANT OF ATTACHMENT AND SALE ON FORFEITURE OF BOND FOR GOOD BEHAVIOUR.

To the Police-officer in charge of the Police-station at

WHEREAS (*name, description and residence*) did on the day of 18 , give security by bond in the sum of rupees for the good behaviour of (*name, &c., of the principal*), and proof has been given before me and duly recorded of the commission by the said (*name*) of the offence of whereby the said bond has been forfeited; and whereas notice has been given to the said (*name*) calling upon him to show cause why the said sum should not be paid, and he has failed to do so or to pay the said sum;

SCHEDULE V—*continued.* FORMS.

This is to authorize you and require you to attach by seizure moveable property belonging to the said (*name*) to the value of rupees which you may find within the District of , and if the said sum be not paid within to sell the property so attached, or so much of it as may be sufficient to realize the same, and to make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

LVI.—WARRANT OF IMPRISONMENT ON FORFEITURE OF A BOND FOR GOOD BEHAVIOUR.

To (*name and designation of Police-officer*) and to the Superintendent (*or Keeper*) of the Civil Jail at

WHEREAS (*name, description and residence*) did on the day of 18 , give security by bond in the sum of rupees for the good behaviour of (*name, &c., of the principal*), and proof of the breach of the said bond has been given before me and duly recorded, whereby the said (*name*) has forfeited to Her Majesty the Empress the sum of rupees ; and whereas he has failed to pay the said sum or to show cause why the said sum should not be paid, although duly called upon to do so, and payment thereof cannot be enforced by attachment of his moveable property, and an order has been made for the imprisonment of the said (*name*) in the Civil Jail for the period of (*term of imprisonment*);

This is to authorize and require you the said (*name of Police Constable*) to take and deliver or cause to be taken and delivered the said (*name*) to the Superintendent (*or Keeper*) of the said Civil Jail, and you the said Superintendent (*or Keeper*) to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (*term of*) *imprisonment*); returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

STATEMENT OF OBJECTS AND REASONS.

No less than three Codes of Criminal Procedure are now in operation in British India: Act X of 1872, amended by Act XI of 1874, which is in force throughout the Mufassal; the High Courts' Act, X of 1875, which is in force in the Presidency-towns, Allahabad and Lahore, and the Presidency Magistrates' Act, IV of 1877, also in force in the Presidency-towns.

Many of the provisions of these Codes merely repeat one another; many of their rules, though dealing with the same subjects, unnecessarily vary in language; and the result is that the bulk of the Indian Statute-book is far greater than need be and that the Courts when construing one Code are often deprived of the guidance of prior decisions on another.

The primary object of this Bill, which has been framed at the suggestion of the Secretary of State, is to recast the Code of 1872, combining with it the substance of the High Courts' Act and the Presidency Magistrates' Act, and incorporating in it the numerous reported decisions on its wording, and thus at last give to India a single and complete Code of Criminal Procedure, and carry out, so far, the policy of providing a simple and uniform system of law for this country. The language and arrangement of Act X of 1872 have, for obvious reasons, been departed from only so far as is necessary for the main purpose of the Bill.

2. Though many of the outlying Acts and Regulations dealing with Criminal Procedure were repealed and re-enacted by Act X of 1872, many more are still untouched, and the secondary object of the present Bill is to consolidate these enactments, which are eleven in number:—

Acts.

XXIII of 1840 (Execution of process).
XXXIV of 1850 (State prisoners).
III of 1858 (State prisoners).
XVIII of 1862 (Administration of Criminal Justice in the High Courts).
II of 1869 (Justices of the Peace).
XXII of 1870, sections 2 and 4 (Application to European British subjects of Acts giving summary jurisdiction).

Regulations.

Bengal Regulation III, 1818 (State prisoners).
Bengal Regulation XX of 1825 (Jurisdiction of Courts Martial).
Madras Regulation II, 1819 (State prisoners).
Bombay Regulation XXV, 1827 (State prisoners).

3. The result of consolidating the Acts and Regulations above specified will be to substitute a single Act of 566 sections for fourteen enactments containing about one thousand unrepealed sections.

4. The present Bill is divided into nine Parts, the first containing the usual preliminary matter; the second dealing with the constitution and powers of the Criminal Courts and offices; the third containing some general provisions; the fourth treating of the prevention of offences; the fifth, of information to the Police and of their powers to investigate; the sixth, of proceedings in prosecutions; the seventh, of appeal, reference and revision; the eighth, of special proceedings; the ninth, of supplementary provisions.

Preliminary.

5. Part I consists of a single chapter containing the usual preliminary matter. The wording of some of the definitions in Act X of 1872 has been amended and definitions of 'to sign,' 'public prosecutor,' 'pleader,' 'offence,' 'chapter,' 'schedule' and 'place' have been added. The definition of 'European British subject' has been extended to persons naturalized in British India. Words referring to acts done are declared to extend also to illegal omissions, and words such as 'special law,' 'local law,' defined in the Penal Code will have the meanings attached to them respectively by that Code. On the other hand, the definitions of 'inquired into,' 'trial,' 'Magistrate's case,' have been omitted as not needed in the Code in its revised form.

Criminal Courts.

6. Part II (constitution and powers of the Criminal Courts and offices) consists of two chapters, of which the first deals (*a*) with the classes of Criminal Courts, (*b*) with territorial divisions, (*c*) with Courts outside the Presidency-towns, (*d*) with the Courts of the Presidency Magistrates, (*e*) with Justices of the Peace and (*f*) with the suspension and removal of Judges, Magistrates and Justices of the Peace. The second chapter treats of the powers of Judges and Magistrates, the description of offences cognizable by each Court, the sentences which may be passed by Courts of various classes, and the mode of conferring powers on the latter. The changes of the law here made are little more than verbal, save that in section 39 (= Act X of 1872, section 56), as to the continuance of powers of an officer transferred to another local area, words have been introduced to shew clearly that the direction therein mentioned may have preceded the transfer. In connection with section 33 as to power to sentence to imprisonment in default of payment of fine, it will be necessary to pass simultaneously with the Bill a short Act amending section 67 of the Penal Code, by inserting a declaration that such imprisonment shall be simple.

Section 35 declares, in accordance with a decision of the Bombay High Court, that, for the purpose of confirmation or appeal, a combined sentence, in case of simultaneous convictions for several offences, shall be deemed to be a single sentence.

General Provisions.

7. Part III contains certain general provisions which it seems convenient to group together and which, to avoid forward references, must stand near the beginning of the Code. They relate to the following matters: aid and information to the Magistrates and Police: arrest, escape and retaking: processes to compel appearance and production of documents. Here, again, the changes in the law are little more than verbal, save that, to the offences which the public are bound to assist in preventing, has been added (section 41) attempts to injure public property: that the section (44) authorizing, in the case of forcible resistance, the use of necessary means to effect arrests, has been extended to meet the case of attempts to evade them; that power has been given (section 47) to break open the doors of a house for the purpose of liberating persons who have lawfully entered for the purpose of making arrests therein: that persons making arrests have been expressly empowered (section 50) to take from the person arrested any offensive weapons which he may have about him; that the Police have been authorized to arrest, without warrant, deserters from the Navy; and that sections (63, 64) equivalent to Act XXV of 1861, section 112, have been inserted to provide for the retaking of persons escaping or rescued from lawful custody.

8. Under the present Code (Act X of 1872, section 153), summonses issued by Magistrates are ordinarily served "through a Police-officer:" the Bill (section 65) provides that they shall ordinarily be served by an officer of the Court, but that the Magistrate may direct service by the Police. Persons to or with whom a summons is delivered, tendered or left may be required (section 67) to countersign a copy of the original. Provision is made (sections 70, 71) for the service of a summons outside the local jurisdiction of the Magistrate who issues it, and for the proof of such service.

9. Section 72 requires that all warrants of arrest, whether issued in the Presidency-towns or the Mufassal, shall be sealed. Act IV of 1877, section 56, does not in such cases require a seal.

10. Section 85 clears up a doubt as to the commencement of the period provided in the corresponding section (171) of Act X of 1872, for the appearance of a person absconding against whom a warrant has been issued.

11. On the other hand, the power to arrest without warrant persons against whom a hue and cry has been raised is omitted, as that obsolete common-law process is unknown in India, and the section authorizing masters and mates to arrest deserters from ships is omitted, as the matter is sufficiently provided for by the Merchant Shipping Act.

Prevention of Offences.

12. Part IV, which relates to the prevention of offences, comes, it is considered, properly before Part VI, which relates to their prosecution. It comprises six chapters dealing respectively with lawful resistance; security for keeping the peace and for good behaviour; the dispersion of unlawful assemblies; suppression of nuisances; disputes as to immoveable property; and, lastly, the preventive action of the Police.

13. The provision (section 104) relating to lawful resistance to the commission of an offence is new. It declares that such resistance may be made by any person in the cases and to the extent in and to which he may exercise the right of private defence—a right defined and limited by the Penal Code, sections 96—106.

14. In the chapter relating to bonds for keeping the peace, and for good behaviour, provision has been made (section 116) as to the manner of conducting inquiries. We have made it clear in section 124 that a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, and Magistrate of the first class can cancel a bond on the application of a surety. Such Magistrates are also empowered (section 108) to require security for good behaviour.

15. In the chapter (X) on dispersion of unlawful assemblies, volunteers enrolled under the Indian Volunteers Act, 1869, are placed on the same footing as soldiers of Her Majesty's army.

Information to the Police, and their power to investigate.

16. Part V consists of a single chapter relating to information to the Police and their power to investigate. It corresponds with chapter X of Act X of 1872, and sections 379, 380 of the same Act.

17. The words "or that immediate arrest is not necessary," which are to be found in section 117 of Act X of 1872, have been omitted from section 155 of the Bill, as it is not apparent why a police-officer should be debarred from investigating a case of a cognizable offence because he does not at starting feel himself justified in arresting any person.

18. Section 162 makes it clear that confessions to Magistrates shall not only be "taken," but signed and certified, like examinations of accused persons.

19. Power resembling that conferred on Coroners by Act IV of 1871, section 11, has been given (section 174) to Magistrates authorized to hold inquests, to disinter and examine corpses in order to discover the cause of death.

Proceedings in Prosecutions.

20. Part VI treats of proceedings in prosecutions up to appeal, and is divided into seventeen chapters, arranged as follows:—

XV. Jurisdiction of Criminal Courts in Inquiries and Trials.
XVI. Complaints to Magistrates.
XVII. Commencement of Proceedings before Magistrates.
XVIII. Inquiry into cases triable by the Court of Session or High Court.
XIX. The Charge.
XX. Trial of Summons Cases by Magistrates.
XXI. Trial of Warrant Cases by Magistrates.
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XXIX. Execution.
XXX. Suspensions, Remissions and Commutations of Sentences.
XXXI. Previous Acquittals or Convictions.

It will be seen that the above-mentioned chapters are arranged, as nearly as may be, according to the chronological order of the events in a prosecution.

Chapter XV (as to the jurisdiction of the Courts in inquiries and trials) deals, first, with the place of inquiry or trial: then with the time of commencing prosecutions: and, thirdly, with the conditions requisite for the initiation of proceedings.

21. "Delay," says Livingston, "inflicts punishment on the innocent, or lessens the force of example by punishing the guilty after the crime he has committed is forgotten." Sections 186-191 accordingly contain rules as to the time within which prosecutions for most offences must be commenced. There will be no limit for prosecutions for the following: offences against the State; offences relating to the Army and Navy; false evidence and offences against public justice; offences relating to coin and Government stamps; offences under the Penal Code, sections 299 to 311, 359 to 373 and 390 to 414; offences under the same Code relating to documents, trade and property-marks and marriage. Three years is the period fixed in case of the following: offences against the public tranquillity; offences by or relating to public servants; contempts of their lawful authority; offences against property other than those against trade and property-marks. For all other offences six months is the period prescribed. The time during which the accused is absent from the jurisdiction of the Court empowered to try him,

or fails to surrender pursuant to a proclamation, will be excluded in computing the prescribed periods.

22. Section 196 requires that the sanction to entertain complaints of certain offences shall, so far as practicable, specify the place in which, and the occasion on which, the offence complained of was committed.

23. Chapter XVI, of complaints to Magistrates, corresponds to sections 144 to 147 of Act X of 1872, but adds (section 202) a provision that a complaint in writing made to a Magistrate not competent to entertain it shall be returned for presentation to the proper tribunal.

24. Chapter XIX. of the charge, extends to the whole of British India the amendments in Act X of 1872, sections 439 to 459, made by Act X of 1875; and with reference to Mr. Justice West's observations in *Reg.* v. *Chand Hur*, 11 Bomb. 241, on the corresponding section (457) of Act X of 1872, section 241 of the Bill has been confined to offences consisting of several particulars, a combination of some only of which constitutes a complete minor offence.

25 The provision (Act X of 1872, section 218) that the accused shall, while making his defence, be allowed to recall and cross-examine the witnesses for the prosecution has been expressly confined (section 259) to cases where the witnesses are present in the Court or its precincts.

26. In chapter XXII, summary trials, the Local Government has been authorised to confer on Benches invested with second or third class powers jurisdiction to try abetments of, and attempts to commit, the offences which they may now try summarily.

27. Chapter XXIII provides a common procedure for the High Court and the Court of Session, preserving, however, the special rules as to juries and their verdicts.

When a juror becomes unable to attend or absents himself, power is given (section 285), with the consent of the prosecutor and the accused, to proceed with the remaining jurors.

Where jurors or assessors have been taken to view the place in which the offence charged is alleged to have been committed, the Court has been empowered (section 296) to exempt them from being immediately brought back.

Where the Sessions Judge disagrees with a verdict of acquittal and submits the case to the High Court, he is required (section 310) to state the offence which he considers to have been committed, and the High Court is empowered to acquit or convict the accused of any offence of which the jury could have convicted him upon the charge framed and placed before it. This, it is believed, is the intention of the corresponding clause of section 263 of Act X of 1872.

28. Much doubt exists as to the offences which may lawfully be compounded. The Exception to section 214 of the Penal Code (in which the law on the subject is contained) is excessively obscure, and this obscurity is increased rather than diminished by the illustrations annexed to that section. The Bill repeals these illustrations; and section 347 declares in unmistakeable language that certain specified offences, and no others, may be compounded. It will be necessary to pass simultaneously with the Bill a short Act declaring that, for the Exception to section 280 of the Penal Code, the following shall be substituted:—

"*Exception.*—The provisions of sections 213 and 214 do not extend to any case in which the offence may lawfully be compounded."

29. In chapter XXVII, as to judgment, section 369 allows the judgments of Mufassal Courts to be written in the mother-tongue of the presiding officer.

30. In chapter XXIX, as to execution, there are no sections corresponding with sections 319, 320 of Act X of 1872. The reason for this omission is that the matter with which they deal does not belong to criminal procedure, but falls within the scope of the Prisoners' Act, 1871; and it is proposed that, simultaneously with the passing of the present Bill, a short Act be passed, substituting for section 33 of the Prisoners' Act, and for section 57 of Act IV of 1877, a section equivalent to Act X of 1872, sections 319, 320.

31. Chapter XXX, as to suspensions, remissions and commutations of sentences.—Where application is made for the suspension or remissions of a sentence, the Government is empowered (section 402) to require the presiding Judge of the Court before which the conviction was had to furnish a statement of the facts proved on the trial, and of any facts bearing on the propriety of granting or refusing the application.

Appeal, Reference and Revision.

32. Part VII deals with appeals, references and the revisional jurisdiction of the High Court.

Section 407 provides that the appeal from a District Magistrate exercising the enhanced powers conferred under section 34 shall lie to the Court of Session in cases in which the sentence has not been submitted to that Court for confirmation, and, when it has been so submitted, to the High Court. This puts the appeals in question on the same footing as appeal from an Assistant Sessions Judge. There seems to be no reason for making any distinction between the two.

33. Section 424, in accordance with a decision of the Madras High Court (I. L. R. 1 Mad. 54), declares that, when an Appellate Court enhances any punishment inflicted by the sentence appealed against, it may inflict punishment of a different kind.

34. In the case of an appeal from an acquittal, section 427 expressly authorizes the High Court to order the accused to be arrested and brought before it, and to commit him to prison pending the disposal of the appeal, or admit him to bail.

35. A section (431) suggested by a decision of the Bombay High Court (I. L. R. 2 Bomb. 564) provides that appeals by persons required to give security for good behaviour or by convicted persons abate on their death, and that appeals against acquittals abate on the death of the accused. The power of revision conferred by section 439 will enable the High Court to alter sentences even after the appeal has abated.

36. Where, in the opinion of the Court of Session or District Magistrate, an accused person has been improperly discharged by an inferior Court, the accused should not be committed without having had an opportunity of shewing cause why the committal should not be made (1 O'K. 98). Provision to this effect has been made by section 436.

37. Section 439 (corresponding with Act X of 1872, section 297) has been framed so as to allow the High Court, when exercising its revisional jurisdiction, to interfere with improper acquittals. There is reason to believe that this change is in accordance with the intention of the framers of Act X of 1872.

Special Proceedings.

38. Part VIII, as to special proceedings, deals with the procedure relating to the following matters:—criminal proceedings against Europeans and Americans: lunatics: contempts of Court and other offences affecting the administration of justice: maintenance of wives and children: State prisoners: proceedings in the nature of *habeas corpus*.

Section 451 removes some differences which exist in the present law between the procedure of the High Courts and Courts of Session in cases in which European British subjects are concerned and which seem unnecessary. In particular, it is provided that, in the Court of Session as well as in the High Court, the requisite moiety of the jury or Assessors may be made up of Americans as well as Europeans.

39. The power given by sections 433 and 434 of Act X of 1872, to discharge from custody or make over to his relative a person acquitted on the ground of insanity, has been extended, in sections 474 and 475 of the Bill, to the case of persons who, being found to be insane at the time of trial, are committed to custody.

40. Section 477 has been framed so as to allow a Court of Session to charge a person for giving false evidence before itself—a power of which such Courts were unintentionally deprived by section 472 of the present Code.

41. Section 487 has been redrawn so as to avoid the difficulty which is felt in determining the meaning of the words "offence committed in contempt of its own authority," which occur in the corresponding section (473) of Act X of 1872.

Supplementary Provisions.

42. Part IX contains certain provisions supplementary to the general rules of procedure contained in the Code. It deals, first, with the public prosecutor, bail, commissions for the examination of witnesses and special rules of evidence. It then contains certain provisions relating to bonds to keep the peace, for good behaviour, for appearance, &c.: the disposal of property regarding which an offence has been committed: the transfer of criminal cases: irregular proceedings, and, lastly, certain miscellaneous matters.

43. Words have been introduced into the section (502) providing for the appointment of a public prosecutor which will have the effect of putting a stop to the practice of appointing a police officer.

44. Section 505 exempts the Advocate General, Standing Counsel, Government Solicitor or other officer empowered by the Local Government from the necessity of obtaining permission to conduct prosecutions.

45. The provisions of the present law as to commissions for the examination of witnesses have been amended in two respects. The Bill (section 515) requires that the interrogatories shall be thought relevant by the Magistrate or Court directing the commission, and power is expressly given (section 518) to stay the inquiry or trial for a specified time reasonably sufficient for the execution and return of the commission.

46. In proving the existence of circumstances as a defence under the 2nd, 3rd, 5th, 6th, 7th, 8th, 9th or 10th Exception to section 499 of the Penal Code, section 521 of the Bill provides that good faith shall be presumed until the contrary appears. This is now the law in the Presidency-towns (Act XVIII of 1862, section 27) and may usefully be extended to the Mufassal.

47. In accordance with a recent rule of the High Court at Bombay, section 528 declares that, when a High Court or Court of Session makes an order for the disposal of property, and cannot through its own officers conveniently deliver the property to the person entitled thereto, the Court may direct its order to be carried into effect by the committing Magistrate.

48. Section 531 provides, in case of a conviction under the Penal Code, sections 292, 293, 501 or 502, for the destruction of the obscene books and defamatory matter in respect of which the conviction was had. It also provides for the destruction of adulterated or noxious food, drink or drugs in respect of which a conviction was had under sections 272—275 of the same Code.

49. Section 536 provides, in accordance with a Minute of Sir B. Peacock, cited I. L. R. 1 Calc. 223, that applications to the High Court for the transfer of cases shall be made by motion supported by affidavit or affirmation.

Schedules.

50. Schedules II and V, which correspond respectively with schedules IV and II of Act X of 1872, have been altered so as to adapt them, not only to the Mufassal Courts, but to those of the Presidency Magistrates.

The lists of powers contained in section 21 *et seq.* of Act X of 1872 have been thrown into Schedules III and IV of the Bill.

51. Excluding the special provisions of the Acts relating respectively to Coroners in the Presidency-towns, extradition, European British vagrants, and criminal tribes, the Bill is now, so far as Mr. Cockerell, Mr. Fitzpatrick and myself have been able to make it, a complete body of criminal procedure. No pains have been spared to render its provisions plain and practical; and in return all competent persons are earnestly asked to point out the mistakes and omissions which they will doubtless discover in so large and complicated a work.

CALCUTTA;
The 28th March 1879.

WHITLEY STOKES.

D. FITZPATRICK,
Secy. to the Govt. of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, APRIL 19, 1879.

☞ Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Bill, and Statement of Objects and Reasons accompanying it, are published for general information, by order of His Excellency the Governor General, under the 22nd of the Rules for the Conduct of the Legislative Business of the Council of the Governor General:—

THE CODE OF CRIMINAL PROCEDURE, 1879.

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A Bill to Consolidate and amend the law relating to Criminal Procedure.

WHEREAS it is expedient to consolidate and amend the law relating to Criminal Procedure; It is hereby enacted as follows:— Preamble.

PART I.

PRELIMINARY.

CHAPTER I.

1. This Act may be called "The Code of Criminal Procedure, 1879:" and shall come into force on the first day of January, 1880; Short title. Commencement.

It extends to the whole of British India; but in the absence of any specific provision to the contrary, nothing herein contained shall affect any special or local law now in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed,* by any other law now in force, or shall apply to— Local extent.

Act X, 1872, ss. 1, 2, 111, 529, 535, 540, 541. Act X, 1875, ss. 143. Act IV, 1877, s. 8.

* e.g., Act V of 1869.

Act X, 1872, s. 540.

(a) the Commissioner of Police or the Police in the towns of Calcutta, Madras and Bombay;

(b) heads of villages in the Presidency of Fort Saint George;

(c) village Police-officers in the Presidency of Bombay;

(d) any officer duly authorized to try petty offences in military bázárs at cantonments and stations occupied by the troops of the said Presidencies respectively.

Act X, 1875, s. 2. Act X, 1872, s. 2, para. 1.

2. On and from the first day of January, 1880, the enactments mentioned in the first schedule shall be repealed to the extent specified in the third column of the said schedule, but not so as to restore any jurisdiction or form of procedure not then existing or followed, or to render unlawful the continuance of any confinement which is then lawful. Repeal of enactments.

Act X, 1872, ss. 32, 86.

Act X, 1872, s. 3, last para., s. 10.

All notifications published, proclamations issued, powers conferred, local limits defined, sentences passed and orders, rules and appointments made, under any enactment hereby repealed, or under any enactment repealed by any such enactment, and which are in force immediately before the first day of January, 1880, shall be deemed to have been respectively published, issued, conferred, defined, passed and made under the corresponding section of this Code. Notifications, &c., under repealed Acts.

Act X, 1872, s. 2, paras. 3, 4.

3. In every enactment passed before this Code comes into force, in which reference is made to, or to any chapter or section of, the Code of Criminal Procedure, Act No. XXV of 1861, or Act No. X of 1872, such reference shall be taken to be made to this Code or to its corresponding chapter or section. References to Code of Criminal Procedure.

In every such enactment the expressions "Officer exercising (or 'having') the powers (or the 'full powers') of a Magistrate," "Subordinate Magistrate, first class," and "Subordinate Magistrate, second class," shall respectively be deemed to mean "Magistrate of the first class," "Magistrate of the second class," and "Magistrate of the third class;" the expression "Magistrate of a division of a district" shall be deemed to mean Sub-divisional Magistrate, and the expression "Magistrate of Police" shall be deemed to mean Presidency Magistrate. Expressions in former Acts.

Act IV, 1877, s. 10.

Act X, 1872, s. 4. Act IV, 1877, s. 6.

4. In this Code the following words and expressions have the following meanings, unless a different intention appears from the subject or context:— Interpretation.

New. Ldv. 501.

(a) "Complaint" means the allegation made to a proper officer that some person, whether known or unknown, has been guilty of an act which amounts to an offence: "Complaint."

(b) "Investigation" includes all the proceedings by the Police authorized by this Code for the collection of evidence: "Investigation."

"Inquired into" omitted.

(c) "Inquiry" includes every inquiry conducted under this Code by a Magistrate or Court: "Inquiry."

Penal Code, 193. I. L. R., 1 All. 6. 1 Mad. H. C. Rep. 46.

(d) "Judicial proceeding" means any proceeding in the course of which evidence is or may be taken: "Judicial proceeding."

New.

(e) "Writing" includes "printing," "lithography," "photography" and "engraving:" "Writing."

(f) "To sign" means to affix a name or mark to an instrument or record in writing or by means of a stamp: "To sign."

New.

(g) "Sub-division" means a sub-division of a District: "Sub-division."

(h) "Province" means the territories for the time being under the administration of any Local Government: "Province."

(i) "Presidency-town" means the local limits for the time being of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William, Madras or Bombay: "Presidency-town."

Act X, 1875, s. 3, altered. Another definition *infra*, s. 269.

(j) "High Court" means, in reference to proceedings against European British subjects or persons jointly charged with European British subjects, the High Courts of Judicature at Fort William, Madras and Bombay, the High Court of Judicature for the North-Western Provinces and the Chief Court of the Punjáb: "High Court."

In other cases "High Court" means the highest Court of criminal appeal or revision for any local area:

(k) "Chief Justice" includes also the senior Judge of a Chief Court: "Chief Justice."

Act X, 1875, s. 3. Act X, 1877, s. 589.

(l) "Advocate General" includes also a Government Advocate, or where there is no Advocate General or Government Advocate, such officer as the Local Government may from time to time appoint in this behalf: "Advocate General."

(m) "Clerk of the Crown" includes any officer specially appointed by the Chief Justice to discharge the functions given by this Code to the Clerk of the Crown: "Clerk of the Crown."

See 11 Bom. 168. Act X, 1872, s. 57. Act X, 1875, s. 3.

(n) "Public prosecutor" means any person appointed under section 502, and includes any person acting under the directions of a public prosecutor; and any person conducting a prosecution on behalf of Her Majesty in any High Court in the exercise of its original criminal jurisdiction: "Public prosecutor."

(o) "Pleader" used with reference to any proceeding in any Court means a pleader authorized to practise in such Court, and includes (1) an advocate, a vakíl and an attorney of a High Court so authorized, and (2) any other person appointed with the permission of the Court to act in such proceeding. "Pleader."

Act X, 1872, s. 186.

(p) "Officer in charge of a Police-station" includes, when the officer in charge of the station is absent or ill, the Police-officer next in rank present at the Police-station above the rank of Constable: "Officer in charge of a Police-station."

Bom. 98.

(q) "Sessions case" means a case triable exclusively by the Court of Session, or which the Magistrate commits to the Court of Session, though he might have tried it himself: "Sessions case."

(r) "Offence" means anything made punishable by any law for the time being in force: "Offence."

(s) "Cognizable offence" means an offence for, and "cognizable case" means a case in, which a Police officer may, under any law for the time being in force, arrest without warrant: "Cognizable offence." "Cognizable case."

"Non-cognizable offence" means an offence for, and "Non cognizable case" means a case in, which a Police-officer may not arrest without warrant: "Non-cognizable offence." "Non-cognizable case."

(t) "Bailable offence" means an offence shewn as bailable in the second schedule or which is made bailable by any other law for the time being in force: and "non-bailable offence" means any other offence: "Bailable offence." "Non-bailable offence."

(u) "Warrant case" means a case relating to an offence punishable with death, transportation, whipping, or imprisonment for a term exceeding six months: "Warrant case."

(v) "Summons case" means a case relating to an offence not so punishable: "Summons case."

Act X, 1872, s. 71. Act X, 1875, s. 2, extended to persons naturalized in British India.

(w) "European British subject" means— "European British subject."

(1) any subject of Her Majesty naturalized in British India, or born, naturalized or domiciled in the United Kingdom of Great Britain and Ireland, or in any of the European, American or Australian Colonies or Possessions of Her Majesty, or in the Colony of New Zealand, or in the Colony of the Cape of Good Hope or Natal;

(2) any child or grand-child of any such person by legitimate descent:

(x) "Chapter" means a chapter of this Code: "Chapter." "Schedule" means a schedule hereto annexed: "Schedule."

(y) "Place" includes also a house, building and vessel: "Place."

Act XI, 1874, s. 2.

Words referring to acts done extend also to illegal omissions, and

all words and expressions used herein and defined in the Indian Penal Code, and not hereinbefore defined, shall be deemed to have the meanings attached to them respectively by that Code. Words to have same meaning as in Penal Code.

e. g., "special law," "local law."

Act X, 1872, ss. 6, 7, 11.

5. All offences under the Indian Penal Code shall, and all offences under any other law shall, in the absence of any enactment for the time being in force regulating the mode of inquiry or trial, be enquired into and tried according to the provisions hereinafter contained. Trial of offences under Penal Code. Trial of offences against other laws.

Act X, 1872, ss. 6, 8, para. 1. Act X, 1875, s. 6. Act IV, 1877, s. 14.

PART II.

CONSTITUTION AND POWERS OF CRIMINAL COURTS AND OFFICES.

CHAPTER II.

OF THE CONSTITUTION OF CRIMINAL COURTS AND OFFICES.

A.—Classes of Criminal Courts.

Act X, 1872, ss. 5, 19.

6. Besides the High Courts and the Courts constituted under any law other than this Code for the time being in force, there Classes of Criminal Courts.

shall be five classes of Criminal Courts in British India, namely :—

I.—Courts of Session :
II.—Courts of Presidency Magistrates :
III.—Courts of Magistrates of the first class :
IV.—Courts of Magistrates of the second class :
V.—Courts of Magistrates of the third class.

B.—Territorial Divisions.

Act X, 1872, ss. 12, 39.

Sessions Divisions.

7. Every Province (excluding the Presidency-towns) shall be a Sessions Division, or shall consist of Sessions Divisions;

Districts.

and every Sessions Division shall, for the purposes of this Code, be a District or consist of Districts.

Act X, 1872, ss. 13, 38.

Power to alter Divisions and Districts.

The Local Government may from time to time alter the limits or, with the previous sanction of the Governor General in Council, the number, of such Divisions and Districts.

Act XI, 1874, s. 4.

Act X, 1872, s. 14.

Existing Divisions and Districts maintained till altered.

The existing Sessions Divisions and Districts shall be Sessions Divisions and Districts respectively, unless and until they are so altered.

Presidency-towns to be deemed Districts.

Every Presidency-town shall, for the purposes of this Code, be deemed to be a District.

Act X, 1872, s. 39.
Act X, 1872, s. 40.

Power to divide Districts into sub-divisions.

8. The Local Government may divide any District outside the Presidency-towns into Sub-divisions, or constitute any portion of any such District a Sub-division, and may from time to time alter the limits of such Sub-divisions.

Existing Sub-divisions maintained.

All existing Sub-divisions which are now usually put under the charge of a Magistrate shall be deemed to have been made under this Code.

C.—Courts and offices outside the Presidency-towns.

Act X, 1872, ss. 15, 16 and 17.

Court of Session.

9. The Local Government shall establish a Court of Session for every Sessions Division, and appoint a Judge of such Court.

It may also appoint Additional Sessions Judges, Joint Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in one or more such Courts.

Act X, 1872, s. 86.

District Magistrate.

10. In every District outside the Presidency-towns, the Local Government shall appoint a Magistrate of the first class, who shall be called the District Magistrate.

Act X, 1872, s. 55.

Officers temporarily succeeding to vacancies in office of District Magistrate.

11. Whenever, in consequence of the office of a District Magistrate becoming vacant, any officer succeeds temporarily to the chief executive administration of the District in criminal matters, such officer shall, pending the orders of the Local Government, exercise all the powers and perform all the duties respectively conferred and imposed by this Code on the District Magistrate.

Act X, 1872, ss. 37, 49.

Subordinate Magistrates.

12. The Local Government may appoint as many persons as it thinks fit, besides the District Magistrate, to be Magistrates of the first, second or third class in any District outside the Presidency-towns; and the Local Government, or the District Magistrate subject to the control of the Local Government, may define local areas within which such persons may exercise the powers with which they may respectively be invested under this Code.

Local limits of their jurisdiction.

In the absence of any such definition, such persons may exercise such powers throughout such District.

Act X, 1872, s. 40.

Power to put Magistrate in charge of Sub-division.

13. The Local Government may place any Magistrate of the first or second class in charge of a Sub-division.

Such Magistrates shall be called Sub-divisional Magistrates.

Delegation of power to Magistrate of District.

The Local Government may, if it thinks fit, delegate its powers under this section to the District Magistrate.

Act X, 1872, s. 42.
Act XI, 1874, s. 17.

Special Magistrates.

14. The Local Government may confer upon any person all or any of the powers conferred or conferrible by or under this Code on a Magistrate of the first, second or third class, in respect to particular cases or to a particular class or particular classes of cases, or in regard to cases generally, in any local area outside the Presidency-towns.

Such Magistrates shall be called Special Magistrates.

See Act No. XI of 1874, s. 5.

With the previous sanction of the Governor General in Council, the Local Government may delegate, with such limitations as it thinks fit, to any officer under its control the power conferred by the first paragraph of this section.

Act X, 1872, s. 50.

Benches of Magistrates.

15. The Local Government may direct any two or more Magistrates in any place outside of the Presidency-towns to sit together as a Bench, and may invest such Bench with any of the powers conferred or conferrible by or under this Code on a Magistrate of the first, second or third class, and direct it to exercise such powers in such cases, or such classes of cases, only, and within such local limits, as the Local Government thinks fit.

Sufferuddin v. Ibrahim, I. L. R. 3 Calc. 764.

Act X, 1872, s. 51.

Powers exercisable by Bench in absence of special direction.

Except as otherwise provided by any order of the Local Government under this section, every such Bench shall have the powers conferred by this Code on a Magistrate of the highest class to which any one of its members belongs, and who is present taking part in the proceedings as a member of the Bench, and as far as possible shall, for the purposes of this Code, be deemed to be a Magistrate of such class.

Act X, 1872, ss. 52, 53.

Power to frame rules for guidance of Benches.

16. The District Magistrate may from time to time, subject to the control of the Local Government, make rules consistent with this Code for the guidance of Magistrates' Benches in his District respecting the following subjects :—

(*a*) the classes of cases to be tried ;
(*b*) the times and places of sitting ;
(*c*) the constitution of the Bench for conducting trials ;
(*d*) the mode of settling differences of opinion which may arise between the Magistrates in session.

Act X, 1872, s. 37, cl. 2.

Subordination of other Magistrates to District Magistrate ;

17. All Magistrates appointed under sections 12, 13 and 14, and all Benches constituted under section 15, shall be subordinate to the District Magistrate, and

Act X, 1872, s. 41.

to Sub-divisional Magistrate.

every Magistrate (other than a Sub-divisional Magistrate) and Bench exercising powers in a Sub-division shall be subordinate to the Sub-divisional Magistrate, subject, however, to the general control of the District Magistrate.

Act X, 1872, s. 37, cl. 2.

Neither the District Magistrate nor the Magistrates or Benches appointed or constituted under sections 12, 13, 14 and 15 shall be subordinate to the Sessions Judge, except to the extent and in the manner hereinafter expressly provided.

D.—Courts of Presidency Magistrates.

Act IV, 1877, ss. 8, 9.

Appointment of Presidency Magistrates.

18. The Local Government shall from time to time appoint a sufficient number of persons (hereinafter called Presidency Magistrates) to be Magistrates for each of the Presidency-towns, and shall appoint one of such persons to be Chief Magistrate for each such town.

Any two or more of such persons may (subject to the rules made by the Chief Magistrate under the power hereinafter conferred) sit together as a Bench.

IV, 1877, para. 5.

Local limits of their jurisdiction.

19. Every Presidency Magistrate shall exercise jurisdiction in all places within the Presidency-town for which he is appointed, and within the limits of the port of such town and of any navigable river or channel leading thereto, as such limits are defined under the law for the time being in force for the regulation of ports and port-dues.

1877, last s. 9, para.

Bombay Court of Petty Sessions.

20. Every Presidency Magistrate in the town of Bombay shall exercise all jurisdiction which, under any law in force immediately before the first day of April, 1877, was exercised in that town by the Court of Petty Sessions :

Provided that appeals under the law for the time being regulating the municipality of Bombay shall lie to the Chief Magistrate only.

1877,

Chief Magistrate.

21. Every Chief Magistrate shall exercise in the Presidency-town for which he is appointed all the powers which by any law or rule in force at the time this Act comes into force are required to be exercised by any Senior or Chief Magistrate, and may from time to time, with the previous sanction of the Local Government, make rules consistent with this Code to regulate—

(*a*) the conduct and distribution of business and the practice in the Courts of the Magistrates of the town ;
(*b*) the times and places at which Benches of Magistrates shall sit ;
(*c*) the constitution of such Benches ; and
(*d*) the mode of settling differences of opinion which may arise between Magistrates in session.

E.—Justices of the Peace.

Act II, 1869, s. 3.

Justices of the Peace for the Mufassal.

22. The Governor General in Council, so far as regards the whole or any part of British India outside the Presidency-towns,

and every Local Government, so far as regards the territories subject to its administration (other than the towns aforesaid),

may, by notification in the official Gazette, appoint such European British subjects as he or it thinks fit to be Justices of the Peace within and for the territories mentioned in such notification.

Act II, 1869, s. 4.

Justices of the Peace for the Presidency-towns.

23. The Governor General in Council or the Local Government, so far as regards the town of Calcutta,

and the Local Government, so far as regards the towns of Madras and Bombay,

may, by notification in the official Gazette, appoint to be Justices of the Peace within the limits of the town mentioned in such notification any persons resident within British India and not being the subjects of any foreign State whom such Governor General in Council or Local Government (as the case may be) thinks fit.

Act II, 1869, s. 10.

Present Justices of the Peace.

24. Every person now acting as a Justice of the Peace within and for any part of British India other than the said towns, under any commission issued by a High Court, shall be deemed to have been appointed under section 22 by the Governor General in Council to act as a Justice of the Peace for the whole of British India other than the same towns.

Every person now acting as a Justice of the Peace within the limits of any of the said towns under any such commission shall be deemed to have been appointed under section 23 by the Local Government.

12 Geo. III, 63, s. 38. Act X, 1875, s. [illegible] Act IV, 1877, s. [illegible] Native [illegible] Courts [illegible] Judicial [illegible] matters [illegible] Justices [illegible] the Peace.

Ex officio Justices of the Peace.

25. In virtue of their respective offices, the Governor General, the Ordinary Members of the Council of the Governor General and the Judges of the High Courts are Justices of the Peace within and for the whole of British India, and the Presidency Magistrates are Justices of the Peace within and for the towns of which they are respectively Magistrates.

F.—Suspension and Removal.

Act X, 1872, s. 9.

26. All Judges of criminal Courts other than the High Courts, and all Magistrates, may be suspended or removed by the Local Government: Provided that such Judges and Magistrates as now are liable to be suspended or removed by the Governor General in Council shall continue to be so liable.

Suspension and removal of Judges and Magistrates.

Act II, 1869, s. 9.

27. The Governor General in Council may suspend any Justice of the Peace appointed by him, and the Local Government may suspend or dismiss any Justice of the Peace appointed by it.

Suspension and removal of Justices of the Peace.

CHAPTER III.

Powers of Courts.

A.—Description of Offences cognizable by each Court.

28. Any offence under the Indian Penal Code may be tried by the High Court or Court of Session or by any other Court by which such offence is shown in the seventh column of the second Schedule to be triable.

Offences under Penal Code.

Act X, 1872, s. 8.

29. Any offence under any other law shall, where any Court is mentioned in this behalf in such law, be tried by such Court; and when no Court is so mentioned, may be tried by the High Court or by any Court constituted under this Code:

Offences under other laws.

Provided that no Magistrate of the second class shall try any such offence which is punishable with imprisonment for a term which may extend to three years, and no Magistrate of the third class shall try any such offence which is punishable with imprisonment for a term which may extend to one year.

Act X, 1872, s. 36.

30. In the territories respectively administered by the Lieutenant-Governor of the Panjáb and the Chief Commissioners of Oudh, the Central Provinces, British Burma, Coorg and Assam, and in those parts of the other Provinces in which there are Deputy Commissioners or Assistant Commissioners, the Local Government may invest the District Magistrate with power to try as a Magistrate all offences not punishable with death.

Offences not punishable with death.

B.—Sentences which may be passed by Courts of various Classes.

Act X, 1872, s. 15, paras. 2 and 17.

31. A High Court may pass any sentence authorized by law.

Sentence which High Court or Sessions Judges may pass.

A Sessions Judge, Additional Sessions Judge or Joint Sessions Judge may pass any sentence authorized by law; but any sentence of death passed by such Judge shall be subject to confirmation by the High Court.

An Assistant Sessions Judge may pass any sentence authorized by law except a sentence of death, transportation or imprisonment for a term exceeding seven years; but any sentence of imprisonment for a term exceeding three years passed by an Assistant Sessions Judge shall be subject to confirmation by the Sessions Judge. Act X, s. 18.

32. The Courts of Magistrates may pass the following sentences, namely:— Act X, 1872, s. 20.

Sentences which Magistrates may pass.

(*a*.) Courts of Presidency Magistrates and of Magistrates of the first class:	Imprisonment for a term not exceeding two years, including such solitary confinement as is authorized by law; Fine not exceeding one thousand rupees; Whipping. Act IV, 1877, s. 11.
(*b*.) Courts of Magistrates of the second class:	Imprisonment for a term not exceeding six months, including such solitary confinement as is authorized by law; Fine not exceeding two hundred rupees; Whipping.
(*c*.) Courts of Magistrates of the third class.	Imprisonment for a term not exceeding one month; Fine not exceeding fifty rupees.

The Court of any Magistrate may pass any lawful sentence, combining any of the sentences which it is authorized by law to pass.

33. The Court of any Magistrate may award such term of imprisonment in default of payment of fine as is authorized by law: Act X, 1872, s. 20, Exp. 309, par. See I. L. R. Mad.

Power to sentence to imprisonment in default of fine.

Provided that the term is not in excess of the Magistrate's powers under this Code:

Provided also that in no case decided by a Magistrate where imprisonment has been awarded as part of the substantive sentence shall the period of imprisonment awarded in default of payment of the fine exceed one-fourth of the period of imprisonment which such Magistrate is competent to inflict as punishment for the offence, otherwise than as imprisonment in default of payment of the fine. Act X, s. 309, 2. As to part that section see Act 1868. Act IV, 1877, s. 12, omitting paras.

Proviso as to cases decided by a Magistrate.

34. The Court of a District Magistrate specially empowered under section 30 may pass any sentence of imprisonment for a term not exceeding seven years, including such solitary confinement as is authorized by law, or of fine, or of whipping, or of any combination of these punishments authorized by law. Act X, s. 36.

Higher powers of certain District Magistrates.

But any sentence of imprisonment for a term exceeding three years passed by any such Court shall be subject to the confirmation of the Sessions Judge.

Act X, 1872, s. 314. Act [illegible] 1875, s. 309. Act IV, 1877, s. 13.

35. When a person is convicted, at one trial, of two or more distinct offences, the Court may sentence him, for such offences, to the several punishments prescribed therefor which such Court is competent to inflict: such punishments, when consisting of imprisonment or transportation, to commence the one after the expiration of the other in such order as the Court may direct.

Sentence in cases of simultaneous conviction of several offences.

It shall not be necessary for the Court, by reason only of the aggregate punishments for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court:

Provided that in no case shall such person be sentenced to punishment for a longer period than fourteen years:

Maximum term of imprisonment.

Provided also that, if the case is tried by a Magistrate (other than a Magistrate acting under section 34), the aggregate punishments shall not exceed twice the amount of punishment which he is, in the exercise of his ordinary jurisdiction, competent to inflict.

I. L. R. 1 Bom. 223.

For the purpose of confirmation or appeal, a combined sentence passed under this section in case of simultaneous convictions for several offences shall be deemed to be a single sentence.

C.—Ordinary and Additional Powers.

1873, s. 24, 30.

36. All District Magistrates, Sub-divisional Magistrates and Magistrates of the first, second and third class have the powers hereinafter respectively conferred upon them and specified in the third schedule. Such powers are called their "ordinary powers."

Ordinary powers of Magistrates.

[illegible] s. 37.

37. In addition to his ordinary powers, any Magistrate of the first, second or third class may be invested by the Local Government or the District Magistrate, as the case may be, with any powers specified in the fourth schedule as powers with which a Magistrate of such class may be invested by the Local Government or the District Magistrate.

Additional powers conferrible on Magistrates.

D.—Conferment, Continuance and Cancellation of Powers.

1872.

38. In conferring powers under this Code, the Local Government may empower persons specially by name, or classes of officials generally by their official titles.

Mode of conferring powers.

39. Whenever any person holding an office in the service of Government who has been invested with any powers under this Code throughout any local area is transferred to an equal or higher office of the same nature within a like local area, he shall, unless the Local Government otherwise directs, or has otherwise directed, continue to exercise the same powers in the local area to which he is so transferred. Act X, 1872, s. 56. I. L. R., 2 Calc., 117.

Continuance of powers of officers transferred.

40. The Local Government may vary or cancel any powers conferred on any person under this Code. Act X, 1872, s. 54.

Powers may be varied or cancelled.

PART III.

GENERAL PROVISIONS.

CHAPTER IV.

Of Aid and Information to the Magistrates and Police.

41. Every person is bound to assist a Magistrate or Police-officer demanding his aid, whether within or without the Presidency-towns, Act X, 1872, s. 91. Act IV, 1877, s. 247.

Public when to assist Magistrates and Police.

(*a*) in the prevention of a breach of the peace, or of any injury attempted to be committed to any public property; New as to public property.

(*b*) in the taking of any other person whom such Magistrate or Police-officer is authorized to arrest, or

(*c*) in the suppression of a riot or affray.

42. Every person, whether within or without the Presidency-towns, aware of the commission of any offence punishable under the following sections of the Indian Penal Code (namely), 121, 121A, 122, 123, 124, 124A, 125, 126, 130, 302, 303, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 456, 457, 458, 459 and 460, shall, in the absence of reasonable excuse, the burden of proving which shall lie upon such person, give information of the same to the nearest Magistrate or to the officer in charge of the nearest Police-station. Act X, 1872, s. 90. Act IV, 1877, s. 248.

Public to give information of certain offences.

43. Every village-headman, village-watchman, owner or occupier of land, or the agent of any such owner or occupier, and every Native officer employed in the collection of revenue or rent of land on the part of Government or the Court of Wards, shall forthwith communicate to the nearest Magistrate, or to the officer in charge of the nearest Police-station, any information which he may obtain respecting— Act X, 1872, s. 90.

Village-headmen, landholders and others bound to report certain matters.

(*a*) the residence of any notorious receiver or vendor of stolen property in the village of which he is headman or watchman, or in which he owns or occupies land, or is agent, or collects revenue or rent, as the case may be;

Arrest, escape and retaking.

(*b*) the resort to any place within the limits of such village of any person whom he knows, or reasonably suspects, to be a thug or robber;

(*c*) the commission of or intention to commit any non-bailable offence in or near such village;

(*d*) the occurrence therein of any sudden or unnatural death.

CHAPTER V.

Of Arrest, Escape and Retaking.

A.—Arrest generally.

Act X, 1872, s. 177.

44. In making an arrest, the Police-officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

Arrest how made.

Act X, 1872, s. 178, adding words as to attempt to evade.

If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such Police-officer or other person may use all means necessary to effect the arrest.

Resisting endeavour to arrest.

Act X, 1872, ss. 99, 179.

45. If any person acting under a warrant of arrest, or any Police-officer having authority to arrest, has reason to believe that the person to be arrested has entered into, or is within, any place, the person residing in, or in charge of, such place shall, on demand of such person acting as aforesaid or such Police-officer, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

Search of place entered by person sought to be arrested.

Act X, 1872, s. 100.

46. If ingress to such place cannot be obtained under section 45, it shall be lawful in any case for a person acting under a warrant, and in any case in which a warrant cannot be obtained without affording the person to be arrested an opportunity of escape, for a Police-officer, to enter such place and search therein, and

Procedure where ingress not obtainable.

Act X, 1872, s. 180.

in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if, after notification of his authority and purpose and demand of admittance duly made, he cannot otherwise obtain admittance.

Act X, 1872, s. 181, which applies only where person to be arrested is accused of an offence for which a warrant may issue.

Provided that, if any such place is an apartment in the actual occupancy of a woman (not being the person to be arrested) who, according to the custom of her caste, does not appear in public, such person or Police-officer shall, before entering such apartment, give notice to such woman that she is at liberty to withdraw, and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it.

Breaking open zanána.

New.

47. Any Police-officer or other person authorized to make an arrest may break open any outer or inner door or window of any house in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein.

Power to break open doors for purposes of liberation

Arrest, escape and retaking.

Act X, 1872, s. 183.

48. The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

No unnecessary restraint.

Act X, 1872, s. 387.

49. Whenever a person is arrested by a Police-officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail, but the person arrested cannot furnish bail, and

Search of arrested persons.

whenever a person is arrested without warrant and cannot legally be admitted to bail, or is unable to furnish bail,

the officer making the arrest or, when the arrest is made by a private person, the Police-officer to whom such private person makes over the person arrested, may search such person; and place in safe custody all articles, other than necessary wearing apparel, found upon him.

A list of such articles shall be forwarded with the daily diary or with the final report in the case.

New. Liv., p. 50.

50. The officer or other person making any arrest under this Code may take from the person arrested any offensive weapons which he has about his person, and shall deliver all weapons so taken to the Court or officer before which or whom the person making the arrest is required by this Code to produce the person arrested.

Power to seize offensive weapons.

B.—Arrest without Warrant.

Act X, 1872, s. 92, omitting clauses 1 and 3.

51. Any Police-officer may, without order from a Magistrate and without a warrant, arrest—

When Police may arrest without warrant.

firstly—any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made, or a reasonable suspicion exists, of his having been so concerned;

Cf. Living, 503.

secondly—any person who has been proclaimed either under this Code or in a notification published in any official Gazette or otherwise duly promulgated by order of an officer of Government;

thirdly—any person found with property in his possession which may reasonably be suspected to be stolen property;

fourthly—any person who obstructs a Police-officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; and

fifthly—any person reasonably suspected of being a deserter from Her Majesty's Army or Navy.

"Or Navy" added.

Act X, 18 s. 9

52. Any officer in charge of a Police-station may, in like manner, arrest or cause to be arrested—

Arrest of vagabonds.

(*a*) any person found taking precautions to conceal his presence within the limits of such station

under circumstances which afford reason to believe that he is taking such precautions with a view to committing an offence; or

(*b*) any person within the limits of such station who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself; or

(*c*) any person who is by repute an habitual robber, house-breaker, thief, or an habitual receiver of stolen property knowing it to be stolen, or who is of a dangerous character.

Act X, 1872, s. 102.

53. When any officer in charge of a Police-station requires any officer subordinate to him to arrest without a warrant (otherwise than in his presence) any person who may lawfully be arrested by such subordinate officer without a warrant, he shall deliver to the officer required to make the arrest an order in writing, specifying the person to be arrested, and the offence for which the arrest is to be made.

Procedure when Police-officer deputes subordinate to arrest without warrant.

Act X, 1872, s. 93.

54. Any person who in the presence of a Police-officer commits or is accused of committing a non-cognizable offence, and refuses on demand of such officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, may be arrested or detained by such officer in order that his name or residence may be ascertained; and shall, within twenty-four hours from the arrest, be forwarded to the nearest Magistrate, unless, before the expiration of that time, his true name and residence are ascertained, in which case he shall be forthwith released.

Refusal to give name and residence.

Act X, 1872, s. 103.

55. For the purpose of arresting without warrant any person whom he is authorised to arrest under this chapter, a Police-officer may pursue such person into any place in British India.

Pursuit of offenders into other jurisdictions.

Act X, 1872, s. 105.

56. Any private person may arrest any person who, in his view, commits a non-bailable and cognizable offence;

Arrest by private persons.

Act X, 1872, s. 107. N. Y. Crim. Pro. Code, s. 168.

and shall, without unnecessary delay, make over any person so arrested to a Police-officer; or in the absence of a Police-officer, take such person to the nearest Police-station.

Procedure on such arrest.

The Police shall deal with such person according to the provisions of section 51 or 54, as the case may be, and shall not detain him in custody unless he appears to be liable to arrest or detention under the section applicable.

57. A Police-officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before the Magistrate having jurisdiction in the case, or before the officer in charge of a Police-station.

Person arrested to be taken before Magistrate or officer in charge of Police-station.

Act X, 1872, s. 124.

58. No Police-officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

Person arrested not to be detained more than 24 hours.

Act X, 1872, s. 132.

59. Officers in charge of Police-stations shall report for orders to the District or Sub-divisional Magistrate the cases of all persons arrested without warrant within the limits of their respective stations, whether such persons have been admitted to bail or otherwise.

Police to report apprehensions.

Act IV, 1877, s. 70, para. 1.

60. No person who has been so arrested by a Police-officer shall be discharged except on his recognizance, with or without sureties, or under the special order of a Magistrate.

Discharge of person apprehended.

Act X, 1872, s. 108. Act IV, 1877, s. 15.

61. When any offence is committed in the presence of a Magistrate, he may order any person to arrest the offender and may thereupon, subject to the provisions herein contained as to bail, commit the offender to custody.

Offence committed in Magistrate's presence.

Act X, 1872, s. 166, clause 2. Act IV, 1877, s. 62.

62. Any Magistrate may at any time direct the arrest, in his presence, of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant.

Arrest in presence of Magistrate.

C.—Escape and Retaking.

Act XXV, 1861, s. 112. N. Y. Cr. Proc. Code, s. 186.

63. If a person in lawful custody escapes or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and retake him at any time and in any place in British India.

Power, on escape, to pursue and retake.

Act XXV, 1861, s. 112. N. Y. Cr. Proc. Code, s. 186.

64. To retake the person so escaping or rescued, the person so pursuing may, after notice of his intention and refusal of admittance, and subject to the provisions of section 46, break open any outer or inner door or window of any house or place.

Power to break open door.

CHAPTER VI.

Of Processes to compel Appearance.

A.—Summons.

Act X, 1872, s. 152, omitting 'and sealed.' Act IV, 1879, s. 47.

65. Every summons issued by a Court under this Code shall be in writing signed by the presiding officer of such Court, or by such other officer as the High Court may from time to time by rule direct.

Form of summons.

Act X, 1872, s. 153, altered.

Such summons shall ordinarily be served by an officer of the Court issuing it; but such Court may, if it thinks fit, direct the summons to be served by a Police-officer.

Summons by whom served.

Act X, 1872, s. 154. Act IV, 1877, s. 63.

66. If the person summoned is found, the summons shall be served on him personally by delivering or tendering the summons to him.

Summons how served.

Every person to whom a summons is so delivered or tendered shall, if so required by the serving officer, sign a receipt therefor, or countersign a copy thereof.

Signature of receipt for summons.

Act X, 1872, s. 154, 'or servant' added. Act IV, 1877, s. 49.

67. Where the person summoned cannot by the exercise of due diligence be found, the summons may be served by leaving it for him with some adult male member or servant of his family residing with him; and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefor, or countersign a copy thereof.

Service when person summoned cannot be found.

Act X, 1872, s. 155.

68. If the signature or countersignature mentioned in sections 66 and 67 cannot by the exercise of due diligence be obtained, the serving officer shall fix a copy of the summons on some conspicuous part of the house in which the person summoned ordinarily resides; and thereupon the summons shall be deemed to have been duly served.

Procedure when receipt cannot be obtained.

Act X, 1872, s. 158, proviso.

69. Where the person summoned is in the active service of Government or of a Railway Company, the Court issuing the summons shall send it to the head of the office in which such person is employed; and such head shall thereupon cause the summons to be served in manner provided by section 66.

Service on servant of Government or of Railway Company.

Act XXIII, 1840, s. 1. Act IV, 1877, s. 50.

70. When a Court desires that a summons issued by it shall be served at any place outside the local limits of its jurisdiction, it shall send such summons in duplicate to a Magistrate within the local limits of whose jurisdiction the person summoned resides or is, to be there served.

Service of summons outside local limits.

Act IV, 1877, s. 51.

71. When a summons issued by a Court is served outside the local limits of its jurisdiction, and in any case where the officer who has served a summons is not present at the hearing of the case, the service may be proved—

Proof of service in such cases and when serving officer not present.

(*a*) by a solemn declaration, purporting to be made before a Magistrate, that such summons has been served; or

(*b*) by a copy of the summons purporting to be countersigned by the person to whom it is delivered or tendered or with whom it is left; or

New.

(*c*) by a receipt under section 66 or 67.

The declaration mentioned in clause (*a*) may be endorsed on the copy of the summons and returned to the Court.

B.—Warrant of Arrest.

Act X, 187 2, s. 159, amended. Act IV, 1877, s. 56, which does not require the seal. But see 9 Bomb. 157.

72. Every warrant for the arrest of an accused person issued by a Court shall be in writing under the hand and seal of the presiding officer.

Form of warrant of arrest.

Every such warrant remains in force until it is cancelled by the Court which issued it, or until it is executed.

Continuance of warrant of arrest.

Act X, 1872, s. 160. Act IV, 1877, s. 58.

73. Any Court issuing a warrant for the arrest of any person may in its discretion direct by endorsement on the warrant that, if such person execute a bond with sufficient sureties for his appearance before the Court on a specified day, the officer to whom the warrant is directed shall take such security, and shall release such person from custody.

Court may direct security to be taken.

The endorsement shall state (*a*) the number of sureties, (*b*) the amount in which they and the person for whose arrest the warrant is issued are to be respectively bound, and (*c*) the day on which he is to appear before the Court.

Whenever security is taken under this section, the officer to whom the warrant is directed shall forward the bond to the Court.

Recognizance to be forwarded.

Act X, 1872, s. 161. Act IV, 1877, s. 56.

74. A warrant of arrest shall ordinarily be directed to one or more Police-officers, and, when issued by a Presidency Magistrate, shall always be so directed; but any other Court issuing such a warrant may, if its immediate execution is necessary and no Police-officer is immediately available, direct it to any other person or persons, and such person or persons shall execute the same:

Warrants to whom directed.

Act X, 1872, s. 164. Act IV, 1877, s. 59.

Provided that when a warrant is directed to more officers or persons than one, it may be executed by all, or by any one or more, of them.

Warrant to several persons.

Act X, 1872, s. 162.

75. A District Magistrate may direct a warrant to any landholder, farmer or manager of land within his district for the arrest of any escaped convict, proclaimed offender or person who has been accused of a non-bailable offence, and who has eluded pursuit.

Warrant may be directed to landholders, &c.

Such landholder, farmer or manager shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued is in, or enters on, his land or farm, or the land under his charge.

When the person against whom such warrant is issued is arrested, he shall be made over with the warrant to the nearest Police-officer, who shall cause him to be taken before the Magistrate having jurisdiction, unless security is taken under section 73.

Act X, 18 s. 163.

76. When a warrant is directed to a person other than a Police-officer, any other person may aid in executing such warrant, if the person to whom it is directed is near at hand and acting in execution thereof.

Warrants directed to any person other than a Police-officer.

Act X, 18 s. 165. Act IV, 1 s. 60.

77. A warrant directed to any Police-officer may also be executed by any other Police-officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed.

Warrant directed to Police-officer.

Act X, 1872, s. 176.

78. The Police-officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested and, if so required, shall show him the warrant.

Notification of substance of warrant.

Act X, 1872, s. 183.

79. The Police-officer or other person executing a warrant of arrest shall (subject to the provisions of section 73 as to security) without unnecessary delay bring the person arrested before the Court before which he is required by this Code to produce him.

Person arrested to be brought before Court without delay.

Act X, 1872, s. 167. Act IV, 1877, s. 63.

80. A warrant of arrest may be executed at any place in British India.

Where warrant may be executed.

Act X, 1872, s. 168. Act IV, 1877, s. 64.

81. When a warrant is to be executed outside the local limits of the jurisdiction of the Court issuing the same, such Court may, instead of directing such warrant to a Police-officer, forward the same by post or otherwise to any Magistrate or Commissioner of Police within the local limits of whose jurisdiction it is to be executed.

Warrant forwarded to Magistrate for execution outside jurisdiction.

The Magistrate or Commissioner to whom such warrant is so forwarded shall endorse his name thereon, and cause it to be executed within the local limits of his jurisdiction.

Act IV, 1877, s. 64, paras. 5, 6, 7.

82. When a warrant directed to a Police-officer is to be executed beyond the local limits of the jurisdiction of the Court issuing the same, he may take it for endorsement either to a Magistrate or to a Police-officer not below the rank of an officer in charge of a station, within the local limits of whose jurisdiction the warrant is to be executed.

Warrant directed to police-officer for execution outside jurisdiction.

Such Magistrate or Police-officer shall endorse his name thereon, and such endorsement shall be sufficient authority to the Police-officer to whom the warrant is directed to execute the same within such limits, and the local Police shall if so required assist such officer in executing such warrant.

Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate or Police-officer within the local limits of whose jurisdiction the warrant is to be executed will prevent such execution, the Police-officer to whom it is directed may execute the same without such endorsement in any place beyond the local limits of the jurisdiction of the Court which issued it.

1872, IV, 1877, para. 1.

83. When a warrant of arrest is executed outside the district in which it was issued, the person arrested shall, unless the Court which issued the warrant is within twenty miles, or is nearer than the Magistrate or Commissioner of Police within the local limits of whose jurisdiction the arrest was made, or unless security is taken under section 73, be taken before such Magistrate or Commissioner.

Procedure on arrest of person against whom warrant issued.

Act X, 1872, ss. 170. Act IV, 1877, s. 65, para. 2.

84. Such Magistrate or Commissioner shall, if the person arrested appears to be the person intended by the Court which issued the warrant, direct his removal in custody to such Court, unless the offence is bailable, and such person is then ready and willing to give the security (if any) required under section 73, in which case the Magistrate or Commissioner shall take such security and forward the bond to the Court which issued the warrant.

Procedure by Magistrate before whom person arrested is brought.

C.—Proclamation and Attachment.

Act X, 1872, ss. 171 and 353. Act X, 1875, s. 82. Act IV, 1877, ss. 67 and 137. 10 Beng. App. 18.

85. If a Court has reason to believe that any person against whom a warrant has been issued by it is absconding or concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of such proclamation.

Proclamation for person absconding.

The proclamation shall be published as follows:—

(*a*) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(*b*) it shall be affixed on some conspicuous part of his ordinary place of abode, or on some conspicuous place of such town or village; and

(*c*) a copy thereof shall be affixed to some conspicuous part of the Court-house.

A statement by the Court to the effect that the proclamation was duly published on a specified day shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

New as to day of publication.

Act X, 1872, ss. 172 and 3 Act IV, 1877, ss. 68, 137.

86. The Court may order the attachment of any property, moveable or immoveable, or both, belonging to any such person.

Attachment of property of person absconding.

Such order shall authorize the attachment of any property belonging to such person within the district in which it is made; and it shall authorize the attachment of any property belonging to such person without such district, when endorsed by the District Magistrate within the local limits of whose jurisdiction such property is situate.

If the property ordered to be attached be immoveable, the attachment under this section shall, in the case of land paying revenue to Government, be made through the Collector of the District in which the land is situate, and in all other cases—

(*a*) by seizure; or

(*b*) by the appointment of a receiver; or

(*c*) by an order prohibiting the payment of rent to the absent person; or

(*d*) by all or any two of such methods, as the Court thinks fit.

If the person so believed to be absconding or concealing himself does not appear within the time specified in the proclamation, the property under attachment shall be at the disposal of Government; but it shall not be sold until the expiration of six months from the date of the attachment, unless it is of a perishable nature, or the Court considers that the sale would be for the benefit of the owner, in either of which cases the Court may cause it to be sold whenever it thinks fit.

Act X, 1872, ss. 178, 354. Act X, 1875, s. 83. Act IV, 1877, ss. 69, 138.

87. If, within two years from the date of the attachment, any person whose property is or has been at the disposal of Government under the last paragraph of section 86 appears voluntarily or is apprehended and brought before the Magistrate having jurisdiction, and proves to the satisfaction of the Court by whose order the property was attached, that he did not abscond or conceal himself for the purpose of evading justice, such property, or, if the same has been sold, the nett proceeds of the sale, or if part only thereof has been sold, the nett proceeds of the sale and the residue of the property, shall, after satisfying thereout all costs incurred in consequence of the attachment, be delivered to him.

Restoration of attached property.

D.—Miscellaneous.

Act X, 1872, ss. 166, 352, 355. Act X, 1875, ss. 81, 84. Act IV, 1877, ss. 34, 86, 53, 135, 136, 217.

88. A Court may, in any case in which it is empowered by this Code to issue a summons for the appearance of any person, issue a warrant for his arrest—

Issue of warrant in lieu of or in addition to summons.

(*a*) if either before the issue of such summons, or after the issue of the same but before the time fixed for his appearance, the Court sees reason to believe that he has absconded or will not obey the summons; or

(*b*) 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.

Act X of 1872, s. 476. Act IV, 1877, s. 140.

89. When any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons or warrant is present in such Court, such officer may require such person to execute a bond with or without sureties for his appearance in such Court.

Power to take bond for appearance.

Act X, 1872, s. 208. Act IV, 1877, s. 124, para. 2.

90. When any person who is bound by any bond taken under this Code to appear before a Court does not so appear, the officer presiding in such Court may issue a warrant directing that such person be arrested or produced before him.

Arrest on breach of bond for appearance.

Act X, 1872, ss. 158. 185, Act IV, 1877, s. 52.

91. The provisions contained in this chapter relating to a summons and warrant and their issue, service and execution shall, so far as may be, apply to every summons and every warrant of arrest issued under this Code.

Provisions in this chapter generally applicable to summonses and warrants of arrest.

CHAPTER VII.

Of Processes to compel the Production of Documents and other Moveable Property.

A.—Summons to produce.

Act X, 1872, s. 365. Act X, 1875, s. 86. Act IV, 1877, s. 144.

92. Whenever any Court or any officer in charge of a Police-station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court or officer may issue a summons to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it at the time and place stated in the summons.

Summons to produce document or other thing.

New.

Nothing in this section applies to a letter or telegram in the custody of the Postal or Telegraph Department.

Act X, 1872, s. 369, last sentence. Act IV, 1877, s. 146.

93. If any letter or telegram in the custody of the Postal or Telegraph Department is, in the opinion of any District Magistrate, Chief Presidency Magistrate, High Court or Court of Session, wanted for the purpose of any investigation, inquiry, trial or other proceeding under this Code, such Magistrate or Court may require such Department to deliver such letter or telegram to such person as such Magistrate or Court directs.

Procedure as to letters and telegrams.

If any such letter is, in the opinion of any other Magistrate or of any Commissioner of Police, or District Superintendent of Police, wanted for any such purpose, he may require the Postal Department to cause search to be made for and to detain such letter, pending the orders of any such District Magistrate, Chief Presidency Magistrate or Court.

B.—Search-warrants.

Act X, 1872, s. 366. Act X, 1872, s. 87. Act IV, 1877, s. 145.

94. Where there is reason to believe that a person to whom a summons under section 92 or a requisition under section 93, paragraph one, has been or might be addressed will not or would not produce the document or other thing as directed in such summons,

When search-warrant may be issued.

or where such document or other thing is not known to be in the possession of any person,

Act X, s. 366. Act IV, s. 159.

or where the Court considers that the purposes of any inquiry, trial or other proceeding under this Code, will be served by a general search or inspection,

it may issue a search-warrant; and the person to whom such warrant is directed may search or inspect any place within the local limits of the jurisdiction of such Court.

Act X, s. 366, 1.

Nothing herein contained shall authorize any Magistrate, other than a District Magistrate, to

grant a warrant to search for a letter or telegram in the custody of the Postal or Telegraph authorities.

General warrant should not be the rule.

Act X, 1872, ss. 370, 371, 372, 373, 375, 376, para. 1, Act IV, 1877, s. 161.

95. The Court may, if it thinks fit, specify in the warrant the particular place, building or part thereof to which only the search or inspection shall extend; and the person charged with the execution of such warrant shall then search or inspect only the place, building or part so specified.

Power to restrict warrant.

Act X, 1872, s. 377. Act IV, 1877, s. 160.

96. The provisions of sections 72, paragraph two, 74, 76, 77, 80, 81 and 82 shall, so far as may be, apply to all search-warrants issued under section 94.

Direction, &c., of search-warrants.

97. If a District Magistrate, Sub-divisional Magistrate, Presidency Magistrate or a Magistrate of the first class, upon information and after such inquiry as he thinks necessary, has reason to believe that any place is used for the deposit or sale of stolen property, or of property which has been fraudulently obtained,

Search of house suspected to contain stolen property, forged documents, &c.

or for the deposit or sale or manufacture of forged documents, false seals, or counterfeit stamps or coin, or instruments or materials for counterfeiting coin or for forging,

or that any forged documents, false seals or counterfeit Government stamps, or coin, or instruments or materials used for counterfeiting coin or for forging are kept or deposited in any place,

he may by his warrant authorize any Police-officer above the rank of a constable—

(*a*) to enter, with such assistance as may be required such place, and

(*b*) to search the same as specified in the warrant, and

(*c*) to take possession of any property, documents, seals, stamps or coins therein found which he reasonably suspects to be stolen, unlawfully obtained, forged, false or counterfeit, and also any such instruments and materials as aforesaid, and

(*d*) to convey such property, documents, seals, stamps, coins, instruments or materials before a Magistrate, or to guard the same on the spot until the offender is taken before a Magistrate, or otherwise to dispose thereof in some place of safety, and

(*e*) to take into custody and carry before a Magistrate every person found in such place who appears to have been privy to the deposit, sale or manufacture or keeping of any such property, documents, seals, stamps, coins, instruments or materials, knowing or having reasonable cause to suspect the said property to have been stolen or otherwise unlawfully obtained, or the said documents, seals, stamps, coins, instruments or materials to have been forged, falsified or counterfeited, or the said instruments or materials to have been or to be intended to be used for counterfeiting coin or for forging.

Act X, 1872, ss. 382, 384. Act IV, 1877, s. 162.

98. Whenever any place liable to search or inspection under this chapter is closed, any person residing in, or being in charge of, such place shall, on demand of the officer or other person executing the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

Persons in charge of closed place to allow search.

If ingress into such place cannot be so obtained, the officer or other person executing the warrant may proceed in manner provided by section 46.

Act X, 1872, s. 383. Act IV, 1877, ss. 163, 164.

Act X, 1872, s. 385. Act IV, 1877, s. 165.

99. Before making a search under this chapter, the officer or other person about to make it shall call upon two or more respectable inhabitants of the locality in which the place to be searched is situate to attend and witness the search.

Search to be made in presence of witnesses.

The search shall be made in their presence, but they shall not be required to attend the Court as witnesses unless specially summoned by it.

The occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search.

Occupant of place searched may attend.

Act X, 1872, s. 386. Act IV, 1877, s. 166.

100. Whenever it is necessary to cause a woman to be searched, the search shall be made with strict regard to the customs of the country.

Mode of searching women.

Act X, 1872, ss. 373, para. 2, 374.

101. When, in the execution of a search-warrant at any place beyond the local limits of the jurisdiction of the Court which issued the same, the thing for which search is made is found, it shall, when such place is nearer to the Magistrate having jurisdiction therein than to such Court, be immediately taken before such Magistrate; and, unless there be good cause to the contrary, such Magistrate shall make an order authorizing it to be taken to such Court.

Disposal of things found in search beyond jurisdiction.

C.—Miscellaneous.

Act X, 1872, s. 367. Act X, 1872, s. 88. Act IV, 1872, s. 147.

102. Any Court may, if it thinks fit, impound any document or other thing produced before it under this Code.

Power to impound document produced.

Act X, 1872, s. 378, para. 2.

103. Any Magistrate may direct a search to be made in his presence of any place for the search of which he is competent to issue a search-warrant.

Magistrate may direct search in his presence.

PART IV.

PREVENTION OF OFFENCES.

CHAPTER VIII.

Lawful Resistance.

New.

104. Lawful resistance to the commission of an offence may be made by any person in the cases and to the extent in and to which he may exercise the right of private defence.

Lawful resistance to offences.

CHAPTER IX.

OF SECURITY FOR KEEPING THE PEACE AND FOR GOOD BEHAVIOUR.

A.—Security for keeping the Peace on Conviction.

Act X, 1872, ss. 489, 490. Act X, 1875, s. 140. Act IV, 1877, s. 208. Bond becomes void when conviction set aside, N. W. P., 1875, p. 376.

105. Whenever a person accused of rioting, assault or other breach of the peace, or with abetting the same, or with assembling armed men or taking other unlawful measures with the evident intention of committing the same, is convicted of such offence before a High Court, a Court of Session or the Court of a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate or a Magistrate of the first class,

Security for keeping the peace on conviction.

and such Court is of opinion that it is necessary to require such person to execute a bond for keeping the peace,

such Court may, at the time of passing sentence on such person, order him to execute a bond for a sum proportionate to his means, with or without sureties, for keeping the peace during such period not exceeding three years as it thinks fit to fix.

Act X, 1872, ss. 490, 493. Cf. s. 506. Act X, 1875, s. 141. Act IV, 1877, s. 209.

B.—Security for keeping the Peace in other Cases and Security for Good Behaviour.

Act X, 1872, s. 491, omitting the "explanation" Act IV, 1877 ss. 215, 231.

106. Whenever a Presidency Magistrate, a District Magistrate, a Sub-Divisional Magistrate or a Magistrate of the first class receives information that any person is likely to commit a breach of the peace, or to do any act that may probably occasion a breach of the peace within the local limits of such Magistrate's jurisdiction, or that there is within such limits a person who is likely to commit a breach of the peace or do any act as aforesaid in any place beyond such limits, the Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period not exceeding three years as the Magistrate thinks fit to fix.

Security for keeping the peace in other cases.

One year in Act X, 1872, s. 498.

Act X, 1872, s. 494.

107. When any Magistrate not empowered to proceed under section 106, or a Court of Session or High Court, has reason to believe that any person is likely to commit a breach of the peace or to do any act that may probably occasion a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by detaining such person in custody, such Magistrate or Court may issue a warrant for his arrest (if he is not already in custody), and may send him before a Magistrate empowered to deal with the case under section 106.

Procedure of Magistrate, &c., not empowered to act under section 106.

A Magistrate before whom a person is sent under this section may in his discretion detain such person in custody until the completion of the enquiry hereinafter prescribed.

Act X, 1872, ss. 504. Act IV, 1877, ss. 212, 231.

108. Whenever a Presidency Magistrate, District Magistrate, Sub-Divisional Magistrate or Magistrate of the first class receives information—

Security for good behaviour from vagrants and suspected persons.

(*a*) that any person is taking precautions to conceal his presence within the local limits of such Magistrate's jurisdiction, and that there is reason to believe that such person is taking such precautions with a view to committing an offence, or

(*b*) that there is within such limits a person who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself,

such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period not exceeding six months as the Magistrate thinks fit to fix.

Act X, 1872, ss. 505, 506. Act IV, 1877, ss. 213, 214, 231.

109. Whenever any such Magistrate receives information that any person within the local limits of his jurisdiction is by repute an habitual robber, housebreaker or thief, or an habitual receiver of stolen property knowing the same to have been stolen, or of a dangerous character,

Security for good behaviour from notorious offenders.

such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period not exceeding three years as the Magistrate thinks fit to fix.

Act X, 1872, s. 517. Act IV, 1877, s. 232.

110. The provisions of sections 108 and 109 do not apply to European British subjects in cases where they may be dealt with under the European Vagrancy Act, 1874.

Proviso as to European vagrants.

Act X, 1872, ss. 492, 509, 515. Act IV, 1877, s. 216, para. 1, 222.

111. When a Magistrate acting under section 106, section 108 or section 109 deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number of sureties (if any) required.

Order to be made.

Act X, 1872, s. 492, Exp. Act IV, 1877, s. 216, para. 2.

112. If the person in respect of whom such order is made is present in court, it shall be read over to him or, if he so desires, the substance thereof shall be explained to him in a language which he understands.

Procedure in respect of person present in Court.

Act X, 1872, ss. 494, 511.

113. If such person is not present in court, the Magistrate shall issue a summons requiring him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is to bring him, before the Court:

Summons or warrant in case of person not so present.

Act IV, s. 217 prov. In bad li. lihood case Police can arrest wit out warran

Provided that, whenever it appears to such Magistrate, upon the report of a Police-officer or upon other information, that there is reason to fear the commission of a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the Magistrate may at any time issue a warrant for his arrest.

114. Every summons or warrant issued under section 113 shall be accompanied by a copy of the order made under section 111, and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with, or arrested under, the same.

Copy of order under section 111 to accompany summons or warrant.

Act X, 1872, s. 495. Act IV, 1877, s. 218.

115. The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called upon to shew cause why he should not be ordered to execute a bond for keeping the peace, and may permit him to appear by a pleader.

Power to dispense with personal attendance.

New. 1 O'Kin. 130.

116. When an order under section 111 has been read or explained to a person present in Court under section 112, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant issued under section 113, the Magistrate shall proceed to enquire into the truth of the information upon which he has acted.

Inquiry as to truth of information.

Such enquiry shall be made, as nearly as may be, where the order requires security for keeping the peace, in the manner hereinafter prescribed for conducting trials in summons-cases; and where the order requires security for good behaviour, in the manner hereinafter prescribed for conducting trials in warrant-cases, except that no charge need be framed.

Act X, 1872, s. 497. Act IV, 1877, s. 220.

117. If, upon such enquiry, it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the enquiry is made should execute a bond with or without sureties, the Magistrate shall make an order accordingly:

Order to give security.

Provided that no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 111:

O'Kin. 95.

Provided also that the amount of every bond shall be fixed with due regard to the circumstances of the case and the means of the person required to execute the same.

X, 1872, 506. IV, 1877,

118. If, on an inquiry under section 116, the Magistrate is not satisfied that there is occasion to bind over the person in respect of whom such enquiry is made to keep the peace, or to be of good behaviour, as the case may be, the Magistrate shall make an entry on the record to that effect, and, if such person is in custody only for the purposes of the enquiry, shall release him.

Discharge of person informed against.

C.—Proceedings in all Cases subsequent to Order to furnish Security.

Act X, 1872, s. 504, para. 2. Act IV, 1877, ss. 210, 224. I. L. R. 1 All. 666 n.

119. If any person in respect of whom an order requiring security is made under section 105 or section 117 is, at the time such order is made, sentenced to, or undergoing a sentence of, imprisonment, the period for which such security is required shall commence on the expiration of such sentence.

Commencement of period for which security is required.

In other cases such period shall commence on the date of such order.

Act X, 1872, s. 502, para. 6.

120. The bond to be executed by any such person shall bind him to keep the peace or to be of good behaviour to Her Majesty the Queen, Empress of India, and to all Her subjects, as the case may be, and in the latter case the commission or attempt to commit, or abetment of, any offence whatever, and wherever it may be committed, is a breach of the bond.

Contents of bond.

Act X, 1872, s. 516.

121. A Magistrate may refuse to accept any surety for good behaviour offered under this chapter, on the ground that such surety is an unfit person.

Power to reject sureties.

Act X, 1872, ss. 499, para. 3, 510. Act IV, 1877, s. 223.

122. If any person ordered to give security under section 105 or section 117 does not give such security on or before the date on which the period for which such security is to be given commences, he shall, except in the case next hereinafter mentioned, be committed to prison, or, if he is already in prison, be detained in prison until such period expires or until within such period he gives the security required.

Imprisonment in default of security.

Act X, 1872, ss. 507, 508. Act IV, 1877, s. 221.

When such person has been ordered by a Magistrate to give security for a period exceeding one year, such Magistrate shall, if such person does not give such security as aforesaid, issue a warrant directing him to be detained pending the orders of the Court of Session, or, if such Magistrate be a Presidency Magistrate, pending the orders of the High Court, and the proceedings shall be laid, as soon as conveniently may be, before such Court.

Proceedings when to be laid before High Court or Court of Session.

Such Court, after examining such proceedings and requiring any further information or evidence which it thinks necessary, may pass such order on the case as it thinks fit: Provided that the period (if any) for which any person is imprisoned for failure to give security shall not exceed three years.

Act X, 1872, s. 499, para. 3.

Imprisonment for failure to give security for keeping the peace shall be simple.

Kind of imprisonment.

Act X, 1872, s. 510, para. 3.

Imprisonment for failure to give security for good behaviour may be rigorous or simple as the Court or Magistrate in each case directs.

Act X, 1872 ss. 500, 511. Act IV, 1877, s. 225.

123. Whenever the District Magistrate or a Presidency Magistrate is of opinion that any person imprisoned for failing to give security under this chapter,

Power to release persons imprisoned for failing to give security.

whether by the order of such Magistrate or that of his predecessor in office, or of some subordinate Magistrate, may be released without hazard to the community or to any other person, he may order such person to be discharged.

Act X, 1872, s. 512.

Whenever the District Magistrate or a Presidency Magistrate is of opinion that any person imprisoned for failing to give security under this chapter as ordered by the Court of Session or High Court may be safely released without such security, such Magistrate shall make an immediate report of the case for the orders of the Court of Session or High Court, as the case may be, and such Court may, if it thinks fit, order such person to be discharged.

Act X, 1872, ss. 500, 511. Act IV, 1877, s. 226.

124. Any surety for the peaceable conduct or good behaviour of another person may at any time apply to a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class to cancel the bond.

Discharge of sureties.

On such application being made, the Magistrate shall issue his summons or warrant, as he thinks fit, requiring the person for whom such surety is bound to appear or to be brought before him.

When such person appears or is brought before the Magistrate, such Magistrate shall cancel the bond, and shall order such person to give, for the unexpired portion of the term of such bond, fresh security of the same description as the original security. Every such order shall, for the purposes of sections 120, 121, 122 and 123, be deemed to be an order made under section 105 or section 117, as the case may be.

CHAPTER X.

UNLAWFUL ASSEMBLIES.

Act X, 1872, s. 480. Act XI, 1874, s. 43. Indian Penal Code, ss. 145, 151,

125. Any Magistrate or officer in charge of a Police-station, whether within or without the Presidency-towns, may command any unlawful assembly, or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

Assembly to disperse on command of Magistrate or Police-officer.

Act X, 1872, s. 481.

126. If, upon being so commanded, any such assembly does not disperse, any Magistrate or officer in charge of a Police-station, whether within or without the Presidency-towns, may proceed to disperse such assembly by force, and may require the assistance of any male person, not being an officer or soldier in Her Majesty's Army or a Volunteer enrolled under the Indian Volunteers Act, 1869, and acting as such, for the purpose of dispersing such assembly, and, if necessary, arresting and confining the persons who form part of it in order to disperse such assembly or that they may be punished according to law.

Use of civil force to disperse.

Volunteers added.

Act X, 1872, s. 482.

127. If any such assembly cannot be otherwise dispersed, and if it is necessary for the public security that it should be dispersed, the Magistrate of the highest rank who is present may cause it to be dispersed by military force.

Use of military force.

Act X, 1872, s. 484, adding volunteers.

128. When a Magistrate determines to disperse any such assembly by military force, he may require any officer in command of any soldiers in Her Majesty's Army or of any Volunteers enrolled under the Indian Volunteers Act, 1869, to disperse such assembly by such force, and to arrest and confine such persons forming part of it as the Magistrate may direct, or as it may be necessary to arrest and confine in order to disperse the assembly, or that they may be punished according to law.

Duty of officer commanding troops required by Magistrate to disperse assembly.

Every such officer shall obey such requisition in such manner as he thinks fit; but in so doing he shall use as little force, and do as little injury to person and property, as is consistent with dispersing the assembly and arresting and detaining such persons.

Act X, 1872, s. 487.

129. When the public security is manifestly endangered by any such assembly, and when no Magistrate can be communicated with, any commissioned officer of Her Majesty's Army may disperse such assembly by military force, and may arrest and confine any persons forming part of it in order to disperse such assembly, or that they may be punished according to law; but as soon as he can communicate the facts of the case to a Magistrate, he shall do so.

Power of commissioned military officers to disperse assembly.

Act X, 1872, s. 488.

130. No prosecution against any Magistrate, Military officer, Police-officer or soldier for any act purporting to be done under this chapter shall be instituted in any criminal Court, except with the sanction of the Governor General in Council or of the Local Government; and

Protection against prosecution for acts done under this chapter.

Act X, 1872, ss. 483, 485, 486.

(*a*) no Magistrate or Police-officer acting under this chapter in good faith;

(*b*) no officer acting under section 129 in good faith;

(*c*) no person doing any act in good faith in compliance with a requisition under section 126 or section 128, and

(*d*) no inferior officer or private soldier doing any act in obedience to any order which under military law he was bound to obey,

shall be deemed to have thereby committed an offence.

CHAPTER XI.

PUBLIC NUISANCES.

Act X, 1872, s. 521, substituting "highway" for "thoroughfare."

131. Whenever a District Magistrate, or Sub-divisional Magistrate or, when empowered by the Local Government in this behalf, a Magistrate of the first class, considers,

Conditional order for removal of nuisance.

on receiving a report or other information and on taking such evidence (if any) as he thinks fit,

that any unlawful obstruction or nuisance should be removed from any highway, navigable river or public place, or

that any trade or occupation, by reason of its being injurious to the health or physical comfort of the community, should be suppressed or removed, or

"Combustible" omitted.

that the construction of any building, or the disposal of any substance as likely to occasion conflagration or explosion, should be prevented or stopped, or

that any building is in such a state of weakness that it is likely to fall and thereby cause injury to persons passing by, and that its removal in consequence is necessary, or

that any tank or well adjacent to any highway should be fenced in such a manner as to prevent danger arising to the public,—

such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or owning, possessing or controlling such building substance, tank or well, as aforesaid, within a time to be fixed in the order,

to remove such obstruction or nuisance; or

to suppress or remove such trade or occupation; or

to prevent or stop the construction of such building; or

to remove it; or

to alter the disposal of such substance; or

to fence such tank or well, as the case may be, or

to appear before himself or some other Magistrate of the first or second class, at a time and place to be fixed by the order, and move to have the order set aside or modified in manner hereinafter provided.

No order duly made by a Magistrate under this section shall be called in question in any Civil Court.

EXPLANATION.—A "public place" includes property belonging to the State, camping grounds, and grounds left unoccupied for sanitary and recreative purposes.

X, 1872, 522.

132. The order shall, if practicable, be served on the person against whom it is made in manner herein provided for service of a summons.

Service or notification of order.

If such order cannot be so served, it shall be notified by proclamation, and a written notice thereof shall be stuck up at such place or places as may be fittest for conveying the information to such person.

X, 1872, 523.

133. The person against whom such order is made shall—

Person to whom order is addressed to obey,

(*a*) perform, within the time specified in the order, the act directed thereby; or

or shew cause or claim jury.

(*b*) appear in accordance with such order and either show cause against the same, or apply to such Magistrate to appoint a jury to try whether the same is reasonable and proper.

Act X, 1872, s. 525.

134. If such person does not perform such act or appear and shew cause or apply for the appointment of a jury as required by section 133, he shall be liable to the penalty prescribed in that behalf in section 188 of the Indian Penal Code; and the order shall be made absolute.

Consequence of his failing to do so.

Act X, 1872, ss. 525, 527. Act XI, 1874, s. 45.

135. If he appears and shews cause against the order, the Magistrate shall take evidence in the matter.

Procedure where he appears to shew cause.

I O'Kin. 486.

If the Magistrate is satisfied that the order is not reasonable and proper, no further proceedings shall be taken in the case.

If the Magistrate is not so satisfied, the order shall be made absolute.

Act X, 1872, s. 523, para. 2.

136. On receiving an application under section 133 to appoint a jury, the Magistrate shall—

Procedure where the claims jury.

(*a*) forthwith appoint a jury consisting of an uneven number of persons not less than five, of whom the foreman and one half of the remaining members shall be nominated by such Magistrate, and the other members by the applicant;

Act X, 1872, s. 524.

(*b*) summon such foreman and members to attend at such place and time as the Magistrate thinks fit; and

(*c*) fix a time within which they are to return their verdict.

Act X, 1872, ss. 523, 526.

137. If the jury or a majority of the jurors find that the order of the Magistrate is reasonable and proper as originally made, or subject to a modification which the Magistrate accepts, the Magistrate shall make the order absolute, subject to such modification (if any).

Procedure where jury finds Magistrate's order to be reasonable.

In other cases, no further proceedings shall be taken.

Act X, 1872, s. 525.

138. When an order has been made absolute under section 134, section 135, or section 137, the Magistrate shall give notice of the same to the person against whom the order was made and shall further require him to perform the act directed by the order within a time to be fixed in the notice, and inform him that, in case of disobedience, he will be liable to the penalty provided by section 188 of the Indian Penal Code.

Procedure on order being made absolute.

If such act is not performed within the time fixed, the Magistrate may cause it to be performed, and may recover the costs of performing it, either by the sale of any building, goods or other property removed by his order, or by the distress and sale of any other moveable property of such person within or without the local limits of the Magistrate's jurisdiction. If such other property is without such limits, the order shall authorize its attachment and sale when endorsed by the Magistrate within the local limits of whose jurisdiction the property to be attached is found.

Consequences of disobedience to order.

Act X, 1872, s. 522, para. 4. No suit shall lie in respect of anything reasonably done under this section.

Act X, 1872, s. 523, para. 4.

Procedure on failure to appoint jury or omission to return verdict.

139. If the applicant by neglect or otherwise prevents the appointment of the jury, or if from any cause the jury appointed do not return their verdict within the time fixed or within such further time as the Magistrate may in his discretion allow, the Magistrate may pass such order as he thinks fit, and such order shall be executed in the manner provided by section 138.

Act X, 1872, s. 528.

Injunction pending inquiry.

140. If a Magistrate making an order under section 131 considers that immediate measures should be taken to prevent imminent danger or injury of a serious kind to the public, he may, whether a jury is to be, or has been, appointed or not, issue such an injunction to the person against whom the order was made as is required to obviate or prevent such danger or injury.

In default of such person forthwith obeying such injunction, the Magistrate may himself use, or cause to be used, such means as he thinks fit to obviate such danger or to prevent such injury.

No suit shall lie in respect of anything reasonably done by a Magistrate under this section.

Act X, 1872, s. 518, Expl. 1. 1 O'Kin. 58.

Power to issue order absolute at once in urgent cases.

141. In cases where, in the opinion of a District Magistrate, a Sub-divisional Magistrate, or of any other Magistrate specially empowered by the Local Government or the District Magistrate to act under this section, a speedy remedy is desirable and the delay which would be occasioned by a resort to the procedure contained in section 131 and the next following sections would occasion a greater evil than that suffered by the person against whom the order was made, or would defeat the intention of this chapter,

Act X, 1872, s. 518. 1 Beng. Ap. Cr. 20.

such Magistrate may, by a written order stating the material facts of the case and served in manner provided by section 132, direct any person to abstain from a certain act or to take certain order with certain property in his possession, or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed, or danger to human life, health or safety, or a riot or an affray.

Act X, 1872, s. 518, Expl. II.

An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed be passed *ex parte*, and may in all cases be made upon such information as satisfies the Magistrate.

Act X, 1872, s. 518, Expl. III. As to disobedience to such orders, see Penal Code, s. 188.

An order under this section may be directed to a particular individual, or to the public generally when frequenting or visiting a particular place.

Act X, 1872, s. 518, Expl. IV.

Any Magistrate may rescind or alter any order made under this section by himself or by his predecessor in office.

Act X, 1872, s. 519. Penal Code, s. 291.

Magistrate may prohibit repetition or continuance of public nuisances.

142. A Sub-divisional Magistrate or any other Magistrate empowered by the Local Government or the District Magistrate in this behalf may order any person not to repeat or continue a public nuisance.

CHAPTER XII.

Disputes as to Immoveable Property.

Act X, 1872, s. 530. 3 Calc. 552.

Procedure where dispute concerning land, &c., is likely to cause breach of peace.

143. Whenever a District Magistrate, Sub-Divisional Magistrate, or a Magistrate of the first class, is satisfied from a Police-report or other information that a dispute likely to cause a breach of the peace exists concerning any tangible immoveable property, or the boundaries thereof, within the local limits of his jurisdiction, he shall make an order in writing stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court, in person or by agent, within a time to be fixed by such Magistrate, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

I. L. R. 3 Calc. 320.

Inquiry as to possession.

The Magistrate shall then, without reference to the merits of the claims of any of such parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties and their respective witnesses, consider the effect of the evidence and, if possible, decide whether any and which of the parties is in possession of the said subject.

1 O'Kin. 136. 2 O'Kin. 67, 264.

Party in possession to be continued until legally evicted.

If he decides that one of the parties is in possession of the said subject, he shall issue an order declaring such party to be entitled to retain possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction.

Act X, 1872, s. 531. 1 O'Kin. 86.

Power to attach subject of dispute.

144. If such Magistrate decides that none of the parties is in possession, or is unable to satisfy himself as to which of them is in possession, of the subject of dispute, he may attach it, until a competent Civil Court has determined the rights of the parties thereto, or the person entitled to possession thereof.

Act X, 1872, s. 532.

Disputes concerning easements, &c.

145. Whenever any such Magistrate is satisfied as aforesaid that a dispute likely to cause a breach of the peace exists concerning the right to do or prevent the doing of anything in or upon any tangible immoveable property situate within the local limits of his jurisdiction, he may inquire into the matter; and may, if it appears to him that such right exists, make an order permitting such thing to be done, or directing that such thing shall not be done, as the case may be, until the person objecting to such thing being done or claiming that such thing may

be done, obtains the decision of a competent Civil Court, adjudging him to be entitled to prevent the doing of, or to do, such thing, as the case may be:

Provided that no order shall be passed under this section permitting the doing of anything where the right to do such thing is exerciseable at all times of the year, unless such right has been ordinarily exercised within three months next before the institution of the inquiry; or, where the right is exerciseable only at particular seasons, unless such right has been so exercised during the season next before the dispute.

Act X, 1872, s. 538.

Local inquiry.

146. Whenever a local inquiry is necessary for the purposes of this chapter, any District Magistrate or Sub-divisional Magistrate may depute any Magistrate subordinate to him to make the inquiry, and may furnish him with such instructions consistent with the law for the time being in force as may seem necessary for his guidance, and may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid.

CHAPTER XIII.

Preventive Action of the Police.

Act X, 1872, s. 95.

Police to prevent cognizable offences.

147. Every Police-officer may interpose for the purpose of preventing, and shall to the best of his ability prevent, the commission of any cognizable offence.

Act X, 1872, s. 96.

Information of design to commit such offences.

148. Every Police-officer receiving information of a design to commit any cognizable offence shall communicate such information to the Police-officer to whom he is subordinate, and to any other officer whom it may concern, to prevent or take cognizance of the commission of any such offence.

Act X, 1872, s. 97.

Arrest to prevent such offences.

149. A Police-officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if the commission of the offence cannot be otherwise prevented.

Act X, 1872, s. 98.

Prevention of injury to public property.

150. A Police-officer may of his own authority interpose to prevent any injury attempted to be committed in his view to any public property, moveable or immoveable, or the removal or injury of any public land-mark, or buoy or other mark used for navigation.

Act X, 1872, s. 99.

Inspection of weights and measures.

151. Any officer in charge of a Police-station may, without a warrant, enter any place within the limits of such station for the purpose of inspecting or searching for any weights or measures, or instruments for weighing, used or kept therein, whenever he has reason to believe that there are in such place any weights, measures or instruments for weighing which are false.

If he finds in such place any weights, measures or instruments for weighing which are false, he may seize the same, and shall forthwith give information of such seizure to the Magistrate having jurisdiction.

PART V.

INFORMATION TO THE POLICE AND OF THEIR POWERS TO INVESTIGATE.

CHAPTER XIV.

Act X, 1872, s. 112.

Information to be reduced to writing.

152. Every information to an officer in charge of a Police-station shall be reduced into writing by or under his direction, and shall be signed by the person giving it; and the substance thereof shall be entered in a book to be kept by such officer in such form as the Local Government may prescribe in this behalf.

Act X, 1872, s. 113.

Complaint in non-cognizable cases.

153. When a complaint is made to an officer in charge of a Police-station of the commission within the limits of such station of a non-cognizable offence, he shall refer the complainant to the Magistrate.

Act X, 1872, s. 110.

Investigation into non-cognizable cases.

No Police-officer shall investigate a non-cognizable case without the order of a Magistrate of the first or second class having power to try such case or commit the same for trial.

Any Police-officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as in a cognizable case.

Act X, 1872, s. 109, c. 19/Va, s. 151.

Investigation into cognizable cases.

154. Any officer in charge of a Police-station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to enquire into or try under the provisions of chapter XV relating to the place of inquiry or trial.

Act X, 1872, s. 114, last para.

No proceeding of a Police-officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

Act X, 1872, s. 114. See Nelson 109.

Procedure where cognizable offence suspected.

155. If, from information received or otherwise, an officer in charge of a Police-station has reason to suspect the commission of an offence which he is empowered under section 154 to investigate, he shall send a report of the same to the nearest Magistrate having jurisdiction to receive Police-reports, and shall proceed in person, or shall depute one of his subordinate officers to proceed, to the spot to investigate the facts and circumstances of the case, and to take such measures as may be necessary for the discovery and arrest of the offender:

Act X, 1872, s. 116.

Where local investigation dispensed with.

Provided that when any information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a Police-station need not proceed in person or depute a subordinate officer to make an investigation on the spot:

Act X, 1872, s. 117, para. 1.

Where Police-officer in charge sees no sufficient ground for investigation.

Provided also that, if it appear to the officer in charge of a Police-station that there is no sufficient ground for entering on an investigation, he shall not proceed to investigate the case.

Act X, 1872, s. 117, para. 2.

Reports under section 155 how submitted.

156. Every report under section 155 shall, if the Local Government so directs, be submitted through such superior officer of Police as the Local Government, by general or special order, appoints in that behalf.

Such superior officer may give such instructions to the officer in charge of the Police-station as he thinks fit, and shall, after recording such instructions on such report, transmit the same without delay to the Magistrate having jurisdiction to receive Police-reports.

Act X, 1872, s. 115.

Power to make preliminary inquiry.

157. Such Magistrate, on receiving such report, may, if he thinks fit, at once proceed, or depute any Magistrate subordinate to him to proceed, to hold a preliminary inquiry into, or otherwise to dispose of, the case in manner provided in this Code.

Act X, 1872, s. 118.

Police-officer's power to require attendance of witnesses.

158. Any Police-officer making an investigation under this chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the circumstances of the case; and such person shall attend as so required.

Act X, 1872, ss. 119, 121.

Examination of witnesses by Police.

159. Any Police-officer making an investigation under this chapter may examine orally any person supposed to be acquainted with the facts and circumstances of the case, and may reduce into writing any statement made by the person so examined.

Such person shall be bound to answer all questions relating to such case put him by such officer other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

Act X, 1872, ss. 119, para. 3, 121.

Statements to Police not to be signed or admitted in evidence.

160. No statement made by any person under section 159 or by an accused person to the Police shall, if reduced into writing, be signed by the person making it, nor shall it be treated as part of the record or used as evidence against the accused person.

Act X, 1872, ss. 120, 184. Cf. Act I, 1872, s. 24.

No inducement to be offered to confess.

161. No Police-officer or other person in authority shall offer or make to an accused person any such inducement, threat or promise as is mentioned in the Indian Evidence Act, 1872, section 24.

But no Police-officer or other person shall prevent, by any caution or otherwise, an accused person from making any statement which he may be disposed to make of his own free will. Nelson, 113.

162. Any Magistrate may record any statement made to him by any person, or any confession made to him by any accused person, in the course of an investigation under this chapter. Act X, 1872, s. 122. Act IV, 1877, s. 16.

Power to record statements and confessions.

Such statements shall be recorded in the manner hereinafter prescribed for recording evidence. Such confessions shall be recorded, signed and certified in the manner provided in section 366, and shall then be forwarded to the Magistrate by whom the case is inquired into or tried. I. L. R. 1 Bom. 219.

No Magistrate shall record any such confession unless, upon questioning the person making it, he has reason to believe that it was made voluntarily; and he shall make a memorandum at the foot thereof to the following effect:—

"I believe that this confession was voluntarily made. It was read over to the person making it, and was admitted by him to be correct.

"(*Signed*) A. B.,
"*Magistrate.*"

Act X, 1872.

Search by officer in charge of Police-station.

163. Whenever an officer in charge of a Police-station, or a Police-officer making an investigation, considers that the production of any thing is necessary to the conduct of an investigation into any offence which he is authorised to investigate, he may search, or cause search to be made, for the same, in any place within the limits of the station of which he is in charge, or to which he is attached.

Such officer shall, if practicable, conduct the search in person.

If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in writing, specifying the thing for which search is to be made, and the place to be searched; and such subordinate officer may thereupon search for such thing in such place.

The provisions of this Code as to search-warrants shall, so far as may be, apply to a search made under this section.

Act X, 1872, s. 380.

When officer of Police-station may require another to issue search-warrant.

164. An officer in charge of a Police-station may require an officer in charge of another Police-station, whether in the same or a different district, to cause a search to be made in any place, in any case in which the former officer might cause such search to be made within the limits of his own station.

Such officer, on being so required, shall proceed according to the provisions of section 163, and shall forward the thing found, if any, to the officer at whose request the search was made.

Act X, 1872, s. 124.

Procedure when investigation is not completed in twenty-four hours.

165. When any investigation under this chapter has not been completed within the period of twenty-four hours fixed by section 58 and no special order has been passed under that section, and there are grounds for believing that the accusation is well-founded, the officer in charge of the Police-station shall forward the accused to the nearest Magistrate, with a statement of the offence for which he has been arrested, and such Magistrate, whether he has or has not jurisdiction to try the case, may authorise the detention of the accused. If he has not jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may forward the accused to a Magistrate having such jurisdiction.

A Magistrate authorizing detention under this section shall record in writing his reasons for so doing.

If such order be given by a Magistrate other than the District Magistrate or Sub-divisional Magistrate, he shall forward a copy of his order, with his reasons for making it, to the Magistrate to whom he is subordinate.

Act X, 1872, s. 123, clause 2.

Report of investigation by subordinate Police-officer.

166. When any subordinate Police-officer has made any investigation under this chapter, he shall report the result of such investigation to the officer in charge of the Police-station.

Act X, 1872, s. 125.

Release of accused when evidence deficient.

167. If, upon an investigation under this chapter, it appears to the officer in charge of the Police-station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear before the District Magistrate or Sub-divisional Magistrate, if and when so required.

Act X, 1872, ss. 123, 127, 130.

Case to be sent to Magistrate when evidence is sufficient.

168. If upon an investigation under this chapter it appears to the officer in charge of the Police-station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to the District Magistrate, or Sub-divisional Magistrate, or some Magistrate empowered to take cognizance of offences upon a police-report, or if the offence charged is bailable and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed.

When the officer in charge of a Police-station forwards an accused person to a Magistrate or takes security for his appearance before such Magistrate under this section, he shall at the same time send to such Magistrate any weapon or other article which it may be necessary to produce before him, and shall require the complainant, if any, and so many of the persons who appear to be acquainted with the circumstances of the case as may be necessary to execute a bond to appear before the Magistrate and prosecute or give evidence (as the case may be) in the matter of the charge against the accused.

If the Court of the District Magistrate or Sub-Divisional Magistrate be mentioned in the bond, it shall be held to include any Court to which such Magistrate may refer the case for inquiry or trial, provided notice of such reference be given to such complainant or witness.

The day fixed under this section shall be the day whereon the accused person is to appear, if security for his appearance has been taken, or the day on which he may be expected to arrive at the Court of the Magistrate, if he is to be forwarded in custody.

The officer in whose presence the bond is executed shall deliver a copy thereof to each of the persons who executed it, and shall then send the original with his report to the Magistrate having jurisdiction.

Act X, 1872, ss. 130, last para. 131, para. 1.

Police-officer not to accompany complainant or witnesses.

169. No Police-officer shall accompany the complainant or witnesses on his or their way to the Court of the Magistrate,

Complainants and witnesses not to be subjected to restraint.

and no complainant or witness shall be subjected to unnecessary restraint or inconvenience, or required to give any security for his appearance other than his own bond:

Act X, 1872, s. 131, para. 2.

Recusant complainant or witness may be forwarded in custody.

Provided that, if any complainant or witness refuses to attend or to execute the bond directed in section 168, the officer in charge of the Police-station may forward him under custody to the Magistrate, who may detain him in custody until he executes such recognizance, or until the hearing of the case is completed.

Act X, 1872, s. 126.

Daily record of proceedings in investigation.

170. Every Police-officer making an investigation under this chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

Any Criminal Court may send for the Police-diaries of a case under inquiry or trial in such Court, and may use such diaries to aid it in such inquiry or trial. Neither the accused nor his agents shall be entitled to call for them, nor shall he or they be entitled to see them merely because they are referred to by the Court; but if they are used by the Police-officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such Police-officer, the provisions of the Indian Evidence Act, 1872, sections 145 and 161, shall apply.

Act X, 1872, ss. 135, 136.

Report of Police-officer.

171. Every investigation under this chapter shall be completed without unnecessary delay, and, as soon as it is completed, the officer in charge of the Police-station shall forward to the Magistrate having jurisdiction a report in the form prescribed by

the Local Government, setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case, and stating whether the accused person has been forwarded in custody, or has been released on his bond, and, if so, whether with or without sureties.

Where a superior officer of Police has been appointed under section 156, the report shall be submitted through him, and he may, pending the orders of the Magistrate, give instructions as to the conduct of the investigation.

Act X, 1872, s. 138.

172. The officer in charge of a Police-station, on receiving information that a person—

Police to inquire and report on unnatural and sudden deaths.

(*a*) has been killed by another, or
(*b*) has suddenly died, or
(*c*) has committed suicide,

shall immediately give intimation thereof to the nearest Magistrate empowered to hold inquests, and shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises and other marks as may be found on the body and as may appear to have been caused by a cut or blow, and stating in what manner, or by what weapon or instrument, such marks appear to have been inflicted.

The report shall be signed by such Police-officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the District Magistrate or the Sub-divisional Magistrate.

When there is any doubt regarding the cause of death, the Police-officer shall forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other medical officer appointed in this behalf by the Local Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

In the territories respectively administered by the Governors of Fort St. George and Bombay in Council, investigations under this section may be made by the Head of the village, who shall then report the result to the nearest Magistrate authorized to hold inquests.

The following Magistrates are empowered to hold inquests, namely, any District Magistrate or Sub-divisional Magistrate, and any Magistrate specially empowered in this behalf by the Local Government or the District Magistrate.

Act X, 1872, s. 134.

173. An officer in charge of a Police-station may, by order in writing, summon two or more persons as aforesaid for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of the case. Any person so summoned shall be bound to attend and to answer all questions other than questions the answers to which would have a tendency to expose him to a criminal charge, or to a penalty or forfeiture.

Power to summon persons.

Penal Code, ss. 174, 179.

If the facts do not disclose a cognizable offence to which section 168 applies, such persons shall not be required by the Police-officer to attend a Magistrate's Court.

174. The nearest Magistrate empowered to hold inquests may, and, where necessary, shall, hold an inquiry into the cause of any such death, either instead of, or in addition to, the investigation held by the Police-officer; and if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence. The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any of the manners hereinafter prescribed, according to the circumstances of the case.

Act X, 1872, s. 135.

Inquiry into cause of such death by nearest Magistrate.

Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined.

New, cf. Act IV, 1871, s. 11.

Power to disinter corpse.

PART VI.

PROCEEDINGS IN PROSECUTIONS.

CHAPTER XV.

Of the Jurisdiction of the Criminal Courts in Inquiries and Trials.

A.—Place of Inquiry or Trial.

175. Every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed.

Act X, s. 63. Act IV, s. 18.

Ordinary place of inquiry and trial.

176. Notwithstanding anything contained in section 175, the Local Government may direct that any cases or class of cases committed for trial in any district may be tried in any Sessions Division:

Act X, s. 63.

Power to order cases to be tried in different Sessions divisions.

Provided that such direction be not repugnant to any direction previously issued under the twenty-fourth and twenty-fifth of Victoria, chapter 104, section 15, or under this Code, section 530.

Act XI, s. 9.

177. When a person is accused of the commission of any offence by reason of anything which has been done, and of any consequence which has ensued, such offence may be inquired into or tried by a Court within the local limits of whose jurisdiction any such thing has been done, or any such consequence has ensued.

Act X, s. 65. Act IV, s. 19.

Accused triable in district where act is done, or where consequence ensues.

Illustrations.

(*a*.) A is wounded in district X and dies in district Z. The offence of the culpable homicide of A may be inquired into and tried either in X or Z.

(*b*.) A is wounded in district X, and is, during ten days in district Y and during ten days more in district Z, unable in either Y or Z to follow his ordinary pursuits. The offence of causing grievous hurt to A may be inquired into and tried in X, Y or Z.

(*c*.) A is put in fear of injury in district X, and is thereby induced, in district Y, to deliver property to the person who put him in fear. The offence of extortion committed on A may be inquired into and tried either in X or Y.

Act X, 1872, s. 66. Act IV, 1877, s. 20.

178. When an act is an offence by reason of its relation to any other act which is also an offence, a charge of the first-mentioned offence may be inquired into and tried by a Court within the local limits of whose jurisdiction either act was done.

Place for trial where act is offence by reason of relation to other offence.

Illustrations.

(*a*.) A charge of abetment may be inquired into and tried either in the district in which the abetment was committed, or in the district in which the offence abetted was committed.

(*b*.) A charge of receiving or retaining stolen goods may be inquired into and tried either in the district in which the goods were stolen, or in any district in which any of them were at any time dishonestly received or retained.

(*c*.) A charge of wrongfully concealing a person known to have been kidnapped may be inquired into and tried in the district in which the wrongful concealing, or in the district in which the kidnapping, took place.

Act X, 1872, s. 67, illustration (*c*), s. 68. Act IV, 1877, s. 22.

179. The offence of being a thug, of murder as a thug, of dacoity, of dacoity with murder, of having belonged to a gang of dacoits, or of having escaped from custody, may be inquired into and tried by a Court within the local limits of whose jurisdiction the person charged is.

Being a thug or belonging to a gang of dacoits, escape from custody, &c.

Act X, 1872, s. 67, illustration (*b*).

The offence of criminal misappropriation or of criminal breach of trust may be inquired into and tried by a Court within the local limits of whose jurisdiction the property which is the subject of the offence was received by the accused person, or the offence was committed.

Criminal misappropriation and criminal breach of trust.

Act X, 1872, s. 67, illustration (*f*). I. L. R., 1 Mad. 17.

The offence of stealing an animal may be inquired into or tried by a Court within the local limits of whose jurisdiction such animal was stolen or was possessed by the thief or by any person who receives or detains the same knowing or having reason to believe it to be stolen.

Stealing an animal.

Act XVIII, 1862, ss. 29-35. X, 1872 [illegible]

180. When it is uncertain in which of several local areas an offence was committed, or

Place of inquiry or trial where scene of offence is uncertain;

or not in one district only;

or offence is continuing;

or committed in more local areas than one, or

or consists of several [illegible]

where an offence is committed partly in one local area and partly in another, or where an offence is a continuing one, and continues where it consists of several acts done in different local areas,

it may be inquired into and tried by a Court having jurisdiction over any such local area.

Act X, 1872, s. 67, illustration (*a*). I Mad. H. C. Rep. 193.

181. An offence committed whilst the offender is actually in the course of performing a journey or voyage may be inquired into and tried by a Court through or into the local limits of whose jurisdiction the offender, or the person against whom, or the thing in respect of which, the offence was committed, passed in the course of that journey or voyage.

Offence committed on a journey.

Act IV, 1877, s. 238. Act LII, 1860, repealed.

182. All offences against the provisions of any law for the time being in force relating to Railways, Telegraphs, the Post-office or Arms and Ammunition may be inquired into and tried in a Presidency-town, whether the offence is stated to have been committed within such town or not: provided that the offender and the witnesses necessary for his prosecution are to be found within such town.

Offences against Railway, Telegraph, Post-office and Arms Acts.

Act IV, 1877, s. 239.

Act X, 1872, s. 69. Act IV, 1877, s. 23.

183. Whenever any doubt arises as to the Court by which any offence should be inquired into or tried, the High Court within the local limits of whose appellate criminal jurisdiction the offender actually is, may decide by which Court the offence shall be inquired into or tried.

High Court to decide, in case of doubt, district where inquiry or trial shall take place.

Act X, 1872, s. 157. Act IV, 1877, s. 54.

184. When a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate or, if he is specially empowered in this behalf by the Local Government, a Magistrate of the first class, sees reason to believe that any person within the local limits of his jurisdiction has committed without such limits an offence which cannot, under the provisions of sections 175 to 182 (both inclusive), or any other law for the time being in force, be inquired into or tried within such local limits, but is under some law for the time being in force triable in British India, such Magistrate may inquire into the offence as if it had been committed within such local limits, and compel such person in manner hereinbefore provided to appear before him, and send him to the Magistrate having jurisdiction to enquire into or try such offence, or, if such offence is bailable, take bail for his appearance before such Magistrate.

Power to issue summons or warrant for offence committed beyond local jurisdiction.

Act X, 1872, s. 174. Act IV, 1877, s. 55. Act XXIII, 1840, s. 7.

When there are more Magistrates than one having such jurisdiction and the Magistrate acting under this section cannot satisfy himself as to the Magistrate to or before whom such person should be sent, or bound to appear, the case shall be reported for the orders of the High Court.

Act X, 1872, s. 175.

185. If the person has been arrested under a warrant issued under section 184 by a Magistrate other than a Presidency Magistrate or District Magistrate, such Magistrate shall send the person arrested to the District Magistrate, unless the Magistrate having jurisdiction to inquire into or try such offence issues his warrant for the arrest of such person, in which case the person arrested shall be delivered to the Police-officer executing such warrant, or shall be sent to the Magistrate by whom such warrant was issued.

Procedure where such warrant issued by Subordinate Magistrate.

If the offence which the person arrested is alleged or suspected to have committed is one which may be inquired into or tried by any Criminal Court in the same district other than that of the Magistrate acting under section 184, such Magistrate shall send such person to the District Magistrate or Sub-divisional Magistrate to whom such Court is immediately subordinate.

B.—Time of commencing Prosecutions.

186. There is no limitation of the time within which prosecutions for the offences mentioned in this section must be commenced:—

Prosecutions for which there is no limitation.

(*a*) offences against the State;
(*b*) offences relating to the Army and Navy;
(*c*) false evidence and offences against public justice;
(*d*) offences relating to coin and Government stamps;
(*e*) offences under the Indian Penal Code, sections 299 to 311 (both inclusive);
(*f*) offences under the same Code, sections 359 to 373 (both inclusive);
(*g*) offences under the same Code, sections 390 to 414 (both inclusive);
(*h*) offences under the same Code relating to documents and to trade-marks and property-marks; and
(*i*) offences under the same Code relating to marriage.

187. A prosecution for any of the offences mentioned in this section must be commenced within three years after the offence is committed:—

Limitation of three years.

(*a*) offences against the public tranquillity;
(*b*) offences by or relating to public servants;
(*c*) contempts of the lawful authority of public servants;
(*d*) offences against property, except those referred to in section 186, clause (*h*).

188. A prosecution for any other offence not expressly provided for by this chapter or by any special or local law must be commenced within six months after the offence is committed.

Limitation of six months.

189. The provisions contained in sections 186, 187 and 188 as to the offences therein mentioned or referred to, apply also to abetments of, and attempts to commit, those offences respectively.

Abetments and attempts.

190. In computing the period of limitation prescribed for any prosecution, the time during which the accused person has been absent from the jurisdiction of the Court having power under this Code to try him shall be excluded.

Exclusion of time during which accused is absent from jurisdiction.

Any person not surrendering himself pursuant to a proclamation duly made under this Code shall be deemed to be absent within the meaning of this section.

191. For the purpose of this chapter, a prosecution shall be deemed to commence when the summons or warrant is applied for, or when no such application is made, when the summons or warrant is issued; or when the person prosecuted is arrested without a warrant, when the arrest is made.

When prosecutions commence.

C.—Conditions requisite for Initiation of Proceedings.

192. Except as hereinafter provided, any Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, and any other Magistrate specially empowered in this behalf, may take cognizance of any offence—

Act X, 1872, ss. 140, 141. Act IV, 1877, ss. 25, 28.

Cognizance of offences by Magistrates.

(*a*) upon receiving a complaint of facts which constitute such offence;
(*b*) upon a Police-report of such facts;
(*c*) upon information received from any person other than a Police-officer, or upon his own knowledge or suspicion that such offence has been committed.

Act X, 1872, s. 148, para. 1.

The Local Government, or the District Magistrate under the general or special orders of the Local Government, may specially empower any Magistrate to take cognizance under clause (*a*) of offences, and any Magistrate of the first or second class to take cognizance under clause (*b*) of offences.

The Local Government may empower any Magistrate of the first or second class to take cognizance under clause (*c*) of offences.

Act X, 1872, ss. 23, 25, 27.

193. Any District Magistrate or Sub-divisional Magistrate may transfer any case, of which he has taken cognizance, for inquiry or trial to any Magistrate subordinate to him.

Transfer of cases by District or Sub-divisional Magistrates.

Any Magistrate subordinate to a District Magistrate or Sub-Divisional Magistrate may, to the full extent of the powers with which he has been invested under this Code, deal with any case of which such District Magistrate or Sub-Divisional Magistrate has taken cognizance and which he has transferred to such Subordinate Magistrate.

Act X, 1872, s. 44. Act XI, 1874, s. 6.

Cognizance of cases transferred to Subordinate Magistrate.

194. Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction, unless the accused person has been committed by a Magistrate duly empowered in that behalf.

Act X, 18[illegible] s. 231. Act XI, 18[illegible] s. 18.

Cognizance of offences by Courts of Session.

Additional Session Judges and Joint [illegible] Judges shall try such cases only as the [illegible] Government by general or special order [illegible] them to try, or as the Sessions Judge of the Division makes over to them for trial.

Act X, 18[illegible] s. 17.

Act X, 1872, s. 18.

Assistant Sessions Judges shall try such cases only as the Sessions Judge of the Division makes over to them by general or special order.

Assistant Sessions Judges.

Act X, 1875, s. 145.

195. The High Court may take cognizance of any offence upon a commitment made to it in manner hereinafter provided.

Cognizance of offences by High Court.

Charter 1865, s. 24.

Nothing herein contained shall be deemed to affect the provisions of any letters patent granted under the twenty-fourth and twenty-fifth of Victoria, chapter 104.

Act X, 1872, s. 467. Act X, 1875, s. 133. Act IV, 1877, s. 40.

196. No Court shall take cognizance—

(*a*) of any offence described in sections 172 to 188 (both inclusive) of the Indian Penal Code, except with the sanction, or on the complaint, of the public servant concerned, or of his official superior.

Prosecution for contempts of lawful authority of public servants.

Act X, 1872, s. 468. Act IV, 1877, s. 41.

(*b*) of any offence described in section 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211 or 228 of the same Code, when such offence is committed before or against any Court, except with the sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate;

Prosecution for certain offences against public justice.

Court of Subordinate Judge is subordinate to that of District Judge, I. L. R. [illegible]

(*c*) of any offence described in section 463, 471, 475 or 476 of the same Code, when such offence has been committed by a party to any proceeding in any Court in respect of a document produced in evidence in such proceeding, except with the sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate.

Prosecution for certain offences relating to documents given in evidence.

Act X, 1872, s. 470, omitting the Explanation. Act X, 1875, s. 134. Act IV, 1877, s. 43. Bom. 36, West, J. No appeal from order recording reasons, I. L. R. 1 All.

The sanction referred to in this section may be expressed in general terms, and need not name the accused person; but it shall, so far as practicable, specify the Court or other place in which, and the occasion on which, the offence was committed.

Nature of sanction necessary.

Such sanction may be given at any time; and a sanction in respect of any offence referred to in this section shall authorise the Court taking cognizance of the case to amend the charge to one of any other such offence disclosed by the facts.

197. No Court shall take cognizance of any offence punishable under chapter VI of the Indian Penal Code, except section [illegible] or punishable under section 294A of the same [illegible] unless upon complaint made by order of, or [illegible] authority from, the Governor General in [illegible] the Local Government, or some officer [illegible] by the Governor General in Council in [illegible] behalf.

Prosecution for offences against the State.

[illegible] No Court shall take cognizance of any offence of which any Judge, or any public servant not removable from his office

Act X, 1875, [illegible] 17, 1877.

Prosecution of Judges and public servants.

without the sanction of the Government of India or the Local Government, is accused as such Judge or public servant, except with the previous sanction of the Government having power to order his removal, or of some officer empowered in this behalf by such Government, or of some Court or other authority to which such Judge or public servant is subordinate, and whose power to give such sanction has not been limited by such Government.

Such Government may determine the person by whom, and the manner in which, the prosecution of such Judge or public servant is to be conducted, and may specify the Court before which the trial is to be held.

Power of Government as to prosecution.

Act X, 1872, s. 142. Act IV, 1877, s. 29.

199. No Court shall take cognizance of an offence falling under chapter XIX or XXI or under sections 493 to 496 (both inclusive) of the Indian Penal Code, except upon a complaint made.

Prosecution for breach of contract, defamation and offences against marriage.

Act X, 1872, ss. 478, 479. Act IV, 1877, s. 45, Sec 1, O'Kin. 524.

200. No Court shall take cognizance of an offence under section 497 or 498 of the Indian Penal Code, except upon a complaint made by the husband of the woman, or, in his absence, by some person who had care of such woman on his behalf at the time when such offence was committed.

Prosecution for adultery.

CHAPTER XVI.

Of Complaints to Magistrates.

Act X, 1872, s. 144.

201. A Magistrate taking cognizance of a case on complaint shall at once examine the complainant upon oath or affirmation, and the examination shall be reduced into writing and shall be signed by the complainant, and also by the Magistrate:

Examination of complainant.

Provided that, when the case has been transferred under section 193 and the Magistrate so transferring it has already examined the complainant, the Magistrate to whom it is so transferred shall not be bound to re-examine the complainant:

Act IV, 1877, s. 30.

Provided also that where the Magistrate is a Presidency Magistrate, such examination may be on oath or affirmation or not as the Magistrate in each case thinks fit, and the Magistrate may, if he thinks fit, before the matter of the complaint is brought before him, require it to be reduced to writing.

Act X, 1872, s. 145.

202. If the Magistrate is not competent to entertain the complaint, he shall refer the complainant to a Magistrate having jurisdiction, and if the complaint has been made in writing, shall return it for presentation to the proper tribunal.

Procedure by Magistrate not empowered to entertain complaint.

Act X, 1872, s. 146.

203. If any Magistrate other than a Presidency Magistrate sees reason to distrust the truth of a complaint which he is authorized to entertain, he may postpone the issuing of process for compelling the attendance of the person complained against, and may direct a previous inquiry or investigation to be made by means of any officer immediately subordinate to such Magistrate or of a Police-officer, or in such other mode as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint.

Postponement of issue of process.

If such inquiry or investigation is made by means of some person other than an officer exercising any of the powers of a Magistrate or a Police-officer, such person shall exercise all the powers conferred by this Code on an officer in charge of a Police-station, except that he shall not have power to arrest without warrant.

Act X, 1872, s.147. para. 1. Act IV, 1877, s. 32.

204. The Magistrate before whom a complaint is made may, if after examining the complainant there is in his judgment no sufficient ground for proceeding, dismiss the complaint.

Dismissal of complaint.

CHAPTER XVII.

Of the Commencement of Proceedings before Magistrates.

Act X, 1872, s. 147, para. 3, 148, 149. Act IV, 1877, ss. 27, 33, 34, 35.

205. If in the opinion of a Magistrate taking cognizance of a case there is sufficient ground for believing that any person has committed an offence, he shall, if the case appears to be one in which according to the fourth column of the second schedule a summons should issue in the first instance, issue his summons, or, if the case appear to be one in which according to that column a warrant should issue in the first instance, his warrant, for causing such person to appear or be brought at a certain time and place before such Magistrate or some other Magistrate having jurisdiction:

Issue of process.

Act X, 1872, s. 148, proviso, 150.

Provided that in any case in which a summons should be issued under the foregoing part of this section, if the Magistrate sees reason to believe that the accused is about to abscond or will not obey the summons, he may, after recording his reasons in writing, instead of issuing a summons, issue a warrant in the first instance for the arrest of such person.

Act X, 1872, s. 151. Act IV, 1877, s. 37.

206. Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused, and permit him to appear by his pleader.

Magistrate may dispense with personal attendance of accused.

But such Magistrate may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in manner hereinbefore provided. Act IV, 1877, s. 37.

CHAPTER XVIII.

Of Inquiry into Cases triable by the Court of Session or High Court.

207. Any Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, Magistrate of the first class or any Magistrate empowered in this behalf by the Local Government may commit any person for trial to the Court of Session or High Court for any offence triable by such Court.

Act X, 1872, s. 143, extended to High Court.

Power to commit for trial.

208. The following procedure shall be adopted in inquiries before Magistrates where the case is triable exclusively by a Court of Session or High Court or, in the opinion of the Magistrate, ought to be tried by such Court.

Act X, 1872, s. 189. Act IV, 1877, s. 81.

Procedure in inquiries preparatory to commitment.

209. The Magistrate shall, when the accused appears or is brought before him, proceed to hear the complainant (if any), and take in manner hereinafter provided all such evidence as may be produced in support of the prosecution or in behalf of the accused.

Act X, 1872, ss. 190, 191, 2nd para. Act IV, 1877, s. 82.

Taking of evidence produced.

If the complainant or accused applies to the Magistrate to issue process to compel the attendance of any witness or the production of any document or other thing, the Magistrate shall issue such process unless, for reasons to be recorded in writing, he deems it unnecessary to do so.

Act X, 1872, ss. 357, 362. Act IV, 1877, s. 88, para. 2.

Process for production of further evidence.

The Magistrate may, before summoning any witness on such application, require that his reasonable expenses incurred in attending for the purposes of the trial be deposited in Court.

Act X, 1872, s. 361, para. 3.

Nothing in this section shall be deemed to require a Presidency Magistrate to record his reasons in writing.

210. When the evidence referred to in section 209 and such other evidence (if any) as the Magistrate may of his own motion cause to be produced has been taken, and the Magistrate has examined the accused in regard to such matters connected with the accusation as the Magistrate thinks fit, such Magistrate shall, if he finds that there are not sufficient grounds for committing the accused person for trial, discharge him, unless it appears to the Magistrate that such person should be tried before himself or some other Magistrate, in which case he shall proceed accordingly.

Act X, 1872, s. 195, omitting the explanations. Act IV, 1877, s. 87, omitting the explanations.

When accused person to be discharged.

211. When, upon such evidence being taken and such examination (if any) being made, the Magistrate finds that there are sufficient grounds for committing the accused for trial, he shall frame a charge under his hand, declaring with what offence the accused is charged.

Act X, 1872, ss. [illegible] Act IV, 1877, s. 88, [illegible] 3 and [illegible]

When charge is to be framed.

Act X, 1872, s. 199. Act X, 1875, s. 13. Act IV, 1877, s. 90.

As soon as the charge has been framed, it shall be read and explained to the accused and a copy thereof shall, if he so require, be given to him free of cost.

Charge to be explained, and copy furnished, to accused.

Act X, 1872, s. 200. Act IV, 1877, s. 91.

212. The accused shall be required at once to give in, orally or in writing, a list of the persons (if any) whom he wishes to be summoned to give evidence on his trial.

List of witnesses for defence on trial.

The Magistrate may in his discretion allow the accused to give in any further list of witnesses at a subsequent time, and nothing in this section shall be deemed to preclude the accused from giving, at any time before his trial before the High Court, to the Clerk of the Crown a further list of the persons whom he wishes to be summoned to give evidence on such trial.

Further list.

Act X, 1872, s. 200. Act IV, 1877, s. 91.

213. The Magistrate may in his discretion summon and examine any witness named in any list given in to him under section 212.

Power of Magistrate to examine such witnesses.

Act X, 1872, ss. 198, 200. Act IV, 1877, ss. 88, para. 1, 91.

214. When the accused on being required to give in a list under section 212 has declined to do so, or when he has given in such list and the witnesses (if any) included therein whom the Magistrate desires to examine have been summoned and examined under section 213, the Magistrate may make an order committing the accused for trial by the [illegible] Court or the Court of Session (as the case may be), and (unless the Magistrate is a Presidency Magistrate) recording the reasons for such commitment.

Order of commitment.

Act X, 1872, s. 197.

215. If any person (not being an European British subject) is accused before a Magistrate other than a Presidency Magistrate of having committed an offence conjointly with a European British subject who is about to be committed for trial, or to be tried, before the High Court on a similar charge, and the Magistrate finds that there are sufficient grounds for committing the accused for trial, he shall commit him to take his trial before the High Court, and not before the Court of Session.

Person charged in Mufassil jointly with European British subject.

[illegible] 1872, s. 200, ex[illegible] mination.

216. A commitment once made under section 214 or 215 by a competent Magistrate can be quashed by the High Court only, and only on a point of law.

Quashing commitments under section 214 or 215.

217. When the accused has given in any list of witnesses under section 212 and has been committed for trial, the Magistrate shall summon such of the witnesses included in the list as have not been compelled to appear before himself under section 213 to appear before the Court to which the accused has been committed:

Summons to witnesses for defence when accused is committed.

Provided that where such person has been committed to the High Court, the Magistrate may in his discretion leave such witnesses to be summoned by the Clerk of the Crown:

Provided also that if the Magistrate thinks that any witness is included in the list for the purpose of vexation or delay, or of defeating the ends of justice, the Magistrate may require the accused to satisfy him that there are reasonable grounds for believing that such witness is material, and if he is not so satisfied, may refuse to summon the witness, or before summoning him require such sum to be deposited as such Magistrate thinks necessary to defray the expense of obtaining the attendance of the witness.

Act X, 1872, s. 359. I. L. R. 3, Calc. 582.

Refusal to summon unnecessary witness unless deposit made.

Act X, 1872, s. 360. Act IV, 1877, s. 93.

218. Complainants and witnesses for the prosecution and defence, whose attendance before the Court of Session or High Court is necessary, and who appear before the Magistrate, shall execute before him bonds binding themselves, to be in attendance when called upon at the Court of Session or High Court, to prosecute or to give evidence, as the case may be.

Bond of complainants and witnesses.

If any complainant or witness refuses to attend before the Court of Session or High Court, or to execute the recognizance above directed, the Magistrate may detain him in custody until he executes such bond, or until his attendance at the Court of Session or High Court is required, when the Magistrate shall send him in custody to the Court of Session or High Court, as the case may be.

Detention in custody in case of refusal to attend or to execute recognisance.

Act X, 1872, s. 201. Act X, 1875, s. 13.

219. When the enquiry is concluded, the accused shall, if he demands them a reasonable time before the trial, be furnished with copies of the depositions. Such copies shall be made at his expense unless the Magistrate sees fit to give them free of cost.

Copies of depositions.

Act X, 1872, s. 202.

220. When the accused is committed for trial, the Magistrate shall issue an order to such person as may be appointed by the Local Government in this behalf, notifying the commitment, and stating the offence in the same form as the charge, unless the Magistrate is satisfied that such person is already aware of the commitment and the form of the charge,

Commitment when to be notified.

Act XI, 1874, s. 15.

and shall send the charge, the record of the enquiry and any weapon or other moveable thing which is to be produced in evidence to the Court of Session or (where the commitment is made to the High Court) to the Clerk of the Crown or other officer appointed in this behalf by the High Court.

Act X, 1872, s. 198.

Charge, &c., to be forwarded to High Court.

The Charge.

Act X, 1872, s. 357, para. 2. Act IV, 1877, s. 91, para. 4.

221. The Magistrate may summon and examine supplementary witnesses after the commitment and before the commencement of the trial, and bind them over in manner hereinbefore provided to appear and give evidence.

Power to summon supplementary witnesses.

Such examination shall, if possible, be taken in the presence of the accused, and where the Magistrate is not a Presidency Magistrate, a copy of the evidence of such witnesses shall, if the accused so require, be given to him free of cost.

Act X, 1875, s. 26. Act IV, 1877, s. 89, para. 3.

222. Pending the trial, the Magistrate may, subject to the provisions of this Code regarding the taking of bail, commit the accused, by warrant, to custody in such jail as may from time to time be appointed by the Local Government in this behalf.

Custody of accused pending trial.

CHAPTER XIX.

Of the Charge.

Form of Charges.

Act X 1872, s. 439. Act IV, 1877, 94.

223. Every charge under this Code shall state the offence with which the accused is charged.

Charge to state offence.

If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

Specific name of offence sufficient description.

If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.

How stated where offence has no specific name.

The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.

The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

What implied in charges.

In the Presidency-towns the charge shall be written in English; elsewhere it shall be written either in English or in the language of the Court. If the language of the charge is not understood by the accused, the charge shall be interpreted to him in a language which he understands.

Language of charge.

Act X, 1875, s. 118. Act X, 1872, s. 439, last para. Act IV, 1877, s. 94, last para.

If the accused has been previously convicted of any offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which is to be awarded, the fact of the previous conviction must be stated in the charge. If such statement is omitted, it may be added at any time before sentence is passed, but not afterwards.

Previous conviction when to be set out.

Illustrations.

(*a.*) *A* is charged with the murder of *B*.

This is equivalent to a statement that *A*'s act fell within the definition of murder given in sections 299 and 300 of the Indian Penal Code; that it did not fall within any of the general exceptions of the same Code; and that it did not fall within any of the five exceptions to section 300; or that, if it did fall within exception 1, one or other of the three provisos to that exception applied to it.

(*b.*) *A* is charged, under section 326 of the Indian Penal Code, with voluntarily causing grievous hurt to *B*, by means of an instrument for shooting. This is equivalent to a statement that the case was not provided for by section 335 of the Indian Penal Code, and that the general exceptions did not apply to it.

(*c.*) *A* is accused of murder, cheating, theft, extortion, adultery or criminal intimidation, or using a false property-mark. The charge may state that *A* committed murder, or cheating, or theft, or extortion, or adultery, or criminal intimidation, or that he used a false property-mark, without reference to the definitions of those crimes contained in the Indian Penal Code; but the sections under which the offence is punishable must, in each instance, be referred to in the charge.

(*d.*) *A* is charged, under section 184 of the Indian Penal Code, with intentionally obstructing a sale of property offered for sale by the lawful authority of a public servant. The charge should be in those words.

Act X, 1872, s. 440. Act IV, 1877, s. 95.

224. The charge shall contain such particulars as to the time and place of the alleged offence, and the person (naming him) against whom, or the thing in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

Particulars as to time, place and person.

Act X, 1872, s. 441. Act IV, 1877, s. 96.

225. When the nature of the case is such that the particulars mentioned in sections 223 and 224 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.

When manner of committing offence must be stated.

Illustrations.

(*a.*) *A* is accused of the theft of a certain article at a certain time and place. The charge need not set out the manner in which the theft was effected.

(*b.*) *A* is accused of cheating *B* at a given time and place. The charge must set out the manner in which *A* cheated *B*.

(*c.*) *A* is accused of giving false evidence at a given time and place. The charge must set out that portion of the evidence given by *A* which is alleged to be false.

(*d.*) *A* is accused of obstructing *B*, a public servant, in discharge of his public functions at a given time and place. The charge must set out the manner in which *A* obstructed *B* in the discharge of his functions.

(*e.*) *A* is accused of the murder of *B* at a given time and place. The charge need not state the manner in which *A* murdered *B*.

(*f.*) *A* is accused of disobeying a direction of the law with intent to save *B* from punishment. The charge must set out the disobedience charged and the law infringed.

(*g.*) *A* is accused of dacoity. The charge should state that *A* conjointly with four or more others committed robbery and thereby committed dacoity.

The Charge.

Act XVIII 1862, s.82.

226. In every charge words used in describing an offence shall be deemed to have been used in the sense attached to them respectively by the Indian Penal Code.

Words in charges taken in sense of Penal Code.

Act X, 1872, s. 443. Act X, 1875, s. 44. Act IV, 1877, s. 98.

227. No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission.

Effect of errors.

Illustrations.

(*a.*) *A* is charged, under section 242 of the Indian Penal Code, with "having been in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit," the word "fraudulently" being omitted in the charge. Unless it appears that *A* was in fact misled by this omission, the error shall not be regarded as material.

(*b.*) *A* is charged with cheating *B*, and the manner in which he cheated *B* is not set out in the charge, or is set out incorrectly. *A* defends himself, calls witnesses, and gives his own account of the transaction. The Court may infer from this that the omission to set out the manner of the cheating is not material.

(*c.*) *A* is charged with cheating *B*, and the manner in which he cheated *B* is not set out in the charge. There were many transactions between *A* and *B*, and *A* had no means of knowing to which of them the charge referred, and offered no defence. The Court may infer from such facts that the omission to set out the manner of the cheating was, in this case, a material error.

(*d.*) *A* is charged with the murder of Khoda Baksh on the 21st January. In fact, the murdered person's name was Haidar Baksh, and the date of the murder was the 20th January. *A* was never charged with any murder but one, and had heard the inquiry before the Magistrate, which referred exclusively to the case of Haidar Baksh. The Court may infer from these facts that *A* was not misled, and that the error in the charge was immaterial.

(*e.*) *A* was charged with murdering Haidar Baksh on the 20th January and Khoda Baksh (who tried to arrest him for that murder) on the 21st January. When charged for the murder of Haidar Baksh, he was tried for the murder of Khoda Baksh. The witnesses present in his defence were witnesses in the case of Haidar Baksh. The Court may infer from this that *A* was misled, and that the error was material.

Act X, 1875, s. 7.

228. When any person is committed for trial before a High Court, the Clerk of the Crown, or, if there be not a Clerk of the Crown, a Judge of the High Court, shall, on receipt of the charge, peruse and consider it, and may, if it appears necessary or expedient so to do, alter or re-draw the same, having regard to the rules as to the form of charges contained in this Code.

Procedure on commitment to High Court.

1875, s. 9. 1879.

229. If a prisoner is committed to the Court of Session or High Court without any charge at all, the Court or (in the case of a High Court) the Clerk of the Crown or a Judge of the High Court may draw up a charge, having regard to the rules last aforesaid.

How Court of Session may deal with charge.

If a prisoner is committed upon a charge which the Court, upon reference to the proceedings before the committing Magistrate, considers improper, the Court may draw up a charge for any offence which it considers to be proved by the evidence taken before the committing Magistrate.

Act X, 1872 ss. 444, 445. Act X, 1875, ss. 9, 10. Act IV, 1877, ss. 99, 100.

230. Any Court may, upon the application of the accused, or of the prosecution, or upon its own motion, alter any charge at any time before judgment is pronounced, or, in the case of trials before the Court of Session or High Court, before the verdict of the jury is returned or the opinions of the assessors are expressed.

Magistrate may alter charge.

Every such alteration shall be read and explained to the accused.

Act X, 1872 s. 447. Act X, 1875, s. 11. Act IV, 1877, s. 101.

231. If the alteration is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence, the Court may in its discretion, after making such alteration, proceed with the trial as if the altered charge had been the original charge.

When trial may proceed immediately after alteration.

Act X, 1872, s. 448. Act X, 1875, s. 12. Act IV, 1877, s. 102.

232. If the alteration is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused in his defence, the Court may either direct a new trial, or suspend the trial for such period as may be necessary to enable him to make his defence to the altered charge; and after hearing his defence, the Court may if it thinks fit further adjourn the trial to admit of the appearance of any witness whose evidence the Court considers to be material to the case, or who the accused wishes to be summoned in his defence.

When new trial may be directed, or trial suspended.

Adjournment.

Act X, 1872, s. 449. Act X, 1875, s. 15, omitting 'during the trial.' Act IV, 1877, s. 103.

233. Whenever a charge is altered by the Court, the complainant and the accused shall be allowed to recall, and examine with reference to such alteration, any witness who may have been examined.

Recall of witnesses when charge altered.

Act X, 1872, s. 450. Act X, 1875, s. 16. Act IV, 1877, s. 104.

234. If the offence stated in the altered charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the altered charge is founded.

Stay of proceedings if prosecution of offence in altered charge require previous sanction.

Act X, 1872, s. 451.

235. If any Appellate Court, or the High Court in the exercise of its powers of revision, is of opinion that any person convicted of an offence was in fact misled in his defence by an error in the charge, it shall direct a new trial to be had upon a charge amended in whatever manner it thinks fit.

Effect of material error.

If the Court is of opinion that the facts of the case are such that no valid charge could be

ferred against the accused in respect of the facts proved, it shall quash the conviction.

Illustration.

Act XI, 1874, s. 40. *A* is convicted of an offence under section 196 of the Indian Penal Code, upon a charge which omits to state that he knew the evidence which he corruptly used or attempted to use as true or genuine was false or fabricated. If the Court thinks it probable that *A* had such knowledge, and that he was misled in his defence by the omission from the charge of the statement that he had it, it shall direct a new trial upon an amended charge; but if it appears probable from the proceedings that *A* had no such knowledge, it shall quash the conviction.

Joinder of Charges.

Act X, 1872, s. 452. Act X, 1875, s. 17, adding "before the Magistrate." Act IV, 1877, s. 105.

236. There must be a separate charge for every distinct offence of which any person is accused before the Magistrate, and every such charge must be tried separately, except in the cases mentioned in sections 237, 238, 239 and 242.

Separate charges for distinct offences.

Illustration.

A is accused of a theft on one occasion, and of causing grievous hurt on another occasion. *A* must be separately charged and separately tried for the theft and the causing grievous hurt.

Act X, 1872, s. 453, omitting the Explanation. Act X, 1875, s. 18, adding "against the same person." I.L.R, 2 Calc. 540. Act IV, 1877, s. 106; cf. 24 & 25 Vic., c. 96, s. 5.

237. When a person is accused at the same time of more offences than one of the same kind, committed against the same person within one year of each other, he may be charged with, and tried at one trial for, any number of them not exceeding three.

More offences than one of same kind may be charged within a year of each other.

Act X, 1872, s. 454, omitting illustration (*i*). Act X, 1875, s. 19. Act IV, 1877, s. 107.

238. I.—If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

I.—Trial of more than one offence.

II.—If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with each of the offences so committed; but he must not receive a punishment more severe than could be inflicted for any of such offences.

II.—One offence falling within two definitions.

III.—If several acts, of which one or more than one would by itself constitute an offence, form, when combined, a different offence, the person accused of them may be charged with every offence, or any of the different offences, which he may have committed; but he shall not receive for such offences, collectively, a punishment more severe than could be inflicted for any one of such offences.

III.—Acts severally constituting more than one offence, but collectively coming within one definition.

Illustrations

to paragraph I—

(*a*.) *A* rescues *B*, a person in lawful custody, and in so doing causes grievous hurt to *C*, a constable in whose custody *B* was. *A* may be separately charged with, convicted of, and punished for, offences under sections 225 and 333 of the Indian Penal Code.

(*b*.) *A* has in his possession several seals knowing them to be counterfeit and intending to use them for the purpose of committing several forgeries punishable under section 466 of the Indian Penal Code. *A* may be separately charged with, convicted of, and punished for, the possession of each seal under section 473 of the Indian Penal Code.

(*c*.) *A*, with intent to cause injury to *B*, institutes a criminal proceeding against him, knowing that there is no just or lawful ground for such proceeding. *A* also falsely accuses *B* of having committed an offence knowing that there is no just or lawful ground for such charge. *A* may be separately charged with, convicted of, and punished for, two offences under section 211 of the Indian Penal Code.

(*d*.) *A*, with intent to cause injury to *B*, falsely accuse him of having committed an offence, knowing that there is no just or lawful ground for such charge. On the trial *A* gives false evidence against *B*, intending thereby to cause *B* to be convicted of a capital offence. *A* may be separately charged with, convicted of, and punished for, offences under sections 211 and 194 of the Indian Penal Code.

(*e*.) *A*, knowing that *B*, a female minor, has been kidnapped in order that she may be subjected to grievous hurt, wrongfully confines her and detains her against her will as a slave. *A* may be separately charged with, convicted of, and punished for, offences under sections 368 (read with 367) and 370 of the Indian Penal Code.

(*f*.) *A*, with six others, commits the offences of rioting, grievous hurt, and of assaulting a public servant, endeavouring in the discharge of his duty as such to suppress the riot. *A* may be separately charged with, convicted of, and punished for, offences under sections 147 and 325 and 152 of the Penal Code.

(*g*.) *A* threatens *B*, *C* and *D* at the same time with injury to their persons with intent to cause alarm to them. *A* may be separately charged with, convicted of, and punished for, each of the three offences under section 506 of the Indian Penal Code.

(*h*.) *A* intentionally causes the death of three persons by upsetting a boat. *A* may be separately charged with, convicted of, and punished for, each of the three offences under section 302 of the Indian Penal Code.

The separate charges referred to in illustrations (*a*) to (*h*) respectively may be tried at the same time.

to paragraph II—

(*i*.) *A* wrongfully strikes *B* with a cane. *A* may be separately charged with, and convicted of, offences under sections 352 and 323 of the Indian Penal Code; but the Presidency Magistrate who tries him may not inflict a more severe punishment than if he had convicted him under section 323 only.

(*j*.) *A* wrongfully kills a buffalo worth sixty rupees, belonging to *B*, and then moves the carcass in order to take it dishonestly out of *B*'s possession without *B*'s consent. *A* may be separately charged with, and convicted of, offences under sections 429 and 379 of the Indian Penal Code; but the Presidency Magistrate who tries him may not inflict a more severe punishment than if he had convicted him under section 429 only.

(*k*.) Several stolen sacks of corn are made over to *A* and *B*, who know they are stolen property. *A* and *B* thereupon voluntarily assist each other to conceal the sacks at the bottom of a grain-pit. *A* and *B* may be separately charged with, and convicted of, offences under sections 411 and 414 of the Indian Penal Code; but the Presidency Magistrate who tries them may not inflict a severer punishment than if he had convicted them under one of those sections only.

(*l*.) *A* dishonestly uses a forged document as genuine evidence, in order to convict *B*, a public servant, of an offence under section 167 of the Indian Penal Code. *A* may be separately charged with, and convicted of, offences under sections 471 (read with 466) and 196 of the same

Code; but the Presidency Magistrate who tries him may not inflict a severe punishment than if he had convicted him under one of those sections only.

to paragraph III—

(*m*.) *A* commits house-breaking by day with intent to commit adultery, and commits, in the house so entered, adultery with *B*'s wife. *A* may be separately charged with, and convicted of, offences under sections 454 and 497 of the Indian Penal Code; but the Presidency Magistrate who tries him may not inflict a severer punishment than if he had convicted him under section 497 only.

(*n*.) *A* commits robbery on *B*, and, in doing so, voluntarily causes hurt to him. *A* may be separately charged with, and convicted of, offences under sections 323, 392 and 394 of the Indian Penal Code; but the Presidency Magistrate who tries him may not inflict a severer punishment than if he had convicted him under section 392 or 394 only.

(*o*.) *A* entices *B*, the wife of *C*, away from *C*, with intent to commit adultery with *B*, and then commits adultery with her. *A* may be separately charged with, and convicted of, offences under sections 498 and 497 of the Indian Penal Code; but the Presidency Magistrate who tries him may not inflict a severer punishment than if he had convicted him under section 497 only.

Act X, 1872, s. 455. Act X, 1875, s. 20. Act IV, 1877, s. 108. N.W.P., 1875, p. 137.

239. If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences; and any number of such charges may be tried at once, or he may be charged in the alternative with having committed some one of the said offences.

Where it is doubtful what offence has been committed.

Illustration.

A is accused of an act which may amount to theft, or receiving stolen property, or criminal breach of trust or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust and cheating, or he may be charged with having committed theft, or receiving stolen property, or criminal breach of trust, or cheating.

Act X, 1872, s. 456. Act X, 1875, s. 21. Act IV, 1877, s. 109.

240. If, in the case mentioned in section 239, the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of that section, he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

When a person is charged with one offence, he can be convicted of another.

Illustration.

A is charged with theft. It appears that he committed the offence of criminal breach of trust, or that of receiving stolen goods. He may be convicted of criminal breach of trust, or of receiving stolen goods (as the case may be), though he was not charged with such offence.

1872, 1875, 1877, 243.

241. When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and part of the charge is not proved, but the part which is proved amounts to a different offence, he may be convicted of the offence which he is proved to have committed, though he was not charged with it.

When offence proved included in offence charged.

Illustration.

(*a*.) *A* is charged, under section 407 of the Indian Penal Code, with criminal breach of trust in respect of property entrusted to him as a carrier. It appears that he did commit criminal breach of trust under section 406 in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under section 406.

Act X 1872, s. 458. Act X, 1875, s. 23. Act IV, 1877, s. 111.

242. When more persons than one are accused of the same offence, or of different offences committed in the same transaction, or when one person is accused of committing any offence, and another of abetment of, or attempt to commit, such offence, they may be charged and tried together or separately, as the Court thinks fit, and the provisions contained in the former part of this chapter shall apply to all such charges.

What persons may be charged jointly.

Illustrations.

(*a*.) *A* and *B* are accused of the same murder. *A* and *B* may be charged and tried together for the murder.

(*b*.) *A* and *B* are accused of a robbery, in the course of which *A* commits a murder with which *B* has nothing to do. *A* and *B* may be tried together on a charge, charging both of them with the robbery, and *A* alone with the murder.

(*c*.) *A* and *B* are both charged with a theft, and *B* is charged with two other thefts committed by him in the course of the same transaction. *A* and *B* may be both tried together on a charge, charging both with the one theft, and *B* alone with the two other thefts.

Act X, 1872, s. 459, omitting the first ten words "In trials before a Court of Session or High Court," and inserting "the complainant." Act X, 1875, s. 103. Act IV, 1877, s. 112. New.

243. When more charges than one are made against the same person, and when a conviction has been had on one or more of them, the complainant, or the officer conducting the prosecution, may, with the consent of the Court, withdraw, or such Court of its own accord may suspend the inquiry into, or trial of, the remaining charge or charges. Such withdrawal shall have the effect of an acquittal on such charge or charges.

Withdrawal of remaining charges on conviction on one of several charges.

CHAPTER XX.

OF THE TRIAL OF SUMMONS-CASES BY MAGISTRATES.

Act X, 1872, s. 208, paras. 1 and 2. Act IV, 1877, s. 114.

244. The following procedure shall be observed by Magistrates in the trial of summons-cases.

Procedure in summons-cases.

Act X, 1872, s. 206. Act IV, 1877 s. 119.

245. When the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked if he has any cause to show why he should not be convicted.

Substance of accusation to be stated.

Act X, 1872, s. 206. Act IV, 1877, s. 120.

246. If the accused admits that he has committed the offence with which he is charged, his admission shall be recorded as nearly as possible in the words used by him; and if he shows no sufficient cause why he should not be convicted, the Magistrate shall convict him accordingly.

Conviction on admission of truth of accusation.

Act X, 1872, s. 207. Act IV, 1877, s. 121.

247. If the accused does not make such admission, the Magistrate shall proceed to hear the complainant (if any), and take all such evidence as

Procedure when no such admission is made.

may be produced in support of the prosecution, and also to hear the accused and take all such evidence as he produces in his defence.

Act X, 1872, s. 361. Act IV, 1877, s. 142. The Magistrate may, if he thinks fit, on the application of the complainant or accused, issue process to compel the attendance of any witness or the production of any document or other thing.

The Magistrate may, before summoning any witness on such application, require that his reasonable expenses incurred in attending for the purposes of the trial be deposited in Court.

Act X, 1872, s. 211, paras. 1 and 2. Act IV, 1877, s. 126.

248. If the Magistrate upon taking the evidence referred to in section 247 and such further evidence (if any) as he may, of his own motion, cause to be produced, and (if he thinks fit) examining the accused, finds the accused not guilty, he shall record an order of acquittal.

Acquittal.

If he finds the accused guilty, he shall pass sentence upon him according to law.

Sentence.

IV of 1877, s. 117, Nelson 206.

249. A Magistrate may, under section 246 or section 248, convict the accused of any offence triable under this chapter which, from the facts admitted or proved, he appears to have committed, whatever may be the nature of the complaint or summons.

Finding not limited by complaint or summons.

Act X, 1872, ss. 205, 212. Act IV, 1872, s. 118.

250. If the summons has been issued on complaint and upon the day appointed for the appearance of the accused or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks proper to adjourn the hearing of the case to some other day.

Non-appearance of complainant.

Act X, 1872, s. 210. Act IV, 1877, s. 125.

251. If a complainant, at any time before a final order is passed in any case under this chapter, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint, the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused.

Withdrawal of complaint.

New.

252. The Magistrate may in his discretion, in any case instituted otherwise than upon complaint, stop the proceedings at any stage without pronouncing any judgment either of acquittal or conviction.

Power to stop proceedings when no complainant.

Act X, 1872, s. 209, paras. 1 and 2. Act IV, 1877, s. 242.

253. If in any case instituted upon complaint a Magistrate acquits the accused under section 248 or section 250, and is of opinion that the complaint was frivolous or vexatious, he may, in his discretion, by his order of acquittal, direct the complainant to pay to the accused, or to each of the accused where there are more than one, such compensation, not exceeding fifty rupees, as the Magistrate thinks fit.

Frivolous or vexatious complaints.

The sum so awarded shall be recoverable as if it were a fine; and if it cannot be so recovered, the complainant shall be imprisoned in the civil jail for such term, not exceeding thirty days, as the Magistrate directs, unless such sum is sooner paid.

Recovery of such compensation.

CHAPTER XXI.

OF THE TRIAL OF WARRANT-CASES BY MAGISTRATES.

Act X, 1872, s. 213.

254. The following procedure shall be observed by Magistrates in the trial of warrant-cases.

Procedure in warrant-cases.

See I. L. R., 3 Cal. 389.

255. When the accused appears or is brought before a Magistrate, such Magistrate shall proceed to hear the complainant (if any) and take all such evidence as may be produced in support of the prosecution.

Evidence for prosecution.

Act X, 1872, s. 362, para. 1. Act IV, 1877, s. 143, para. 1.

The Magistrate shall ascertain, from the complainant or otherwise, the names of any persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution, and shall summon to give evidence before himself such of them as he thinks necessary.

Act X, 1872, s. 215.

256. If upon taking all the evidence produced under section 255, and such examination (if any) of the accused as the Magistrate thinks necessary, he finds that no offence has been proved against the accused, the Magistrate shall discharge him.

Discharge of accused.

Act X, 1872, s. 216. Act XI, 1874, s. 16. Act IV, 1877, ss. 116, 138.

257. If when such evidence and examination have been wholly or partially taken, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this chapter, which such Magistrate is competent to try, and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

Charge to be framed when offence appears proved.

Act X, 1872, s. 217. Act IV, 1877, ss. 120, 138.

258. The charge shall then be read and explained to the accused, and he shall be asked whether he is guilty or has any defence to make.

Plea.

cf. Act X, 1872, ss. 287, 288.

If the accused pleads guilty, the Magistrate shall record the plea, and may in his discretion convict him thereon.

Act X, 1872, s. 218. Act IV, 1877, s. 121.

259. If the accused refuses to plead or does not plead, or claims to be tried, he shall be called upon to enter upon his defence and to produce his evidence, and shall, at any time while he is making his defence, be allowed to recall and cross-examine any witness for the prosecution present in the Court or its precincts.

Defence.

If the accused puts in any written statement, the Magistrate may file it with the record, but shall not be bound to do so.

Act X, 1872, s. 362. Act IV, 1877, s. 143, para 2. Cf. s. 255 and 209.

260. If the accused applies to the Magistrate to issue any process for compelling the attendance of any witness (whether he has or has not been previously examined in the case) or the production of any document or other thing, the Magistrate shall issue such process unless, for reasons to be recorded by him in writing, he considers that such application should be refused.

Process for production of evidence for defence.

The Magistrate may, before summoning any witness on such application, require that his reasonable expenses incurred in attending for the purposes of the trial be deposited in Court.

Act X, 1872, s. 220, omitting the explanation. Act IV, 1877, s. 126, first half.

261. If in any case under this chapter in which a charge has been framed the Magistrate finds the accused not guilty, he shall record an order of acquittal.

Acquittal.

If in any such case the Magistrate finds the accused guilty, he shall pass sentence upon him according to law.

Conviction.

Act X, 1872, s. 215, expl. I. Contrast Act IV of 1877, s. 118; but 133 same

262. When the proceedings have been instituted upon complaint and upon any day fixed for the hearing of the case the complainant is absent and the offence may be lawfully compounded, the Magistrate may, in his discretion, notwithstanding anything hereinbefore contained, at any time before the charge has been framed, discharge the accused.

Absence of complainant.

CHAPTER XXII.

OF SUMMARY TRIALS.

Act X, 1872, ss. 222, 223, 224. I. L. R. 2 Calc. 367.

263. Notwithstanding anything herein contained, the District Magistrate and any Magistrate of the first class specially empowered in this behalf by the Local Government may try in a summary way all or any of the following offences:—

Power to try summarily.

(*a*). Offences not punishable with death, transportation, whipping, or imprisonment for a term exceeding six months;

(*b*). Offences relating to weights and measures, under sections 264, 265 and 266 of the Indian Penal Code;

(*c*). Hurt, under section 323 of the same Code;

(*d*). Theft, under section 379 of the same Code, where the value of the property stolen does not exceed fifty rupees;

(*e*). Theft, under section 380 of the same Code, where the value of the property stolen does not exceed fifty rupees;

(*f*). Theft, under section 381 of the same Code, where the value of the property stolen does not exceed fifty rupees;

(*g*). Receiving stolen property, under section 411 of the same Code;

(*h*). Mischief, under section 427 of the same code;

(*i*). House-trespass, under section 448 of the same Code;

(*j*). Insult with intent to provoke a breach of the peace, under section 504, and criminal intimidation, under section 505, of the same Code;

(*k*). Abetment of any of the foregoing offences;

(*l*). An attempt to commit any of the foregoing offences when such attempt is an offence.

Act X, 1872, s. 225.

264. The Local Government may confer on any Bench of Magistrates invested with the powers of a Magistrate of the second or third class power to try summarily all or any of the following offences:—

Power to invest Bench of Magistrates invested with less power.

(*a*). Offences against the Indian Penal Code, sections 277, 278, 279, 285, 286, 289, 290, 292, 293, 294, 323, 334, 336, 341, 352, 426 and 447;

(*b*). Offences against Municipal Acts, and the conservancy-clauses of Police Acts, punishable only with fine, or with imprisonment for a term not exceeding one month;

New.

(*c*). Abetment of any of the foregoing offences;

New.

(*d*). An attempt to commit any of the foregoing offences when such attempt is an offence.

Act X, 1872, s. 226.

265. In trials under this chapter, the procedure prescribed for summons-cases shall be followed in summons-cases, and the procedure prescribed for warrant-cases shall be followed in warrant-cases, except as hereinafter mentioned.

Procedure for summons and warrant-cases applicable with certain exceptions.

Act X, 1872, ss. 227.

266. In cases where no appeal lies, the Magistrate or Bench of Magistrates need not record the evidence of the witnesses, or the reasons for passing the judgment, or frame a formal charge; but he or they shall enter in a register to be kept for the purpose the following particulars:—

Record in cases where there is no appeal.

(*a*) the serial number;

(*b*) the date of the commission of the offence;

(*c*) the date of the report or complaint;

(*d*) the name of the complainant (if any);

(*e*) the name, father's name and residence of the accused;

(*f*) the offence complained of or proved;

(*g*) the plea of the accused and his examination (if any);

(*h*) the finding, and, in the case of a conviction, a brief statement of the reasons therefor;

(*i*) the sentence, and

(*j*) the date on which the proceedings terminated.

Act X, 1872, s. 228.

267. In every case tried summarily by a Magistrate or Bench in which an appeal lies, such Magistrate or Bench shall, before passing sentence, record a judgment embodying the

Record in appealable cases.

substance of the evidence on which the conviction was had, and also the particulars mentioned in section 266.

Such judgment shall be the only record in cases coming within this section.

Act X, 1872, s. 229.

268. Records made under section 266 and judgments recorded under section 267 shall be written by the presiding officer, either in English or in the language of the Court, or, if the Court to which such presiding officer is immediately subordinate so directs, in such officer's mother-tongue.

Language of judgment.

Act X, 1872, s. 230.

The Local Government may authorize any Bench of Magistrates empowered to try offences summarily to prepare the aforesaid record or judgment by means of an officer appointed in this behalf by the Court to which such Bench is immediately subordinate, and the record or judgment so prepared shall be signed by each member of such Bench present taking part in the proceedings.

Bench may be authorised to employ clerk.

CHAPTER XXIII.

OF TRIALS BEFORE HIGH COURTS AND COURTS OF SESSION.

A.—Preliminary.

Act X, 1875, s. 3.

269. In this chapter the expression "High Court" means a High Court of Judicature established or to be established under the twenty-fourth and twenty-fifth of Victoria, chapter 104, and includes the Chief Court of the Panjáb, and such other Courts as the Governor General in Council may from time to time, by notification in the *Gazette of India*, declare to be High Courts for the purposes of this chapter.

"High Court" defined.

Act X, 1875, s. 32.

270. All trials under this chapter before a High Court shall be by jury;

Trials before High Court to be by jury.

and, notwithstanding anything contained herein, all criminal cases transferred to a High Court under this Code or under the Letters Patent of any High Court established under the twenty-fourth and twenty-fifth of Victoria, chapter 104, the trial may, if the High Court so direct, be by jury.

Act X, 1872, s. 232.

271. All trials before a Court of Session shall be either by jury, or with the aid of assessors.

Trials before Sessions Court to be by jury or with assessors.

Act X, 1872, s. 233.

272. The Local Government may by order in the official Gazette direct that the trial of all offences, or of any particular class of offences, before any Court of Session, shall be by jury in any district, and from time to time revoke or alter such order.

Local Government may order trials before Court of Session to be by jury.

When the accused is triable at the same time for several offences of which some are and some are not triable by jury, he shall be tried by jury for each offence.

Act X, 1872, s. 235.

273. In every trial before a Court of Session, the prosecution shall be conducted by a Public Prosecutor.

Trial before Court of Session to be conducted by Public Prosecutor.

B.—Commencement of Proceedings.

Act X, 1872, s. 237.

274. When the Court is ready to commence the trial, the accused shall appear or be brought before it, and the charge shall be read and explained to him, and he shall be asked whether he is guilty of the offence charged, or claims to be tried.

Commencement of trial.

Act X, 1875, ss. 28 and 29.

If the accused pleads guilty, the plea shall be recorded, and he may be convicted thereon.

Plea of guilty.

Act X, 1872, s. 238. Act X, 1875, s. 30.

275. If the accused refuses to, or does not, plead, or if he claims to be tried, the Court shall proceed to choose jurors or assessors as hereinafter directed and to try the case:

Refusal to plead or claim to be tried.

Act X, 1872, s. 265. Act X, 1875, s. 34.

Provided that, subject to the right of objection hereinafter mentioned, the same jury may try, or the same assessors may aid in the trial of, as many accused persons successively as the Court thinks fit.

Trial by same jury or assessors of several offenders in succession.

Act X, 1875, s. 14. Query, extend to Sessions Judges.

276. When any charge, or portion of a charge, appears to a Judge of the High Court, at any time before the commencement of the trial of the person charged, to be clearly unsustainable, such Judge may make on the charge an entry to that effect.

Entry on unsustainable charge.

Such entry shall have the effect of staying proceedings upon the charge or portion of the charge, as the case may be.

Effect of entry.

C.—Choosing a Jury.

Act X, 1875, s. 33.

277. In trials before the High Court the jury shall consist of nine persons.

Number of jury.

Act X, 1872, s. 236.

In trials by jury before the Court of Session, the jury shall consist of such uneven number not being less than three, or more than nine, as the Local Government, by order applicable to any particular district or to any particular class of offences in that district, may from time to time direct.

Act X, 1872, s. 241.

278. In a trial by jury, before the Court of Session, of a person not being a European or an American, at least one half of the jury shall, if he so desires, consist of persons who are neither Europeans nor Americans.

Jury for trial of persons not Europeans or Americans before Court of Session.

Act X, 1872, s. 240. Act X, 1875, s. 33.

279. The jurors shall be chosen by lot from the persons summoned to act as such—

Jurors to be chosen by lot.

As to practice in High Court, Bombay, see I. L. R., 1 Bombay 462.

in trials before the High Court, in such manner as that Court, and in trials before Sessions Courts,

in such manner as the Local Government may from time to time by rule direct:

Proviso.

Act X, 1875, s. 49.

Provided that—

Existing practice maintained.

1st, pending the issue under this section of rules for any Court, the practice now prevailing in such Court in respect to the choosing of jurors shall be followed.

Act X, 1872, s. 243.

2nd, in case of a deficiency of persons summoned, the number of jurors required may, with the leave of the Court, be chosen from such other persons as may be present; and

Act X, 1875, s. 33.

Persons not summoned when eligible.

Act X, 1875, s. 38.

Trials before special jurors.

3rd, in the Presidency-towns—

(*a*) if the accused person is charged with having committed an offence punishable with death, or

(*b*) if in any other case a Judge of the High Court so directs,

the jurors shall be chosen from the special jury list hereinafter prescribed.

Act X, 1872, s. 243. Act X, 1875, s. 53.

280. As each juror is chosen, his name shall be called aloud, and upon his appearance, the accused shall be asked if he objects to be tried by such juror.

Names of jurors to be called.

Objection may then be taken to such juror by the accused or by the prosecutor, and the grounds of objection shall be stated:

Objection to jurors.

Act X, 1875, s. 47, para. 1.

Provided that, in the High Court, objections without grounds stated shall be allowed to the number of eight on behalf of the Crown and eight on behalf of the person or all the persons charged.

Objection without grounds stated.

Act X, 1872, ss. 244, 405. Act X, 1875, ss. 47, 54.

281. Any objection taken to a juror on any of the following grounds, if made out to the satisfaction of the Court, shall be allowed:—

Grounds of objection.

(*a*) some personal ground, such as alienage, infancy, old age, or deficiency in the qualification required by any law or rule having the force of law for the time being in force;

(*b*) his having by habit or religious vows relinquished all care of worldly affairs;

(*c*) his holding any office in or under the Court;

(*d*) his executing any duties of Police or being entrusted with Police-duties;

(*e*) his having been convicted of any offence which, in the opinion of the Court, renders him unfit to serve on the jury;

(*f*) some presumed or actual partiality in the juror;

Act X, 1872, s. 245. Act X, 1875, s. 57.

(*g*) inability to understand the language in which the evidence is given, or when such evidence is interpreted, the language in which it is interpreted;

(*h*) any other circumstance which, in the opinion of the Court, renders him improper as a juror.

Act X, 1872, s. 243, para 3. Act X, 1875, ss. 48, 55.

282. Every objection taken to a juror shall be decided by the Court, and such decision shall be final.

Decision of objection.

Act X, 1872, s. 243. Act X, 1875, s. 56.

If the objection is allowed, the place of such juror shall be supplied by any other juror attending in obedience to a summons and chosen in manner provided by section 279; or, if there is no such other juror present, then by any other person present in the Court whose name is on the list of jurors, or whom the Court considers a proper person to serve on the jury, provided that no objection to such juror or other person is taken under section 281 and allowed.

Supply of place of juror against whom objection allowed.

Act X, 1872, s. 246. Act X, 1875, s. 58.

283. When the jurors have been chosen, they shall appoint one of their number to be foreman.

Foreman of jury.

The foreman shall preside in the debates of the jury, deliver the verdict of the jury, and ask any information from the Court that is required by the jury or any of the jurors.

If a majority of the jury do not, within such time as the Judge thinks reasonable, agree in the appointment of a foreman, he shall be appointed by the Court.

New.

284. When the foreman has been appointed, the jurors shall be sworn under the Indian Oaths Act, 1873.

Swearing of jurors.

Act X, 1872, s. 254.

285. If, in the course of a trial by jury, at any time before the return of the verdict, any juror, from any sufficient cause, is prevented from attending throughout the trial, or if any juror absents himself, and it is not possible to enforce his attendance,

Procedure when juror ceases to attend.

(*a*) a new juror shall be added; or

(*b*) the jury shall be discharged and a new jury chosen; or

(*c*) with the consent of the prosecutor and the accused, the trial shall proceed with the remaining jurors.

In cases (*a*) and (*b*) the trial shall commence anew.

Act X, 1875, s. 99.

286. The Judge may also discharge the jury whenever the prisoner becomes incapable of remaining at the bar.

Discharge of jury in case of sickness of prisoner.

D.—Choosing Assessors.

Act X, 1872, s. 239.

287. When the trial is to be held with the aid of assessors, two or more shall be chosen, as the Judge thinks fit, from the persons summoned to act as such.

Assessor how chosen.

Act X, 1872, s. 259.

288. If, in the course of a trial with the aid of assessors, at any time prior to the finding, any assessor is, from any sufficient cause, prevented from attending throughout

Procedure when assessor is unable to attend.

the trial, or absents himself, and it is not possible to enforce his attendance, the trial shall proceed with the aid of the other assessor or assessors.

If all the assessors are prevented from attending or absent themselves, the proceeding shall be stayed, and a new trial shall be held with the aid of fresh assessors.

E.—Trial to Close of Cases for Prosecution and Defence.

Act X, 1872, s. 247. Act XI, 1874, s. 19. Act X, 1875, s. 59.

Opening case for prosecution.

289. When the jurors or assessors have been chosen, the prosecutor shall open his case by reading from the Indian Penal Code or other law the description of the offence charged, and stating shortly by what evidence he expects to prove the guilt of the accused.

Examination of witnesses.

The prosecutor shall then examine his witnesses.

Act X, 1872, s. 248. Act X, 1875, s. 60.

Examination of accused before Magistrate to be evidence.

290. The examination of the accused before the committing Magistrate shall be tendered as evidence by the prosecutor, scrutinised by the presiding Judge and read as evidence.

Act X, 1872, s. 249. Act XI, 1874, s. 20. Act X, 1875, s. 75. 12 Ben. Appendix 16, 17. The exercise of this discretion may be reviewed on appeal, 11 Bomb. 282.

Evidence given at preliminary inquiry admissible.

291. The evidence of a witness duly taken in the presence of the accused before the committing Magistrate may, in the discretion of the presiding Judge, if such witness is produced, be treated as evidence in the case.

Act X, 1872, s. 251. Act X, 1875, s. 62.

Procedure after examination of witnesses for prosecution.

292. When the examination of the witnesses for the prosecution and the examination (if any) of the accused is concluded, the accused shall be asked whether he means to call witnesses.

In such case it is not necessary to ask the assessors their opinion—I. L. R. 1 All. 626.

If he says that he does not, the prosecutor may sum up his case; and if the Court wholly discredits the evidence for the prosecution, it may then, in a case tried with the aid of assessors, record a finding, or, in a case tried by a jury, direct the jury to return a verdict of not guilty.

If the accused says that he means to call witnesses, or if, on his saying that he does not mean to call witnesses, the prosecutor sums up his case and the Court believes, or merely doubts the truth of, the evidence for the prosecution, the Court shall call on the accused to enter on his defence.

Act X, 1872, s. 251. Act X, 1875, s. 62.

Defence.

293. The accused or his pleader, may then open his case, stating the facts or law on which he intends to rely, and whether he thinks the evidence for the prosecution insufficient or inapplicable. He may then examine his witnesses, if any, and after their cross-examination and re-examination (if any) may sum up his case.

Act X, 1872, s. 368. Act X, 1875, s. 85. Act IV, 1877, s. 21.

Right of accused as to examination and summoning of witness.

294. The accused shall be allowed to examine any witness not previously named by him, if such witness is in attendance; but he shall not, except as provided in section 232, be entitled of right to have any witness summoned, other than the witnesses named in the list delivered to the Magistrate by whom he was committed for trial.

Act X, 1872, s. 252. Act X, 1875, s. 63.

Prosecutor's right of reply.

295. If any evidence is produced on behalf of the accused, the prosecutor shall be entitled to reply.

Act X, 1872, s. 253, omitting provision as to reconducting to Court, Act X, 1875, s. 64. Taken from Livingston, Art. 357.

View by jury or assessors.

296. Whenever the Court thinks that the jury or assessors should view the place in which the offence charged is alleged to have been committed, or any other place in which any other transaction material to the trial is alleged to have occurred, the Court shall make an order to that effect, and the jury or assessors shall be conducted in a body, under the care of an officer of the Court, to such place, which shall be shown to them by a person appointed by the Court.

Such officer shall not suffer any other person to speak to, or hold any communication with, any of the jury or assessors, and, unless the Court otherwise directs, they shall, when the view is finished, be immediately conducted back into Court.

Act X, 1872, s. 258. Act X, 1875, s. 69.

When juror or assessor may be examined.

297. If a juror or assessor is personally acquainted with any relevant fact, it is his duty to inform the Judge that such is the case, whereupon he may be sworn, examined, cross-examined and re-examined in the same manner as any other witness.

Act X, 1872, s. 260. Act X, 1875, s. 67.

Jury or assessors to attend at adjourned sitting.

298. If a trial is adjourned, the jury or assessors shall attend at the adjourned sitting, and at every subsequent sitting, until the conclusion of the trial.

Act X, 1875, s. 65.

Locking-up jury.

299. The High Court may from time to time make rules as to keeping the jury together during a trial before such Court lasting for more than one day, and, subject to such rules, the presiding Judge may order whether and in what manner the jurors shall be kept together under the charge of an officer of the Court, or whether they shall be allowed to return to their respective homes.

F.—Conclusion of Trial in Cases tried by Jury.

Act X, 1872, s. 255. Act X, 1875, s. 90.

Charge to jury.

300. In cases tried by jury, when the case for the defence, and the prosecutor's reply, if any, are concluded, the Court shall proceed to charge the jury, summing up the evidence for the prosecution and defence, and laying down the law by which the jury are to be guided.

Act X, 1872, s. 256. Act X, 1875, s. 91.

Duty of Judge.

301. In such cases, it is the duty of the Judge—

(*a*) to decide all questions of law, and especially all questions as to the relevancy of facts which it is proposed to prove, the admissibility of evidence or the propriety of questions asked by or on behalf of the parties which may arise in the course of the trial, and, in his discretion, to prevent the production of inadmissible evidence, whether it is or is not objected to by the parties;

(*b*) to decide upon the meaning and construction of all documents given in evidence at the trial;

(*c*) to decide upon all matters of fact which it may be necessary to prove in order to enable evidence of particular matters to be given;

(*d*) to decide whether any question which arises is for himself or for the jury, and upon this point his decision shall be final.

The Judge may, if he thinks proper, in the course of his summing up, express to the jury his opinion upon any question of fact, or upon any question of mixed law and fact, relevant to the proceeding.

Illustrations.

(*a.*) It is proposed to prove a statement made by a person not called as a witness under circumstances which render evidence of his statement admissible.

It is for the Judge, and not for the jury, to decide whether the existence of those circumstances has been proved.

(*b.*) It is proposed to give secondary evidence of a document the original of which is alleged to have been lost or destroyed.

It is the duty of the Judge to decide whether the original has been lost or destroyed.

Act X, 1872, s. 257. Act X, 1875, s. 93.

Duty of jury.

302. It is the duty of the jury—

(*a*) to decide which view of the facts is true, and then to return the verdict which under such view ought, according to the direction of the Judge, to be returned;

(*b*) to determine the meaning of all technical terms and words used in an unusual sense which it may be necessary to determine, whether such words occur in documents or not;

(*c*) to decide all questions which according to law are to be deemed questions of fact;

(*d*) to decide whether general indefinite expressions do or do not apply to particular cases, unless such expressions refer to legal procedure, or unless their meaning is ascertained by law, in either of which cases it is the duty of the Judge to decide their meaning.

Illustrations.

(*a.*) A is tried for the murder of B.

It is the duty of the Judge to explain to the jury the distinction between murder and culpable homicide, and to tell them under what views of the facts A ought to be convicted of murder, or of culpable homicide, or to be acquitted.

It is the duty of the jury to decide which view of the facts is true, and to return a verdict in accordance with the direction of the Judge, whether that direction is right or wrong, and whether they do or do not agree with it.

(*b.*) The question is whether a person entertained a reasonable belief on a particular point,—whether work was done with reasonable skill or due diligence.

Each of these is a question for the jury.

Retirement to consider.

303. In cases tried by jury, after the Judge has finished his charge, the jury may retire to consider their verdict.

Except with the leave of the Court, no person other than a juror shall speak to, or hold any communication with, any member of such jury.

Act X, 1872, s. 263. Act X, 1875, s. 94.

Delivery of verdict.

304. When the jury have considered their verdict, the foreman shall inform the Judge what is their verdict, or what is the verdict of a majority.

Act X, 1872, s. 263, para. 3. Act X, 1875, s. 96.

Procedure where jury differ.

305. If the jury are not unanimous, the Judge may require them to retire for further consideration. After such a period as the Judge considers reasonable, the jury may deliver their verdict, although they are not unanimous.

Act X, 1872, s. 263, para. 2. Act X, 1875, s. 95.

Verdict to be given on each charge. Judge may question jury.

306. The jury shall return a verdict on all the charges on which the accused is tried, and the Judge may ask them such questions as are necessary to ascertain what their verdict is.

New. Dears. C. C. 229.

Questions and answers to be recorded.

Such questions and the answers to them shall be recorded.

Act X, 1875, ss. 97, 98.

Amending verdict.

307. When a wrong verdict is delivered, the jury may, before or immediately after it is recorded, amend the verdict, and it shall stand as ultimately amended.

Verdict in High Court when to prevail.

308. When in a case tried before a High Court the jury are unanimous in their opinion, or when as many as six are of one opinion and the Judge agrees with them, the Judge shall give judgment in accordance with such opinion.

When in any such case the jury are satisfied that they will not be unanimous, but six of them are of one opinion, the foreman shall so inform the Judge.

Discharge of jury in other cases.

If the Judge disagrees with the majority, he shall at once discharge the jury.

If there are not so many as six who agree in opinion, the Judge shall, after the lapse of such time as he thinks reasonable, discharge the jury.

Act X, 1872, s. 263, para. 4.

Verdict in Sessions Court when to prevail.

309. When in a case tried before the Court of Session the Judge does not think it necessary to express disagreement with the verdict of the jurors or of a majority of the jurors, he shall give judgment accordingly.

If the accused is acquitted, the Judge shall record judgment of acquittal. If the accused is convicted, the Judge shall pass sentence on him according to law.

Act XI, 1871, s. 24.

Act X, 1872, s. 263, last para. Act XI, 1874, s. 21. I. L. R. 1 Bomb. 10. The dissent must be complete, I. L. R. 2 Bomb. 526.

Procedure where Judge disagrees with verdict.

310. If in any such case the Judge disagrees with the verdict of the jurors, or of a majority of the jurors, on all or any of the charges on which the accused has been tried, so completely that he considers it necessary for the ends of justice to submit the case to the High Court, he shall submit the case accordingly, record-

ing the grounds of his opinion and, when the verdict is one of acquittal, stating the offence which he considers to have been committed.

I. L. R., 3 Calc. 623.

Whenever the Judge submits a case under this section, he shall not record judgment of acquittal or of conviction on any of the charges on which the accused has been tried, but he may either remand the accused to custody, or admit him to bail.

See Markby J., in I. L. R., 3 Calc. 192.

The High Court shall deal with the case so submitted as it would deal with an appeal; but it may acquit or convict the accused of any offence of which the jury could have convicted him upon the charge framed and placed before it; and if it convict him, may pass such sentence as might have been passed by the Court of Session.

G.—Re-trial of Accused after Discharge of Jury.

Act X, 1875, s. 100.

311. Whenever the jury is discharged, the accused shall be detained in custody or on bail (as the case may be), and shall be tried by another jury, unless the Judge considers that he should not be re-tried, in which case the Judge shall make an entry to that effect on the charge, and such entry shall operate as an acquittal.

Re-trial of accused after discharge of jury.

H.—Conclusion of Trial in Cases tried with Assessors.

Act X, 1872, ss. 255, 261, 262.

312. When in a case tried with the aid to assessors, the case for the defence and the prosecutor's reply (if any) are concluded, the Court shall require each of the assessors to state his opinion orally, and shall record such opinion.

Delivery of opinion of assessors.

The Judge shall then give judgment; but in doing so shall not be bound to conform to the opinion of the assessors.

Judgment.

I.—List of Jurors for High Court and summoning Jurors for that Court.

Act X, 1875, s. 39.

313. The jurors' book for the year current when this Code comes into force shall be taken as containing a correct list of persons liable to serve as jurors under this chapter;

Jurors' book.

and those persons whose names are entered in the said book as being liable to serve on special juries only shall be deemed to be persons privileged and liable to serve only as special jurors under this chapter during the year for which the said list has been prepared.

Act X, 1875, s. 40.

314. The names of not more than two hundred persons shall at any one time be entered in the special jurors' list.

Number of special jurors.

Act X, 1875, s. 41.

All persons whose names are entered in the special jurors' list shall be exempted from serving on any other than special juries, but so long only as their names are contained in such list.

Exemption of special jurors.

Act X, 1875, s. 42.

315. The Clerk of the Crown shall, before the first day of April in each year, and subject to such rules as the High Court from time to time prescribes, prepare—

Lists of common and special jurors.

(*a*) a list of all persons liable to serve as common jurors; and

(*b*) a list of persons liable to serve as special jurors only.

Regard shall be had, in the preparation of the latter list, to the property, character and education of the persons whose names are entered therein.

No persons shall be entitled to have his name entered in the special jurors' list merely because he may have been entered in the special jurors' list for a previous year.

The Governor General in Council may exempt any salaried officer of Government from serving as a juror.

Act X, 1875 s. 43.

The Clerk of the Crown shall, subject to such rules as aforesaid, have full discretion to prepare the said lists as seems to him to be proper, and there shall be no appeal from, or review of, his decision.

Discretion of officer preparing lists.

Act X, 1875, s. 44.

316. Preliminary lists of persons liable to serve as common jurors and as special jurors, respectively, signed by the Clerk of the Crown, shall be published once in the local official Gazette before the fifteenth day of April next after their preparation.

Publication of preliminary lists.

Revised lists of persons liable to serve as common jurors and special jurors, respectively, signed as aforesaid, shall be published once in the local official Gazette before the first day of May next after their preparation.

Copies of the said lists shall be affixed to some conspicuous part of the Court-house.

Act X, 1875, s. 45.

317. Out of the persons named in the revised lists aforesaid, there shall be summoned for each sessions at least twenty-seven of those who are liable to serve on special juries, and fifty-four of those who are liable to serve on common juries.

Number of jurors to be summoned.

No persons shall be so summoned more than once in six months unless the number cannot be made up without him.

If, during the continuance of any sessions, it appears that the number of persons so summoned is not sufficient, such number as may be necessary of other persons liable to serve as aforesaid shall be summoned for such sessions.

Supplementary summons.

Act X, 1875, s. 50.

318. Whenever a High Court has given notice of its intention to hold sittings at any place outside the Presidency towns for the exercise of its original criminal jurisdiction, the

Summoning jurors outside the Presidency-towns.

Court of Session at such place shall, subject to any direction which may be given by the High Court, summon a sufficient number of jurors from its own list in the manner hereinafter prescribed for summoning jurors to the Court of Session.

Act X, 1875, s. 51.

319. In addition to the persons so summoned as jurors, the said Court of Session shall, if it think needful, after communication with the Commanding Officer, cause to be summoned such number of commissioned and non-commissioned officers in Her Majesty's army resident within ten miles of its place of sitting, as the Court considers to be necessary to make up the juries required for the trial of persons charged with offences before the High Court as aforesaid.

Military jurors.

All officers so summoned shall be liable to serve on such juries notwithstanding anything contained in this Code; but no such officer shall be summoned whom his Commanding Officer desires to have excused on the ground of urgent military duty, or for any other special military reason.

Act X, 1875, s. 46.

320. Any person summoned under section 317, 318 or 319, who without lawful excuse fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Judge, or fails to attend after an adjournment of the Court after being ordered to attend, shall be deemed guilty of a contempt and be liable by order of the Judge to such fine as he thinks fit; and, in default of payment of such fine, to imprisonment in the civil jail until the fine is paid.

Failure of jurors to attend.

J.—List of Jurors and Assessors for Court of Session, and summoning Jurors and Assessors for that Court.

Act X, 1872, s. 400.

321. The Sessions Judge and the Collector of the District, or such other officer as the Local Government appoints in this behalf, shall prepare and make out in alphabetical order a list of persons residing within ten miles from the place where trials before the Court of Session are held, or within such other distance as the Local Government directs, who are capable of serving as jurors or assessors, qualified in the judgment of the Sessions Judge and Collector or other officer as aforesaid to serve as such, and not exempt under section 327.

List of jurors and assessors.

The list shall contain the name, place of abode and quality or business of every such person; and if the person is a European or an American, the list shall mention the race to which he belongs.

X, 1872, 401, para.

322. Copies of such list shall be stuck up in the office of the Collector or other officer as aforesaid, and in the Court-houses of the District Magistrate and of the District Court, and in some conspicuous place in the town or towns in or near which the persons named in the list reside.

Publication of list.

Act X, 1872, s. 401, para. 2.

323. To every such copy shall be subjoined a notice stating that objections to the list will be heard and determined by the Sessions Judge and Collector or other officer as aforesaid, at the Sessions Court-house, and at a time to be mentioned in the notice.

Objections to list.

Act X, 1872, s. 402.

324. For the hearing of such objections, the Sessions Judge shall sit with the Collector or other officer as aforesaid, and shall, at the time and place mentioned in the notice, revise the list and hear the objections (if any) of persons interested in the amendment thereof, and shall strike out the name of any person not suitable in their judgment to serve as a juror or as an assessor, or who may avail himself of the exemption from service given by section 327, and insert the name of any person omitted from the list whom they deem qualified for such service.

Revision of list.

In the event of a difference of opinion between the Collector or other officer as aforesaid and the Sessions Judge, the name of the proposed juror or assessor shall be omitted from the list.

A copy of the revised list shall be signed by the Sessions Judge and Collector or other officer as aforesaid and sent to the Court of Session.

Any order of the Sessions Judge and Collector or other officer as aforesaid in preparing and revising the list shall be final.

Act X, 1872, s. 403.

325. The list so prepared and revised shall be again revised once in every year.

Annual revision of list.

The list so revised shall be deemed a new list, and shall be subject to all the rules hereinbefore contained as to the list originally prepared.

Act X, 1872, s. 404.

326. All male persons between the ages of twenty-one and sixty resident within the local limits of the jurisdiction of the Court of Session, except those next hereinafter mentioned, shall be deemed capable of serving as jurors and assessors, and shall be liable to be summoned accordingly.

Jurors and assessors.

Act X, 1872, s. 406.

327. The following persons are exempt from liability to serve as jurors or as assessors, namely:—

Exemptions.

(*a*). Officers in civil employ superior in rank to a District Magistrate;

(*b*). Judges and other Judicial Officers;

(*c*). Commissioners and Collectors of Revenue or Customs;

(*d*). Persons engaged in the Preventive Service in the Customs Department;

(*e*). Persons engaged in the collection of the revenue whom the Collector thinks fit to exempt on the ground of official duty;

(*f*). Persons actually officiating as priests or ministers of their respective religions;

(*g*). Persons in Her Majesty's Army except when, by any law in force for the time being, they are specially made liable to serve as jurors or assessors;

(*h*). Surgeons and others who openly and constantly practise the medical profession;

(*i*). Persons employed in the Post-office and Telegraph Departments;

(*j*). Persons exempted by the Local Government from liability to serve as jurors, and persons exempted from personal appearance in Court under the provisions of the Code of Civil Procedure, sections 640 and 641.

Person exempted not bound to avail himself of his right.

The exemption from service given by this section is a right of which each person exempted may avail himself or not as he thinks fit.

Act X, 1872, s. 407.

Court to summon jurors.

328. The Sessions Judge shall ordinarily, three days at least before the time fixed for holding the sessions, send a letter to a Magistrate requesting him to summon as many persons named in the said revised list as seem to the Judge to be needed for trials by jury and trials with the aid of assessors at the said sessions, the number to be summoned not being less than double the number required for any case about to be tried at such sessions.

The names of the persons to be summoned shall be drawn by lot in open Court, excluding those on the revised list who have served within six months, unless the number cannot be made up without them; and the names so drawn shall be specified in the said letter.

Act X, 1872, s. 410.

Power to summon another set of jurors or assessors.

329. The Court of Session may direct jurors or assessors to be summoned at other periods than the period specified in section 328, when the number of trials before the Court renders the attendance of one set of jurors or assessors for a whole session oppressive, or whenever for other reasons such direction is found to be necessary.

Act X, 1872, s. 409, para. 1.

Form and service of summons.

330. Every summons to a juror or assessor shall be in writing, and shall require his attendance as a juror or assessor, as the case may be, at a time and place to be therein specified.

Act X, 1872, s. 411.

When officer of Government may be excused.

331. If any person summoned to serve as a juror or assessor be in the service of Government or of a Railway Company, the Court may excuse his attendance if it appear, on the representation of the head of the office in which he is employed, that he cannot serve as a juror or assessor, as the case may be, without inconvenience to the public service.

Act X, 1872, s. 412.

Court may excuse attendance of juror or assessor.

332. The Court of Session may for reasonable cause excuse any juror or assessor from attendance at any particular session.

Act X, 1872, s. 413.

List of jurors or assessors attending.

333. At each session, the said Court shall cause to be made a list of the names of those who serve as jurors or assessors at such session.

Such list shall be kept with the revised list of the jurors and assessors prepared under section 324.

A reference shall be made in the margin of the said revised list to each of the names which are mentioned in the list prepared under this section.

Act X, 1872, s. 414.

Penalty for non-attendance of juror or assessor.

334. Any person summoned to attend as a juror or as an assessor who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Court, or fails to attend after an adjournment of the Court after being ordered to attend, shall be liable, by order of the Court of Session, to a fine not exceeding one hundred rupees.

Such fine shall be levied by the District Magistrate by attachment and sale of any moveable property belonging to such juror or assessor within the local limits of the jurisdiction of the Court making the order.

In default of recovery of the fine by such attachment and sale, such juror or assessor may be imprisoned in the civil jail for the term of fifteen days, unless such fine is paid before the end of the said term.

K.—Special Provisions for High Courts.

Act X, 1875, s. 146. Cf. s. 262, *supra*.

Power of Advocate General to stay prosecution

335. At any stage of any trial before a High Court under this Code before the return of the verdict, the Advocate General may, if he thinks fit, inform the Court on behalf of Her Majesty that he will not further prosecute the defendant upon the charge; and thereupon all proceedings on such charge against the defendant shall be stayed, and he shall be discharged of and from the same. But such discharge shall not amount to an acquittal.

Act X, 1876, s. 4.

Time of holding sittings.

336. For the exercise of its original criminal jurisdiction, every High Court shall hold sittings on such days and at such convenient intervals as the Chief Justice of such Court from time to time appoints.

Act X, 1875, s. 5.

Place of holding sittings.

337. The High Court shall hold its sittings at the place at which it now holds them, or at such other place (if any) as the Governor General in Council in the case of the High Court at Fort William, and as the Local Government in the case of the other High Courts, may direct.

But it may from time to time, in the case of the High Court at Fort William, with the consent of the Governor General in Council, in all other cases with the consent of the Local Government, hold sittings at such other places within the local limits of its appellate jurisdiction as the High Court appoints.

Notice of sittings.

Such officer as the Chief Justice directs shall give notice beforehand in the local official Gazette of all sittings intended to be held for the exercise of

the original criminal jurisdiction of the High Court.

Act X, 1875, s. 27.

Intermediate custody of European British subjects.

338. The High Court may direct that all European British subjects committed or bailed for trial by it within certain specified districts or during certain specified periods of the year shall be tried at the ordinary place of sitting of the Court,

or direct that they shall be tried at a particular place named.

CHAPTER XXIV.

OF TENDER OF PARDON IN CASES TRIABLE BY THE HIGH COURT OR COURT OF SESSION.

Act X, 1872, s. 347. Act IV, 1877, s. 150.

Tender of pardon to accomplice.

339. The District Magistrate, a Presidency Magistrate, any Magistrate of the first class inquiring into the case, or, with the sanction of the District Magistrate, any Magistrate duly empowered to commit to the Court of Session, may, with the view of obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, any offence specified in the second schedule as triable exclusively by the Court of Session or High Court, tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to such offence, and to every other person concerned in the perpetration thereof.

Every person accepting a tender under this section shall be examined as a witness in the case.

Such person, if not on bail, shall be detained in custody until the termination of the trial.

Every Magistrate, other than a District Magistrate or a Presidency Magistrate, who tenders a pardon under this section, shall record his reasons for so doing; and when he has made such tender and examined the accused person, he shall not try the case himself, although the offence which the accused person appears to have committed may be triable by such Magistrate.

Act X, 1872, s. 348, omitting "as a Court of Revision." Act X, 1875, s. 77.

Power to direct tender of pardon.

340. At any time after committal, but before judgment is passed, the High Court or Court of Session may, with the view of obtaining on the trial the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, any such offence, tender, or direct the committing Magistrate to tender, a pardon on the same condition to such person.

X, 1872, 340. X, 1875, 151. IV, 1877, 151.

Commitment of person to whom pardon has been tendered.

341. Where a pardon has been tendered under section 339 or 340, if before the trial it appears to the Court making or directing the tender, or to the Magistrate, that any person who has accepted such tender has, either by wilfully concealing anything essential or by giving false evidence, not complied with the condition on which the tender was made, such Court or Magistrate may commit him for trial for the offence in respect of which the pardon was so tendered, or for any other offence of which he appears to have been guilty in connection with the same matter.

The statement made by a person under pardon may be given in evidence against him when the pardon has been withdrawn under this section.

CHAPTER XXV.

GENERAL PROVISIONS AS TO INQUIRIES AND TRIALS.

Act X, 1872, s. 186, paras. 1 and 2. Act XI, 1874, s. 13. Act X, 1875, s. 31 Act IV, 1877, s. 130. Act X, 1872, s. 186, para. 3. Act X, 1875, s. 130. Act IV, 1877, s. 131.

Right of accused to be defended.

342. Every person accused before any criminal Court may of right be defended by a pleader.

Procedure where accused does not understand proceedings.

343. If the accused, though not insane, cannot be made to understand the proceedings, the Court may proceed with the inquiry or trial; and in the case of a Court other than a High Court, if such inquiry results in a commitment, or if such trial results in a conviction, the proceedings shall be forwarded to the High Court with a report of the circumstance of the case, and the High Court shall pass thereon such order as it thinks fit.

Act X, 1872, ss. 193, 250, 342. Act X, 1875, s. 61. Act IV, 1877, ss. 5, 148. 1 O' Kin. 436.

Power to examine the accused.

344. At any stage of any inquiry or trial the Court may, without previously warning the accused, put such questions to him as the Court considers necessary.

The accused shall not render himself liable to punishment for refusal to answer such questions, or for giving false answers to them; but the Court shall draw such inference from such refusal or false answers as it thinks just.

Act X, 1872, s. 343, see Act I, 1872, s. 114, ill. (*h*).

Act X, 1872, s. 193.

The answers given by the accused may be put in evidence against him, not only in such inquiry or trial, but also in any other inquiry into, or trial for, any other offence which such answer may tend to show he has committed.

Act X, 1872, s. 345.

No oath or affirmation shall be administered to the accused.

Act X, 1872, s. 344. Act IV, 1877, s. 149.

No influence to be used to induce disclosures.

345. Except as provided in section 339, no influence, by means of any promise or threat or otherwise, shall be used to an accused person to induce him to disclose or withhold any matter within his knowledge.

Act X, 1872, ss. 194, paras. 1 and 3, 208, para. 1, 219, 264.

Power to postpone or adjourn proceedings.

346. If, from the absence of a witness or any other reasonable cause, it becomes necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial,

Act X. 1875, s. 66. Act IV, 1877, ss. 86, 124. 11 & 12 Vic., c. 42, s. 21.

the Court may, by order, from time to time, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and by a warrant, or to the like effect, remand the accused if in custody :

Remand.

Provided that no Magistrate shall remand an accused person to custody under this section for a period exceeding fifteen days at a time.

Every order made under this section by a Court other than a High Court shall be in writing signed by the presiding Judge.

Explanation.—If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

Reasonable cause for remand.

Act X, 1872, s. 188. Act X, 1875, s. 151. Act IV, 1877, s. 133. Compare N. Y. Crim. Proc. Code, s. 731.

347. In the case of offences which may lawfully be compounded, the injured person may compound the offence out of Court, or in Court, with the permission of the Magistrate or presiding Judge. Such composition shall have the effect of an acquittal of the accused.

Compounding offences.

Explanation.—The following offences, and no others, may be lawfully compounded :—

New.

(*a*) offences relating to the human body, except offences under the Indian Penal Code, sections 299 to 311 (both inclusive) and sections 359 to 373 (both inclusive) ;

(*b*) criminal breach of contracts of service ;

(*c*) defamation ;

(*d*) criminal intimidation, insult and annoyance ;

(*e*) offences against property, except offences under the Indian Penal Code, sections 390 to 414 (both inclusive) ;

(*f*) offences relating to documents, trade-marks and property-marks, except offences under the same Code, sections 463 to 477 (both inclusive) ;

(*g*) adultery and other offences relating to married women, under the same Code, sections 497 and 498 ;

(*h*) offences against Municipal and Cantonment Acts, and the conservancy-clauses of Police Acts ;

(*i*) abetment of any of the foregoing offences ;

(*k*) an attempt to commit any of the foregoing offences when such attempt is an offence.

Act X, 1872, s. 45. Madras H. C. ruling cited Nelson, 63.

348. If, in the course of an inquiry or trial before a Magistrate in any district outside the Presidency-towns, the evidence appears to him to warrant a presumption that the case is one which should be tried or committed for trial by some other Magistrate in such district, he shall stay proceedings and submit the case, with a brief report explaining its nature, to any Magistrate to whom he is subordinate, or to such other Magistrate, having jurisdiction, as the District Magistrate directs.

Procedure of Mufassal Magistrate in cases which he cannot dispose of.

The Magistrate to whom the case is submitted shall, if so empowered, either try the case himself, or refer it to any officer subordinate to him having jurisdiction, or commit the accused for trial.

In any such case, such Magistrate or other officer as aforesaid shall examine the parties and witnesses, and shall proceed in all respects as if no proceedings had been held in any other Court.

Act X, 1872, s. 221. Act IV, 1877, s. 127.

349. If in any trial before a Magistrate it appears to him at any stage of the proceedings before signing judgment that the case is one which ought to be tried by the Court of Session or High Court, and he is empowered to commit for trial, he shall stop further proceedings and commit the accused under the provisions hereinbefore contained.

Procedure when after commencement of trial Magistrate finds case should be committed.

If such Magistrate is not empowered to commit for trial, he shall proceed under section 348.

Act X, 1872, s. 315. Act IV, 1877, s. 128.

350. Whoever, having been convicted of an offence punishable under chapter XII or XVII of the Indian Penal Code with imprisonment for a term of three years or upwards, is again accused of any offence punishable under either of those chapters with imprisonment for a term of three years or upwards, shall ordinarily, if the Magistrate before whom he is accused considers him an habitual offender, be committed to the Court of Session or High Court, as the case may be :

Trial of persons previously convicted of offences against coinage, stamp-law and property.

Provided that, in districts in which the District Magistrate has been invested with powers under section 30, the accused person may be placed on his trial before such Magistrate.

Proviso.

Act X, 1872 s. 46, inserting "different in kind from or"

351. Whenever a Magistrate of the second or third class, having jurisdiction, is of opinion upon concluding a trial that the accused is guilty, and that he ought to receive a punishment different in kind from, or more severe than, that which such Magistrate is empowered to inflict, he may record the finding and, instead of passing sentence, submit his proceedings, and forward the accused to the District Magistrate or Sub-divisional Magistrate to whom he is subordinate.

Procedure when Magistrate cannot pass sentence sufficiently severe.

The Magistrate to whom the proceedings are submitted may, if he thinks fit, examine the parties and recall and examine any witness who has already given evidence in the case ; and may call for and take any further evidence, and shall pass such judgment, sentence or order in the case as he thinks fit, and as is according to law : Provided that he shall not inflict a punishment more severe than he is empowered to inflict under sections 32 and 33.

Act X, 1872, ss. 328 and 329. Act IV, 1877, s. 158.

352. Whenever any Magistrate, after having heard the whole or any part of the evidence in an inquiry or trial, ceases to exercise jurisdiction therein, and is succeeded by another Magistrate who has and who exercises such jurisdiction, the Magistrate so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself ; or he may re-summon the witnesses and re-commence the enquiry or trial :

Conviction on evidence partly recorded by one Magistrate and partly by another.

Provided that the accused may, when the second Magistrate commences his proceedings, demand that the witnesses be re-summoned and re-heard, in which case the inquiry or trial shall be re-commenced :

Provided also that the High Court, or, in cases tried by Magistrates subordinate to the District Magistrate, the District Magistrate may, without appeal, set aside any conviction passed on evidence not wholly recorded by the Magistrate before whom the conviction was had, if such Court or District Magistrate is of opinion that the accused has been materially prejudiced thereby ; and may order a new inquiry or trial.

Nothing in this section applies to cases in which proceedings have been stayed under section 348.

Act X, 1872, s. 104.

353. Any person attending a criminal Court, although not upon an arrest or summons, may be detained by such Court for the purpose of examination, for any offence of which such Court can take cognizance and which, from the evidence, he may appear to have committed, and may be proceeded against as though he had been arrested or summoned.

Detention of offenders attending Court.

When the detention takes place in the course of an inquiry under chapter XVIII, or after a trial has been begun, the proceedings in respect of such person shall be commenced afresh and the witnesses re-heard.

X, 1872, 187. X, 1875, 150. IV, 1877, 132.

354. The place in which any criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed an open Court, to which the public generally may have access, so far as the same can conveniently contain them :

Courts to be open.

Provided that the presiding Judge may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court.

CHAPTER XXVI.

Of the Mode of taking and recording Evidence in Inquiries and Trials.

1872, 4 para. 1878, 5 para.

355. Except as otherwise expressly provided, all evidence taken under chapters XVIII, XX, XXI, XXII and XXIII shall be taken in the presence

Evidence to be taken in presence of accused.

of the accused, or, when his personal attendance is dispensed with, in presence of his pleader.

Act X, 1872, s. 332.

356. In inquiries and trials (other than summary trials) under this Code by or before a Magistrate (other than a Presidency Magistrate) or Sessions Judge, the evidence of the witnesses shall be recorded in the following manner.

Manner of recording evidence in Mufassal.

Act X, 1872, s. 333.

357. In summons-cases tried before a Magistrate, other than a Presidency Magistrate, and in cases of the offences mentioned below when tried by a Magistrate of the first or second class, the Magistrate shall make a memorandum of the substance of the evidence of each witness as the examination of the witness proceeds.

Record in summons-cases, and in trials of certain offences by first and second class Magistrates.

Such memorandum shall be written and signed by the Magistrate with his own hand, and shall form part of the record.

If the Magistrate is prevented from making a memorandum as above required, he shall record the reason of his inability to do so, and shall cause such memorandum to be made in writing from his dictation in open Court, and shall sign the same ; and such memorandum shall form part of the record.

The offences above referred to are—

Act X, 1872, s. 222.

(1). Offences relating to weights and measures, under sections 264, 265 and 266 of the Indian Penal Code ;

(2). Hurt, under section 323 of the same Code ;

(3). Theft, under section 379 of the same Code, where the value of the property stolen does not exceed fifty rupees ;

(4). Theft, under section 380 of the same Code, where the value of the property stolen does not exceed fifty rupees ;

(5). Theft under section 381 of the same Code, where the value of the property stolen does not exceed fifty rupees ;

(6). Receiving stolen property, under section 411 of the same Code ;

(7). Mischief, under section 427 of the same Code ;

(8). House-trespass, under section 448 of the same Code ;

(9). Criminal intimidation, under sections 504 and 506 of the same Code ;

(10). Abetment of any of the foregoing offences ;

(11). Attempt to commit (when such attempt is an offence) any of the foregoing offences.

Act X, 1872, s. 334.

358. In all other trials before Courts of Session and Magistrates (other than Presidency Magistrates) and in all inquiries under chapter XVIII, the evidence of each witness shall be taken down in writing in the language of the

Record in other cases in the Mufassal.

No exception of cases in which no appeal lies. 11 Beng. Appx. 6.

Court, by the Magistrate or Sessions Judge, or in his presence and hearing and under his personal direction and superintendence, and shall be signed by the Magistrate or Sessions Judge.

Evidence given in English.

When the evidence of such witness is given in English, the Magistrate or Sessions Judge may take it down in that language with his own hand, and, unless the accused is familiar with English, or the language of the Court is English, an authenticated translation of such evidence in the language of the Court shall form part of the record.

Memorandum when evidence not taken down by the Magistrate or Judge himself.

In cases in which the evidence is not taken down in writing by the Magistrate or Sessions Judge, he shall, as the examination of each witness proceeds, make a memorandum of the substance of what such witness deposes, and such memorandum shall be written and signed by the Magistrate or Sessions Judge with his own hand, and shall form part of the record.

If the Magistrate or Sessions Judge is prevented from making a memorandum as above required, he shall record the reason of his inability to make it.

Act X, 1872, s. 335.

Language of record of evidence.

359. The Local Government may direct that in any district or part of a district, or in proceedings before any Court of Session, or before any Magistrate or class of Magistrates, the evidence shall in the cases referred to in section 358 be taken down by the Sessions Judge or Magistrate with his own hand and in his mother-tongue, unless he is prevented by any sufficient reason from taking down the evidence of any witness, in which case he shall record the reason of his inability to do so, and shall cause the evidence to be taken down in writing from his dictation in open Court.

The evidence so taken down shall be signed by the Sessions Judge or Magistrate, and shall form part of the record:

Provided that, if the mother-tongue of the Sessions Judge or Magistrate is not English or the language of the Court, the Local Government may direct him to take down the evidence in the English language, or in the language of the Court.

Act X, 1872, s. 336.

Option to Magistrate in cases under section 357.

360. In cases of the kind mentioned in section 357, the Magistrate may, if he thinks fit, take down the evidence of any witness in the manner provided in section 358, or, if within the local limits of the jurisdiction of such Magistrate, the Local Government has made the order referred to in section 359, in the manner provided in the same section.

Act X, 1872, s. 338.

Mode of recording evidence under section 358 or 359.

361. Evidence taken under section 358 or 359 shall not ordinarily be taken down in the form of question and answer, but in the form of a narrative.

The Magistrate or Sessions Judge may in his discretion take down, or cause to be taken down, any particular question and answer, if there appears any special reason for so doing, or if the prosecutor or the accused, or his pleader so requires.

Act X, 1872, s. 339.

Procedure in regard to such evidence when completed.

362. As the evidence of each witness taken under section 358 or 359 is completed, it shall be read over to him in the presence of the accused if in attendance, or of his pleader, when his personal attendance is dispensed with and he appears by pleader, and shall, if necessary, be corrected.

If the witness deny the correctness of any part of the evidence when the same is read over to him, the Magistrate or Sessions Judge may, instead of correcting the evidence, make a memorandum thereon of the objection made to it by the witness, and shall add such remarks as he thinks necessary.

If the evidence be taken down in a language different from that in which it has been given, and the witness does not understand the language in which it is taken down, he may require his evidence as taken down to be interpreted to him in the language in which it was given, or in a language which he understands.

Act X, 1872, s. 340.

Interpretation of evidence to accused or his agent.

363. Whenever any evidence is given in a language not understood by the accused and he is present in person, it shall be interpreted to him in open Court in a language understood by him.

If he appears by pleader and the evidence is given in a language other than the language of the Court, and not understood by the pleader, it shall be interpreted to such pleader in that language.

When documents are put in for the purpose of formal proof, it shall be in the discretion of the Court to interpret as much thereof as appears necessary.

Act X, 1872, s. 335. Act IV, 1877, s. 115.

Record of evidence in Presidency Magistrates' Courts.

364. In every case in which a Presidency Magistrate imposes a fine exceeding two hundred rupees, or imprisonment for a term exceeding six months, he shall either take down the evidence of the witnesses with his own hand, or cause it to be taken down in writing from his dictation in open Court. All evidence so taken down shall be signed by the Magistrate and shall be part of the record.

Act X, 1872, s. 338. Act IV, 1877, s. 115.

Evidence so taken down shall ordinarily be recorded in the form of a narrative, but the Magistrate may in his discretion take down, or cause to be taken down, any particular question or answer.

Sentences passed under section 35 on the same occasion shall, for the purposes of this section, be considered as one sentence.

Act X, 1872, s. 341.

Remarks respecting demeanour of witness.

365. Every Sessions Judge or Magistrate recording the evidence of a witness shall record such remarks as he thinks material respecting the demeanour of such witness whilst under examination.

Act X, 1872, s. 346. Act IV, 1877, ss. 84, 123.

Examination of accused how recorded.

366. Whenever the accused is examined by any Magistrate or by any Court other than a High Court established by Royal Charter, the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full, and shall be shown or read to him, and he shall be at liberty to explain or add to his answers.

When the whole is made conformable to what he declares is the truth, the examination shall be signed by the accused and the Magistrate or Judge of such Court, and such Magistrate or Judge shall certify under his own hand that it was taken in his presence and in his hearing, and contains a full and true account of the statement made by the accused.

In cases in which the examination of the accused is not recorded by the Magistrate or Judge himself, he shall be bound, unless he is a Presidency Magistrate, as the examination proceeds, to make a memorandum thereof in the language of the Court or in English, if he is sufficiently acquainted with the latter language; and such memorandum shall be written and signed by the Magistrate or Judge with his own hand, and shall be annexed to the record. If the Magistrate or Judge is unable to make a memorandum as above required, he shall record the reason of such inability.

If the Court of Session or High Court finds that the provisions of this section have not been fully complied with by a Magistrate committing any person for trial to such Court, it shall take evidence that such person duly made the statement recorded: and unless the error injures the accused as to his defence on the merits, it shall not affect the admissibility of such statement.

Act X, 1875, s. 68, introducing Chief Court.

Record of evidence in High Court.

367. Every High Court established by Royal Charter and the Chief Court of the Panjáb may from time to time by general rule prescribe the manner in which evidence shall be taken down in cases coming before the Court in the exercise of its ordinary or its extraordinary original criminal jurisdiction, and the Judges of such Court shall take down the evidence or the substance thereof in accordance with the rule (if any) so prescribed.

CHAPTER XXVII.

Of the Judgment.

Act VIII, 1859, s. 183. Act X, 1872, s. 462.

Mode of delivering judgment.

368. The judgment in every trial in any criminal Court of original jurisdiction shall be pronounced in open court either immediately or at some subsequent time of which due notice shall be given to the parties or their pleaders; and the accused shall, if in custody, be brought up, or if not in custody shall be required to attend, to hear judgment delivered, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only, in which case it may be pronounced in the presence of his pleader.

Act X, 1872, s. 463. cf. Act X, 1877, s. 200.

Language of judgment.

369. Every such judgment shall, except as otherwise expressly provided by this Code, be written by the presiding officer of the Court in the language of the Court, or in English, or in the presiding officer's mother-tongue, and shall contain the point or points for determination, the decision thereon, and the reasons for the decision, and shall be dated and signed by the presiding officer in open court at the time of pronouncing it.

Act X, 1872, s. 464. cf. Act VIII, 1859, s. 185.

Contents of judgment.

It shall specify the offence (if any) of which, and the section of the Indian Penal Code or other law under which, the accused is convicted, and the punishment (if any) to which he is sentenced.

Act X, 1872, s. 461.

Judgment in alternative.

When the conviction is under the Indian Penal Code, and it is doubtful under which of two sections, or under which of two parts of the same section, of that Code the offence falls, the Court shall distinctly express the same, and pass judgment in the alternative, according to section 72 of the same Code.

If it be a judgment of acquittal, it shall direct that the accused be set at liberty.

Act X, 1872, s. 287, para. 2.

If the accused is convicted of an offence punishable with death, and the Court sentences him to any punishment other than death, the Court shall in its judgment state the reason why sentence of death was not passed:

Act X, 1872, s. 255, last para., and 464.

Provided that, in trials by jury, the Court need not write a judgment, but the Court of Session shall record the heads of the charge to the jury.

Act X, 1872, s. 321. Act X, 1875, s. 113.

Sentence of death.

370. When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.

Act X, 1872, s. 464, second sentence.

Court not to alter judgment.

371. No Court when it has signed its judgment shall alter or review the same.

Act IV, 1877, s. 114.

372. Instead of recording a judgment in manner hereinbefore provided, a Presidency Magistrate shall record the following particulars:—

Presidency Magistrate's judgment.

(*a*) the serial number of the case;

(*b*) the date of the commission of the offence;

(*c*) the name of the complainant (if any);

(*d*) the name of the accused person;

(*e*) the offence complained of or proved;

(*f*) the plea of the accused and his examination (if any);

(*g*) the final order;

(*h*) the date of such order; and

Act IV, 1877, s. 126.

(*i*) in all cases in which the Magistrate inflicts imprisonment, or fine exceeding two hundred rupees, or both, a brief statement of the reasons for the conviction.

Act XI, 1874, s. 41.

373. The judgment shall be explained to the accused, and on his application a copy of the judgment or, when he so desires, a translation in his own language, if practicable, or in the language of the Court, shall be given to him without delay, and free of cost.

Judgment to be explained and copy given to accused.

When the accused is sentenced to death by a Sessions Judge, such Judge shall further inform him of the period within which, if he wishes to appeal, his appeal should be preferred.

Case of person sentenced to death.

374. The original judgment shall be filed with the record of proceedings, and where the original is recorded in a different language from that of the Court, a translation thereof into the language of the Court shall be added to such record.

Judgment to be translated.

Act X, 1872, s. 302.

375. In cases tried by the Court of Session, the Court shall forward a copy of its judgment to the District Magistrate within the local limits of whose jurisdiction the trial was held.

Court of Session to send copy of judgment to District Magistrate.

CHAPTER XXVIII.

OF THE SUBMISSION OF SENTENCES FOR CONFIRMATION.

Act X, 1872, s. 287, para. 1.

376. When the Court of Session passes sentence of death, the proceedings shall be submitted to the High Court, and the sentence shall not be executed unless it is confirmed by the High Court.

Sentence of death to be submitted by Court of Session.

Act X, 1872, s. 289.

377. If when such proceedings are submitted the High Court thinks that additional evidence upon any point bearing upon the guilt or innocence of the convicted person is necessary, it may direct such evidence to be taken.

Power to direct additional evidence on such reference.

Such evidence shall not be taken in the presence of jurors or assessors, and unless the High Court otherwise directs, the presence of the convicted person may be dispensed with when the same is taken.

The result of such evidence shall be certified to the High Court.

Act X, 1872, s. 288.

378. In any case submitted under section 376, whether tried with the aid of assessors or by jury, the High Court may confirm the sentence, or pass any other sentence warranted by law, or may annul the conviction, and order a new trial on the same or an amended charge, or may acquit the accused person.

Power of High Court to confirm sentence or annul conviction.

Act X, 1872, s. 290.

379. In every case so submitted, the confirmation of the sentence or any new sentence or order passed by the High Court, shall, when such Court consists of two or more Judges, be signed by at least two of them.

Confirmation or new sentence to be signed by two Judges.

? New.

380. When any such case is heard before a bench of Judges and such Judges are equally divided, the case, with their opinions thereon, shall be laid before another Judge, and such Judge, after such examination and hearing as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion.

Procedure in case of difference of opinion.

Act X, 1872, s. 301, para. 1.

381. In cases submitted by the Court of Session to the High Court for the confirmation of a sentence of death, the proper officer of the High Court shall, without delay, after the order of confirmation or other order has been made by the High Court, send a copy of the order, under the seal of the High Court, and attested with his official signature, to the Court of Session.

Procedure in cases submitted to High Court for confirmation.

Act X, 1872, ss. 18 and 35. Act XI, 1874, s. 3.

382. When a sentence passed by an Assistant Sessions Judge or by a District Magistrate acting under section 34 is submitted to a Sessions Judge for confirmation, such Sessions Judge may either confirm, modify or annul such sentence or the finding on which the same is based, or if he thinks further enquiry or additional evidence upon any point bearing upon the guilt or innocence of the accused to be necessary, he may direct such inquiry or evidence to be made or taken.

Confirmation of sentence of Assistant Sessions Judge or Magistrate acting under section 34.

Unless the High Court otherwise directs, the presence of the convicted person may be dispensed with when such evidence is taken; and when the sentence has been submitted by an Assistant Sessions Judge, such evidence shall not be taken in the presence of jurors or assessors.

CHAPTER XXIX.

OF EXECUTION.

Act X, 1872, s. 301, para. 1.

383. When a sentence of death passed by a Court of Session is submitted to the High Court for confirmation, such Court of Session shall, on receiving the order of the

Execution of order passed under section 378.

High Court thereon, cause such order to be carried into effect by issuing a warrant or taking such other steps as may be necessary.

Act X, 1872, s. 306. Act X, 1875, s. 114, adding "to transportation for life."

384. If a woman sentenced to death be found by the Civil Surgeon to be pregnant, the High Court shall order the execution of the sentence to be postponed, and may commute the sentence to transportation for life.

Postponement of capital sentence on pregnant woman.

Act X, 1872, s. 302A. Act XI, 1874, s. 32. Act IV, 1877, s. 183.

385. Where the accused is sentenced to transportation or imprisonment in cases other than those provided for by section 383, the Court shall forthwith forward him with a warrant to the jail in which he is to be confined.

Execution of sentences of transportation or imprisonment in other cases.

As to subsidiary jails, see Nelson, 290, Act X of 1872, s. 88.

386. Every person for whose imprisonment a warrant is issued under sections 383 or 385 shall be confined in such jail or other place as the Local Government directs in his behalf.

Sentence of imprisonment where to be carried out.

Act X, 1872, s. 303. Act X, 1875, ss. 103, 104. Act IV, 1877, s. 184.

387. Every warrant for the execution of a sentence of imprisonment, shall be directed to the officer in charge of the jail or other place in which the prisoner is, or is to be, confined.

Direction and form of warrant for execution.

Act X, 1872, s. 304. Act X, 1875, s. 104.

388. When the prisoner is to be confined in a jail, the warrant shall be lodged with the jailor, if he is at the jail and if he is not at the jail, with his deputy.

Warrant with whom to be lodged.

If the jailor has no deputy, the warrant may be lodged with any officer in charge of the jail for the time being.

Act X, 1872, s. 307. Act X, 1875, s. 108. Act IV, 1877, s. 185.

389. Whenever an offender is sentenced to pay a fine, the Court passing the sentence may in its discretion issue a warrant for the levy of the amount by distress and sale of any moveable property belonging to the offender, although the sentence directs that, in default of payment of the fine, the offender shall be imprisoned.

Execution of sentence of fine.

Such warrant may be executed within the local limits of the jurisdiction of such Court, and it shall authorize the distress and sale of any such property without such limits, when endorsed by the District Magistrate within the local limits of whose jurisdiction such property is found.

Act IV, 1877, s. 186.

390. When a Court issues a warrant under section 389, it may, instead of at once ordering the offender to be imprisoned under section 64 of the Indian Penal Code, release him on his executing a bond with or without sureties, as the Court thinks fit, conditioned for his appearance before such Court on the day appointed for the return to such warrant, such day not being more than eight days from the time of executing the bond.

Detention of offender until return made to distress-warrant.

Act X, 1872, s. 307, last sentence. Act IV, 1877, s. 185, last sentence.

391. The warrant may be issued either by any Judge or Magistrate who, if the case had been tried by him, might have imposed the fine, or by his successor in office.

Who may issue warrant.

Act X, 1872, s. 302A, last sentence. Act IV, 1877, s. 183.

392. Where the accused is sentenced to whipping only, the sentence shall be executed at such place and time as the Court may direct.

Execution of sentence of whipping only.

Act X, 1872, s. 310. Act IV, 1877, s. 187.

393. When the accused is sentenced to whipping in addition to imprisonment in a case which is subject to appeal, the whipping shall not be inflicted until fifteen days from the date of the sentence or, if an appeal be made within that time, until the sentence is confirmed by the appellate Court: but the whipping shall be inflicted immediately on the expiry of the fifteen days or, in case of an appeal, immediately on the receipt of the order of the appellate Court confirming the sentence.

Execution of sentence of whipping, in addition to imprisonment.

Act XI, 1874, s. 33.

The whipping shall be inflicted in the presence of the officer in charge of the jail: unless the Judge or Magistrate orders it to be inflicted in his own presence.

Act X, 1872, s. 311, para. 1. Act X, 1875, s. 108. Act IV, 1877, s. 188.

394. In the case of a person of or over sixteen years of age, whipping shall be inflicted with such instrument, in such mode, and on such part of the person, as the Local Government directs; and in the case of a person under sixteen years of age, it shall be inflicted in the way of school-discipline with a light ratan.

Mode of inflicting punishment.

Act X, 1872, s. 311, para. 2.

395. In no case, if the cat-o'-nine-tails be the instrument employed, shall whipping exceed one hundred and fifty lashes, or if the ratan be employed, shall such punishment exceed thirty stripes.

Limit of number of stripes.

Act IV, 1877, s. 190.

No sentence of whipping shall be executed by instalments.

Not to be executed by instalments.

Act X, 1872, s. 312. Act XI, 1874, s. 33. Act X, 1875, s. 108. Act IV, 1877, s. 189.

396. The punishment of whipping shall not be inflicted, unless a Medical Officer, if present, certifies, or, if there is not a Medical Officer present, unless it appears to the Magistrate or officer present, that the offender is in a fit state of health to undergo such punishment.

Whipping not to be inflicted if offender not in fit state of health.

Act XI, 1874, s. 33.

If, during the execution of a sentence of whipping, a Medical Officer certifies, or it appears to the Magistrate or officer present, that the offender is not in a fit state of health to undergo the remainder of the sentence, the whipping shall be finally stopped.

Stay of execution.

Act X, 1872, s. 313. Act X, 1875, s. 108. Act IV, 1877, s. 191.

397. In any case in which, under section 396, a sentence of whipping is, wholly or partially, prevented from being executed, the offender shall be kept

Procedure if punishment cannot be inflicted under the last section.

in custody till the Court which passed the sentence can revise it; and the said Court may, at its discretion, either remit such sentence, or sentence the offender in lieu of whipping, or in lieu of so much of the sentence of whipping as was not executed, to imprisonment for any period, which may be in addition to any other punishment to which he may have been sentenced for the same offence:

Provided that the whole period of imprisonment to which such offender is sentenced shall not exceed that to which he is liable by law, or that which the Court is competent to award.

Act X, 1872, s. 316. Act X, 1875, s. 110. Act IV, 1877, s. 192.

398. When sentence is passed under this Code on an escaped convict, such sentence, if of death, fine or whipping, shall take effect immediately, and if of imprisonment, penal servitude or transportation, shall take effect according to the following rules, that is to say:—

Execution of sentence on escaped convicts.

If the new sentence is severer in its quality than the sentence which such convict was undergoing when he escaped, the new sentence shall take effect immediately.

When the new sentence is not severer in its quality than the sentence the convict was undergoing when he escaped, the new sentence shall take effect after he has suffered imprisonment, penal servitude or transportation, as the case may be, for a further period equal to that which, at the time of his escape, remained unexpired of his former sentence.

Explanation.—For the purpose of this section—

(*a*) a sentence of transportation or penal servitude shall be deemed severer than a sentence of imprisonment;

(*b*) a sentence of imprisonment with solitary confinement shall be deemed severer than a sentence of the same description of imprisonment without solitary confinement; and

(*c*) a sentence of rigorous imprisonment shall be deemed severer than a sentence of simple imprisonment with or without solitary confinement.

Act X, 1872, s. 317. Act X, 1875, s. 111. Act IV, 1877, s. 193.

399. When a person already undergoing a sentence of imprisonment, penal servitude or transportation is sentenced to imprisonment, penal servitude or transportation, such imprisonment, penal servitude or transportation shall commence at the expiration of the imprisonment, penal servitude or transportation to which he has been previously sentenced:

Sentence on offender already sentenced for another offence.

Provided that if he is undergoing a sentence of imprisonment, and the sentence on such subsequent conviction be one of transportation, the Court may, in its discretion, direct that the latter sentence shall commence immediately, or at the expiration of the imprisonment to which he has been previously sentenced.

400. Nothing in section 398 or section 399 shall be held to excuse any person from any part of the punishment to which he is liable upon his former or subsequent conviction.

Act X, 1872, s. 317, last sentence.

Saving as to sections 398 and 399.

401. When any person under the age of sixteen years is sentenced by any Criminal Court to imprisonment for any offence, the Court may direct that such person, instead of being imprisoned in a criminal jail, shall be confined in any reformatory established by the Local Government as a fit place for confinement, in which there are means of suitable discipline and of training in some branch of useful industry, or which is kept by a person willing to obey such rules as the Government prescribes with regard to the discipline and training of persons confined therein.

Act X, 1872, s. 318. Act X, 1875, s. 112. Act V of 1876 has not yet come into force anywhere except—

Confinement of youthful offenders in reformatories.

All persons confined under this section shall be subject to the rules so prescribed.

CHAPTER XXX.

Of Suspensions, Remissions and Commutations of Sentences.

402. When any person has been sentenced to punishment for an offence, the Governor General in Council, or the Local Government, may at any time, without conditions, or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

Act X, 1872, s. 322, para. 1.

Power to suspend or remit sentences.

Whenever an application is made to the Governor General in Council or the Local Government for the suspension or remission of a sentence, the Governor General in Council or the Local Government, as the case may be, may require the presiding Judge of the Court before which the conviction was had to furnish without delay a statement of the facts proved on the trial, and of any facts having reference to the propriety of granting or refusing the application.

New.

If the person in whose favour a sentence has been suspended or remitted fails to fulfil the conditions prescribed by the Governor General in Council or the Local Government, the Governor General in Council or the Local Government, as the case may be, may cancel such suspension or remission whereupon such person may, if at large, be arrested by any police officer without warrant and remanded by any Magistrate to undergo the unexpired portion of the sentence.

Act X, 1872, s. 322, para. 2.

Nothing herein contained shall be deemed to interfere with the right of Her Majesty to grant pardons, reprieves, respites, or remissions of punishment.

Act X, 1872, s. 322, para. 3.

403. The Governor General in Council, or the Local Government, may, without the consent of the person sentenced, commute

Power to commute punishment.

any one of the following sentences for any other mentioned after it:—

death, transportation, penal servitude, imprisonment.

CHAPTER XXXI.

Of previous Acquittals or Convictions.

Act X, 1872, s. 460. Act X, 1875, s. 117. Act IV, 1877, s. 118. Cf. N. Y. Code of Crim. Proc., s. 13. Form of plea under this section, N. W. P., 1875, p. 373.

404. A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under section 239, or for which he might have been convicted under section 240.

Person once convicted or acquitted not to be tried for same offence.

A person convicted or acquitted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under section 238, paragraph one.

A person acquitted or convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that for which he was acquitted or convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was acquitted or convicted.

A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed, if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

Act X, 1872, s. 215, expl. 2. Act X, 1875, s. 14.

Explanation.—The dismissal of a complaint, the discharge of the accused or any entry made upon a charge under section 276 is not an acquittal for the purposes of this section.

Illustrations.

(*a.*) *A* is tried upon a charge of theft as a servant and acquitted. He cannot afterwards be charged with theft as a servant, or, upon the same facts, with theft simply, or with criminal breach of trust.

(*b.*) *A* is tried upon a charge of murder and acquitted. There is no charge of robbery; but it appears from the facts that *A* committed robbery at the time when the murder was committed; he may afterwards be charged with, and tried for, robbery.

(*c.*) *A* is tried for an assault and convicted. The person assaulted afterwards dies. *A* may be tried again for culpable homicide.

(*d.*) *A* is tried, under section 270 of the Indian Penal Code, for malignantly doing an act likely to spread the infection of a disease dangerous to life, and is acquitted. The act so done afterwards causes a person permanently to lose his eyesight. *A* may be charged under section 326 of the same Code, with voluntarily causing grievous hurt to that person.

(*e.*) *A* is charged before the Court of Session and convicted of the culpable homicide of *B*. *A* may not afterwards be tried on the same facts for the murder of *B*.

(*f.*) *A* is charged by a Magistrate of the first class with, and convicted by him of, voluntarily causing hurt to *B*. *A* may not afterwards be tried for voluntarily causing grievous hurt to *B* on the same facts, unless the case comes within paragraph three of this section.

(*g.*) *A* is charged by a Presidency Magistrate with, and convicted by him of, theft of property from the person of *B*. *A* may be subsequently charged with, and tried for, robbery on the same facts.

(*h.*) *A*, *B* and *C* are charged by a Magistrate of the first class with, and convicted by him of, robbing *D*. *A*, *B* and *C* may afterwards be charged with, and tried for, dacoity on the facts.

PART VII.

OF APPEAL, REFERENCE AND REVISION.

CHAPTER XXXII.

Of Appeals.

405. Any person required by a Magistrate, other than the District Magistrate or a Presidency Magistrate, to give security for good behaviour under section 117 may appeal to the District Magistrate.

Act X, 1872, s. 267.

Appeal from order requiring security for good behaviour.

406. Any person convicted on a trial held by any Magistrate of the second or third class, or any person sentenced by a Sub-divisional Magistrate of the second class under section 351, may appeal to the District Magistrate.

Act X, 1872, s. 266, omitting "or to a Magistrate of first class empowered."

Appeal from sentence of Magistrate of the second or third class.

The District Magistrate may refer any appeal under this section, or any class of such appeals, to any Magistrate of the first class subordinate to him and empowered by the Local Government to hear such appeals, and may withdraw from any such Magistrate any appeal so referred.

Act X, 1872, s. 47, para. 2.

Transfer of appeals to first class Magistrate.

407. Any person convicted on a trial held by the District Magistrate or other Magistrate of the first class, or any person sentenced under section 351 by a Magistrate of the first class, may appeal to the Court of Session:

Act X, 1872, s. 269.

Appeal from sentence of Magistrate of the first class.

Provided that when a District Magistrate passes a sentence in exercise of powers conferred by section 34, and such sentence has been submitted to the Court of Session under section 382, the appeal shall lie to the High Court:

Act X, 1872, s. 270.

Provided also that any European British subject so convicted may at his option appeal either to the High Court or the Court of Session.

Act X, 1872.

408. Any person convicted by an Assistant Sessions Judge may, when the sentence is not submitted for confirmation to the Sessions Judge, appeal to the Sessions Judge, except in the case of an European British subject, when the appeal shall lie to the High Court.

Act X, 1872, s. 270.

Appeal from sentences of Assistant Sessions Judge not requiring confirmation.

409. An appeal to the Court of Session or Sessions Judge shall be heard by the Sessions Judge or by an Additional or Joint Sessions Judge.

Appeals to Court of Session how heard.

Act X, 1872, ss. 80, 270, 271. Act XI, 1874, s. 22.

410. Any person convicted on a trial held by a Sessions Judge, or Additional or Joint Sessions Judge, or convicted by an Assistant Sessions Judge, where the case has been submitted by the Sessions Judge under section 382, may appeal to the High Court.

Appeal from sentence of Sessions Court.

Act IV, 1877, s. 167.

411. Any person convicted on a trial held by a Presidency Magistrate may appeal to the High Court if the Magistrate has sentenced him to imprisonment for a term exceeding six months or to fine exceeding two hundred rupees.

Appeal from sentence of Presidency Magistrates.

Act X, 1872, s. 273, last para. Act IV, 1872, s. 167.

412. Notwithstanding anything hereinbefore contained, where an accused person has been convicted by a Court of Session or a Presidency Magistrate on his own plea, there shall be no appeal except as to the extent or legality of the sentence.

No appeal in certain cases when accused pleads guilty.

Act X, 1872, s. 273.

413. Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in cases in which a Court of Session or the District Magistrate or other Magistrate of the first class passes a sentence of imprisonment not exceeding one month only, or of fine not exceeding fifty rupees only, or of whipping only.

No appeal in petty cases.

Act X, 1872, s. 274.

414. Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in cases tried summarily in which a Magistrate empowered to act under section 263 passes a sentence of imprisonment not exceeding three months only, or of fine not exceeding two hundred rupees only, or of whipping only.

No appeal from certain summary convictions.

Act X, 1872, s. 274, para. 2.

415. An appeal may be brought against any sentence referred to in section 413 or 414 by which any two or more of the punishments therein mentioned are combined; but not against any sentence which would not otherwise be liable to appeal, because the person convicted is ordered to find security to keep the peace.

Proviso to sections 413 and 414.

Act XI, 1874, s. 24.

EXPLANATION.—A sentence of imprisonment in default of payment of fine is not a sentence by which two or more punishments are combined within the meaning of this section.

Act X, 1872, s. 274.

416. Nothing in sections 413 and 414 applies to appeals from sentences passed on European British subjects under chapter XXXIV.

Saving of sentences on European British subjects.

Act X, 1872, s. 272. Act IV, 1877, s. 168, para. 1.

417. The Local Government may direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal, dismissal or discharge.

Appeal on behalf of Government in case of acquittal, &c.

418. An appeal may lie on a matter of fact as well as a matter of law except where the conviction was in a trial by jury, in which case the appeal shall be admissible on a matter of law only.

Appeal on what matters admissible.

Act X, 1872, s. 271, last para. Compare Act X, 1877, s. 541.

419. No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force.

Unless otherwise provided, no appeal to lie from judgment or order of Criminal Court.

Act X, 1872, ss. 285, 286. Act IV, 1877, s. 180.

420. Every appeal shall be made in the form of a petition in writing presented by the appellant, and every such petition shall be accompanied by a copy of the judgment or order appealed against, and in cases tried by a jury a copy of the heads of the charge recorded under section 369.

Petition of appeal.

Act X, 1872, ss. 275, 276. Act IV, 1877, s. 169.

421. If the appellant is in jail, he may present his petition of appeal, and the copy of the judgment or order appealed against, to the officer in charge of the jail, who shall thereupon forward such petition and copy to the proper Appellate Court.

Procedure when appellant in jail.

Act X, 1872, s. 277. Act IV, 1877, s. 171.

422. On receiving the petition and copy under section 420 or section 421, the Appellate Court shall peruse the same, and if it considers that there is no sufficient ground for interfering, it may reject the appeal summarily. Provided that no appeal presented under section 420, shall be dismissed unless the appellant or his pleader has had a reasonable opportunity of being heard in support of the same.

Summary rejection of appeal.

Act X, 1872, s. 278. Act IV, 1877, s. 172, omitting last sentence.

Before rejecting an appeal under this section, the Court may call for the record of the case, but shall not be bound to do so.

423. If the Appellate Court does not reject the appeal summarily, it shall cause notice to be given to the appellant and the Public Prosecutor of the time and place at which such appeal will be heard, and shall furnish the Public Prosecutor with a copy of the grounds of appeal;

Notice of appeal.

Act X, 1872, ss. 62, 269, para. 2, 279. Act IV, 1877, s. 173.

and in cases of appeals under section 417, the Appellate Court shall cause a like notice to be given to the accused.

Act XI, 1874, s. 27.

424. The Appellate Court shall then send for the record of the case and, after perusing the same and hearing the appellant or his pleader, if he appears, and the Public Prosecutor if he appears, may, if it considers there is no sufficient ground for interfering, reject the appeal or may—

Powers of Appellate Court in disposing of appeal.

Act X, 1872, s. 280. Act IV, 1877, ss. 174,

(*a*) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be retried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

Act X, 1872, s. 284.

(*b*) in an appeal from an order of discharge or dismissal, reverse such order and direct that further inquiry be made;

(*c*) in an appeal from a conviction (1) reverse the finding and sentence, and order the accused to be discharged or retried by a Court of competent jurisdiction subordinate to such Appellate Court, or (2) alter the finding, or enhance or reduce the sentence with or without altering the finding, or (3) alter the nature of the sentence with or without such enhancement or reduction and with or without altering the finding;

(*d*) in an appeal from any other order, alter or reverse such order:

Provided that, if the appeal is from the sentence of a Magistrate, the Appellate Court shall not inflict a greater punishment for the offence which, in the opinion of the Appellate Court, the appellant has committed than might have been inflicted for such offence by a Presidency Magistrate or a Magistrate of the first class:

Provided also that nothing herein contained shall authorise the Court to alter or reverse the verdict of a jury, unless it is of opinion that such verdict is erroneous owing to a misdirection by the Judge.

425. The rules contained in chapter XXVII as to the judgment of a Criminal Court of original jurisdiction shall apply, so far as may be practicable, to the judgment of any Appellate Court other than a High Court.

Judgments of subordinate Appellate Courts.

426. Pending any appeal by a convicted person, the Appellate Court may order that the execution of the sentence or order appealed against be suspended and, if he is in confinement, that he be released on bail.

Suspension of sentence pending appeal.

Release of appellant on bail.

When the appellant is ultimately sentenced to imprisonment, the time during which he is so released shall be excluded in computing the term of his imprisonment.

427. When an appeal is presented under section 417, the High Court may order the accused person to be arrested and brought before it, and may commit him to prison pending the disposal of the appeal or admit him to bail.

Arrest of accused in appeals under section 417.

428. In dealing with any appeal under this chapter, the Appellate Court, if it thinks additional evidence to be necessary, may either take such evidence itself, or may direct it to be taken by a Magistrate.

Appellate Court may take further evidence or direct it to be taken.

When the additional evidence is taken by the Magistrate, he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

Unless the Appellate Court otherwise directs, the appellant or his pleader shall be present when the additional evidence is taken; but such evidence shall not be taken in the presence of jurors or assessors.

429. When the Judges composing the Court of appeal are equally divided, the case, with their opinions thereon, shall be laid before another Judge of the same Court, and such Judge, after such examination and hearing as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion.

Procedure where Judges of Court of appeal, &c., are equally divided.

Act X, 1872, s. 271B. Act XI, 1874, s. 22.

430. Judgments and orders passed by an Appellate Court upon appeal shall be final, except in the cases provided for in section 417 and chapter XXXIII.

Finality of orders on appeal.

Act X, 1872, s. 285.

431. Every appeal under this chapter finally abates on the death of the appellant or, in the case of an appeal under section 417, on the death of the accused.

Abatement of appeals.

I. L. R., 2 Bom. 584.

CHAPTER XXXIII.

OF REFERENCE AND REVISION.

432. A Presidency Magistrate may, if he thinks fit, refer for the opinion of the High Court any question of law which arises in the hearing of any case pending before him, or may give judgment in any such case subject to the decision of the High Court on such reference; and, pending such decision, may either commit the accused to jail or release him on bail to appear for judgment when called upon.

Reference by Presidency Magistrate to High Court.

Act IV, 1877, s. 240.

433. When a question has been so referred, the High Court shall pass such order thereon as it thinks fit, and shall cause a copy of such order to be sent to the Magistrate by whom the reference was made, who shall dispose of the case conformably to the said order.

Disposal of case according to decision of High Court.

Act IV, 1877, s. 241.

The High Court may direct by whom the costs of such reference shall be paid.

Direction as to costs.

434. When any person has, in a trial before a Judge of a High Court acting in the exercise of its original criminal jurisdiction, been convicted of an offence, the Judge, if he thinks fit, may reserve and refer for the decision of a Court consisting of two or more Judges of such Court any question of law which has arisen in the course of the trial of such person, and the determination of which would affect the event of the trial.

Power to reserve questions arising in original jurisdiction of High Court.

Act X, 1875, s. 101. Qy confine to Chartered Courts and Chief Court.

If the Judge reserves any such question, the person convicted shall, pending the decision thereon, be remanded to jail or, if the Judge thinks fit, be admitted to bail;

Procedure when question reserved.

and the High Court shall have power to review the case, or such part of it as may be necessary, and finally determine such question, and thereupon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgment and sentence as the High Court thinks fit.

Act X, 1872, ss. 294, 295. 12 Beng. 253.

435. The High Court or any Court of Session or District Magistrate may call for and examine the record of any proceeding before any inferior Criminal Court situate within the local limits of its or his jurisdiction for the purpose of satisfying itself or himself as to the legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of the proceedings of such inferior Court.

Power to call for records of inferior Courts.

Act X, 1872, s. 520, I would omit. See I. L. R. 2 Calc. 295, from which it appears that the High Court cannot interfere even under section 15 of the High Court Act.

Orders made under sections 141 and 142 are not proceedings within the meaning of this section.

Act X, 1872, s. 296, paras. 2 and 3. Act XI, 1874, s. 29. 10 Beng. 289.

436. When on examining the record of any case under section 435 the Court of Session or District Magistrate considers that such case is triable exclusively by the Court of Session, and that an accused person has been improperly discharged by the inferior Court, the Court of Session or District Magistrate may direct him to be committed for trial upon the matter of which he has been, in the opinion of the Court of Session or District Magistrate, improperly discharged:

Power to order commitment.

O'Kin. 93.

Provided that the accused has had an opportunity of shewing cause to such Court or Magistrate why the committal should not be made:

Act XI, 1874, s. 29.

Provided also that, if such Court or Magistrate thinks that the evidence shows that some other offence has been committed by the accused, such Court or Magistrate may direct the inferior Court to inquire into such offence.

Act X, 1872, s. 298. Act XI, 1874, s. 31.

437. On examining any record under section 435, the Court of Session may direct the District Magistrate by himself or by any of the Magistrates subordinate to him, or the District Magistrate may direct any subordinate Magistrate, to make further inquiry into any complaint which has been dismissed under section 204.

Power to order inquiry.

Act X, 1872, s. 296, para. 1.

438. The Court of Session or District Magistrate may, if it or he thinks fit, on examining under section 435 the record of any proceeding, report for the orders of the High Court the results of such examination.

Report to High Court.

Act X, 1872, s. 297. I. L. R. 2 Calc. 113. I. All. I, 139. I Bomb. 125; Nelson 287. 1 O'Kin. 84.

439. In the case of any proceeding the record of which has been called for by itself, or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 424, 426, 427 and 428, and when the Judges composing the Court of revision are equally divided, the case shall be disposed of in manner provided by section 429.

High Court's powers of revision.

This will empower High Court to reduce amount of forfeited recognizances? 2 O'K. 408.

Act X, 1872, s. 297, last para.

440. No party has any right to be heard either personally or by pleader before any High Court when exercising its powers of revision; but the High Court may, if it thinks fit, when exercising such powers, hear any party either personally or by pleader.

Optional with Court to hear parties.

Act IV, 1877, s. 182.

441. When the record of any proceeding of any Presidency Magistrate is called for by the High Court under section 435, the Magistrate may submit with the record a statement setting forth the grounds of his decision or order and any facts which he thinks material to the issue; and the Court shall consider such statement before overruling or setting aside the said decision or order.

Statement by Magistrate of grounds of his decision to be considered by High Court.

Act X, 1872, s. 299.

442. Whenever a case is revised by the High Court under this chapter, it shall certify its decision or order to the Court by which the finding, sentence or order was recorded or passed. If the finding, sentence or order was recorded or passed by a Magistrate other than the District Magistrate, the certificate shall be sent through the District Magistrate.

Order on revision to be certified to lower Court or District Magistrate.

The Court or Magistrate to which the High Court certifies its order shall thereupon make such orders as are conformable to the decision of the High Court and, if necessary, the record shall be amended in accordance therewith.

PART VIII.

SPECIAL PROCEEDINGS.

CHAPTER XXXIV.

CRIMINAL PROCEEDINGS AGAINST EUROPEANS AND AMERICANS.

Act X, 1872, s. 74.

443. No charge against a European British subject shall be inquired into or tried by any Magistrate, unless he is a Justice of the Peace, and (except in the case of a Presidency Magistrate) unless he is a Magistrate of the first class and a European British subject.

Magistrates who may inquire into and try charges against European British subjects.

444. No charge against a European British subject shall be tried by any Sessions Court unless the presiding Judge is a European British subject.

Sessions Judge to be an European British subject.

Act X, [illegible]

445. Nothing in section 443 or section 444 shall prevent any Magistrate from taking cognizance of an offence committed by any European British subject in any case in which he could take cognizance of a like offence if committed by another person:

Cognizance of offence committed by European British subject.

Provided that if he issues any process for the purpose of compelling the appearance of a European British subject accused of an offence, such pro[illegible]

shall be made returnable before a Magistrate having jurisdiction to inquire into or try the case.

Act X, 1872, s. 73.

446. Notwithstanding anything contained in section 32, or section 34, no Magistrate other than a Presidency Magistrate shall pass any sentence on a European British subject other than imprisonment for a term which may extend to three months, or fine which may extend to one thousand rupees, or both.

Sentences which may be passed by mufassal Magistrates.

Act X, 1872, ss. 75, 438.

447. When a European British subject is accused of an offence before a Magistrate, and such offence cannot, in the opinion of such Magistrate, be adequately punished by him, and is not punishable with death or with transportation for life, such Magistrate shall, if he thinks that the accused ought to be committed, commit him to the Court of Session or, in the case of a Presidency Magistrate, to the High Court.

When commitment is to be to Court of Session and to High Court.

Act XI, 1874, s. 12.

When the offence complained of is punishable with death or transportation for life, the commitment shall be to the High Court.

448. Where any person committed to the High Court under section 447 is charged with several offences of which one is punishable with death or transportation for life and the others with a less punishment, and the High Court considers that he should not be tried for the offence punishable with death or transportation, the High Court may nevertheless try him for the other offence.

Trial for offences of which one is, and the others are not, punishable with death or transportation.

Act X, 1872, s. 76.

449. Sessions Judges, Additional Sessions Judges or Joint Sessions Judges, and, when specially empowered in this behalf by the Local Government, Assistant Sessions Judges who have been Assistant Sessions Judges for not less than three years, may pass on European British subjects any lawful sentence of imprisonment for a term which may extend to one year, or fine, or both.

Sentences which may be passed by Court of Session.

If at any stage of the proceedings in a Sessions Court, before the signing of the judgment, the presiding Judge thinks that the offence which appears to be proved cannot be adequately punished by such a sentence, he shall record his opinion to that effect and transfer the case to the High Court. Such Judge may either himself bind over, or direct the committing Magistrate to bind over, the complainant and witnesses to appear before the High Court.

Procedure when Sessions Judge finds his powers inadequate.

X, 1872, 77.

450. If the Judge of the Sessions Division within which the offence is ordinarily triable is not a European British subject, the case shall be reported by the committing Magistrate for the orders of the High Court.

Procedure when Sessions Judge is not a European British subject.

Act X, 1872, s. 78. Act X, 1875, s. 35.

451. In trials of European British subjects before a High Court or Court of Session, if before the first juror is called and accepted or the first assessor is appointed, as the case may be, any such subject requires to be tried by a mixed jury, or by a mixed set of assessors, not less than half the number of the jurors or assessors shall be Europeans or Americans, or both Europeans and Americans.

Mixed jury for trial of European British subjects.

Act X, 1875, s. 36.

452. In any case in which a European British subject is accused jointly with a person not being an European British subject, and such European British subject is committed for trial before a High Court or Court of Session, such persons may be tried together, and the procedure on the trial shall be the same as it would have been had the European British subject been tried separately:

Trial of European British subject and Native jointly accused.

Act X, 1875, s. 37.

Provided that, if the European British subject requires under section 451 to be tried by a mixed jury, or by a mixed set of assessors, and the person not being a European British subject requires that he shall be tried separately, the latter person shall be tried separately in accordance with the provisions of chapter XXIII.

When Native may claim separate trial.

Act X, 1872, s. 83.

453. When any person claims to be dealt with as a European British subject, he shall state the grounds of such claim to the Magistrate before whom he is brought for the purposes of the inquiry or trial; and such Magistrate shall inquire into the truth of such statement, and allow the person making it a reasonable time within which to prove that it is true, and shall then decide whether he is or is not a European British subject, and shall deal with him accordingly. If any such person is convicted by such Magistrate and appeals from such conviction, the burden of proving that the Magistrate's decision was wrong shall lie upon him.

Procedure on claim of European British subject to be dealt with as such.

When any such person is committed by the Magistrate for trial before the Court of Session, and such person again before such Court claims to be dealt with as a European British subject, such Court shall after such further enquiry if any, as it thinks fit, decide whether he is or is not a European British subject, and shall deal with him accordingly. If he is convicted by such Court and appeals from such conviction, the burden of proving that the Court's decision was wrong shall lie upon him.

When the Court before which any person is tried decides that he is not a European British subject, such decision shall form a ground of appeal from the sentence or order passed in such trial.

Act X, 1872, s. 84.

454. If a European British subject does not claim to be dealt with as such by the Magistrate before whom he is tried or by whom he is committed, or if, when such claim

Failure to plead status a waiver.

has been made before and disallowed by the committing Magistrate, it is not again made before the Court to which he is committed, he shall be held to have waived his privilege as such European British subject, and shall not assert it in any subsequent stage of the same case.

Act X, 1872, s. 85. Unless the Magistrate has reason to believe that any person brought before him is not a European British subject, the Magistrate shall ask such person whether he is such a subject or not.

455. Where a person who is not a European British subject is dealt with under this chapter as such, and does not object, the inquiry, commitment or trial (as the case may be) shall not, by reason of such dealing, be invalid.

Trial under this chapter of person not a European British subject.

Act X, 1872, s. 81. **456.** Any European British subject who is detained in custody by any person, and who considers such detention unlawful, may apply to the High Court which would have jurisdiction over him in respect of any offence committed by him at the place where he is detained, or to which he would be entitled to appeal from any conviction for any such offence, for an order directing the person detaining him to bring him before the High Court to abide such further order as it may pass.

Right of European British subject under detention to apply for order to produce his person.

Act X, 1872, s. 81. **457.** The High Court, if it thinks fit, may, before issuing such order, inquire on affidavit or otherwise, into the grounds on which it is applied for, and grant or refuse such application; or it may issue the order in the first instance and, when the person applying for it is brought before it, it may make such further order in the case as it thinks fit, after such inquiry (if any) as it thinks necessary.

Procedure on such application.

Act X, 1872, s. 81. **458.** The High Court may issue such orders throughout the territories within the local limits of its appellate criminal jurisdiction, and such other territories as the Governor General in Council may from time to time direct.

Territories throughout which High Court may issue such orders.

Act XXII, 1870, ss. 2 & 4. **459.** Unless there be something repugnant in the context, all enactments heretofore or hereafter made by the Governor General in Council, which confer summary jurisdiction over offences, shall be deemed to apply to European British subjects, although such persons be not expressly referred to therein.

Application of Acts conferring summary jurisdiction.

Nothing in this section shall be deemed to authorize any court to exceed the limits prescribed by this chapter as to the amount of punishment which it may inflict on an European British subject, or to confer jurisdiction on any Magistrate not being a Justice of the Peace or on any Magistrate outside the Presidency towns not being an European British subject.

460. In every case in which an European (not being an European British subject) or an American is the accused person, or one of the accused persons, not less than half the number of jurors or assessors shall, if practicable and if such European or American so desires, be Europeans, or Americans.

Act X, 1872, s. 284.

Jury for trial of Europeans or Americans.

461. Whenever an European or American is charged before the Court of Session jointly with a person of any other race, and claims to be tried by a jury consisting of at least one-half of Europeans and Americans, such person shall, if he so desires, be tried separately.

Act X, 1872, s. 242.

Jury when European or American charged jointly with one of another race.

462. When a trial is to be held before the Court of Session in which the accused person, or one of the accused persons, is entitled to be tried by a jury constituted under the provisions of section 451, or section 460, the Court shall, three days at least before the day fixed for holding such trial, cause to be summoned, in the manner hereinafter prescribed, as many European and American jurors as are required for the trial.

Act X, 1872, s. 408.

Summoning and empannelling jurors under section 451, or 460.

The Court shall also at the same time in like manner cause to be summoned the same number of other persons named in the revised list, unless such number of such other persons has been already summoned for trials by jury at that session.

From the whole number of persons returned, the jurors who are to constitute the jury shall be chosen by lot in the manner prescribed in section 279, until a jury containing the proper number of Europeans or Americans, or a number approaching thereto as nearly as possible, has been obtained.

463. Criminal proceedings against European British subjects, Europeans not being European British subjects, and Americans before the Court of Session and High Court, shall, except as otherwise expressly provided, be conducted according to the provisions of chapter XXIII.

Conduct of criminal proceedings against European British subjects.

CHAPTER XXXV.

LUNATICS.

464. When any person accused of an offence before a Magistrate holding an inquiry or a trial appears to such Magistrate to be of unsound mind and incapable of making his defence,

Act X, s. 433. Act IV, s. 194.

Procedure in case of accused being lunatic.

the Magistrate shall inquire into the fact of such unsoundness, and shall cause such person to be examined by the Civil Surgeon of the district or such other medical officer as the Local Government directs, and thereupon shall examine such Surgeon or other officer as a witness, and shall reduce the examination into writing.

If such Magistrate is of opinion that the accused is of unsound mind, he shall postpone further proceedings in the case.

Act X, 1872, s. 425. Act X, 1875, s. 120. **465.** If any person committed for trial before a Court of Session or a High Court appears to the Court at his trial to be of unsound mind and incapable of making his defence, the Court shall, in the first instance, try the fact of such unsoundness and incapacity and, if satisfied of the fact, shall pass judgment accordingly, and thereupon the trial shall be postponed.

Procedure in case of person committed before Court of Session or High Court being lunatic.

Act XI, 1874, s. 39. The trial of the fact of the unsoundness of mind and incapacity of the accused shall be deemed to be part of his trial before the Court.

Act X, 1872, s. 426. Act X, 1875, s. 121. Act IV, 1877, s. 196. **466.** Whenever an accused person is found to be of unsound mind and incapable of making his defence, the Magistrate or Court, as the case may be, if the offence of which such person is accused is bailable, may release him on sufficient security being given that he shall be properly taken care of, and shall be prevented from doing injury to himself or to any other person, and for his appearance when required before the Magistrate or Court or such officer as the Magistrate or Court appoints in this behalf.

Release of lunatic pending investigation or trial.

If the offence is not bailable, or if sufficient security is not given, the Magistrate or Court shall report the case to the Local Government, and the Local Government may order such person to be confined in a Lunatic Asylum or other suitable place of safe custody, and the Magistrate or Court shall give effect to such order.

Custody of lunatic.

I. L. R. 2 Calc. 356.

Act X, 1872, s. 427. Act X, 1875, s. 122. Act IV, 1877, s. 197. **467.** Whenever an inquiry or trial is postponed under section 464 or section 465, the Magistrate or Court, as the case may be, may at any time resume the inquiry or trial, and require the accused to appear or be brought before such Magistrate or Court.

Resumption of inquiry or trial.

When the accused has been released under section 466, and the sureties for his appearance produce him to the officer whom the Magistrate or Court appoints in this behalf, the certificate of such officer that the accused is capable of making his defence shall be receivable in evidence.

Act X, 1872, s. 428. Act X, 1875, s. 123. Act IV, 1877, s. 198. **468.** If, when the accused appears or is again brought before the Magistrate or the Court, as the case may be, the Magistrate or Court considers him capable of making his defence, the inquiry or trial shall proceed.

Procedure on accused appearing before Magistrate or Court.

If the Magistrate or Court considers the accused person to be still incapable of making his defence, the Magistrate or Court shall again act according to the provisions of section 464 or section 465, as the case may be.

Act X, 1872, s. 424. Act IV, 1877, s. 195. **469.** When the accused appears to be of sound mind at the time of inquiry or trial, and the Magistrate is satisfied from the evidence given before him that there is reason to believe that the accused committed an act which, if he had been of sound mind, would have been an offence, and that he was at the time when the act was committed, by reason of unsoundness of mind, incapable of knowing the nature of the act or that it was contrary to law, the Magistrate shall proceed with the case and, if the offence be triable exclusively by the Court of Session or High Court, send the accused for trial before the Court of Session or High Court, as the case may be.

When accused appears to have been insane.

Act X, 1872, s. 429. Act X, 1875, s. 124. Act IV, 1877, s. 199. 39 & 40 Geo. III, c. 94. *Reg.* v. *Macnaughten*, 10 Cl. & Fin. 200. **470.** Whenever any person is acquitted upon the ground that, at the time at which he is alleged to have committed an offence, he was, by reason of unsoundness of mind, incapable of knowing the nature of the act alleged as constituting the offence complained of, or that it was contrary to law, the judgment of acquittal shall state specially whether he committed the act or not.

Judgment of acquittal on ground of lunacy.

Act X, 1872, s. 430. Act X, 1875, s. 125. Act IV, 1877, s. 200. **471.** Whenever such judgment states that the accused person committed the act alleged, the Magistrate or Court before whom or which the trial has been held shall, if such act would, but for the incapacity found, have constituted an offence, order such person to be kept in safe custody in such place and manner as the Magistrate or Court thinks fit, and shall report the case for the order of the Local Government.

Person acquitted on such ground to be kept in safe custody.

The Local Government may order such person to be confined in a Lunatic Asylum, jail or other suitable place of safe custody.

Act X, 1872, s. 432. Act X, 1875, s. 127. Act IV, 1877, s. 202. **472.** When any person is confined under the provisions of section 466 or section 471, the Inspector General of Prisons, if such person is confined in a jail, or the visitors of the Lunatic Asylums or any two of them, if he is confined in a Lunatic Asylum, may visit him in order to ascertain his state of mind; and he shall be visited once at least in every six months by such Inspector General or by two of such visitors as aforesaid; and such Inspector General or visitors shall make a special report to the Local Government as to the state of mind of such person.

Lunatic prisoners to be visited by Inspector General.

Act X, 1872, s. 431. Act X, 1875, s. 126. Act IV, 1877, s. 201. **473.** If such person is confined under the provisions of section 466, and such Inspector General or visitors shall certify that, in his or their opinion, such person is capable of making

Procedure where lunatic prisoner is reported capable of making his defence.

his defence, he shall be taken before the Magistrate or Court, as the case may be, at such time as the Magistrate or Court appoints, and the Magistrate or Court shall deal with such person under the provisions of section 468; and the certificate of such Inspector General or visitors as aforesaid shall be receivable as evidence.

Act X, 1872, s. 433. Act X, 1875, s. 128. Act X, 1877, s. 203.

Procedure where lunatic confined under section 466 or 471 is declared fit to be discharged.

474. If such person is confined under the provisions of section 466 or section 471, and such Inspector General or visitors shall certify that, in his or their judgment, he may be discharged without danger of his doing injury to himself or to any other person, the Local Government may thereupon order him to be discharged, or to be detained in custody, or to be transferred to a public Lunatic Asylum if he has not been already sent to such an Asylum, and in case it orders him to be transferred to an Asylum, may appoint a commission, consisting of a judicial officer and two medical officers, whereof the chief medical officer attached to the Asylum shall be one.

The said commission shall make formal inquiry into the state of mind of such person, taking such evidence as is necessary, and shall report to the Local Government, who may order his discharge or detention as it thinks fit.

Act X, 1872, s. 434. Act X, 1875, s. 129. Act IV, 1877, s. 204.

Delivery of lunatic to care of relative.

475. Whenever any relative or friend of any person confined under the provisions of section 466 or section 471 desires that he shall be delivered over to his care and custody, the Local Government, upon the application of such relative or friend, and on his giving security to the satisfaction of such Government that the person delivered shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, may order such person to be delivered to such relative or friend.

Whenever such person is so delivered, it shall be upon condition that he shall be produced for the inspection of such officer and at such times as the Local Government directs.

The provisions of sections 472 and 474 shall, *mutatis mutandis*, apply to persons delivered under the provisions of this section; and the certificate of the inspecting officer appointed under this section shall be dealt with as a certificate under section 474.

CHAPTER XXXVI.

Proceedings in case of certain Offences affecting the Administration of Justice.

Act X, 1872, ss. 471, 477. Act X, 1875, s. 135. Act IV, 1877, s. 44, omitting last para. I. L. R. 1 Cal. 454. I. L. R. 1 All. 131, 193. cf. 14 & 15 Vic., c. 100, s. 19. 2 O'Kin. 217.

Procedure in cases mentioned in section 196.

476. When any Court is of opinion that there is ground for enquiring into any offence referred to in section 196, and committed before it or brought under its notice in the course of a judicial proceeding, such Court, after making any preliminary inquiry that may be necessary may send the case for enquiry to any Magistrate having power to try or commit for trial the accused for such offence, and may send the accused in custody, or take sufficient security for his appearance, before such Magistrate; and may bind over any person to appear and give evidence on such trial or enquiry.

Such Magistrate shall thereupon proceed according to law, and may, if he is authorised to transfer cases under section 193, transfer the enquiry to some other competent Magistrate, instead of completing the inquiry himself.

Power of Session Court as to such offences committed before itself.

Act X, 1872, s. 472. *Reg.* v. *Nomal*, 4 Beng. App. Crim. Jur. 11.

477. A Court of Session may charge a person for any offence referred to in section 196 and committed before it, or brought under its notice in the course of a judicial proceeding, and may commit, or admit to bail and try, such person upon its own charge.

Such Court may direct the Magistrate to cause the attendance of any witnesses for the purposes of the trial.

Power of Civil Courts to complete investigation and commit to Sessions Court.

Act X, 1872, s. 474, paras. 1 and 2.

478. When any such offence is committed before any Civil Court, or brought under the notice of any Civil Court in the course of a judicial proceeding and such case is triable exclusively by the High Court or Court of Session, or such Civil Court thinks that it ought to be tried by the High Court or Court of Session, such Civil Court may, instead of sending the case under section 476 to a Magistrate for enquiry, itself complete the enquiry, and commit or hold to bail the accused person to take his trial before the High Court or Court of Session, as the case may be.

Act X, 1872, s. 476.

For the purposes of an enquiry under this section, the Civil Court may exercise all the powers of a Magistrate; and its proceedings in such enquiry shall be conducted as nearly as may be in accordance with the provisions of chapter XVIII, and shall be deemed to have been held by a Magistrate.

Procedure of Civil Court in such cases.

Act X, 1872, s. 476.

479. When any such commitment is made by a Civil Court, the Court shall send the charge with the order of commitment and the record of the case to the Presidency Magistrate, District Magistrate or other Magistrate authorised to commit for trial; and such Magistrate shall bring the case before the High Court or Court of Session, as the case may be, together with the witnesses for the prosecution and defence.

Procedure in certain cases of contempt.

Act X, 1872, s. 435. Act IV, 1877, s. 205.

480. When any such offence as is described in section 175, 178, 179, 180, or 228 of the Indian Penal Code is committed in the view or presence of any Court, the Court may cause the offender, whether he is a European British subject or not, to be detained in custody; and at any time before the rising of the Court on the same day* may, if it thinks fit, take cognizance of the offence and sentence the offender to fine not exceeding two hundred rupees and, in default of payment, to imprisonment in the civil jail for a term which may extend to one month, unless such fine be sooner paid.

* Pollard's case, L. R. 2 P. C. 106.

Record in such cases.

481. In every such case, the Court shall record the facts constituting the offence, with the statement (if any) made by the offender, as well as the finding and sentence.

If the offence is under section 228 of the Indian Penal Code, the record must show the nature and stage of the judicial proceeding in which the Court interrupted or insulted was sitting, and the nature of the interruption or insult offered.

New. 13 Bengal Appendix 40.

Registrar to be deemed a Civil Court within section 480.

482. A Registrar appointed under the Indian Registration Act, 1877, shall be deemed to be a Civil Court within the meaning of section 480.

Act X, 1872, s. 486, para. 1. Act IV, 1877, s. 206.

Procedure where Court considers that case should not be dealt with under section 480.

483. If the Court in any case considers that a person accused of any of the offences referred to in section 480 and committed in its view or presence should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, or such Court is for any other reason of opinion that the case should not be disposed of under section 480, such Court, after recording the facts constituting the offence and the statement of the accused as hereinbefore provided, may forward the case to a Magistrate having jurisdiction to try the same, and may require security to be given for the appearance of such accused person before such Magistrate or, if sufficient security is not given, shall forward such person under custody to such Magistrate.

The Magistrate to whom any person is forwarded under this section shall proceed to hear the complaint against him in manner hereinbefore provided.

X, 1872, 437. IV, 1877, 207.

Discharge of offender on submission or apology.

484. When any Court has under section 480 or 483 adjudged an offender to punishment, or forwarded him to a Magistrate for trial, for refusing or omitting to do anything which he was lawfully required to do, or for any intentional insult or interruption, the Court may in its discretion discharge the offender or remit the punishment on his submission to the order or requisition of such Court, or on apology being made to its satisfaction.

X, 1872, 356, 364. X, 1875, 89. IV, 1877, 141.

Imprisonment or committal of person refusing to answer or produce document.

485. If any witness before a Court refuses to answer such questions as are put to him or to produce any document in his possession or power which the Court requires him to produce, and does not offer any reasonable excuse for such refusal, such Court may sentence him to simple imprisonment, or commit him to the custody of an officer of the Court, for any term not exceeding seven days, unless in the meantime such person consents to be examined and to answer; after which, in the event of his persisting in his refusal, he may be dealt with according to the provisions of section 480 or 483, and in the case of a High Court shall be deemed guilty of a contempt.

Omitting 'by warrant under his hand and seal.'

Appeals from convictions in contempt-cases.

Act X, 1872, s. 268.

486. Any person convicted by any Court under section 480 or section 485 may appeal to the Court to which decrees or orders made in such Court are ordinarily appealable.

Sections 420, 421, 422, 426 and 428 shall apply to appeals under this section, and the Appellate Court may alter or reverse the finding or sentence appealed against, and may if it sees fit enhance any punishment that has been awarded.

An appeal from such conviction by a Small Cause Court may be made to the Court of Session for the Sessions Division within which such Court is situate.

New.

An appeal from such conviction by any officer as Registrar appointed as aforesaid may, when such officer is also Judge of a Civil Court, be made to the Court to which it would, under the preceding portion of this section, be made if such conviction were a conviction by such officer in his capacity as such Judge, and in other cases may be made to the Inspector-General of Registration.

Act X, 1872, s. 473. I. L. R. 1 Bomb. 359. 1 All. 162. 625. 7 Mad. XVI. App. Pro. See I. L. R. 1 Mad. 305. I. L. R. 1 All. 625.

Judge or Magistrate not to try offences referred to in section 481 when committed before himself.

487. Except as provided in sections 477, 480, and 485, no Judge or Magistrate other than a Judge of a High Court, the Recorder of Rangoon, and the Presidency Magistrates, shall try any person for any offence referred to in section 196, when such offence is committed before himself or brought under his notice in a judicial proceeding.

Nothing in section 476 or 483 shall prevent a Magistrate empowered to commit to the Court of Session or High Court from committing any case to such Court, or shall prevent a Presidency Magistrate from himself disposing of any case instead of sending it for enquiry to another Magistrate.

CHAPTER XXXVII.

Of the Maintenance of Wives and Children.

Act X, 1872, s. 536. Act IV, 1877, s. 284.

Order for maintenance of wives and children.

488. If any person having sufficient means neglects or refuses to maintain his wife or his legitimate or illegitimate child unable to maintain itself, the District Magistrate, a Presidency Magistrate, a Sub-Divisional Magistrate, or a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, at such monthly rate, not exceeding fifty rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate from time to time directs.

Such allowance shall be payable from the date of the order.

If any person so ordered wilfully neglects to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in manner hereinbefore provided for levying fines, and may sentence such person, for each month's allowance remaining unpaid, to imprisonment for any term not exceeding one month:

Enforcement of order.

Provided that, if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her; and may make an order under this section notwithstanding such offer, if he is satisfied that such person is living in adultery, or that he has habitually treated his wife with cruelty.

Proviso.

No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

Act X, 1872, s. 537. Act IV, 1877, s. 235.

489. The Magistrate may, on proof of a change in the circumstances of any person receiving or ordered, under section 488, to pay a monthly allowance, his wife or child, may make such alteration in the allowance ordered as the Magistrate thinks fit, provided the monthly rate of fifty rupees be not exceeded.

Alteration in allowance.

Act X, 1872, s. 538. Act IV, 1877, s. 236.

490. A copy of the order of maintenance shall be given without payment to the person in whose favour it is made, or to his guardian, if any; and such order shall be enforceable by any Magistrate in any place where the person against whom it is made may be, on such Magistrate being satisfied as to the identity of the parties and the non-payment of the allowance due.

Enforcement of order of maintenance.

CHAPTER XXXVIII.

State-Prisoners.

Ben. Reg. III, 1818, s. 2. Mad. Reg. II, 1819, s. 2. Bombay Reg. XXV of 1827, preamble and section 1.

491. Whenever, for all or any of the reasons of State hereinafter mentioned, the Governor General in Council, the Governor of Fort St. George in Council, or the Governor of Bombay in Council is of opinion that any person should be placed under personal restraint, without any immediate view to ulterior judicial proceedings, a warrant of commitment under the authority of the Governor General in Council, the Governor of Fort St. George in Council or the Governor of Bombay in Council (as the case may be) and under the hand of one of the Secretaries to Government, shall be issued to the officer in whose custody such person (hereinafter called a State-prisoner) is to be placed.

Procedure in placing persons under restraint as State-prisoners.

The reasons above referred to are as follows:—

(*a*) the maintenance of the alliances formed by the British Government with foreign powers;

(*b*) the preservation of tranquillity in the territories of Native Princes and States entitled to its protection;

(*c*) the security of the British dominions from foreign hostility or internal commotion.

Act III, 1858, s. 2.

492. Such warrant shall authorize the detention of the State-prisoner therein mentioned in any fortress, jail or other place within British India.

Form and effect of warrant.

Ben. Reg. III, 1818, s. 5. Mad. Reg. II, 1819, s. 5. Bombay Reg. XXV, 1827, s. 5, clause 2.

493. The officer in whose custody any State-prisoner has been placed under this chapter or under any enactment repealed by this Code, shall forward, with such observations as he thinks necessary, to the Government under whose authority such prisoner was so placed, every representation which he may from time to time be desirous of submitting to such Government.

Representations made by State-prisoners to be submitted to Government.

Ben. Reg. III, 1818, s. 6. Mad. Reg. II, 1819, s. 6. Bombay Reg. XXV, 1827, s. 5, clause 1.

494. Every officer in whose custody any State-prisoner is placed shall, as soon after taking such prisoner into his custody as may be practicable, report to such Government whether the degree of confinement to which the State-prisoner is subjected seems likely to injure his health, and whether the allowance fixed for his support is adequate to the supply of his own wants and those of his family then with him according to their rank in life.

Report to Government regarding nature of confinement, health and allowances of State-prisoners.

Ben. Reg. III, 1818, s. 9. Mad. Reg. II, 1819, s. 9. Bombay Reg. XXV, 1827, s. 7.

495. Whenever the Governor General in Council, the Governor of Fort St. George in Council or the Governor of Bombay in Council for any of the reasons mentioned in section 491, considers it necessary to attach the lands of any proprietor without any previous decision of a Court of justice or other judicial proceeding, he shall direct the District Magistrate within the local limits of whose jurisdiction the lands are situate to attach such lands, and they shall be attached accordingly.

Attachment of lands by order of Government.

Ben. Reg. III, 1818, s. 8. Mad. Reg. II, 1819, s. 8. Bombay Reg. XXV, 1827, s. 8.

496. The lands so attached shall be held under the management of the Collector, and shall be administered in the same manner as the estates of disqualified proprietors under the superintendence of Government.

Lands attached to be placed under management,

Such lands shall not be liable to be sold in execution of decrees of the Civil Courts, or for the realization of fines or otherwise, so long as they are so held under attachment, without the consent of the Government and the proprietor.

and not to be sold in execution.

Bom. Reg. varies.

But the whole or any part of the annual nett proceeds of such lands may, if the Government so directs, be applied to the satisfaction of the decrees of the Civil Courts against the proprietor.

Government to arrange for satisfying decrees.

Ben. Reg. III, 1818, s. 11. Mad. Reg. II, 1819, s. 11. Bom. Reg. XXV, 1827.

497. Whenever the Government by whose direction such lands were attached, is of opinion that the circumstances which rendered necessary the attachment have ceased to operate, and that the management of the lands can be committed to the proprietor without public hazard or inconvenience, such Government shall direct the Collector to release the lands from attachment, to adjust the accounts of the collection during the period in which they have been superintended by Government and to pay over to the proprietor the nett proceeds of the lands which have accumulated during the attachment.

Procedure where Government orders release of land from attachment.

Act XXXIV, 1850, s. 1. Act III, 1858, s. 3.

498. The warrant of commitment of any State-prisoner under this chapter may be directed to the Superintendent of the jail in any Presidency-town, or to the Commandant of any fortress, or to the officer in charge of any jail or other place, in which it is deemed expedient that such State-prisoner be confined, in any part of British India; and such warrant shall authorize the detention of such State-prisoner in the jail, fortress or other place therein mentioned.

Officers to whom warrant of commitment of State-prisoner may be directed.

Act III, 1858, s. 5.

499. The Governor General in Council may order the removal of any State-prisoner confined under this chapter or any enactment repealed by this Code from any jail, fortress or place in which he may be confined to any other jail, fortress or place of confinement within British India.

Removal of State-prisoners from one place of confinement to another.

Act XI, 1857, s. 6. Bom. Reg. XXV, 1827, chapter. 1, s. 1.

500. Nothing in this chapter applies to European British subjects.

Saving of European British subjects.

CHAPTER XXXIX.

Directions of the Nature of a Habeas Corpus.

K. 1875, 148.

501. Any of the High Courts of Judicature at Fort William, Madras and Bombay may, whenever it thinks fit, direct—

Power to issue directions of the nature of a *habeas corpus*.

(*a*) that a person within the limits of its ordinary original criminal jurisdiction be brought up before the Court to be dealt with according to law;

(*b*) that a person illegally or improperly detained in public or private custody within such limits be set at liberty;

(*c*) that a prisoner detained in any gaol situate within such limits be brought before the Court to be there examined as a witness in any matter pending or to be inquired into in such Court;

(*d*) that a prisoner detained as aforesaid be brought before a Court-martial or any Commissioners acting under the authority of any Commission from the Governor General in Council for trial, or to be examined touching any matter depending before such Court-martial or Commissioners respectively;

(*e*) that a prisoner within such limits be removed from one custody to another for the purpose of trial;

(*f*) that the body of a defendant within such limits may be brought in on the Sheriff's return of *cepi corpus* to a writ of attachment.

Each of the said High Courts may from time to time frame rules to regulate the procedure in cases under this section.

Nothing in this section applies to State-prisoners detained under chapter XXXVIII or under any enactment hereby repealed.

PART IX.

SUPPLEMENTARY PROVISIONS.

CHAPTER XL.

Of the Public Prosecutor.

502. The Governor General in Council or the Local Government may appoint officers, to be called Public Prosecutors, who shall perform their functions in all or any cases or specified classes of cases in any local area, outside the Presidency-towns.

Power to appoint public prosecutors.

In any case committed for trial to the Court of Session, the District Magistrate, or, subject to the control of the District Magistrate, the Subdivisional Magistrate, may, in the absence of the Public Prosecutor, or where no Public Prosecutor has been appointed, appoint any other person, not being an officer of Police, to act as Public Prosecutor.

Act X, 1872, s. 60.

503. The Public Prosecutor may appear and plead without any written authority before any Court, in which any case of which he has charge is under inquiry, trial or appeal; and if any private person instructs a pleader to prosecute in any Court any person in any such case, the Public Prosecutor shall conduct the prosecution, and the pleader so instructed shall act therein under his directions.

Public Prosecutor may plead in all Courts in cases under his charge.

Pleaders, privately instructed, to be under his direction.

Act X, 1872, s. 61.

504. The Public Prosecutor may, with the consent of the Court, withdraw any charge against any person in any such case, and upon such withdrawal, if it is made whilst the case is under inquiry, the accused shall be discharged. If it is made when he is under trial, he shall be acquitted: provided that the charge is withdrawn, in cases tried by jury, before the return of the verdict, and in other cases, before the judgment is pronounced.

Effect of withdrawal of charge by Public Prosecutor.

Act X, 1872, s. 59. Act XI, 1874, s. 8. Act IV, 1877,

505. Any Magistrate inquiring into or trying any case may permit any person to conduct the prosecution; but no person, other than the Advocate General, Standing Counsel, Government Solicitor, or public prosecutor, shall be entitled to do so without such permission.

Permission to conduct prosecution.

Any person conducting the prosecution may do so personally or by a pleader.

CHAPTER XLI.

Of Bail.

Act X, 1872, ss. 388, 393, 194, para. 2; also ss. 128 and 204. Act IV, 1877, ss. 70, 74. N.W.P., 1874, p. 371.

506. When any person is arrested or detained by a Police-officer without warrant for a bailable offence, or appears or is brought before a Court accused of any such offence, and is prepared at any time while in the custody of such Police-officer or at any stage of the proceedings before such Court to give bail, such person shall be released on bail: Provided that such officer or Court, if he or it thinks fit, may, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided.

Bail to be taken in case of bailable offence.

Act X, 1872, ss. 128, 389. Act IV, 1877, s. 71.

507. When any person accused of any non-bailable offence is arrested or detained without warrant by a Police-officer, or appears or is brought before a Court, he shall not be released on bail if there appear reasonable grounds for believing that he has been guilty of the offence of which he is accused.

When bail shall not be taken in case of non-bailable offence.

If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there is not reasonable ground for believing that such person has committed such offence, but that there is sufficient ground for further inquiry into his guilt, the accused person shall be released on bail pending such inquiry.

When it may be.

Any Court may, at any subsequent stage of any proceeding under this Code, cause any person who has been released under this section to be arrested, and may commit him to custody.

Act X, 1872, s. 390. Act X, 1875, s. 136. I. L. R. 1 All. 151.

508. The High Court or Court of Session may in any case, whether there be an appeal on conviction or not, direct that any accused person be admitted to bail, or that the bail required by a Police-officer or Magistrate be reduced.

Power to direct admission to bail or reduction of bail.

Bail to be taken under this chapter shall not be excessive.

Act X, 1872, s. 391. Act IV, 1877, s. 72.

509. Before any person is released on bail or released on his own bond, a bond for such sum of money as the Police-officer or Court, as the case may be, thinks sufficient shall be executed by such person, and when he is released on bail, by one or more sufficient sureties, conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the Police-officer or Court as the case may be.

Bond of accused and sureties.

If the case so require, the bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session or other Court to answer the charge.

Act X, 1872, s. 394. Act IV, 1877, s. 73.

510. As soon as the bond has been executed, the accused shall be released; and when he is in jail, the Court admitting him to bail shall issue an order of release to the officer in charge of the jail, and such officer on receipt of the order shall release him.

Discharge from custody.

Act X, 1872, s. 392. Act IV, 1877, s. 75.

511. If, through mistake or fraud, insufficient sureties have been taken, or if they afterwards become insufficient, the Court may issue a warrant of arrest directing that the accused person be brought before it, and may order him to find sufficient sureties, and on his failing so to do may commit him to jail.

Power to order sufficient bail when that first taken is insufficient.

Act X, 1872, s. 393. Act IV, 1877, s. 76.

512. All or any sureties for the attendance and appearance of a person released on bail may at any time apply to a Magistrate to discharge the bond either wholly or so far as relates to the applicants.

Discharge of sureties.

On such application being made, the Magistrate shall issue his warrant of arrest, directing that the person so released be brought before him.

On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Magistrate shall direct the bond to be discharged either wholly or so far as relates to the applicants, and shall call upon such person to find other sufficient sureties, and if he fails to do so, may commit him to jail.

CHAPTER XLII.

Of Commissions for the Examination of Witnesses.

Act X, 1872, s. 330, paras. 1 and 2. Act X, 1875, s. 76, para. 3, omitting provision where witness is in Native State. Act IV, 1877, s. 157. Act IV, 1877, s. 158.

513. Whenever, in the course of an inquiry or trial or other proceeding under this Code, it appears to a Presidency Magistrate, a Court of Session or the High Court that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, such Magistrate or Court may dispense with such attendance and may issue a commission to any District Magistrate or Magistrate of the first class, within the local limits of whose jurisdiction such witness resides, to take the evidence of such witness.

When attendance of witness may be dispensed with.

Issue of commission and procedure thereunder.

The Magistrate to whom the commission is issued, or, if he is the District Magistrate, such Magistrate of the first class as he appoints in this behalf, shall proceed to the place where such witness is, or shall summon such witness before him, and shall take his evidence in the same manner, and may for this purpose exercise the same powers, as in trials of warrant-cases under this Code.

Act XI, 1874, s. 35. Act X, 1875, s. 76, para. 4.

514. If the witness is within the local limits of the jurisdiction of any Presidency Magistrate, the Magistrate or Court issuing the commission may direct the same to the said Presidency Magistrate, who thereupon may compel the attendance of, and examine, such witness as if he were a witness in a case pending before himself.

Commission in case of witness being within Presidency-town.

Nothing in this section shall be deemed to affect the power of the High Court to issue commissions under the thirty-ninth and fortieth of Victoria, chapter 46, section 3.

Act X, 1872, s. [illegible] para. 4. Act X, 1875, s. [illegible] para. 5.

515. The parties to any proceeding under this Code in which a commission is issued may respectively forward any interrogatories in writing which the Magistrate or Court directing the commission may think relevant to the issue, and the Magistrate to whom the commission is directed shall examine the witness upon such interrogatories.

Parties may examine witness.

Such parties may appear before such Magistrate by pleader, or if not in custody, in person, and may examine, cross-examine and re-examine (as the case may be) the said witness.

Act X, 1872, s. 330, para. 5.

516. Whenever, in the course of a trial before any Magistrate other than a Presidency Magistrate, it appears that a commission ought to be issued for the examination of a witness whose evidence is necessary for the ends of justice, such Magistrate shall apply to the Court of Session to which he is subordinate, stating the reasons for the application; and such Court may either issue a commission in the manner hereinbefore provided or reject the application.

Power of mufassal Magistrate to apply for issue of commission.

Act X, 1872, s. 330, para. 6. Act X, 1875, s. 76, para. 6.

517. After any commission issued under section 513 or section 516 has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the Court out of which it issued; and the commission, the return thereto and the deposition of such witness shall be open at all reasonable times to inspection of the parties, and may, subject to all just exceptions, be read in evidence in the case by either party, and shall form part of the record.

Return of commission.

N. Y. Proc. s. 706.

518. In every case in which a commission is directed under section 513 or section 516, the inquiry or trial may be stayed for a specified time reasonably sufficient for the execution and return of the commission.

Stay of inquiry or trial.

CHAPTER XLIII.

Special Rules of Evidence.

Act X, 1872, s. 323. Act X, 1875, s. 71. Act IV, 1877, s. 152.

519. The deposition of a Civil Surgeon or other medical witness, duly taken and duly attested by a Magistrate, may be given in evidence in any inquiry, trial or other proceeding under this Code, although the deponent is not called as a witness.

Deposition of medical witness.

The Court may, if it thinks fit, summon and examine such deponent as to the subject-matter of his deposition.

Power to summon medical witness.

Act X, 1872, s. 325. Act X, 1875, s. 72. Act IV, 1877, s. 153.

520. Any document purporting to be a report under the hand of the Chemical Examiner or Assistant Chemical Examiner to Government, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.

Report of Chemical Examiner.

The Court may presume that the signature to any such document is genuine, and that the person signing it held the office which he purported by such signature to hold at the time when he signed the document.

Presumption as to signature.

The High Court or a Presidency Magistrate may, if it or he thinks fit, summon and examine such Chemical Examiner or Assistant Chemical Examiner as to the subject-matter of his said report.

Power to summon Chemical Examiner.

Act XVIII, 1862, s. 27. Not in Act X of 1872.

521. In proving the existence of circumstances as a defence under the second, third, fifth, sixth, seventh, eighth, ninth or tenth Exception to section 499 of the Indian Penal Code, good faith shall be presumed until the contrary appears.

Good faith to be presumed in certain cases.

Act X, 1872, ss. 326, 515, last clause. Act X, 1875, s. 119. Act IV, 1877, ss. 154, 230.

522. A previous conviction or acquittal may be proved in any inquiry, trial or other proceeding under this Code—

Previous conviction or acquittal how proved.

(*a*) by an extract certified, under the hand of the officer having the custody of the records of the Court in which such conviction or acquittal was had to be a copy of the sentence or order; or

(*b*) in case of a conviction, either by a certificate signed by the officer in charge of the jail in which the punishment or any part thereof was inflicted, or by production of the warrant of commitment, under which the punishment was suffered.

Act X, 1872, s. 327. Act X, 1875, s. 74. Act IV, 1877, s. 155.

523. If it be proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court competent to try or commit for trial such person for the offence complained of may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions, and any such deposition may, on the arrest of such person, be put in on his trial for the offence with which he is charged, if the attendance of the deponent cannot be procured.

Record of evidence in absence of accused.

CHAPTER XLIV.

PROVISIONS AS TO BONDS.

Act X, 1872, s. 399. Act X, 1875, s. 139. Act IV, 1877, s. 80.

524. When any person is required by any Court or officer to execute a bond with or without sureties, such Court or officer may, except in the case of a bond for good behaviour, permit him to deposit a sum of money or Government promissory notes to such amount as the Court or officer may fix in lieu of executing such bond.

Deposit instead of recognizance.

Act X, 1872, ss. 396, 397, 398, 502, paras. 1 to 5, 503, 514. Act X, 1876, ss. 137, 138. Act IV, 1877, ss. 77, 78, 79, 228, 229.

525. Whenever it is proved before the Court by which a bond under this Code has been taken, or before the Court of a Presidency Magistrate or Magistrate of the first class, that such bond has been forfeited, such Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof, or to show cause why it should not be paid.

Procedure on forfeiture of bond.

If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same by issuing a warrant for the attachment and sale of the movable property belonging to such person.

Such warrant may be executed within the local limits of the jurisdiction of the Court which issued it; and it shall authorise the distress and sale of any movable property belonging to such person without such limits, when endorsed by the District Magistrate within the local limits of whose jurisdiction such property is found.

If such penalty be not paid and cannot be recovered by such attachment and sale, the person so bound shall be liable, by order of the Court which issued the warrant, to imprisonment in the civil jail for a term which may extend to six months.

The Court may at its discretion remit any portion of the penalty mentioned and enforce payment in part only.

Act X, 1872, s. 398, penultimate para.

526. All orders passed under section 525 by any Magistrate other than a Presidency Magistrate or District Magistrate shall be appealable to the District Magistrate, or, if not so appealed, may be revised by him.

Appeals from, and revision of, orders under section 525.

Act X, 1875, s. 138, last para.

527. The High Court or Court of Session may direct any Magistrate to levy the amount due on a bond to appear and attend at such High Court or Court of Session.

Power to direct levy of amount due on certain recognizances.

Act X, 1872, s. 418. Act X, 1875, s. 115. Act IV, 1877, ss. 243 & 244. Act XI, 1874, s. 38. High Court Rule, *Bombay Government Gazette*, 13th [illegible] 1877, p. 528.

CHAPTER XLV.

OF THE DISPOSAL OF PROPERTY PRODUCED UNDER THIS CODE.

Qy. add provisions of 24 & 25 Vic. c. 96, s. 100, as to restoring stolen property on conviction of theft or [illegible] withstanding sale [illegible] mark [illegible] overt, [illegible] of 30 & 31 Vic., c. [illegible] s. 10, [illegible] payment [illegible] innocent [illegible] purchaser [illegible] stolen property [illegible] money [illegible] once [illegible] thief [illegible] executed [illegible] amount [illegible] proceeds [illegible] sale, [illegible] application [illegible] and [illegible] restitution [illegible] of [illegible] property.

Order for disposal of property regarding which offence committed.

528. When an inquiry or trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal of any document or other property produced before it regarding which any offence appears to have been committed, or which has been used for the commission of any offence, or which has been produced as evidence in such inquiry or trial.

When a High Court or a Court of Session makes such order and cannot through its own officers conveniently deliver the property to the person entitled thereto, such Court may direct that the order be carried into effect by the committing Magistrate.

EXPLANATION.—In this section the term "property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in

the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange whether immediately or otherwise.

Act X, 1872, s. 419.

529. Any Court of appeal, confirmation, reference or revision may direct any such order passed by a Court subordinate thereto to be stayed pending consideration by the former Court, and may modify, alter or annul such order.

Stay of such order.

Act X, 1872, s. 420.

530. The order passed by any Court under section 528 or 529 may be in the form of a reference of the property to the District Magistrate or to a Sub-divisional Magistrate, who shall in such cases deal with it as if the property had been seized by the Police, and the seizure had been reported to him in the manner hereinafter mentioned.

Order may take form of reference to District Magistrate.

Livingston, p. 432.

531. On a conviction under the Indian Penal Code, section 292, 293, 501 or 502, the Court may order all the copies of the thing in respect of which the conviction was had, and which remain in the possession or power of the person convicted, to be destroyed.

Destruction of libellous and other matter.

The Court may in like manner, on a conviction under the Indian Penal Code, sections 272, 273, 274 or 275, order the food, drink, drug or medical preparation in respect of which the conviction was had to be destroyed.

Act X, 1872, s. 534. Act X, 1875, s. 142. Act IV, 1877, s. 283.

532. Whenever a person is convicted of using criminal force, and it appears to the Court that, by such force, any person has been dispossessed of any immoveable property, the Court may order such person to be restored to the possession of the same.

Power to restore possession of immoveable property.

No such order shall prejudice any right or interest to or in such immoveable property which any person may be able to establish in a civil suit.

Act X, 1872, s. 415. Act IV, 1877, s. 244.

533. The seizure by any Police-officer of property alleged or suspected to have been stolen or found under circumstances which create suspicion of the commission of any offence, shall be forthwith reported to a Magistrate, who shall thereupon make such order as he thinks fit respecting the delivery of such property to its owner, or if such owner cannot be ascertained, respecting the custody and production of such property.

Procedure by Police upon seizure of stolen property.

[illegible] s. 523, 1872, [illegible] s. 416.

If the owner of such property is known, the Magistrate shall order it to be delivered to him on such condition (if any) as the Magistrate thinks fit. If the owner of such property is unknown, the Magistrate may detain it, and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto to appear before him and establish his claim within six months from the date of such proclamation.

Procedure where owner of property seized unknown.

Act X, 1872, s. 417. Act IV, 1877, s. 244.

534. If no person within such period establishes his claim to such property, and if the person in whose possession such property was found is unable to show that it was legally acquired by him, such property shall be at the disposal of the Government, and may be sold under the orders of the Presidency Magistrate, District Magistrate or Sub-divisional Magistrate or of a Magistrate of the first class empowered by the Local Government in this behalf.

Procedure where no claimant appears within six months.

In the case of every order passed under this section, an appeal shall be allowed to the Court to which appeals against sentences of the Court passing such order would lie.

535. If the owner of such property is unknown or absent, and such property is of a perishable nature, or the Magistrate is of opinion that its sale would be for the benefit of the owner, the Magistrate may at any time direct it to be sold; and the provisions of sections 533 and 534 shall, as nearly as may be, apply to the net proceeds of such sale.

Power to sell perishable property.

CHAPTER XLVI.

OF THE TRANSFER OF CRIMINAL CASES.

Act X, 1872, s. 64. Act X, 1[illegible], s. 147.

536. Whenever it is made to appear to the High Court—

High Court may transfer case, or itself try it.

(*a*) that a fair and impartial enquiry or trial cannot be had in any criminal Court subordinate thereto, or

(*b*) that some question of law of unusual difficulty is likely to arise, or

(*c*) that a view of the place in or near which any offence has been committed may be required for the satisfactory enquiry into or trial of the same, or

(*d*) that an order under this section will tend to the general convenience of the parties or witnesses—

it may order—

(1) that any offence be enquired into or tried by any Court not empowered under sections 175 to 182, but in other respects competent to enquire into or try such offence;

(2) that any particular criminal case or appeal, or class of such cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction, or

(3) that any particular criminal case or appeal be transferred to and tried before itself.

When the High Court withdraws for trial before itself any case from any Court other than the Court of a Presidency Magistrate, it shall, except as provided in section 270, observe in such

trial the same procedure which that Court would have observed if the case had not been so withdrawn.

I. L. R., 1 Calc., 233. Every application for the exercise of the power conferred by this section shall be made by motion which shall, except when the applicant is the Advocate General, be supported by affidavit or affirmation.

Archb. 88. When an accused person makes an application under this section, the High Court may direct him to execute a bond conditioned that he will, if convicted, pay the costs of the prosecutor.

Act IV, 1877, s. 181. Every accused person making any such application shall give to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of the application unless at least twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

Notice to Public Prosecutor of application under this section.

Act X, 1872, s. 64 A. Act XI, 1874, s. 11. **537.** Whenever it appears to the Governor General in Council that the transfer next hereinafter mentioned will promote the ends of justice or tend to the general convenience of parties or witnesses, he may, by notification in the *Gazette of India*, direct the transfer of any particular criminal case or appeal from one High Court to another High Court, or from any Criminal Court subordinate to one High Court to any other Criminal Court of equal or superior jurisdiction subordinate to another High Court.

Power of Government of India to transfer criminal cases and appeals.

The Court to which such case or appeal is transferred shall deal with the same as if it had been originally instituted in, or presented to, such Court.

Act X, 1872, s. 47. Act XI, 1874, s. 6. **538.** Any District Magistrate or Sub-divisional Magistrate may withdraw any case from, or recall any case which he has made over to any Magistrate subordinate to him, and may inquire into or try such case himself, or refer it for inquiry or trial to any other such Magistrate competent to inquire into or try the same.

Magistrate may withdraw or refer cases.

Act X, 1872, s. 48. The Local Government may authorize the District Magistrate to withdraw from the Magistrates subordinate to him either such classes of cases as he thinks proper, or particular classes of cases.

Power to authorise District Magistrates to withdraw classes of cases.

CHAPTER XLVII.

Of irregular Proceedings.

Act X, 1872, s. 32. Nelson, p. 54. **539.** If any Magistrate empowered by law to do under certain circumstances any of the following things, namely:—

Irregularities which do not vitiate proceedings.

(*a*) to issue a search-warrant, under section 97;

(*b*) to order, under section 153, the Police to investigate an offence;

(*c*) to hold an inquest under section 174;

(*d*) to issue process, under section 184, for the apprehension of a person within the local limits of his jurisdiction who has committed an offence outside such limits; or

(*e*) to take cognizance of an offence under section 192, clause (*a*) or clause (*b*);

(*f*) to transfer a case under section 193;

(*g*) to withdraw a case and try it himself under section 538;

by mistake or accident does that thing in the absence of any of the requisite circumstances, his proceedings shall not be set aside merely on the ground of such absence.

Act X, 1872, s. 34. **540.** If any Magistrate, not being empowered by law in this behalf, does any of the following things (namely),—

Irregularities which vitiate proceedings.

(*a*) passes a sentence under section 351, on proceedings recorded by another Magistrate;

(*b*) takes cognizance under section 192, clause (*c*) of an offence;

(*c*) attaches and sells property under section 86;

(*d*) tries an offender summarily;

(*e*) decides an appeal;

(*f*) calls under section 435 for proceedings;

(*g*) issues a search-warrant for a letter in the Post-office, or a telegram in the Telegraph Department;

(*h*) revises under section 526 an order passed under section 525;

(*i*) demands security to keep the peace;

(*j*) discharges bonds to keep the peace;

(*k*) demands security for good behaviour;

(*l*) discharges a person lawfully bound to be of good behaviour;

(*m*) makes an order under section 131 as to a local nuisance;

(*n*) issues an order under section 141.

(*o*) prohibits under section 142 the repetition or continuance of a public nuisance;

(*p*) makes an order under chapter XII;

(*q*) makes an order for maintenance, or

(*r*) sells property under section 534 or section 535;

his proceedings shall be void.

Act X, s. 70. Act IV, s. 24. **541.** No finding, sentence or order of any criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceeding in the course of which it was arrived at or passed, took place in a wrong Sessions Division, District Sub-division or other local area, unless it appears that some party to such proceeding was prejudiced in the conduct of his case by such error.

Proceedings in wrong place.

Act X, s. 33. Act X, s. 35. **542.** If any Magistrate or other authority purporting to exercise powers duly conferred, but not being so conferred, commits an accused person to take his trial before a Court of Session or High Court, the Court to which the commitment is made may, after perusal of the proceedings accept the commitment if it considers that the accused has not been prejudiced, unless objection was made on behalf either of the accused or of the prosecution to the jurisdiction of such Magistrate or other authority during the inquiry and before the order of commitment.

When irregular commitments may be validated.

If such Court considers that the accused was prejudiced, or if such objection as aforesaid was so made, it shall quash the commitment, and direct a fresh inquiry by a competent Magistrate.

543. An omission to ask any person whether he is a European British subject in a case to which the second clause of section 454 applies shall not affect the validity of any proceeding.

Omission to ask question prescribed by section 454, clause 2.

Act X, 1872, s. 216, Expln. I. **544.** No finding or sentence pronounced or passed shall be deemed invalid merely on the ground that no charge was framed, unless, in the opinion of the Court of appeal or revision, a failure of justice has been occasioned thereby.

Effect of omission to prepare charge.

Act X, 1872, s. 216, Expln. II. If the Court of appeal or revision thinks that a failure of justice has been occasioned by an omission to frame a charge, it shall order that a charge shall be framed, and that the trial be recommenced from the point immediately after the framing of the charge.

Act X, 1872, s. 233, Explanation. **545.** If an offence triable with the aid of assessors is tried by a jury, the trial shall not on that ground be invalid.

Trial by jury of offences triable with assessors.

If an offence triable by a jury is tried with the aid of assessors, the trial shall not on that ground only be invalid, unless the objection is taken before the Court records its finding.

Trial with assessors of offences triable by jury.

Act XI, 1874, s. 41. **546.** No error or defect in any judgment shall invalidate the proceedings where such error or defect is in a matter not affecting the merits of the case.

Errors in judgment.

Act X, 1872, ss. 283, 300 11 & 12 Vic., c. 43, s. 9. Act IV, 1877, ss. 117, 177. I. L. R., 1 All. 610. **547.** Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered on appeal or revision on account of any error or omission in the complaint or summons or in the charge, or in the proceedings during trial, or any misdirection in any charge to a jury, unless such error or omission or misdirection has occasioned a failure of justice either by affecting the due conduct of the prosecution, or by injuring the accused person as to his defence on the merits.

Finding or sentence when reversible by reason of error or omission in charge or proceedings.

Act IV, 1877, ss. 81, 178. Bomb. Subject as last aforesaid, no irregularity in the proceedings prior to the commencement of the trial is a sufficient ground for reversing any sentence or order passed in a trial properly held.

548. No distress made under this Code shall be deemed unlawful, nor shall any person making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, writ of distress or other proceedings relating thereto.

Act IV, 1877, s. 185, para. 5.

Distress not illegal nor distrainer a trespasser for defect of form in proceedings.

CHAPTER XLVIII.

Miscellaneous.

Act X, 1875, s. 149. **549.** Affidavits and affirmations to be used before any High Court or any officer of such Court may be sworn and affirmed before such Court or the Clerk of the Crown, or any Commissioner or other person appointed by such Court for that purpose, or any Judge or Commissioner for taking affidavits in any Court of Record in British India, or any Commissioner to administer oaths in Chancery in England or Ireland, or any Magistrate authorized to take affidavits or affirmations in Scotland.

Courts and persons before whom affidavits may be sworn.

Act X, 1872, ss. 192 & 351. Act X, 1875, s. 80. Act IV, 1877, ss. 85 & 134. **550.** Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness or examine any person in attendance, though not summoned as a witness; or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person, if his evidence appears to it essential to the just decision of the case.

Power to summon material witness, or examine person present.

Act IV, 1877, s. 189. **551.** Notwithstanding anything contained in the Prisoners Testimony Act, 1869, any Presidency Magistrate desirous of examining, as a witness or accused person, in any case pending before him, any person confined in any jail within the local limits of his jurisdiction, may issue an order to the officer in charge of the said jail requiring him to bring such prisoner in proper custody, at a time to be therein named, to the Magistrate for examination.

Power to order prisoner in jail to be brought up for examination.

The officer so in charge, on receipt of such order, shall act in accordance therewith, and shall provide for the safe custody of the prisoner during his absence from the jail for the purpose aforesaid.

Act X, 1875, s. 70. Act X, 1877, s. 423. **552.** When the services of an interpreter are required by any Criminal Court for the interpretation of any evidence or statement, he shall be bound to state the true interpretation of such evidence or statement.

Interpreter to be bound to interpret truthfully.

Act X, 1872, s. 421. Act X, 1875, s. 116. Act IV, 1877, s. 245. **553.** Subject to any rules made by the Local Government with the previous sanction of the Governor General in Council, any Criminal Court may order payment, on the part of Government, of the reasonable expenses of any

Expenses of complainants and witnesses.

complainant or witness attending for the purposes of any enquiry, trial or other proceeding before such Court under this Code.

Act X, 1872, s. 308. Act X, 1875 s. 106. Act IV, 1877, s. 186.

554. Whenever a criminal Court, under any law in force for the time being, imposes a fine or confirms in appeal or revision a sentence of fine, or a sentence of which fine forms a part, the Court may order the whole or any part of the fine to be applied—

Power of Court to pay expenses or compensation out of fine.

(*a*) in defraying expenses properly incurred in the prosecution;

(*b*) in compensation for the injury caused by the offence complained of, where substantial compensation could, in the opinion of the Court, be recovered by civil suit.

If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

Act X, 1872, s. 322, para. 5. Act XI, 1874, s. 34.

555. Whenever any fine is imposed on any person for any offence, the Governor General in Council or the Local Government may (subject to the provisions of section 554) direct that the whole or any part of the fine be applied in defraying the expenses properly incurred in the prosecution.

Power of Government to pay expenses out of fine.

Act X, 1872, s. 308, last para. Act. X, 1875, s. 106, last para. 22 Suth. W. R. Civil Rul. ings, 336.

556. At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum which may have been paid as compensation under section 554.

Payments to be taken into account in subsequent suit.

Act X, 1872, s. 276. Act XI, 1872, s. 25. Act IV, 1877, s. 170.

557. If any person affected by a judgment or order passed by a Criminal Court desires to have a copy of the Judge's charge to the jury or of any order or deposition or other part of the record, he shall, on applying for such copy, be furnished therewith: provided that he pay for the same, unless the Court, for some special reason, thinks fit to furnish it free of cost.

Copies of Proceedings.

Ben. Reg. XX of 1825.

558. When any officer or soldier or other person subject to any Act of Parliament for the time being in force for the punishment of mutiny and desertion in the army, and who is serving with any body of troops in Her Majesty's service at any place situate more than one hundred and twenty miles from the towns of Calcutta, Madras and Bombay, respectively, is accused of having committed any offence punishable under the Indian Penal Code, and which if committed in England would be punishable by the criminal law there, any Magistrate before whom such officer, soldier or other person is brought shall, unless the Governor General in Council otherwise directs, deliver him, together with a statement of the offence of which he is accused, to the commanding officer of the regiment, corps or detachment to which he belongs, or to the commanding officer of the nearest military station, for the purpose of being brought for trial before a Court-martial.

Delivery to Military authorities of persons subject to the Mutiny Act.

Every Magistrate shall, on receiving a written application for that purpose by the commanding officer of any body of troops stationed or employed at any such place, use his utmost endeavours to apprehend and secure any such officer, soldier or other person accused of an offence.

Apprehension of such persons.

Any person appointed to conduct the proceedings of a Court-martial held under any such Act may send the Magistrate within the local limits of whose jurisdiction persons required to attend before such Court-martial reside any process to compel the attendance of such persons; and the Magistrate shall aid in the execution of such process and of all other processes issued by such Courts-martial.

Enforcement of process for attendance of witnesses before Courts-martial.

Act X, 1872, s. 137.

559. Police-officers superior in rank to officers in charge of a Police-station may exercise the same powers, within the District or sub-division to which they are appointed, as may be exercised by officers in charge of Police-stations within the limits of their respective stations.

Powers of superior officers of Police.

Act IV, 1877, s. 17.

560. Upon complaint made to a Presidency Magistrate on oath of the abduction or unlawful detention of a woman, or of a female child under the age of fourteen years, for any unlawful purpose, he may make an order for the immediate restoration of such woman to her liberty, or of such female child to her husband, parent, guardian or other person having the lawful charge or government of such child, and may compel compliance with such order, using force if necessary.

Power to compel restoration of abducted females in Presidency-town.

Act IV, 1877, s. 242, omitting provision as to complaints which is provided for elsewhere.

561. Whenever any person causes a Police-officer to arrest another person in a Presidency-town, if it appears to the Magistrate by whom the case is heard that there was no sufficient ground for causing such arrest, the Magistrate may award such compensation, not exceeding fifty rupees, to be paid by the person so causing the arrest to the person so arrested for his loss of time and expenses in the matter, as the Magistrate thinks fit.

Compensation to person groundlessly given in charge in Presidency-town.

In such cases, if more persons than one are arrested or complained against, the Magistrate may, in like manner, award to each of them such compensation, not exceeding fifty rupees, as such Magistrate thinks fit.

All compensation awarded under this section may be recovered as if it were a fine, and if it cannot be so recovered, the person by whom it is payable should be imprisoned in the civil jail for such term not exceeding thirty days as the Magistrate directs, unless such sum is sooner paid.

Act X, 1827, ss. 292, 293.

562. With the previous sanction of the Local Government, every High Court not established by Royal Charter may from time to time—

Power of certain High Courts to make rules.

(*a*) make rules for keeping all books, entries and accounts to be kept in all criminal Courts subordinate to it, and for the preparation and transmission of any returns or statements to be prepared and submitted by such Courts; and

(*b*) frame forms for every proceeding in the said Courts for which it thinks that a form should be provided;

(*c*) make rules for regulating its own practice and proceedings and the practice and proceedings of all criminal Courts subordinate to it:

Provided that such rules and forms be not inconsistent with this Code or any other law in force for the time being.

All rules made under this section shall be published in the official Gazette.

563. Subject to the power conferred by section 562 and by the twenty-fourth and twenty-fifth of Victoria, chapter 104, section 15, the forms set forth in the fifth schedule hereto annexed, with such variation as the circumstances of each case require, shall be used for the respective purposes therein mentioned.

Forms.

Act X, 1872, s. 337.

564. The Local Government may determine what, for the purposes of this Code, shall be held to be the language of each Court, other than the High Court, established within the territories administered by such Government.

Power to decide language of the Court.

565. All powers conferred by this Code on the Local Government may be exercised from time to time as occasion requires.

Powers of Local Government exercisable from time to time.

Act X, 1872, ss. 3 & 539. Act IV, 1877, ss. 5 & 237.

566. The procedure prescribed by this Code shall be followed, so far as may be, in all cases pending in any criminal Court when this Code comes into force and in all miscellaneous criminal cases and proceedings instituted in any Court.

Pending cases and miscellaneous proceedings.

SCHEDULE I.

ENACTMENTS REPEALED.

(*a*).—*Statutes.*

Year, reign and chapter	Title.	Extent of repeal.
13 Geo. III, chapter 63	An Act for establishing certain Regulations for the better management of the affairs of the East India Company as well in India as in Europe	Section 38.

(*b*).—*Acts.*

Number and year.	Subject.	Extent of repeal.
XXIII of 1840 ...	Execution of process	So much as has not been repealed.
XXXIV of 1850 ...	State-Prisoners	The whole.
III of 1858 ...	State-Prisoners	So much as has not been repealed.
XLV of 1860 ...	Penal Code	The illustrations to section 214.
XVIII of 1862 ...	Criminal Procedure, Supreme Courts ...	So much as has not been repealed.
II of 1869 ...	Justices of the Peace	So much as has not been repealed.
XXII of 1870 ...	Application to European British subjects of Acts conferring summary jurisdiction.	So much as has not been repealed.
IV of 1872 ...	Panjáb Laws	So far as it relates to Bengal Regulations III of 1818 and XX of 1825.
X of 1872 ...	The Code of Criminal Procedure ...	So much as has not been repealed.
XI of 1874 ...	Amending the Code of Criminal Procedure	The whole.
XV of 1874 ...	Laws Local Extent	So far as it relates to Acts XXXIV of 1850 and III of 1858, and to Bengal Regulations III of 1818 and XX of 1825, Madras Regulation II of 1819, and Bombay Regulation XXV of 1827.
X of 1875 ...	High Courts' Criminal Procedure ...	The whole Act, except section 144 and so much of section 146 as relates to informations.
XVII of 1875 ...	Burma Courts	So much of section 98 as relates to Bengal Regulation III of 1818.
XX of 1875 ...	Central Provinces Laws	So far as relates to Bengal Regulations III of 1818 and XX of 1825.
XVIII of 1876 ...	Oudh Laws	Ditto.
IV of 1877 ...	Presidency Magistrates	The whole.

SCHEDULE I—*continued.*

ENACTMENTS REPEALED—(*continued*).

(*c*).—*Regulations.*

Number and year.	Subject.	Extent of repeal.
Bengal Regulation III of 1818.	State-Prisoners	So much as has not been repealed.
Bengal Regulation XX of 1825.	Jurisdiction of Courts Martial... ...	Ditto.
Madras Regulation II of 1819.	State-Prisoners	Ditto.
Bombay Regulation XXV of 1827.	Ditto	Ditto.
III of 1872 ...	Sontal Parganas Settlement	So far as relates to Acts XXXIV of 1850, III of 1858 and X of 1872, and to Bengal Regulation III of 1818.
IX of 1874 ...	Arakan Hills District Laws	So far as relates to Acts XXXIV of 1850, III of 1858, II of 1869, X of 1872 and XI of 1874, and to Bengal Regulation III of 1818.
II of 1877 ...	Ajmer Laws	So far as relates to Bengal Regulations III of 1818 and XX of 1825.

SCHEDULE II.

TABULAR STATEMENT OF OFFENCES.

EXPLANATORY NOTE.—The entries in the second and sixth columns of this schedule, headed respectively "Offence" and "Punishment under the Indian Penal Code," are not intended as definitions of the offences and punishments described in the several corresponding sections of the Indian Penal Code, or even as abstracts of those sections, but merely as references to the subject of the section, the number of which is given in the first column.

CHAPTER V.—OF ABETMENT.

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
109	Abetment of any offence, if the act abetted is committed in consequence, and where no express provision is made for its punishment.	May arrest without warrant, if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.	According as the offence abetted is bailable or not.	The same punishment as for the offence abetted.	By the Court by which the offence abetted is triable.
110	Abetment of any offence, if the person abetted does the act with a different intention from that of the abettor.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
	When one act is abetted and a different act is done, subject to the proviso.	Ditto ...	Ditto ...	Ditto ...	The same punishment as for the offence intended to be abetted.	Ditto.
111	When an effect is caused by the act abetted different from that intended by the abettor.	Ditto ..	Ditto ...	Ditto ...	The same punishment as for the offence committed.	Ditto.
113	If abettor is present when offence is committed.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
114	Abetment of an offenee punishable with death or transportation for life, if the offence be not committed in consequence of the abetment.	Ditto ...	Ditto ...	Not bailable ...	Imprisonment of either description for 7 years and fine.	Ditto.
115	If an act which causes harm be done in consequence of the abetment.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 14 years and fine.	Ditto.
116	Abetment of an offence punishable with imprisonment, if the offence be not committed in consequence of the abetment.	Ditto ...	Ditto ...	According as the offence abetted is bailable or not.	Imprisonment extending to quarter part of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.
	If the abettor or the person abetted be a public servant whose duty it is to prevent the offenec.	Ditto ...	Ditto ...	Ditto ...	Imprisonment extending to half of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.

SCHEDULE II—*continued.*

CHAPTER V.—OF ABETMENT—(*continued*).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
117	Abetting the commission of an offence by the public, or by more than ten persons.	May arrest without warrant, if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.	According as the offence abetted is bailable or not.	Imprisonment of either description for 3 years, or fine, or both.	By the Court by which the offence abetted is triable.
118	Concealing a design to commit an offence punishable with death or transportation for life, if the offence be committed.	Ditto ...	Ditto ...	Not bailable ...	Imprisonment of either description for 7 years and fine.	Ditto.
	If the offence be not committed ..	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.
119	A public servant concealing a design to commit an offence which it is his duty to prevent, if the offence be committed.	Ditto ...	Ditto ...	According as the offence abetted is bailable or not.	Imprisonment extending to half of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.
	If the offence be punishable with death or transportation.	Ditto ...	Ditto ...	Not bailable ...	Imprisonment of either description for 10 years.	Ditto.
	If the offence be not committed ...	Ditto ...	Ditto ...	According as the offence abetted is bailable or not.	Imprisonment extending to quarter part of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.
120	Concealing a design to commit an offence punishable with imprisonment, if the offence be committed.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
	If not committed	Ditto ...	Ditto ...	Ditto ...	Imprisonment extending to one-eighth part of the longest term, and of the description, provided for the offence, or fine, or both.	Ditto.

CHAPTER VI.—OFFENCES AGAINST THE STATE.

121	Waging or attempting to wage war, or abetting the waging of war, against the Queen.	Shall not arrest without warrant.	Warrant ...	Not bailable ...	Death, or transportation for life, and forfeiture of property.	Court of Session.
121A	Conspiring to commit certain offences against the State.	Ditto ...	Ditto ...	Ditto ...	Transportation for life or any shorter term, or imprisonment of either description for 10 years.	Ditto.
122	Collecting arms, &c., with the intention of waging war against the Queen.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and forfeiture of property.	Ditto.
123	Concealing with intent to facilitate a design to wage war.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
124	Assaulting Governor General, Governor, &c., with intent to compel or restrain the exercise of any lawful power.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
124A	Exciting, or attempting to excite, disaffection.	Ditto ...	Ditto ...	Ditto ...	Transportation for life or for any term and fine, or imprisonment of either description for 3 years and fine, or fine.	Ditto.
125	Waging war against any Asiatic Power in alliance or at peace with the Queen, or abetting the waging of such war.	Ditto ...	Ditto ...	Ditto ...	Transportation for life and fine, or imprisonment of either description for 7 years and fine, or fine.	Ditto.

SCHEDULE II—*continued.*

CHAPTER VI.—OFFENCES AGAINST THE STATE—(*concluded*).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
126	Committing depredation on the territories of any Power in alliance or at peace with the Queen.	Shall not arrest without warrant.	Warrant ...	Not bailable ...	Imprisonment of either description for 7 years and fine, and forfeiture of certain property.	Court of Session.
127	Receiving property taken by war or depredation mentioned in sections 125 and 126.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
128	Public servant voluntarily allowing prisoner of State or War in his custody to escape.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
129	Public servant negligently suffering prisoner of State or War in his custody to escape.	Ditto ...	Ditto ...	Bailable ...	Simple imprisonment for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
130	Aiding escape of, rescuing or harbouring, such prisoner, or offering any resistance to the recapture of such prisoner.	Ditto ...	Ditto ...	Not bailable ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.

CHAPTER VII.—OFFENCES RELATING TO THE ARMY AND NAVY.

131	Abetting mutiny, or attempting to seduce an officer, soldier or sailor from his allegiance or duty.	May arrest without warrant.	Warrant ...	Not bailable ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.
132	Abetment of mutiny, if mutiny is committed in consequence thereof.	Ditto ...	Ditto ...	Ditto ...	Death, or transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
133	Abetment of an assault by an officer, soldier or sailor on his superior officer, when in the execution of his office.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
134	Abetment of such assault, if the assault is committed.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
135	Abetment of the desertion of an officer, soldier or sailor.	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
136	Harbouring such an officer, soldier or sailor who has deserted.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
137	Deserter concealed on board merchant-vessel, through negligence of master or person in charge thereof.	Shall not arrest without warrant.	Summons ...	Ditto ...	Fine of 500 rupees ...	Ditto.
138	Abetment of act of insubordination by an officer, soldier or sailor, if the offence be committed in consequence.	May arrest without warrant.	Warrant ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Ditto.
140	Wearing the dress or carrying any token used by a soldier, with intent that it may be believed that he is such a soldier.	Ditto ...	Summons ...	Ditto ...	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.

CHAPTER VIII.—OFFENCES AGAINST THE PUBLIC TRANQUILLITY.

143	Being member of an unlawful assembly...	May arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 6 months, or fine, or both.	Any Magistrate.

SCHEDULE II—*continued.*

CHAPTER VIII.—OFFENCES AGAINST THE PUBLIC TRANQUILLITY—(*continued*).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
144	Joining an unlawful assembly armed with any deadly weapon.	May arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.
145	Joining or continuing in an unlawful assembly, knowing that it has been commanded to disperse.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
147	Rioting	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
148	Rioting armed with a deadly weapon ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
149	If an offence be committed by any member of an unlawful assembly, every other member of such assembly shall be guilty of the offence.	According as arrest may be made without warrant for the offence or not.	According as a warrant or summons may issue for the offence.	According as the offence is bailable or not.	The same as for the offence ...	By the Court by which the offence is triable.
150	Hiring, engaging or employing persons to take part in an unlawful assembly.	May arrest without warrant.	According to the offence committed by the person hired, engaged or employed.	Ditto ...	The same as for a member of such assembly, and for any offence committed by any member of such assembly.	Ditto.
151	Knowingly joining or continuing in any assembly of five or more persons after it has been commanded to disperse.	Ditto ...	Summons ...	Bailable ...	Imprisonment of either description for 6 months, or fine, or both.	Any Magistrate.
152	Assaulting or obstructing public servant when suppressing riot.	Ditto ...	Warrant ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
153	Wantonly giving provocation with intent to cause riot, if rioting be committed.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Any Magistrate.
	If not committed	Ditto ...	Summons ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Ditto.
154	Owner or occupier of land not giving information of riot, &c.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Fine of 1,000 rupees	Presidency Magistrate or Magistrate of the first or second class.
155	Person for whose benefit or on whose behalf a riot takes place not using all lawful means to prevent it.	Ditto ...	Ditto ...	Ditto ...	Fine	Ditto.
156	Agent of owner or occupier for whose benefit a riot is committed not using all lawful means to prevent it.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
157	Harbouring persons hired for an unlawful assembly.	May arrest without warrant.	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Ditto.

SCHEDULE II—*continued.*

CHAPTER VIII.—OFFENCES AGAINST THE PUBLIC TRANQUILLITY—(*concluded*).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
158	Being hired to take part in an unlawful assembly or riot.	May arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 6 months, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
	Or to go armed	Ditto ...	Warrant ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
160	Committing affray	Shall not arrest without warrant.	Summons ...	Ditto ...	Imprisonment of either description for 1 month, or fine of 100 rupees, or both.	Any Magistrate.

CHAPTER IX.—OFFENCES BY OR RELATING TO PUBLIC SERVANTS.

161	Being or expecting to be a public servant, and taking a gratification other than legal remuneration in respect of an official act.	Shall not arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
162	Taking a gratification in order by corrupt or illegal means to influence a public servant.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
163	Taking a gratification for the exercise of personal influence with a public servant.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
164	Abetment by public servant of the offences defined in the last two preceding clauses with reference to himself.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
165	Public servant obtaining any valuable thing, without consideration, from a person concerned in any proceeding or business transacted by such public servant.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
166	Public servant disobeying a direction of the law with intent to cause injury to any person.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 year, or fine, or both.	Ditto.
167	Public servant framing an incorrect document with intent to cause injury.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
168	Public servant unlawfully engaging in trade.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
169	Public servant unlawfully buying or bidding for property.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 2 years, or fine, or both, and confiscation of property, if purchased.	Ditto.
170	Personating a public servant ...	May arrest without warrant.	Warrant ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.

SCHEDULE II—*continued.*

CHAPTER IX.—OFFENCES BY OR RELATING TO PUBLIC SERVANTS—(*concluded*).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
171	Wearing garb or carrying token used by public servant with fraudulent intent.	May arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 3 months, or fine of 200 rupees, or both.	Any Magistrate.
	CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.					
172	Absconding to avoid service of summons or other proceeding from a public servant.	Shall not arrest without warrant.	Summons ...	Bailable ...	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
	If summons or notice require attendance in person, &c., in a Court of justice.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
173	Preventing the service or the affixing of any summons or notice, or the removal of it when it has been affixed, or preventing a proclamation.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
	If summons, &c., require attendance in person, &c., in a Court of justice.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
174	Not obeying a legal order to attend at a certain place in person or by agent, or departing therefrom without authority.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
	If the order require personal attendance, &c., in a Court of justice.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
175	Intentionally omitting to produce a document to a public servant by a person legally bound to produce or deliver such document.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Court in which the offence is committed, subject to the provisions of chapter XXXVI or, if not committed in a Court, a Presidency Magistrate or Magistrate of the first or second class.
	If the document is required to be produced in or delivered to a Court of justice.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
176	Intentionally omitting to give notice or information to a public servant by a person legally bound to give such notice or information.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
	If the notice or information required respects the commission of an offence, &c.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
177	Knowingly furnishing false information to a public servant.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
	If the information required respects the commission of an offence, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.

SCHEDULE II—*continued.*

CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS—(*continued*).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
178	Refusing oath when duly required to take oath by a public servant.	Shall not arrest without warrant.	Summons ...	Bailable ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Court in which the offence is committed, subject to the provisions of chapter XXXVI of this Code, or, if not committed in a Court, a Presidency Magistrate or Magistrate of the first or second class.
179	Being legally bound to state truth, and refusing to answer questions.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
180	Refusing to sign a statement made to a public servant when legally required to do so.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 3 months, or fine of 500 rupees, or both.	Ditto.
181	Knowingly stating to a public servant on oath as true that which is false.	Ditto ...	Warrant ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
182	Giving false information to a public servant in order to cause him to use his lawful power to the injury or annoyance of any person.	Ditto ...	Summons ...	Ditto ...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
183	Resistance to the taking of property by the lawful authority of a public servant.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
184	Obstructing sale of property offered for sale by authority of a public servant.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 month, or fine of 500 rupees, or both.	Ditto.
185	Bidding by a person under a legal incapacity to purchase it for property at a lawfully authorized sale, or bidding without intending to perform the obligations incurred thereby.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 month, or fine of 200 rupees, or both.	Ditto.
186	Obstructing public servant in discharge of his public functions.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Ditto.
187	Omission to assist public servant when bound by law to give such assistance.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Ditto.
	Wilfully neglecting to aid a public servant who demands aid in the execution of process, the prevention of offences, &c.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 500 rupees, or both.	Ditto.
188	Disobedience to an order lawfully promulgated by a public servant, if such disobedience causes obstruction or annoyance or injury to persons lawfully employed.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Ditto.
	If such disobedience causes danger to human life, health or safety, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.

SCHEDULE II—*continued.*

CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS—(*concluded*).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
189	Threatening a public servant with injury to him, or one in whom he is interested, to induce him to do or forbear to do any official act.	Shall not arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
190	Threatening any person to induce him to refrain from making a legal application for protection from injury.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Ditto.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.

193	Giving or fabricating false evidence in a judicial proceeding.	Shall not arrest without warrant	Warrant ...	Bailable ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	Giving or fabricating false evidence in any other case.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.
194	Giving or fabricating false evidence with intent to cause any person to be convicted of a capital offence.	Ditto ...	Ditto ...	Not bailable ...	Transportation for life, or rigorous imprisonment for 10 years and fine.	Court of Session.
	If innocent person be thereby convicted and executed.	Ditto ...	Ditto ...	Ditto ...	Death, or as above ...	Ditto.
195	Giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation or imprisonment for more than seven years.	Ditto ...	Ditto ...	Ditto ...	The same as for the offence ...	Ditto.
196	Using in a judicial proceeding evidence known to be false or fabricated.	Ditto ...	Ditto ...	According as the offence of giving such evidence is bailable or not.	The same as for giving or fabricating false evidence.	Court of Session, Presidency Magistrate or Magistrate of the first class.
197	Knowingly issuing or signing a false certificate relating to any fact of which such certificate is by law admissible in evidence.	Ditto ...	Ditto ...	Bailable ...	The same as for giving false evidence	Ditto.
198	Using as a true certificate one known to be false in a material point.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
199	False statement made in any declaration which is by law received as evidence.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
200	Using as true any such declaration known to be false.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
201	Causing disappearance of evidence of an offence committed, or giving false information touching it to screen the offender, if a capital offence.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
	If punishable with transportation or imprisonment for ten years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.

SCHEDULE II—*continued.*

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—(*continued*).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
	If punishable with less than 10 years' imprisonment.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment for quarter of the longest term, and of the description, provided for the offence, or fine, or both.	By a Presidency Magistrate or Magistrate of the first class, or by the Court by which the offence is triable.
202	Intentional omission to give information of an offence by a person legally bound to inform.	Ditto ...	Summons ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
203	Giving false information respecting an offence committed.	Ditto ...	Warrant ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
204	Secreting or destroying any document to prevent its production as evidence.	Ditto ...	Ditto ...	Ditto ...	Ditto	Presidency Magistrate or Magistrate of the first class.
205	False personation for the purpose of any act or proceeding in a suit or criminal prosecution, or for becoming bail or security.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
206	Fraudulent removal or concealment, &c., of property to prevent its seizure as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
207	Claiming property without right, or practising deception touching any right to it, to prevent its being taken as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
208	Fraudulently suffering a decree to pass for a sum not due, or suffering decree to be executed after it has been satisfied.	Ditto ...	Ditto ...	Ditto ...	Ditto	Presidency Magistrate or Magistrate of the first class.
209	False claim in a Court of justice ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years and fine.	Ditto.
210	Fradulently obtaining a decree for a sum not due, or causing a decree to be executed after it has been satisfied.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
211	False charge of offence made with intent to injure.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
	If offence charged be capital, or punishable with transportation for life, or imprisonment for 7 years or upwards.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
212	Harbouring an offender, if the offence be capital.	May arrest without warrant.	Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.

SCHEDULE II—*continued.*

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—(*continued*).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
	If punishable with transportation for life, or with imprisonment for 10 years.	May arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If punishable with imprisonment for 1 year and not for 10 years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment for quarter of the longest term, and of the description, provided for the offence, or fine, or both.	By a Presidency Magistrate or Magistrate of the first class, or by the Court by which the offence is triable.
213	Taking gift, &c., to screen an offender from punishment, if the offence be capital.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
	If punishable with transportation for life or with imprisonment for 10 years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If with imprisonment for less than 10 years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment for quarter of the longest term, and of the description, provided for the offence, or fine, or both.	By a Presidency Magistrate or Magistrate of the first class, or by the Court by which the offence is triable.
214	Gift made to cause restoration of property in consideration of screening offender, if the offence be capital.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
	If punishable with transportation for life, or with imprisonment for 10 years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If with imprisonment for less than 10 years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment for quarter of the longest term, and of the description, provided for the offence, or fine, or both.	By a Presidency Magistrate or Magistrate of the first class, or by the Court by which the offence is triable.
215	Taking gift to help to recover movable property of which a person has been deprived by an offence, without causing apprehension of offender.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years or fine, or both.	Presidency Magistrate or Magistrate of the first class.
216	Harbouring an offender who has escaped from custody, or whose apprehension has been ordered, if the offence be capital.	May arrest without warrant.	Ditto ...	Ditto	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If punishable with transportation for life, or with imprisonment for 10 years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.
	If with imprisonment for 1 year, and not for 10 years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment for quarter of the longest term, and of the description, provided for the offence, or fine, or both.	By a Presidency Magistrate or Magistrate of the first class, or by the Court by which the offence is triable.

SCHEDULE II—*continued.*

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—(*continued*).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
217	Public servant disobeying a direction of law with intent to save persons from punishment, or property from forfeiture.	Shall not arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
218	Public servant framing an incorrect record or writing with intent to save person from punishment, or property from forfeiture.	Ditto ...	Warrant ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session.
219	Public servant in a judicial proceeding making and pronouncing an order, report, verdict or decision which he knows to be contrary to law.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Ditto.
220	Commitment for trial or confinement by a person having authority, who knows that he is acting contrary to law.	Ditto ...	Ditto ...	Ditto ...	Ditto ditto ditto ...	Ditto.
221	Intentional omission to apprehend on the part of a public servant bound by law to apprehend an offender, if the offence be capital.	Ditto ..	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, with or without fine.	Ditto.
	If punishable with transportation for life, or imprisonment for 10 years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, with or without fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If with imprisonment for less than 10 years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, with or without fine.	Presidency Magistrate or Magistrate of the first or second class.
222	Intentional omission to apprehend on the part of a public servant bound by law to apprehend person under sentence of a Court of justice, if under sentence of death.	Ditto ...	Ditto ...	Not bailable ...	Transportation for life, or imprisonment of either description for 14 years, with or without fine.	Court of Session.
	If under sentence of transportation for life, or imprisonment or penal servitude for 10 years or upwards.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, with or without fine.	Ditto.
	If under sentence of imprisonment for less than 10 years.	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
223	Escape from confinement negligently suffered by a public servant.	Ditto ...	Summons ...	Ditto ...	Simple imprisonment for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
224	Resistance or obstruction by a person to his lawful apprehension.	May arrest without warrant.	Warrant ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
225	Resistance or obstruction to the lawful apprehension of another person, or rescuing him from lawful custody.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

SCHEDULE II—*continued.*

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—(*concluded*).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
	If charged with an offence punishable with transportation for life, or imprisonment for 10 years.	May arrest without warrant.	Warrant ...	Not bailable ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If charged with a capital offence ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, or fine.	Court of Session.
	If the person is sentenced to transportation for life, or to transportation, penal servitude or imprisonment for 10 years or upwards.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
	If under sentence of death	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
225A	Escape, or attempt to escape, from custody for failing to furnish security for good behaviour.	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for one year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
226	Unlawful return from transportation ...	Ditto ...	Ditto ...	Not bailable ...	Transportation for life, and fine and rigorous imprisonment for 3 years before transportation.	Court of Session.
227	Violation of condition of remission of punishment.	Shall not arrest without warrant.	Summons ...	Ditto ...	Punishment of original sentence, or if part of the punishment has been undergone, the residue.	By the Court by which the original offence was triable.
228	Intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding.	Ditto ...	Ditto ...	Bailable ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Court in which the offence is committed, subject to the provisions contained in chapter XXXVI of this Code.
229	Personation of a juror or assessor ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first class.

CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.

231	Counterfeiting, or performing any part of the process of counterfeiting, coin.	May arrest without warrant.	Warrant	Not bailable ...	Imprisonment of either description for 7 years and fine.	Court of Session.
232	Counterfeiting, or performing any part of the process of counterfeiting, the Queen's coin.	Ditto ...	Ditto ...	Ditto ...	Transportation for life or imprisonment of either description for 10 years and fine.	Ditto ...
233	Making, buying or selling instrument for the purpose of counterfeiting coin.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
234	Making, buying or selling instrument for the purpose of counterfeiting the Queen's coin.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.

SCHEDULE II—*continued.*

CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS—(*continued*).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
235	Possession of instrument or material for the purpose of using the same for counterfeiting coin.	May arrest without warrant.	Warrant ...	Not bailable ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If Queen's coin	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Court of Session.
236	Abetting in India the counterfeiting out of British India of coin.	Ditto ...	Ditto ...	Ditto ...	The punishment provided for abetting the counterfeiting of such coin within British India.	Ditto.
237	Import or export of counterfeit coin, knowing the same to be counterfeit.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
238	Import or export of counterfeits of the Queen's coin, knowing the same to be counterfeit.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.
239	Having any counterfeit coin known to be such when it came into possession, and delivering, &c., the same to any person.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
240	The same with respect to the Queen's coin.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
241	Knowingly delivering to another any counterfeit coin as genuine which, when first possessed, the deliverer did not know to be counterfeit.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine of ten times the value of the coin counterfeited, or both.	Presidency Magistrate or Magistrate of the first or second class.
242	Possession of counterfeit coin by a person who knew it to be counterfeit when he became possessed thereof.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
243	Possession of Queen's coin by a person who knew it to be counterfeit when he became possessed thereof.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
244	Persons employed in a Mint causing coin to be of a different weight or composition from that fixed by law.	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session.
245	Unlawfully taking from a Mint any coining instrument.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
246	Fraudulently diminishing the weight or altering the composition of any coin.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
247	Fraudulently diminishing the weight or altering the composition of the Queen's coin.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
248	Altering appearance of any coin with intent that it shall pass as a coin of a different description.	Ditto ...	Ditto ..	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.

SCHEDULE II—*continued*.

CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS—(*concluded*).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
249	Altering appearance of the Queen's coin with intent that it shall pass as a coin of a different description.	May arrest without warrant.	Warrant ...	Not bailable ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
250	Delivery to another of coin possessed with the knowledge that it is altered.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Ditto.
251	Delivery of Queen's coin possessed with the knowledge that it is altered.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
252	Possession of altered coin by a person who knew it to be altered when he became possessed thereof.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.
253	Possession of Queen's coin by a person who knew it to be altered when he became possessed thereof.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Ditto.
254	Delivery to another of coin as genuine which, when first possessed the deliverer did not know to be altered.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine of ten times the value of the coin.	Presidency Magistrate or Magistrate of the first or second class.
255	Counterfeiting a Government stamp ..	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for 10 years and fine.	Court of Session.
256	Having possession of an instrument or material for the purpose of counterfeiting a Government stamp.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years.	Ditto.
257	Making, buying or selling instrument for the purpose of counterfeiting a Government stamp.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
258	Sale of counterfeit Government stamp ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
259	Having possession of a counterfeit Government stamp.	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session, Presidency Magistrate or Magistrate of the first class.
260	Using as genuine a Government stamp known to be counterfeit.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Ditto.
261	Effacing any writing from a substance bearing a Government stamp, or removing from a document a stamp used for it with intent to cause wrongful loss to Government	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Ditto.
262	Using a Government stamp known to have been before used.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
263	Erasure of mark denoting that stamp has been used.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.

CHAPTER XIII.—OFFENCES RELATING TO WEIGHTS AND MEASURES.

264	Fraudulent use of false instrument for weighing.	Shall not arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

SCHEDULE II—*continued.*

CHAPTER XIII.—OFFENCES RELATING TO WEIGHTS AND MEASURES—(*concluded*).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
	Fraudulent use of false weight or measure	Shall not arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
266	Being in possession of false weights or measures for fraudulent use.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
267	Making or selling false weights or measures for fraudulent use.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS.

269	Negligently doing any act known to be likely to spread infection of any disease dangerous to life.	May arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 6 months, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
270	Malignantly doing any act known to be likely to spread infection of any disease dangerous to life.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
271	Knowingly disobeying any quarantine rule	Shall not arrest without warrant.	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Ditto.
272	Adulterating food or drink for man, intended for sale, so as to make the same noxious.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Ditto.
273	Selling any food or drink as food and drink for man knowing the same to be noxious.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
274	Adulterating any drug or medical preparation intended for sale so as to lessen its efficacy, or to change its operation, or to make it noxious.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
275	Offering for sale or issuing from a dispensary any drug or medical preparation known to have been adulterated.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
276	Knowingly selling or issuing from a dispensary any drug or medical preparation as a different drug or medical preparation.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
277	Defiling the water of a public spring or reservoir.	May arrest without warrant.	Ditto ...	Ditto ...	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.
278	Making atmosphere noxious to health ...	Shall not arrest without warrant.	Ditto ...	Ditto ...	Fine of 500 rupees	Ditto.
279	Driving or riding on a public way so rashly or negligently as to endanger human life, &c.	May arrest without warrant.	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Ditto.
280	Navigating any vessel so rashly or negligently as to endanger human life, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto	Presidency Magistrate or Magistrate of the first or second class.
281	Exhibition of a false light, mark or buoy	Ditto ...	Warrant ...	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Court of Session.

SCHEDULE II—*continued.*

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS—(*concluded*).

1 Section.	2	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
282	Conveying for hire any person by water, in a vessel in such a state, or so loaded, as to endanger his life ...	May arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
283	Causing danger, obstruction or injury in any public way or line of navigation.	Ditto ...	Ditto ...	Ditto ...	Fine of 200 rupees ...	Ditto.
284	Dealing with any poisonous substance so as to endanger human life, &c.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Ditto.
285	Dealing with fire or any combustible matter so as to endanger human life, &c.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto	Any Magistrate.
286	So dealing with any explosive substance...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
287	So dealing with any machinery ...	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto	Presidency Magistrate or Magistrate of the first or second class.
288	A person omitting to guard against probable danger to human life by the fall of any building over which he has a right entitling him to pull it down or repair it.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
289	A person omitting to take order with any animal in his possession, so as to guard against danger to human life, or of grievous hurt from such animal.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto	Any Magistrate.
290	Committing a public nuisance ...	Shall not arrest without warrant.	Ditto ...	Ditto ...	Fine of 200 rupees	Ditto.
291	Continuance of nuisance after injunction to discontinue.	May arrest without warrant.	Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
292	Sale, &c., of obscene books, &c. ...	Ditto ...	Warrant ...	Ditto ...	Imprisonment of either description for 3 months, or fine, or both.	Ditto.
293	Having in possession obscene book, &c., for sale or exhibition.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
294	Obscene songs	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
295A	Keeping a lottery-office	Shall not arrest without warrant.	Summons ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Any Magistrate.
	Publishing proposals relating to lotteries	Ditto ...	Ditto ...	Ditto ...	Fine of 1,000 rupees	Ditto.

CHAPTER XV.—OFFENCES RELATING TO RELIGION.

295	Destroying, damaging, or defiling a place of worship or sacred object with intent to insult the religion of any class of persons.	May arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

SCHEDULE II—*continued.*

CHAPTER XV.—OFFENCES RELATING TO RELIGION—(*concluded*).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
296	Causing a disturbance to an assembly engaged in religious worship.	May arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
297	Trespassing in a place of worship or sepulchre, disturbing funeral with intention to wound the feelings or to insult the religion of any person, or offering indignity to a human corpse.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
298	Uttering any word or making any sound in the hearing, or making any gesture, or placing any object in the sight, of any person, with intention to wound his religious feeling.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto	Ditto.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.

Offences affecting Life.

302	Murder	May arrest without warrant.	Warrant ...	Not bailable ...	Death, transportation for life and fine	Court of Session.
303	Murder by a person under sentence of transportation for life.	Ditto ...	Ditto ...	Ditto ...	Death	Ditto.
304	Culpable homicide not amounting to murder, if act by which the death is caused is done with intention of causing death, &c.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
	[illegible] with knowledge that it is likely to cause death, but without any intention to cause death, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years, or fine, or both.	Ditto.
304A	Causing death by rash or negligent act ...	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for two years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
305	Abetment of suicide committed by a child, or insane or delirious person, or an idiot, or a person intoxicated.	Ditto ...	Ditto ...	Not bailable ...	Death, or transportation for life, or imprisonment for 10 years and fine.	Court of Session.
306	Abetting the commission of suicide ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
307	Attempt to murder ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
	If such act cause hurt to any person ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or as above...	Ditto.
308	Attempt to commit culpable homicide ...	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for 3 years, or fine, or both.	Ditto.
	If such act cause hurt to any person ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Ditto.
309	Attempt to commit suicide ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for one year and fine.	Presidency Magistrate or Magistrate of the first or second class.
311	Being a thug ...	Ditto ...	Ditto ...	Not bailable ...	Transportation for life and fine ...	Court of Session.

SCHEDULE II—*continued.*

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—(*continued*).

Of the Causing of Miscarriage; of Injuries to Unborn Children; of the Exposure of Infants; and of the Concealment of Births.

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
312	Causing miscarriage	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session.
	If the woman be quick with child ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
313	Causing miscarriage without woman's consent.	Ditto ...	Ditto ...	Not bailable ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
314	Death caused by an act done with intent to cause miscarriage	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
	If act done without woman's consent	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or as above.	Ditto.
315	Act done with intent to prevent a child being borne alive, or to cause it to die after its birth.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years, or fine, or both.	Ditto.
316	Causing death of a quick unborn child by an act amounting to culpable homicide.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
317	Exposure of a child under 12 years of age by parent or person having care of it, with intention of wholly abandoning it.	May arrest without warrant.	Ditto ...	Bailable ...	Imprisonment of either description for 7 years, or fine, or both.	Ditto.

318	Concealment of birth by secret disposal of dead body.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.

Of Hurt.

323	Voluntarily causing hurt	* May arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Any Magistrate.
324	Voluntarily causing hurt by dangerous weapons or means.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
325	Voluntarily causing grievous hurt ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
326	Voluntarily causing grievous hurt by dangerous weapons or means.	Ditto ...	Ditto ...	Not bailable ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
327	Voluntarily causing hurt to extort property or a valuable security, or to constrain to do an illegal act which may facilitate the commission of an offence.	Ditto ...	Warrant ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Court of Session.
328	Administering stupefying drug with intent to cause hurt.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

* See Act XI of 1874, section 46.

SCHEDULE II—*continued.*

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—(*continued*).

Of Hurt—concluded.

1 Section.	2 Offence.	3 Where the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
329	Voluntarily causing grievous hurt to extort property or a valuable security, or to constrain to do an illegal act which may facilitate the commission of an offence.	May arrest without warrant.	Warrant ...	Not bailable ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.
330	Voluntarily causing hurt to extort confession or information, or to compel restoration of property, &c.	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for 7 years and fine.	Ditto.
331	Voluntarily causing grievous hurt to extort confession or information, or to compel restoration of property, &c.	Ditto ...	Ditto ...	Not bailable ...	Imprisonment of either description for 10 years and fine.	Ditto.
332	Voluntarily causing hurt to deter public servant from his duty.	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
333	Voluntarily causing grievous hurt to deter public servant from his duty.	Ditto ...	Ditto ...	Not bailable ...	Imprisonment of either description for 10 years and fine.	Court of Session.
334	Voluntarily causing hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.	Ditto ...	Summons ...	Bailable ...	Imprisonment of either description for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
335	Causing grievous hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 4 years, or fine of 2,000 rupees, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
336	Doing any act which endangers human life or the personal safety of others ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 months, or fine of 250 rupees, or both.	Any Magistrate.
337	Causing hurt by an act which endangers human life, &c. ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine of 500 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
338	Causing grievous hurt by an act which endangers human life, &c. ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine of 1,000 rupees, or both.	Ditto.
	Of wrongful Restraint and wrongful Confinement.					
341	Wrongfully restraining any person ...	May arrest without warrant.	Summons ...	Bailable ...	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
342	Wrongfully confining any person ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
343	Wrongfully confining for three or more days ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.

SCHEDULE II—*continued.*

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—(*continued*).

Of wrongful Restraint and wrongful Confinement—(concluded).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
344	Wrongfully confining for ten or more days.	May arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
345	Keeping any person in wrongful confinement, knowing that a writ has been issued for his liberation.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, in addition to imprisonment under any other section.	Ditto.
346	Wrongful confinement in secret ...	May arrest without warrant.	Ditto ...	Ditto ...	Ditto	Ditto.
347	Wrongful confinement for the purpose of extorting property, or constraining to an illegal act, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.
348	Wrongful confinement for the purpose of extorting confession or information, or of compelling restoration of property, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto Ditto ...	Court of Session, Presidency Magistrate or Magistrate of the first class.

Of Criminal Force and Assault.

352	Assault or use of criminal force otherwise than on grave provocation.	Shall not arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.
353	Assault or use of criminal force to deter a public servant from discharge of his duty.	May arrest without warrant.	Warrant ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
354	Assault or use of criminal force to a woman with intent to outrage her modesty.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
355	Assault or criminal force with intent to dishonour a person, otherwise than on grave and sudden provocation.	Shall not arrest without warrant.	Summons ...	Ditto ...	Ditto	Ditto.
356	Assault or criminal force in attempt to commit theft of property worn or carried by a person.	May arrest without warrant.	Warrant ...	Not bailable ...	Ditto	Any Magistrate.
357	Assault or use of criminal force in attempt wrongfully to confine a person.	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Ditto.
358	Assault or use of criminal force on grave and sudden provocation.	Shall not arrest without warrant.	Summons ...	Ditto ...	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Ditto.

Of Kidnapping, Forcible Abduction, Slavery and forced Labour.

363	Kidnapping	May arrest without warrant.	Warrant ...	Not bailable ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.

SCHEDULE II—*continued.*

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—(*concluded*).

Of Kidnapping, Forcible Abduction, Slavery and forced Labour—(concluded).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
364	Kidnapping or abducting in order to murder.	May arrest without warrant.	Warrant ...	Not bailable ...	Transportation for life, or rigorous imprisonment for 10 years and fine.	Court of Session.
365	Kidnapping or abducting with intent secretly and wrongfully to confine a person.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
366	Kidnapping or abducting a woman to compel her marriage or to cause her defilement, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
367	Kidnapping or abducting in order to subject a person to grievous hurt, slavery, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
368	Concealing or keeping in confinement a kidnapped person.	Ditto ...	Ditto ...	Ditto ...	Punishment for kidnapping or abduction.	Ditto.
369	Kidnapping or abducting a child with intent to take property from the person of such child.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
370	Buying or disposing of any person as a slave.	Shall not arrest without warrant.	Ditto ...	Bailable ...	Ditto	Ditto.
371	Habitual dealing in slaves	May arrest without warrant.	Ditto ...	Not bailable ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
372	Selling or letting to hire minor for the purpose of prostitution ..	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
373	Buying or obtaining possession of a minor for the same purpose ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
374	Unlawful compulsory labour ...	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for 1 year, or fine, or both.	Any Magistrate.
	Of Rape.					
376	Rape	May arrest without warrant.	Warrant ...	Not bailable ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.
	Of Unnatural Offences.					
377	Unnatural offences	May arrest without warrant.	Warrant ...	Not bailable ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.
	CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY. *Of Theft.*					
379	Theft	May arrest without warrant.	Warrant ...	Not bailable ...	Imprisonment of either description for 3 years, or fine, or both.	Any Magistrate.
380	Theft in a building, tent or vessel ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.

SCHEDULE II—*continued.*

CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY—(*continued*).

Of Theft—(concluded).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
381	Theft by clerk or servant of property in possession of master or employer.	May arrest without warrant.	Warrant ...	Not bailable ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
382	Theft, preparation having been made for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, in order to the committing such theft or to retiring after committing it, or to retaining property taken by it.	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for 10 years and fine.	Court of Session.

Of Extortion.

384	Extortion	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
385	Putting or attempting to put in fear of injury, in order to commit extortion.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
386	Extortion by putting a person in fear of death or grievous hurt.	Ditto ...	Ditto ...	Not bailable ...	Imprisonment of either description for 10 years and fine.	Court of Session
387	Putting or attempting to put a person in fear of death or grievous hurt, in order to commit extortion.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
388	Extortion by threat of accusation of an offence punishable with death, transportation for life, or imprisonment for 10 years.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
	If the offence threatened be an unnatural offence.	Ditto ...	Ditto ...	Ditto ...	Transportation for life	Ditto.
389	Putting a person in fear of accusation of offence punishable with death, transportation for life, or with imprisonment for 10 years, in order to commit extortion.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
	If the offence be an unnatural offence ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life	Ditto.

Of Robbery and Dacoity.

392	Robbery	May arrest without warrant.	Warrant ...	Not bailable ...	Rigorous imprisonment for 10 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If committed on the highway between sunset and sunrise.	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for 14 years and fine.	Ditto.
393	Attempt to commit robbery ...	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for 7 years and fine.	Ditto.

SCHEDULE II—*continued.*

CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY—(*continued*).

Of Robbery and Dacoity—(concluded).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
394	Person voluntarily causing hurt in committing or attempting to commit robbery, or any other person generally concerned in such robbery.	May arrest without warrant.	Warrant ...	Not bailable ...	Transportation for life, or rigorous imprisonment for 10 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
395	Dacoity	Ditto ..	Ditto ...	Ditto ...	Ditto	Court of Session.
396	Murder in dacoity	Ditto ...	Ditto ...	Ditto ...	Death, transportation for life, or rigorous imprisonment for 10 years and fine.	Ditto.
397	Robbery or dacoity with attempt to cause death or grievous hurt.	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for not less than 7 years.	Ditto.
398	Attempt to commit robbery or dacoity when armed with deadly weapon.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
399	Making preparation to commit dacoity ...	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for 10 years and fine.	Ditto.
400	Belonging to a gang of persons associated for the purpose of habitually committing dacoity.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or as above...	Ditto.
401	Belonging to a wandering gang of persons associated for the purpose of habitually committing thefts.	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for 7 years and fine.	Ditto.
	Being one of five or more persons assembled for the purpose of committing dacoity.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
	Of Criminal Misappropriation of Property.					
403	Dishonest misappropriation of movable property, or converting it to one's own use.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.
404	Dishonest misappropriation of property, knowing that it was in possession of a deceased person at his death, and that it has not since been in the possession of any person legally entitled to it.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
	If by clerk or person employed by deceased	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
	Of Criminal Breach of Trust.					
406	Criminal breach of trust	May arrest without warrant.	Warrant ...	Not bailable ...	Imprisonment of either description for 3 years, or fine, or both ...	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
407	Criminal breach of trust by a carrier, wharfinger, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.

SCHEDULE II—*continued.*

CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY—(*continued*).

Of Criminal Breach of Trust—(concluded).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
408	Criminal breach of trust by a clerk or servant.	May arrest without warrant.	Warrant ...	Not bailable ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
409	Criminal breach of trust by public servant or by banker, merchant or agent, &c.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.

Of the Receiving of Stolen Property.

411	Dishonestly receiving stolen property, knowing it to be stolen.	May arrest without warrant.	Warrant ...	Not bailable ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
412	Dishonestly receiving stolen property, knowing that it was obtained by dacoity.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or rigorous imprisonment for 10 years and fine.	Court of Session.
413	Habitually dealing in stolen property ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
414	Assisting in concealment or disposal of stolen property, knowing it to be stolen.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.

Of Cheating.

417	Cheating	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
418	Cheating a person whose interest the offender was bound, either by law or by legal contract, to protect.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
419	Cheating by personation	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
420	Cheating and thereby dishonestly inducing delivery of property, or the alteration or destruction of a valuable security.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.

SCHEDULE II—*continued.*

CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY—(*continued*).

Of Fraudulent Deeds and Dispositions of Property.

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
421	Fraudulent removal or concealment of property, &c., to prevent distribution among creditors.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
422	Fraudulently preventing from being made available for his creditors a debt or demand due to the offender.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
423	Fraudulent execution of deed of transfer containing a false statement of consideration.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
424	Fraudulent removal or concealment of property of himself or any other person, or assisting in the doing thereof, or dishonestly releasing any demand or claim to which he is entitled.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
	Of Mischief.					
426	Mischief	Shall not arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 3 months, or fine, or both.	Any Magistrate.
427	Mischief, and thereby causing damage to the amount of 50 rupees or upwards.	Ditto ...	Warrant ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
428	Mischief by killing, poisoning, maiming or rendering useless any animal of the value of 10 rupees or upwards.	* May arrest without warrant.	Ditto ...	Ditto ...	Ditto	Ditto.
429	Mischief by killing, poisoning, maiming or rendering useless any elephant, camel, horse, &c., whatever may be its value, or any other animal of the value of 50 rupees or upwards.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 5 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
430	Mischief by causing diminution of supply of water for agricultural purposes, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
431	Mischief by injury to public road, bridge, river or navigable channel, and rendering it impassable or less safe for travelling or conveying property.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
432	Mischief by causing inundation or obstruction to public drainage attended with damage.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
433	Mischief by destroying or moving or rendering less useful a light-house or sea-mark, or by exhibiting false lights.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Court of Session.

SCHEDULE II—*continued.*

CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY—(*continued*).

Of Mischief—(concluded).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
434	Mischief by destroying or moving, &c., a landmark fixed by public authority.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
435	Mischief by fire or explosive substance, with intent to cause damage to amount of 100 rupees or upwards.	May arrest without warrant.	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
436	Mischief by fire or explosive substance with intent to destroy a house, &c.	Ditto ...	Ditto ...	Not bailable ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
437	Mischief with intent to destroy or make unsafe a decked vessel or a vessel of 20 tons burden.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
438	The mischief described in the last section when committed by fire or any explosive substance.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
439	Running vessel ashore with intent to commit theft, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
440	Mischief committed after preparation made for causing death or hurt, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Ditto.

Of Criminal Trespass.

447	Criminal trespass	May arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.
448	House-trespass	Ditto ...	Warrant ...	Ditto ...	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Ditto.
449	House-trespass in order to the commission of an offence punishable with death.	Ditto ...	Ditto ...	Not bailable ...	Transportation for life, or rigorous imprisonment for 10 years and fine.	Court of Session.
450	House-trespass in order to the commission of an offence punishable with transportation for life.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
451	House-trespass in order to the commission of an offence punishable with imprisonment.	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for 2 years and fine.	Any Magistrate.
	If the offence is theft	Ditto ...	Ditto ...	Not bailable ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
452	House-trespass, having made preparation for causing hurt, assault, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
453	Lurking house-trespass or house-breaking	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years and fine.	Presidency Magistrate or Magistrate of the first or second class.

SCHEDULE II—*continued.*

CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY—(*concluded*).

Of Criminal Trespass—(concluded).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
454	Lurking house-trespass or house-breaking in order to the commission of an offence punishable with imprisonment.	May arrest without warrant.	Warrant ...	Not bailable ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
	If the offence is theft	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
455	Lurking house-trespass or house-breaking after preparation made for causing hurt, assault, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session, Presidency Magistrate or Magistrate of the first class.
456	Lurking house-trespass or house-breaking by night.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
457	Lurking house-trespasss or house-breaking by night in order to the commission of an offence punishable with imprisonment.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Ditto.
	If the offence is theft ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 14 years and fine.	Ditto.
458	Lurking house-trespass or house-breaking by night, after preparation made for causing hurt, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session, Presidency Magistrate or Magistrate of the first class.
459	Grievous hurt caused whilst committing lurking house-trespass or house-breaking	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.
460	Death or grievous hurt caused by one of several persons jointly concerned in house-breaking by night, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
461	Dishonestly breaking open or unfastening any closed receptacle containing or supposed to contain property.	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
462	Being entrusted with any closed receptacle containing or supposed to contain any property, and fraudulently opening the same.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.

CHAPTER XVIII.—OF OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY-MARKS.

465	Forgery	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for 2 years, or fine, or both.	Court of Session.

SCHEDULE II—*continued.*

CHAPTER XVIII.—OF OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY-MARKS—(*continued*)

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
466	Forgery of a record of a Court of justice or of a Register of births, &c., kept by a public servant.	Shall not arrest without warrant.	Warrant ...	Not bailable ...	Imprisonment of either description for 7 years and fine.	Court of Session.
467	Forgery of a valuable security, will, or authority to make or transfer any public security, or to receive any money, &c.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
	When the valuable security is a promissory note of the Government of India.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Ditto.
468	Forgery for the purpose of cheating ...	Shall not arrest without warrant.	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
469	Forgery for the purpose of harming the reputation of any person, or knowing that it is likely to be used for that purpose.	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for 3 years and fine.	Ditto.
471	Using as genuine a forged document which is known to be forged.	Ditto ...	Ditto ...	Ditto ...	Punishment for forgery ...	Ditto.
	When the forged document is a promissory note of the Government of India.	May arrest without warrant.	Ditto ...	Not bailable ...	Ditto ...	Ditto.
472	Making or counterfeiting a seal, plate, &c., with intent to commit a forgery punishable under section 467 of the Indian Penal Code, or possessing with like intent any such seal, plate, &c., knowing the same to be counterfeit.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 7 years and fine.	Ditto.
473	Making or counterfeiting a seal, plate, &c., with intent to commit a forgery punishable otherwise than under section 467 of the Indian Penal Code, or possessing with like intent any such seal, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
474	Having possession of a document, knowing it to be forged, with intent to use it as genuine.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
	If the document is a valuable security or will.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or as above...	Ditto.
475	Counterfeiting a device or mark used for authenticating documents described in section 467 of the Indian Penal Code, or possessing counterfeit marked material.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
476	Counterfeiting a device or mark used for authenticating documents other than those described in section 467 of the Indian Penal Code, or possessing counterfeit marked material.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
477	Fraudulently destroying or defacing, or attempting to destroy or deface, or secreting, a will, &c.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 7 years and fine.	Ditto.
	Of Trade and Property-Marks.					
482	Using a false trade or property-mark with intent to deceive or injure any person.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for one year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

SCHEDULE II—*continued.*

CHAPTER XVIII.—OF OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY-MARKS—(*concluded*).

Of Trade and Property-Marks—(concluded).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
483	Counterfeiting a trade or property-mark used by another, with intent to cause damage or injury.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
484	Counterfeiting a property-mark used by a public servant, or any mark used by him to denote the manufacture, quality, &c., of any property.	Ditto ...	Summons ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
485	Fraudulently making or having possession of any die, plate, or other instrument for counterfeiting any public or private property or trade-mark.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Ditto.
486	Knowingly selling goods marked with a counterfeit property or trade-mark.	Ditto ...	Ditto	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
487	Fraudulently making a false mark upon any package or receptacle containing goods, with intent to cause it to be believed that it contains goods which it does not contain, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
488	Making use of any such false mark ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
489	Removing, destroying or defacing any property-mark with intent to cause injury.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

CHAPTER XIX.—OF THE CRIMINAL BREACH OF CONTRACTS OF SERVICE.

490	Being bound by contract to render personal service during a voyage or journey, or to convey or guard any property or person, and voluntarily omitting to do so.	Shall not arrest without warrant.	Summons ...	Bailable ...	Imprisonment of either description for 1 month, or fine of 100 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
491	Being bound to attend on, or supply the wants of, a person who is helpless from youth, unsoundness of mind or disease, and voluntarily omitting to do so.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 months, or fine of 200 rupees, or both.	Ditto.
492	Being bound by a contract to render personal service for a certain period at a distant place to which the employé is conveyed at the expense of the employer, and there voluntarily deserting the service or refusing to perform the duty.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 month, or fine of double the expence incurred, or both.	Ditto.

CHAPTER XX.—OFFENCES RELATING TO MARRIAGE.

493	A man by deceit causing a woman not lawfully married to him to believe that she is lawfully married to him, and to cohabit with him in that belief.	Shall not arrest without warrant.	Warrant ...	Not bailable ...	Imprisonment of either description, for 10 years and fine.	Court of Session.

SCHEDULE II—*continued.*

CHAPTER XX.—OFFENCES RELATING TO MARRIAGE—*(concluded)*.

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Punishment under the Indian Penal Code.	7 By what Court triable.
494	Marrying again during the life-time of a husband or wife.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for 7 years and fine.	Court of Session.
495	Same offence with concealment of the former marriage from the person with whom subseqent marriage is contracted.	Ditto ...	Ditto ...	Not bailable ...	Imprisonment of either description for 10 years and fine.	Ditto.
496	A person with fraudulent intention going through the ceremony of being married, knowing that he is not thereby lawfully married.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
497	Adultery ...	Ditto ...	Ditto ...	Bailable ...	Imprisonment of either description for 5 years, or fine, or both.	Ditto.
498	Enticing or taking away or detaining with a criminal intent a married woman.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

CHAPTER XXI.—OF DEFAMATION.

500	Defamation	Shall not arrest without warrant.	Warrant ...	Bailable ...	Simple imprisonment for 2 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
501	Printing or engraving matter knowing it to be defamatory.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
502	Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter.	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

CHAPTER XXII.—OF CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE.

504	Insult intended to provoke a breach of the peace.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.
505	False statement, rumours, &c., circulated with intent to cause mutiny or offences against the public peace.	Ditto ...	Ditto ...	Not bailable ...	Ditto	Presidency Magistrate or Magistrate of the first or second class.
506	Criminal intimidation ...	Ditto ...	Ditto ...	Bailable ...	Ditto	Ditto.
	If threat be to cause death or grievous hurt, &c.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
507	Criminal intimidation by anonymous communication or having taken precaution to conceal whence the threat comes.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, in addition to the punishment under above section.	Ditto.
508	Act caused by inducing a person to believe that he will be rendered an object of Divine displeasure.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

SCHEDULE II—*continued.*

CHAPTER XXII.—OF CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE—(*concluded*).

1 Section.	2 Offence.	3 Whether the Police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not	6 Punishment under the Indian Penal Code.	7 By what Court triable.
509	Uttering any word or making any gesture intended to insult the modesty of a woman.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Simple imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
510	Appearing in a public place, &c., in a state of intoxication, and causing annoyance to any person.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 24 hours, or fine of 10 rupees, or both.	Any Magistrate.

CHAPTER XXIII.—OF ATTEMPTS TO COMMIT OFFENCES.

511	Attempting to commit offences punishable with transportation or imprisonment, and in such attempt doing any act towards the commission of the offence.	According as the offence is one in respect of which the Police may arrest without warrant or not.	According as the offence is one in respect of which a summons or warrant shall ordinarily issue.	According as the offence contemplated by the offender is bailable or not.	Transportation or imprisonment not exceeding half of the longest term, and of the description, provided for the offence, or fine, or both.	By the Court by which the offence attempted is triable.

OFFENCES AGAINST OTHER LAWS.

If punishable with death, transportation or imprisonment for seven years or upwards.	May arrest without warrant.	Warrant ...	Not bailable ...	... ...	According to the provisions of section 29 of this Code.	
If punishable with imprisonment for three years and upwards but less than seven.	Ditto ...	Ditto ...	Ditto ...	... ...		
If punishable with imprisonment for less than three years.	Shall not arrest without warrant.	Summons ...	Bailable ...	... ...		
If punishable with fine only ...	Ditto ...	Ditto ...	Ditto ...	... ...		

SCHEDULE III.

ORDINARY POWERS OF MUFASSAL MAGISTRATES.

I.—Ordinary Powers of Magistrates of the Third Class.

(1.) Power to arrest an offender in the presence of the Magistrate, sect. 62.
(2.) Power to endorse a warrant, or to order the removal of an accused person arrested under a warrant, sects. 81, 82 & 84.
(3.) Power to issue proclamations in cases judicially before him, sect. 85.
(4.) Power to attach and sell property in cases judicially before him, sect. 86.
(5.) Power to endorse a search-warrant and order delivery of thing found, sects. 96 & 101.
(6.) Power to record confessions or statements during a Police-investigation, sect. 162.
(7.) Power to authorize detention of a person during a Police-investigation, sect. 165.
(8.) Power to detain an accused person found in Court, sect. 353.
(9.) Power to sell perishable property of a suspicious character, sect. 535.

II.—Ordinary Powers of Magistrates of the Second Class.

(1.) The ordinary powers of a Magistrate of the third class.
(2.) Power to order the Police to investigate an offence in cases in which the Magistrate has jurisdiction to try or commit for trial, sect. 153.

III.—Ordinary Powers of Magistrates of the First Class.

(1.) The ordinary powers of a Magistrate of the second class.
(2.) Power to issue search-warrants otherwise than in course of an inquiry, sect. 97.
(3.) Power to require security to keep the peace, sect. 106.
(4.) Power to require security for good behaviour, sects. 108 and 109.
(5.) Power to make orders, &c., in possession-cases, sects. 143, 144, 145.
(6.) Power to commit for trial.
(7.) Power to make orders of maintenance, sects. 488 & 489.

IV.—Ordinary Powers of Sub-Divisional Magistrates.

(1.) The ordinary powers of a Magistrate of the first class.
(2.) Power to make orders as to local nuisance, sect. 131.
(3.) Power to make order under sect. 141.
(4.) Power to make orders prohibiting repetitions of nuisances, sect. 142.
(5.) Power to hold inquests, sect. 172.
(6.) Power to issue process for person within jurisdiction who has committed an offence outside the jurisdiction, sect. 184.
(7.) Power to receive Police-reports, sect. 192.
(8.) Power to entertain complaints, sect. 192.
(9.) Power to entertain cases without complaint, 192.
(10.) Power to transfer cases to a Subordinate Magistrate, sect. 193.
(11.) Power to pass sentence on proceedings recorded by a Subordinate Magistrate, sect. 351.
(12.) Power to sell property alleged or suspected to have been stolen, &c., sect. 534.
(13.) Power to withdraw cases other than appeals, and to try or refer them for trial, sect. 528.

V.—Ordinary Powers of District Magistrates.

(1.) The ordinary powers of a Sub-Divisional Magistrate, being a Magistrate of the first class.
(2.) Power to direct warrants to landholders, sect. 75.
(3.) Power to issue search-warrants for letters in Post-office, sect. 94.
(4.) Power to discharge persons bound to be of good behaviour, sect. 123.
(5.) Power to try summarily, sect. 263.
(6.) Power to quash convictions in certain cases, sect. 352.
(7.) Power to withdraw or refer appeals from convictions by Magistrates of the second and third classes, sect. 406.
(8.) Power to hear appeals from convictions by Magistrates of the second and third classes, sect. 406.
(9.) Power to call for proceedings, sect. 435.
(10.) Power to revise orders passed under sects. 525 & 526.

SCHEDULE IV.

ADDITIONAL POWERS WITH WHICH MUFASSAL MAGISTRATES MAY BE INVESTED.

POWERS WITH WHICH A MAGISTRATE OF THE FIRST CLASS MAY BE INVESTED	BY THE LOCAL GOVERNMENT	(1). Power to make orders as to local nuisances, section 131: (2). Power to make orders under section 141: (3). Power to make orders prohibiting repetitions of nuisances, section 142: (4). Power to hold inquests, section 172: (5). Power to issue process for person within jurisdiction who has committed an offence outside the jurisdiction, section 184: (6). Power to entertain complaints, section 192: (7). Power to receive Police-reports, section 192: (8). Power to entertain cases without complaint, section 192: (9). Power to try summarily, section 263: (10). Power to hear appeals from convictions by Magistrates of the second and third classes, section 406: (11). Power to sell property alleged or suspected to be stolen, &c., section 534:
	BY THE MAGISTRATE OF THE DISTRICT	(1). Power to make orders under section 141: (2). Power to make orders prohibiting repetitions of nuisances, section 142: (3). Power to hold inquests, section 172. (4). Power to entertain complaints, section 192: (5). Power to receive Police-reports, section 192:
POWERS WITH WHICH A MAGISTRATE OF THE SECOND CLASS MAY BE INVESTED	BY THE LOCAL GOVERNMENT	(1). Power to commit for trial: (2). Power to make orders under section 141: (3). Power to make orders prohibiting repetitions of nuisances, section 142: (4). Power to hold inquests, section 172: (5). Power to entertain complaints, section 192: (6). Power to receive Police-reports, section 192: (7). Power to entertain cases without complaint, section 192:
	BY THE MAGISTRATE OF THE DISTRICT	(1). Power to make orders under section 141: (2). Power to make orders prohibiting repetitions of nuisances, section 142: (3). Power to hold inquests, section 172: (4). Power to entertain complaints, section 192: (5). Power to receive Police-reports, section 192:

SCHEDULE IV—*concluded.*

POWERS WITH WHICH A MAGISTRATE OF THE THIRD CLASS MAY BE INVESTED	BY THE LOCAL GOVERNMENT	(1). Power to commit for trial : (2). Power to make orders under section 141 : (3). Power to make orders prohibiting repetitions of nuisances, section 142 : (4). Power to hold inquests, section 172 : (5). Power to entertain complaints, section 192 :
	BY THE MAGISTRATE OF THE DISTRICT	(1). Power to make orders under section 141 : (2). Powers to make orders prohibiting repetitions of nuisances, section 142 : (3). Power to hold inquests, section 172 : (4). Power to entertain complaints, section 192 :

SCHEDULE V.

FORMS.

I.—SUMMONS TO AN ACCUSED PERSON.

(*See section 65.*)

To of

WHEREAS your attendance is necessary to answer to a charge of (*state shortly the offence charged*), you are hereby required to appear in person (*or by authorized agent, as the case may be*) before the (*Magistrate*) of on the day of . Herein fail not.

Dated the day of

(*Seal.*)

(*Signature.*)

II.—WARRANT OF ARREST.

(*See section 72.*)

To (*name and designation of the person or persons who are to execute the warrant*).

WHEREAS of stands charged with the offence of (*state the offence*), you are hereby directed to apprehend the said , and to produce him before me. Herein fail not.

(*Seal.*)

(*Signature.*)

This warrant may be endorsed as follows :—

If the said shall give bail himself in the sum of , with one surety in the sum of (*or two sureties each in the sum of*), to appear before me on the day of , he may be released.

Dated this day of 18 .

(*Signature.*)

III.—BOND AND BAIL-BOND AFTER ARREST UNDER A WARRANT.

(*See section 84.*)

I, (*name*), of , being brought before the Magistrate of the District of (*or as the case may be*) under a warrant issued to compel my appearance to answer to the

SCHEDULE V—*continued.* FORMS.

charge of , do hereby bind myself to appear in the Court of on the day of next to answer to the said charge, and, in case of my making default herein, I bind myself to forfeit to Her Majesty the sum of rupees

Dated this day of 18 .

(*Signature.*)

I do hereby declare myself surety for the abovesaid of , that he shall attend before at in the Court of on the day of next to answer to the charge on which he has been arrested; and, in case of his making default therein, I hereby bind myself to forfeit to Her Majesty the sum of rupees

Dated this day of 18 .

(*Signature.*)

IV.—PROCLAMATION REQUIRING THE APPEARANCE OF A PERSON ACCUSED.

(*See section 85.*)

WHEREAS complaint has been made before me that (*name, description and address*) has committed (*or is suspected to have committed*) the offence of , punishable under section of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (*name*) cannot be found ; and whereas it has been shewn to my satisfaction that the said (*name*) has absconded (*or is concealing himself to avoid the service of the said warrant*) ;

Proclamation is hereby made that the said of is required to appear before this Court (*or before me*) to answer the said complaint within days from this date.

Dated this day of 18 .

(*Seal.*)

(*Signature.*)

V.—PROCLAMATION REQUIRING THE ATTENDANCE OF A WITNESS.

(*See section 85.*)

WHEREAS complaint has been made before me that (*name, description and place of residence*) has committed (*or is suspected to have committed*) the offence of (*mention the offence concisely*) and a warrant has been issued to compel the attendance of (*name, description and address of the witness*) before this Court to be examined touching on the matter of the said complaint; and whereas it has been returned to the said warrant that the said (*name of witness*) cannot be served, and it has been shown to my satisfaction that he has absconded (*or is concealing himself to avoid the service of the said warrant*) ;

Proclamation is hereby made that the said (*name*) is required to appear before the Court of on the day of next at o'clock, to be examined touching , the offence complained of.

Dated this day of 18 .

(*Seal.*)

(*Signature.*)

VI.—ORDER OF ATTACHMENT.

(*See section 86.*)

To the Police-officer in charge of the Police-station at

WHEREAS a warrant has been duly issued to compel the attendance of (*name, description and address*) to testify concerning a complaint pending before this Court, and it has been returned to the said warrant that it cannot be served; and whereas it has been shown to my satisfaction that he has absconded (*or is concealing himself to avoid the service of the said warrant*) ; and thereupon a proclamation was duly issued and published requiring the said to appear and give evidence at the time and place mentioned therein, and he has failed to appear ;

This is to authorize and require you to attach by seizure the moveable property belonging to the said to the value of rupees (*see sections and*) which you may find within the District of and to hold the said property under attachment

FORMS. SCHEDULE V—*continued.*

pending the further order of this Court, and to return this warrant with an endorsement certifying the manner of its execution.

Dated this day of 18 .

(*Seal.*) (*Signature.*)

WARRANT OF ATTACHMENT TO COMPEL APPEARANCE.

(*See section* .)

To (*name and designation of the person or persons who is or are to execute the warrant*).

WHEREAS complaint has been made before me that (*name, description and address*) has committed (*or is suspected to have committed*) the offence of punishable under section of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (*name*) cannot be found ; and whereas it has been shown to my satisfaction that the said (*name*) has absconded (*or is concealing himself to avoid the service of the said warrant*), and thereupon a Proclamation has been duly issued and published requiring the said to appear to answer the said charge within days ; and whereas the said is possessed of the following property other than the land paying revenue to Government in the village (*or town*) of , in the District of , *viz.*, , and an order has been made for the attachment thereof ;

You are hereby required to attach the said property by seizure, and to hold the same under attachment pending the further order of this Court, and to return this warrant with an endorsement certifying the manner of its execution.

Dated this day of 18 .

(*Seal.*)

(*Signature.*)

ORDER AUTHORIZING AN ATTACHMENT BY THE DEPUTY COMMISSIONER AS COLLECTOR.

(*See section 86.*)

To the Deputy Commissioner of the District of

WHEREAS complaint has been made before me that (*name, description and address*) has committed (*or is suspected to have committed*) the offence of punishable under section of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (*name*) cannot be found ; and whereas it has been shown to my satisfaction that the said (*name*) has absconded (*or is concealing himself to avoid the service of the said warrant*), and thereupon a Proclamation has been duly issued and published requiring the said to appear to answer the said charge within days, but he has not appeared ; and whereas the said is possessed of certain land paying revenue to Government in the village (*or town*) of in the District of ;

You are hereby authorized and requested to cause the said land to be attached, and to be held under attachment pending the further order of this Court, and to certify without delay what you may have done in pursuance of this order.

Dated this day of 18 .

(*Seal.*)

(*Signature.*)

VII.—WARRANT IN THE FIRST INSTANCE TO BRING UP A WITNESS.

(*See section* 88.)

To (*name and designation of the Police-officer or other person or persons to execute the warrant*).

WHEREAS complaint has been made before me that of has (*or is suspected to have*) committed the offence of (*mention the offence concisely*), and it appears likely that (*name and description of witness*) can give evidence concerning the said complaint ; and whereas I have good and sufficient reason to believe that he will not attend as a witness on the hearing of the said complaint unless compelled to do so ;

This is to authorize and require you to serve the said (*name*) with this warrant, and to bring him before this Court on the day of , using no unnecessary violence or forceable restraint for that purpose, to be examined touching the offence complained of.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

SCHEDULE V—*continued.* FORMS.

VIII.—WARRANT TO SEARCH AFTER INFORMATION OF A PARTICULAR OFFENCE.

(*See section 95.*)

To (*name and designation of the Police-officer or other person or persons to execute the warrant*).

WHEREAS information has been laid (*or complaint has been made*) before me of the commission (*or suspected commission*) of the offence of (*mention the offence concisely*), and it has been made to appear to me that the production of (*specify the thing clearly*) is essential to the enquiry now being made (*or about to be made*) into the said offence (*or suspected offence*) ;

This is to authorize and require you to search for the said (*the thing specified*) in the (*describe the house or place, or part thereof, to which the search is to be confined*), and, if found, to produce the same forthwith before this Court : returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

IX.—WARRANT TO SEARCH SUSPECTED PLACE OF DEPOSIT.

(*See section 97.*)

To (*name and designation of a Police-officer above the rank of a Constable*).

WHEREAS information has been laid before me, and on due enquiry thereupon had I have been led to believe that the house (*describe the house or other place*) is used as a place for the deposit (*or sale*) of stolen property (*or, if for either of the other purposes expressed in the section, state the purpose in the words of the section*) ;

This is to authorize and require you to enter the said house (*or other place*) with such assistance as shall be required, and to use, if necessary, reasonable force for that purpose, and to search every part of the said house (*or other place, or, if the search is to be confined to a part, specify the part clearly*) and to seize and take possession of any property (*or documents, or stamps, or seals, or coins, as the case may be*)—[Add (*when the case requires it*) and also of any instruments and materials which you may reasonably believe to be kept for the manufacture of forged documents, or counterfeit stamps, or false seals, or counterfeit coin (*as the case may be*),] and forthwith to bring before this Court such of the said things as may be taken possession of, returning this warrant with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

X.—BOND TO KEEP THE PEACE.

(*See section 105*).

WHEREAS I, (*name*), inhabitant of (*place*), have been called upon to enter into a bond to keep the peace for the term of , I hereby bind myself not to commit a breach of the peace or do any act that may probably occasion a breach of the peace during the said term ; and in case of my making default therein, I hereby bind myself to forfeit to Her Majesty the sum of rupees .

Dated this day of 18 .

(*Signature.*)

XI.—FORM OF BOND FOR GOOD BEHAVIOUR.

(*See sections 108 and 109.*)

WHEREAS I, (*name*), inhabitant of (*place*), have been called upon to enter into a bond to be of good behaviour to Her Majesty the Empress and to all her subjects for the term of (*state the period*), I hereby bind myself to be of good behaviour to Her Majesty and to all her subjects during the said term ; and in case of my making default therein, I bind myself to forfeit to Her Majesty the sum of rupees.

Dated this day of 18 .

(*Seal.*)

(*Signature.*)

FORMS. SCHEDULE V—*continued.*

XII.—SUMMONS ON INFORMATION OF A PROBABLE BREACH OF THE PEACE.

(*See section 113.*)

To of

WHEREAS it has been made to appear to me by credible information that (*state the substance of the information*) and that you are likely to commit a breach of the peace (*or by which act a breach of the peace will probably be occasioned*), you are hereby required to attend in person (*or by a duly authorized agent*) at the Magistrate's Office at on the day of 18 , at ten o'clock in the forenoon, to shew cause why you should not be required to enter into a bond for rupees (*when sureties are required add*) and also to give security by the bond of one (*or two as the case may be*) sureties in the sum of rupees (*each if more than one*), that you will keep the peace for the term of

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

XIII.—WARRANT OF COMMITMENT ON FAILURE TO FIND SECURITY TO KEEP THE PEACE.

(*See section 122.*)

To (*name and designation of Police-officer*) and to the Superintendent (*or Keeper*) of the Civil Jail at

WHEREAS (*name and place*) appeared before me in person (*or by his authorized agent*) on the day of in obedience to a summons calling upon him to shew cause why he should not enter into a bond for rupees with one surety (*or a bond with two sureties each in rupees*), that he the said (*name*) would keep the peace for the period of months; and whereas an order was then made requiring the said (*name*) to enter into and find such security (*state the security ordered when it differs from that mentioned in the summons*), and he has failed to comply with the said order;

This is to authorize and require you the said (*name of Police Constable*) to take and deliver, or cause to be taken and delivered, the said (*name*) to the Superintendent (*or Keeper*) of the said Civil Jail, and you the said Superintendent (*or Keeper*) to receive the said (*name*) into your custody together with this warrant, and him safely to keep in the said Jail for the said period of (*term of imprisonment*) unless he shall in the meantime comply with the said order by himself and his sureties entering into the said bond, in which case the same shall be received, and the said (*name*) released; and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

XIV.—WARRANT OF COMMITMENT ON FAILURE TO FIND SECURITY FOR GOOD BEHAVIOUR.

(*See section 122.*)

To (*name and designation of Police-officer*) and to the Superintendent (*or Keeper*) of the Civil Jail at

WHEREAS it has been made to appear to me that (*name and description*) has been and is lurking within the District of having no ostensible means of subsistence (*or, and that he is unable to give any satisfactory account of himself*);

or

WHEREAS evidence of the general character of (*name and description*) has been adduced before me and recorded from which it appears that he is by repute a robber (*or house-breaker, &c., as the case may be*);

or

WHEREAS evidence of the general character of (*name and description*) has been adduced before me and recorded from which it appears that he is by habit a robber (*or house-breaker, &c., as the case may be*);

And whereas an order has been recorded stating the same and requiring the said (*name*) to furnish security for his good behaviour for the term of (*state the period*) by entering into a bond with one surety (*or two or more sureties as the case may be*) himself for rupees , and the said surety (*or such of the said sureties*) for rupees , and the said (*name*) has failed to comply with the said order, and for such default has been adjudged imprisonment for (*state the term*) unless the said security be sooner furnished;

FORMS. SCHEDULE V—*continued.*

This is to authorize and require you the said (*name of Police-officer*) to take and deliver or cause to be taken and delivered the said (*name*) to the Superintendent (*or Keeper*) of the said Civil Jail, and you the said Superintendent (*or Keeper*) to receive the same (*name*) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (*term of imprisonment*), unless in the meantime he shall be prepared to furnish the said security, and in that event forthwith to cause him to be brought before the Court to be dealt with according to law; and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

XV.—WARRANT TO DISCHARGE A PERSON IMPRISONED ON FAILURE TO GIVE SECURITY.

(*See section 123.*)

To (*the Superintendent or Keeper*) of the Jail at (*or other officer in whose custody the person is*).

WHEREAS (*name and description of prisoner*) was committed to your custody under warrant of this Court, dated the day of , and has since with his surety (*or sureties*) duly entered into a recognizance,

or

and sufficient cause has been shewn to me for his release from further imprisonment,

or

and there have appeared to me sufficient grounds for the opinion that he can be released without any hazard to the community;

This is to authorize and require you forthwith to discharge the said (*name*) from your custody.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

XVI.—ORDER FOR THE REMOVAL OF NUISANCES.

(*See section 131.*)

To (*name, description and place of residence*).

WHEREAS it has been made to appear to me that you have caused an obstruction (*or nuisance*) to persons using the public roadway (*or other public place*), which, &c. (*describe the road or public place*), by, &c. (*state what it is that causes the obstruction or nuisance*), and that such obstruction (*or nuisance*) still exists;

or

WHEREAS it has been made to appear to me that you are carrying on as owner, or manager, the trade or occupation of (*state the particular trade and the place where it is carried on*), and that the same is injurious to the public health (*or comfort*) by reason (*state briefly in what manner the injurious effects are caused*), and should be suppressed or removed to a different place;

or

WHEREAS it has been made to appear to me that you are the owner (*or are in possession of or have the control over*) a certain tank (*or well*) adjacent to the public passage (*describe the thoroughfare*), and that the safety of the public is endangered by reason of the said tank (*or well*) being without a fence (*or insecurely fenced*);

or

WHEREAS, &c., &c. (*as the case may be*);

I do hereby direct and require you within (*state the time allowed*) to remove (*state what is required to be done to abate the nuisance*) or to appear at in the Court of on the day of next, and to show cause why this order should not be enforced;

or

I do hereby direct and require you within (*state the time allowed*) to cease carrying on the said trade or occupation at the said place, and not again to carry on the same, or to remove the said trade from the place where it is now carried on to (*specify the more suitable place by a limit of distance or local description*), or to appear, &c.;

or

I do hereby direct and require you within (*state the time allowed*) to put up a sufficient fence (*state the kind of fence and the part to be fenced*), or to appear, &c.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

FORMS.

SCHEDULE V—*continued.*

XVII.—MAGISTRATE'S ORDER CONSTITUTING A JURY.

(*See section 136.*)

WHEREAS on the day of 18 , an order was issued to (*name*) requiring him (*state the effect of the order*) ; and whereas the said (*name*) has applied to me by a petition bearing date the day of for an order appointing a Jury to try whether the said recited order is reasonable and proper, I do hereby appoint (*the names, &c., of the five or more Jurors*) to be the Jury, to try and decide the said question, and do require the said Jury to report their decision within days from the date of this order at my office at

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

XVIII.—MAGISTRATE'S NOTICE AND PEREMPTORY ORDER AFTER THE FINDING BY A JURY.

(*See section 138.*)

To (*name, description and residence*).

I HEREBY give you notice that the Jury duly appointed on the petition presented by you on the day of have found that the order issued on the day of requiring you (*state substantially the requisition in the order*) is reasonable and proper, and I hereby direct and require you to obey the said order within (*state the time allowed*) on peril of the penalty provided by the Indian Penal Code for disobedience thereto.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

XIX.—INJUNCTION TO PROVIDE AGAINST IMMINENT DANGER PENDING ENQUIRY BY JURY.

(*See section 140.*)

To (*name, description and residence*).

WHEREAS the enquiry by a Jury appointed to try whether my order issued on the day of , 18 is reasonable and proper is still pending, and it has been made to appear to me that the nuisance mentioned in the said order is attended with so imminent serious danger to the public as to render necessary immediate measures to prevent such danger, I do hereby, under the provisions of section of the Code of Criminal Procedure, direct and enjoin you forthwith to (*state plainly what is required to be done as a temporary safeguard*), pending the result of the local enquiry by the Jury.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

XX.—MAGISTRATE'S ORDER TO PREVENT OBSTRUCTION, RIOT, &c.

(*See section 141.*)

To (*name, description and place of residence*).

WHEREAS it has been made to appear to me that you are in possession (*or have the management*) of (*describe clearly the property*), and that, in digging a drain on the said land, you are about to throw or place a portion of the earth and stones dug up upon the adjoining public road, so as to occasion risk of obstruction to persons using the road;

or

WHEREAS it has been made to appear to me that you and a number of other persons (*mention the class of persons*) are about to meet and proceed in a religious procession along the public street, &c. (*as the case may be*), and that such procession is likely to lead to a riot or an affray;

or

WHEREAS, &c., &c. (*as the case may be*) ; I do hereby order you not to place or permit to be placed any of the earth or stone dug from your land in any part of the said road ; or

I do hereby prohibit the procession passing along the said street, and strictly warn and enjoin you not to take any part in such procession (*or as the case recited may require*).

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

FORMS.

SCHEDULE V—*continued.*

XXI.—MAGISTRATE'S ORDER PROHIBITING THE REPETITION, &c., OF A NUISANCE.

(*See section 142.*)

To (*name, description and place of residence*).

WHEREAS it has been made to appear to me that, &c. (*state the proper recital guided by Form No. XX*) ;

I do hereby strictly order and enjoin you not to repeat the said nuisance by again placing or causing or permitting to be placed, &c. (*as the case may be*).

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

XXII.—MAGISTRATE'S ORDER DECLARING PARTY ENTITLED TO RETAIN POSSESSION OF LAND, &c., IN DISPUTE.

(*See section 143.*)

IT appearing to me, on the grounds duly recorded, that a dispute, likely to induce a breach of the peace, existed between (*describe the parties by name and residence, or residence only, if the dispute be between bodies of villagers*) concerning certain (*state concisely the subject of dispute*) situate within the local limits of my jurisdiction, all the said parties were called upon to give in a written statement of their respective claims as to the fact of actual possession of the said (*the subject of dispute*) and being satisfied by due enquiry had thereupon, without reference to the merits of the claim of either of the said parties to the legal right of possession, that the claim of actual possession by the said (*name or names or description*) is true,

I do decide and declare that he is (*or they are*) in possession of the said (*the subject of dispute*) and entitled to retain such possession until ousted by due course of law, and do strictly forbid any disturbance of his (*or their*) possession in the meantime.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

XXIII.—WARRANT OF ATTACHMENT IN THE CASE OF A DISPUTE AS TO THE POSSESSION OF LAND, &c.

(*See section 144.*)

To the Police-officer in charge of the Police-station at

WHEREAS it has been made to appear to me that a dispute likely to induce a breach of the peace existed between (*describe the parties concerned by name and residence, or residence only, if the dispute be between bodies of villagers*) concerning certain (*state concisely the subject of dispute*) situate within the limits of my jurisdiction, and the said parties were thereupon duly called upon to state in writing their respective claims as to the fact of actual possession of the said (*the subject of dispute*), and whereas, upon due enquiry in the said claims, I have decided that neither of the said parties was in possession of the said (*the subject of dispute*) ;

This is to authorize and require you to attach the said (*the subject of dispute*) by taking and keeping possession thereof, and to hold the same under attachment until the decree or order of a competent Court determining the rights of the parties, or the claim to possession shall have been obtained ; and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

XXIV.—MAGISTRATE'S ORDER PROHIBITING THE DOING OF ANY THING ON LAND OR WATER.

(*See section 145.*)

A DISPUTE having arisen concerning the right of use of (*state concisely the subject of dispute*) situate within the limits of my jurisdiction, the possession of which land (*or* water) is claimed exclusively by (*describe the person or persons*), and it appearing to me, on due enquiry into the same, that the said land (*or* water) has been open to the enjoyment of such use by the public (*or if by an individual or class of persons, describe him or them*), and (*if the use can be enjoyed throughout the year*) that the said use has been ordinarily enjoyed within three months of the

FORMS. SCHEDULE V—*continued.*

institution of the said enquiry (*or, if the use is enjoyable only at particular seasons, say: "during the last of the seasons at which the same is capable of being enjoyed"*);

I do order that the said (*the claimant or claimants of possession*), or any one in their interest, shall not take (*or* retain) possession of the said land (*or* water) to the exclusion of the enjoyment of the right of use aforesaid, until he (*or they*) shall obtain the decree or order of a competent Court adjudging him (*or them*) to be entitled to exclusive possession.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

XXV.—BOND AND BAIL-BOND ON A PRELIMINARY ENQUIRY BEFORE A POLICE-OFFICER.

(*See section 167.*)

I, (*name*), of , being charged with the offence of and after enquiry required to appear before the Magistrate of

or

and after enquiry called upon to enter into my own recognizance to appear when required , do hereby bind myself to appear at in the Court of on the day of next (*or on such day as I may hereafter be required to attend*) to answer further to the said charge, and, in case of my making default herein, I bind myself to forfeit to Her Majesty the Queen, Empress of India the sum of rupees .

Dated this day of 18 .

(*Signature.*)

I hereby declare myself (*or we jointly and severally declare ourselves and each of us*) surety (*or sureties*) for the above-said that he shall attend at , in the Court of on the day of next (*or on such day as he may hereafter be required to attend*); further, to answer to the charge pending against him, and in case of his making default therein, I hereby bind myself to forfeit to Her Majesty the Queen, Empress of India the sum of rupees .

Dated this day of 18 .

(*Signature.*)

XXVI.—BOND TO PROSECUTE OR GIVE EVIDENCE.

(*See section 168.*)

I, (*name*), of (*place*), do hereby bind myself to appear at , in the Court of , at o'clock on the day of next, and then and there to prosecute (*or, as the case may be, to prosecute and give evidence, or to give evidence*) in the matter of a charge of against one A. B., and, in case of making default herein, I bind myself to forfeit to Her Majesty the sum of rupees .

Dated this day of 18 .

(*Signature.*)

XXVII.—NOTICE OF COMMITMENT BY MAGISTRATE OR GOVERNMENT PLEADER.

(*See section 220.*)

The Magistrate of hereby gives notice that he has committed one for trial at the next Sessions; and the Magistrate hereby instructs the Government Pleader to conduct the prosecution of the said case.

The charge against the accused is that, &c. (*state the offence as in the charge*).

Dated this day of 18 .

(*Signature.*)

XXVIII.—CHARGES.

(*See sections 223, 224, 225.*)

(I).—CHARGES WITH ONE HEAD.

(*a*). I, [*name and office of Magistrate, &c.*], hereby charge you, [*name of accused person*], as follows:—

(*b*). That you, on or about the day of , at , waged war against Her Majesty the Queen, Empress of India, and thereby committed an offence punishable under section 121 of the Indian

On Penal Code, section 121.

SCHEDULE V—*continued.* FORMS.

Penal Code, and within the cognizance of the Court of Session [*when the charge is framed by a Presidency Magistrate, for* Court of Session, *substitute* High Court].

(*c*). And I hereby direct that you be tried by the said Court on the said charge.

[*Signature and seal of the Magistrate.*]

[*To be substituted for* (*b*):—]

(2). That you, on or about the day of , at , with the intention of inducing the Honourable *A. B.*, Member of the Council of the Governor General of India, to refrain from exercising a lawful power as such Member, assaulted such Member, and thereby committed an offence punishable under section 124 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

On section 124.

(3). That you, being a public servant in the Department, directly accepted from [*state the name*], for another party [*state the name*], a gratification, other than legal remuneration, as a motive for forbearing to do an official act, and thereby committed an offence punishable under section 161 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 161.

(4). That you, on or about the day of , at , committed culpable homicide not amounting to murder, causing the death of , and thereby committed an offence punishable under section 304 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 304.

(5). That you, on or about the day of , at , abetted the commission of suicide by *A. B.*, a person in a state of intoxication, and thereby committed an offence punishable under section 306 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 306.

(6). That you, on or about the day of , at , voluntarily caused grievous hurt to , and thereby committed an offence punishable under section 325 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 325.

(7). That you, on or about the day of , at , committed robbery, an offence punishable under section 392 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 392.

(8). That you, on or about the day of , at , committed dacoity, an offence punishable under section 395 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 395.

(9). That you, on or about the day of , at , did [*or* omitted to do, *as the case may be*] , such conduct being contrary to the provisions of Act , section , and was known by you to be prejudicial to , and thereby committed an offence punishable under section 166 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 160.

(10). That you, on or about the day of , at , in the course of the trial of , before , stated in evidence that " ;" which statement you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under section 193 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 193.

[*In cases tried by Magistrates, substitute* "within my cognizance" *for* "within the cognizance of the Court of Session." *In* (*d*) *omit* "by the said Court."]

(II).—CHARGES WITH TWO OR MORE HEADS.

(*a*) I, [*name and office of Magistrate, &c.*], hereby charge you, [*name of accused person*], as follows:—

(*b*) *First.*—That you, on or about the day of at , knowing a coin to be counterfeit, delivered the same to another person, by name *A. B.*, as genuine, and thereby committed an offence punishable under section 241 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

On sections 241 and 242.

Secondly.—That you, on or about the day of , at , knowing a coin to be counterfeit, attempted to induce another person, by name *A. B.*, to receive it as

FORMS. SCHEDULE V—*continued.*

genuine, and thereby committed an offence punishable under section 242 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court]:

(*c*). And I hereby direct that you be tried by the said Court on the said charge.

[*Signature and seal of the Magistrate.*]

On sections 302 and 304.

For (*b*) *First.*—That you, on or about the day of , at , committed murder by causing the death of , and thereby committed an offence punishable under section 302 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

Secondly.—That you, on or about the day of , at , by causing the death of , committed culpable homicide, and thereby committed an offence punishable under section 304 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On sections 379 and 382.

For (*b*) *First.*—That you, on or about the day of , at , committed theft, and thereby committed an offence punishable under section 379 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

Secondly.—That you, on or about the day of , at , committed theft, having made preparation for causing death to a person in order to the committing of such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

Thirdly.—That you, on or about the day of , at , committed theft, having made preparation for causing restraint to a person in order to the effecting of your escape after the committing of such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

Fourthly.—That you, on or about the day of , at , committed theft, having made preparation for causing fear of hurt to a person in order to the retaining of property taken by such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

Alternative charges on section 193.

For (*b*) That you, on or about the day of , at , in the course of the enquiry into before , stated in evidence that " ," and that you, on or about the day of at , in the course of the trial of , before , stated in evidence that " ," one of which statements you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under section 193 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

In trials before Magistrates, substitute " within my cognizance " *for* " within the cognizance of the Court of Session " *and omit* " by the said Court. "

XXIX.—WARRANT OF COMMITMENT ON A SENTENCE OF IMPRISONMENT OR FINE IF PASSED BY A MAGISTRATE.

(*See sections 248 and 261.*)

To (*name and designation of Police Constable*) and to the Superintendent (*or Keeper*) of the Jail at

WHEREAS on the day of 18 (*name of prisoner*) the (*1st, 2nd, 3rd, as the case may be*) prisoner in case No. of the calendar for 18 was convicted before me (*name and official designation*) of the offence of (*mention the offence or offences concisely*) under section (*or sections*) of the Penal Code (*or of Act*), and was sentenced to (*state the punishment fully and distinctly*);

This is to authorize and require you the said (*name of Police Constable*) to take and deliver, or cause to be taken and delivered, the said, (*name of offender*) to the Superintendent (*or Keeper*) of the said jail, and you the said (*Superintendent or Keeper*) to receive the said (*prisoner's name*) into your custody in the said jail together with this warrant, and there carry the aforesaid sentence into execution according to law.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

SCHEDULE V—*continued.* FORMS.

XXX.—WARRANT OF IMPRISONMENT ON FAILURE TO RECOVER AMENDS BY DISTRESS.

(*See section 253.*)

To (*name and designation of Police Constable*) and to the Superintendent (*or Keeper*) of the Civil Jail at

WHEREAS (*name and description*) has brought against (*name and description of the accused person*) the complaint that (*mention it concisely*) and the same has been dismissed as frivolous and vexatious, and the order of dismissal awards payment by the said (*name of complainant*) of the sum of rupees as amends; and whereas the said sum has not been paid and cannot be recovered by distress of the moveable property of the said (*name of complainant*) and an order has been made for his imprisonment in jail for the period of days, unless the aforesaid sum be sooner paid;

This is to authorize and require you the said (*name of Police Constable*) to take and deliver, or cause to be taken and delivered, the said (*name*) to the Superintendent (*or Keeper*) of the said Civil Jail, and you the said Superintendent (*or Keeper*) to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (*term of imprisonment*) unless the said sum be sooner paid, and on the receipt thereof forthwith to set him at liberty: returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

XXXI.—SUMMONS TO A WITNESS.

(*See sections 65 and 255.*)

To of

WHEREAS complaint has been made before me that of has (*or is suspected to have*) committed the offence of (*state the offence concisely with time and place*) and it appears to me that you are likely to give material evidence for the prosecution;

You are hereby summoned to appear before this Court on the day of next at ten o'clock in the forenoon, to testify what you know concerning the matter of the said complaint, and not to depart thence without leave of the Court; and you are hereby warned that if you shall without just excuse neglect or refuse to appear on the said date, a warrant will be issued to compel your attendance.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

XXXII.—WARRANT OF COMMITMENT ON A SENTENCE OF IMPRISONMENT OR FINE IF PASSED BY A MAGISTRATE.

(*See section 261.*)

To (*name and designation of Police Constable*) and to the Superintendent (*of Keeper*) of the Jail at

WHEREAS on the day of 18 , (*name of prisoner*) the (*1st, 2nd, 3rd, as the case may be*) prisoner in case No. of the Calendar for 18 was convicted before me (*name and official designation*) of the offence of (*mention the offence or offences concisely*) under section (*or sections*) of the Penal Code (*or of Act*), and was sentenced to, (*state the punishment fully and distinctly*);

This is to authorize and require you the said (*name of Police Constable*) to take and deliver or cause to be taken and delivered, the said (*name of offender*) to the Superintendent (*or Keeper*) of the said jail, and you the said (*Superintendent or Keeper*) to receive the said (*prisoner's name*) into your custody in the said jail together with this warrant, and there carry the aforesaid sentence into execution according to law.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

FORMS. SCHEDULE V—*continued.*

XXXIII.—PRECEPT TO MAGISTRATE TO SUMMON JURORS AND ASSESSORS.

(*See section 328.*)

To the Magistrate of

WHEREAS a Criminal Session is appointed to be held in the Court-house at on the day of next, and the names of the persons herein stated have been duly drawn by lot from among those named of the revised list of jurors and assessors furnished to this Court, you are hereby required to summon the said persons to attend at the said Court of Session at 10 A. M. on the said date, and, within such date, to certify that you have done so in pursuance of this precept.

(*Here enter the names of Jurors and Assessors.*)

Given under my hand and the Seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

XXXIV.—SUMMONS TO JUROR OR ASSESSOR.

(*See section 330.*)

To (*name*) of (*place*).

PURSUANT to a precept directed to me by the Court of Session of requiring your attendance as an Assessor (*or Juror*) at the next Criminal Session, you are hereby summoned to attend at the said Court of Session at ten o'clock in the forenoon on the day of next.

Given under my hand and seal of office, this day of 18 .

(*Seal.*)

(*Signature.*)

XXXV.—WARRANT OF COMMITMENT UNDER SENTENCE OF DEATH.

(*See section 369.*)

To (*the Superintendent or Keeper*) of the Jail at

WHEREAS at the Sessions held before me on the day of 18 , (*name of prisoner*), the (*1st, 2nd, 3rd, as the case may be*) prisoner in case No. of the calendar, at the said Session, was duly convicted of the offence of culpable homicide amounting to murder under section of the Penal Code, and sentenced to suffer death, subject to the confirmation of the said sentence by the Court of Court ;

This is to authorize and require you, the said (*Superintendent or Keeper*), to receive the said (*prisoner's name*) into your custody in the said Jail, together with this warrant, and him there safely keep until you shall receive the further warrant or order of this Court, carrying into effect the order of the said Court.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

XXXVI.—WARRANT OF EXECUTION ON A SENTENCE OF DEATH.

(*See section 383.*)

To the Superintendent (*or Keeper*) of the Jail at

WHEREAS (*name of prisoner*) the (*1st, 2nd, 3rd, as the case may be*) prisoner in case No. of the calendar, at the Sessions held before me on the day of 18 , has been by a warrant of this Court, dated the day of , committed to your custody under sentence of death, and whereas the order of the Court of confirming the said sentence has been received by this Court;

This is to authorize and require you the said Superintendent (*or Keeper*) to carry the said sentence into execution by causing the said to be hanged by the neck until be dead, at the usual time and place of execution, and to return this warrant to the Court with an endorsement certifying that the sentence has been executed.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

FORMS. SCHEDULE V—*continued.*

XXXVII.—WARRANT AFTER A COMMUTATION OF A SENTENCE.

(*See section 384.*)

To the Superintendent (*or Keeper*) of the Jail at

WHEREAS at a Session held on the day of 18, (*name of prisoner*) the (*1st, 2nd, or 3rd, as the case may be*) prisoner in case No. of the calendar, at the said Sessions, was convicted of the offence of , punishable under section of the Indian Penal Code, and sentenced to , and was thereupon committed to your custody; and whereas by the order of the Court of Court (*a duplicate of which is hereunto annexed*) the punishment adjudged by the said sentence has been commuted to the punishment of transportation for life (*or as the case may be*);

This is to authorize and to require you, the said (*Superintendent or Keeper*), safely to keep the said (*prisoner's name*) in your custody in the said Jail, as by law is required, until he shall be delivered over by you to the proper authority and custody for the purpose of his undergoing the punishment of transportation under the said order,

or

if the mitigated sentence is one of imprisonment, say after the words "custody in the said Jail," and there to carry into execution the punishment of imprisonment under the said order according to law.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

XXXVIII.—WARRANT TO LEVY A FINE BY DISTRESS AND SALE.

(*See section 389.*)

To (*name and designation of the Police-officer or other person, or persons, to execute the warrant*).

WHEREAS (*name and description of the offender*) was on the day of 18 , convicted before me of the offence of (*mention the offence concisely*) and sentenced to pay a fine of rupees , and whereas the said (*name*), although required to pay the said fine, hath not paid the same or any part thereof;

This is to authorize and require you to make distress by seizure of any moveable property belonging to the said (*name*) which may be found within the District of ; and, if within (*state the number of days or hours allowed*) next after such distress the said sum shall not be paid (*or forthwith*), to sell the moveable property distrained, or so much thereof as shall be sufficient to satisfy the said fine; returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

XXXIX.—WARRANT OF COMMITMENT IN CERTAIN CASES OF CONTEMPT WHEN A FINE IS IMPOSED.

(*See section 480.*)

To (*name and designation of Police Constable*) at the Police-station of and to (*name*) the Superintendent (*or Keeper*) of the Civil Jail at

WHEREAS at a Court holden before me on this day (*name and description of the offender*) in the presence (*or view*) of the Court committed wilful contempt, for that he

(*a*) being legally bound (*state whether in obedience to the summons or order of the Court, or how otherwise*) to produce (*or deliver up*) a certain (*specify the document*) to the Court (*if to a particular officer so state*), intentionally omitted to produce or deliver up the said (*document specified*) when required to do so;

Applicable to a case under section 175 of the Penal Code.

(*b*) being legally required by the Court to bind himself by an oath (*or solemn affirmation*) duly administered to state the truth as a witness on the hearing of a suit (*or if not a suit as the fact may be*), wilfully refused to take such oath (*or solemn affirmation*) without alleging any just excuse for such refusal;

Applicable to a case under section 178 of the Penal Code.

(*c*) being a witness in (*state the suit or enquiry or other proceeding as the case may be*), and legally bound by an oath (*or solemn affirmation*) duly administered to state the truth, wilfully refused to give answer to a question (*or questions*) put to him by the Court touching

Aplicable to a case under section 179 of the Penal Code.

FORMS. SCHEDULE V—*continued.*

the subject-matter of the said suit (*or other proceeding*) without alleging any just cause for such refusal;

(*d*) being legally required by the Court (*or if by a duly empowered Ministerial Officer so state*) to sign a written record of the statements made by him as a witness on the hearing of a suit (*or if not a suit, as the fact may be*) wilfully refused to sign the same when required so to do, without alleging any just cause for such refusal;

Applicable to a case under section 180 of the Penal Code.

(*e*) wilfully insulted me whilst sitting in Court and engaged in the hearing of (*state the judicial proceeding*) or wilfully caused an interruption during the sitting of the Court, and whilst I was engaged in the hearing of (*state the judicial proceeding*) by (*mention concisely the conduct causing the contempt.*)

Applicable to a case under section 228 of the Penal Code.

And whereas for such his contempt the said (*name of offender*) has been adjudged by the Court to pay a fine of rupees or in default to suffer imprisonment for the space of (*state the number of months or days*);

This is to authorize and require you, the said (*name of Police Constable*), to take and deliver, or cause to be taken and delivered, the said (*name of offender*) to the Superintendent (*or Keeper*) of the said Civil Jail, and you, the said Superintendent (*or Keeper*) of the said Civil Jail, to receive the said (*name of offender*) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (*term of imprisonment*) unless the said fine be sooner paid; and on the receipt thereof, forthwith to set him at liberty, returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

XL.—MAGISTRATE'S WARRANT OF COMMITMENT FOR REFUSING TO ANSWER WHERE THERE IS NO FINE.

(*See section 485.*)

To (*name and designation of Police Constable*) at the Police-station of

WHEREAS (*name and description*) being summoned (*or brought before this Court*) as a witness and this day required to give evidence on an enquiry into an alleged offence refused to answer a certain question (*or questions*) put to him touching the said alleged offence, and duly recorded without alleging any just excuse for such refusal, and for his contempt has been adjudged detention in custody for (*term of detention awarded*);

This is to authorize and require you to take the said (*name*) into custody, and him safely keep in the Lock up of the said station for the space of days unless in the meantime he shall consent to be examined and to answer the questions asked of him, and on the last of the said days, or forthwith on such consent being known, to bring him before this Court to be dealt with according to law; returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

XLI.—SESSIONS JUDGE'S WARRANT OF COMMITMENT FOR REFUSING TO ANSWER.

(*See section 480.*)

To (*name and designation of the Police Constable at the Police-station of*)

WHEREAS (*name and description*) being a witness in case No. of the calendar of cases for trial at the Court of Session holden before me on this day, and being required by the Court to answer a certain question (*or questions*) put to him on the hearing of the said case, and duly recorded has refused to answer the said question (*or questions*) without alleging any just excuse for such refusal, and for his contempt has been adjudged detention in custody, for (*term of detention awarded*): This is to authorize and require you to take the said (*name*) into custody, and him safely to keep in the lock-up of the said station for the space of days, unless in the meantime he shall consent to be examined, and to answer the question (*or questions*) asked of him, and on the last of the said days, or forthwith on such consent being known, to bring him before this Court to be dealt with according to law; returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

SCHEDULE V—*continued.* FORMS.

XLII.—WARRANT OF IMPRISONMENT ON FAILURE TO PAY MAINTENANCE.

(*See section 488.*)

To (*name and designation of Police Constable*) and to the Superintendent (*or Keeper*) of the Jail at

WHEREAS (*name, description and address*) has been proved before me to be possessed of sufficient means to maintain his wife (*name*) [or his child (*name*)], who is by reason of (*state the reason*) unable to maintain (*herself or himself*) and to have neglected (*or refused*) to do so, and an order has been duly made requiring the said (*name*) to allow to his said wife (*or child*) for maintenance the monthly sum of rupees , and whereas it has been further proved that the said (*name*) in wilful disregard of the said order has failed to pay rupees , being the amount of the allowance for the month (*or months*) of : And thereupon an order was made adjudging him to undergo simple (*or rigorous*) imprisonment in the said jail for the period of ;

This is to authorize and require you the said (*name of Police-officer*) to take and deliver, or cause to be taken and delivered, the said (*name*) to the Superintendent (*or Keeper*) of the said Civil Jail, and you the said Superintendent (*or Keeper*) to receive the said (*name*) into your custody in the said jail, together with this warrant, and there carry the said order into execution according to law; returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

XLIII.—WARRANT TO ENFORCE THE PAYMENT OF MAINTENANCE BY DISTRESS AND SALE.

(*See section 488.*)

To (*name and designdtion of the Police-officer or other person to execute the warrant*).

WHEREAS (*name and description and address*) has been proved before me to be possessed of sufficient means to maintain his wife (*name*) [or his child (*name*)], who is by reason of (*state the reason*) unable to maintain (*herself or himself*), and to have neglected (*or refused*) to do so, and an order has been duly made requiring the said (*name*), to allow to his said wife (*or child*) for maintenance the monthly sum of rupees , and whereas it has been further proved that the said (*name*) in wilful disregard of the said order has failed to pay rupees , being the amount of the allowance for the month (*or months of*);

This is to authorize and require you to make distress by seizure of any moveable property belonging to the said (*name*) which may be found within the district of , and if within (*state the number of days or hours allowed*) next after such distress the said sum shall not be paid (*or forthwith*), to sell the moveable property distrained, or so much thereof as shall be sufficient to satisfy the said sum; returning this warrant with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*)

(*Signature.*)

XLIV.—WARRANT OF COMMITMENT UNDER SECTION 492.

To the (*here insert the officer's designation*).

WHEREAS the Governor General (*or* the Governor of Fort St. George, *or* the Governor of Bombay, *as the case may be*) in Council, for good and sufficient reasons, has seen fit to determine that (*here insert the State-prisoner's name*) shall be placed under personal restraint at (*here insert the name of the place*), you are hereby required, in pursuance of that determination, to receive the person above-named into your custody, and to deal with him in conformity to the orders of the Governor General (*or* the Governor) in Council, and the provisions of the Code of Criminal Procedure, chapter XXXVIII.

Fort William (*or as the case may be*), the

By order of the Governor General (*or* the Governor) in Council.

A. B.,

Secretary (*or Chief Secretary*) to Government.

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FORMS. SCHEDULE V—*continued.*

XLV.—BOND AND BAIL-BOND ON A PRELIMINARY ENQUIRY BEFORE A MAGISTRATE.

(*See sections 506, 509.*)

I, (*name*), of (*place*), being brought before the Magistrate of (*as the case may be*) charged with the offence of , and required to give security for my attendance in his Court and at the Session Court, if required, do bind myself to attend at the Court of the said Magistrate on every day of the preliminary enquiry into the said charge, and should the case be sent for trial by the Session Court to be, and appear, before the said Court when called upon to answer the charge against me, and in case of my making default herein, I bind myself to forfeit to Her Majesty the sum of rupees .

Dated this day of 18 .

(*Signature.*)

I hereby declare myself (*or we jointly or severally declare ourselves and each of us*) surety for the said (*name*) that he shall attend at the Court of on every day of the preliminary enquiry into the offence charged against him, and should the case be sent for trial by the Session Court, that he shall be and appear before the said Court to answer the charge against him, and in case of his making default therein, I bind myself to forfeit to Her Majesty the Empress the sum of rupees .

Dated this day of 18 .

(*Signature.*)

XLVI.—WARRANT TO DISCHARGE A PERSON IMPRISONED ON FAILURE TO GIVE SECURITY.

(*See section 510.*)

To (*the Superintendent or Keeper*) of the Jail at (*or other Officer in whose custody the person is*).

WHEREAS (*name and description of prisoner*) was committed to your custody under warrant of this Court, dated the day of , and has since with his surety (*or sureties*) duly executed a bond,

or

and sufficient cause has been shewn to me for his release from further imprisonment,

or

and there have appeared to me sufficient grounds for the opinion that he can be released without any hazard to the community;

This is to authorize and require you forthwith to discharge the said (*name*) from your custody.

Given under my hand and the seal of the Court, this day of 18 .

(*Signature.*)

XLVII.—WARRANT OF ATTACHMENT TO ENFORCE A BOND.

(*See section 525.*)

To (*the Police-officer in charge*) of the Police-station at

WHEREAS (*name, description and address of person*) has failed to appear on (*mention the occasion*) pursuant to his recognizance, and has by such default forfeited to Her Majesty the Empress the sum of rupees (*the penalty in the bond*);

This is to authorize and require you to attach any moveable property of the said (*name*) that you may find within the district of by seizure and detention, and if the said amount be not paid within three days to sell the property so attached or so much of it as may be sufficient to realize the amount aforesaid, and to make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

SCHEDULE V—*continued.* FORMS.

XLVIII.—NOTICE TO SURETY ON BREACH OF A BOND.

To of

WHEREAS on the day of 18 , you became surety for (*name*) of (*place*) that he should appear before this Court on the day of , and bound yourself in default thereof to forfeit the sum of rupees to Her Majesty the Empress; and whereas the said (*name*) has failed to appear before this Court, and by reason of such default you have forfeited the aforesaid sum of rupees , you are hereby required to pay the said penalty or shew cause, within days from this date, why payment of the said sum should not be enforced against you.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

XLIX.—NOTICE TO SURETY OF FORFEITURE OF BOND FOR GOOD BEHAVIOUR.

To of

WHEREAS on the day of 18 , you became surety by a bond for (*name*) of (*place*) that he would keep the peace for the period of , and bound yourself in default thereof to forfeit the sum of rupees to Her Majesty the Empress; and whereas the said (*name*) has been convicted of the offence of (*mention the offence concisely*) committed since you became such surety, whereby your security-bond has become forfeited;

You are hereby required to pay the said penalty of rupees , or to show cause within days, why it should not be paid.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

L.—WARRANT OF ATTACHMENT AGAINST A SURETY.

To

WHEREAS (*name, description and address*) has bound himself as surety for the appearance of (*mention the condition of the bond*), and the said (*name*) has made default, and thereby forfeited to Her Majesty the Empress the sum of rupees (*the penalty in the bond*);

This is to authorize and require you to attach any moveable property of the said (*name*) which you may find within the district of by seizure and detention. If the said amount be not paid within three days, to sell property so attached, or so much of it as may be sufficient to realize the amount aforesaid, and make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

LI.—WARRANT OF COMMITMENT OF THE SURETY OF AN ACCUSED PERSON ADMITTED TO BAIL.

To (*name and designation of Police-officer*) and the Superintendent (*or Keeper*) of the Civil Jail at

WHEREAS (*name and description of surety*) has bound himself as a surety for the appearance of (*state the condition of the bond*), and the said (*name*) has therein made default whereby the penalty mentioned in the said bond has been forfeited to Her Majesty the Empress; and whereas the said (*name of surety*) has, on due notice to him, failed to pay the said sum or shew any sufficient cause why it should not be enforced against him, and the same cannot be recovered by attachment and sale of moveable property of his, and an order has been made for his confinement in Jail for (*specify the period*);

This is to authorize and require you the said (*name of Police-officer*) to take and deliver, or cause to be taken and delivered, the said (*name*) to the Superintendent (*or Keeper*) of the said Civil Jail, and you the said Superintendent (*or Keeper*) to receive the said (*name*) into your custody with this warrant and him safely to keep in the said Jail for the said (*term of imprisonment*), and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

FORMS. SCHEDULE V—*continued.*

LII.—NOTICE OF FORFEITURE OF A BOND TO KEEP THE PEACE TO THE PRINCIPAL.

To (*name, description and address*).

WHEREAS on the day of 18 , you entered into a bond not to commit, &c. (*as in the bond*), and proof of the forfeiture of the same has been given before me and duly recorded;

You are hereby called upon to pay the said penalty of rupees or to shew cause before me within days, why payment of the same should not be enforced against you.

Dated this day of 18 .

(*Seal.*) (*Signature.*)

LIII.—WARRANT TO ATTACH THE PROPERTY OF THE PRINCIPAL ON BREACH OF A BOND TO KEEP THE PEACE.

To (*name and designation of Police-officer*) at the Police-station of

WHEREAS (*name and description*) did on the day of 18 , enter into a bond for the sum of rupees , binding himself not to commit a breach of the peace, &c. (*as in the bond*), and proof of the forfeiture of the said bond has been given before me and duly recorded; and whereas notice has been given to the said (*name*) calling upon him to shew cause why the said sum should not be paid, and he has failed to do so or to pay the said sum;

This is to authorize and require you to attach by seizure moveable property belonging to the said (*name*) to the value of rupees which you may find within the district of , and if the said sum be not paid within to sell the property so attached, or so much of it as may be sufficient to realize the same; and to make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

LIV.—WARRANT OF IMPRISONMENT ON BREACH OF A BOND TO KEEP THE PEACE.

To (*name and designation of Police-officer*) and to the Superintendent (*or Keeper*) of the Civil Jail at

WHEREAS proof has been given before me and duly recorded that (*name and description*) has committed a breach of the bond entered into by him to keep the peace whereby he has forfeited to Her Majesty the Empress the sum of rupees ; and whereas the said (*name*) has failed to pay the said sum or to shew cause why the said sum should not be paid, although duly called upon to do so, and payment thereof cannot be enforced by attachment of his moveable property, and an order has been made for the imprisonment of the said (*name*) in the Civil Jail for the period of (*term of imprisonment*);

This is to authorize and require you the said (*name of Police-officer*) to take and deliver, or cause to be taken and delivered, in the said (*name*) to the Superintendent (*or Keeper*) of the said Civil Jail; and you the said Superintendent (*or Keeper*) to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (*term of imprisonment*); and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

LV.—WARRANT OF ATTACHMENT AND SALE ON FORFEITURE OF BOND FOR GOOD BEHAVIOUR.

To the Police-officer in charge of the Police-station at

WHEREAS (*name, description and residence*) did on the day of 18 , give security by bond in the sum of rupees for the good behaviour of (*name, &c., of the principal*), and proof has been given before me and duly recorded of the commission by the said (*name*) of the offence of whereby the said bond has been forfeited; and whereas notice has been given to the said (*name*) calling upon him to show cause why the said sum should not be paid, and he has failed to do so or to pay the said sum;

SCHEDULE V—*continued.* FORMS.

This is to authorize you and require you to attach by seizure moveable property belonging to the said (*name*) to the value of rupees which you may find within the District of , and if the said sum be not paid within to sell the property so attached, or so much of it as may be sufficient to realize the same, and to make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

LVI.—WARRANT OF IMPRISONMENT ON FORFEITURE OF A BOND FOR GOOD BEHAVIOUR.

To (*name and designation of Police-officer*) and to the Superintendent (*or Keeper*) of the Civil Jail at

WHEREAS (*name, description and residence*) did on the day of 18 , give security by bond in the sum of rupees for the good behaviour of (*name, &c., of the principal*), and proof of the breach of the said bond has been given before me and duly recorded, whereby the said (*name*) has forfeited to Her Majesty the Empress the sum of rupees ; and whereas he has failed to pay the said sum or to show cause why the said sum should not be paid, although duly called upon to do so, and payment thereof cannot be enforced by attachment of his moveable property, and an order has been made for the imprisonment of the said (*name*) in the Civil Jail for the period of (*term of imprisonment*);

This is to authorize and require you the said (*name of Police Constable*) to take and deliver or cause to be taken and delivered the said (*name*) to the Superintendent (*or Keeper*) of the said Civil Jail, and you the said Superintendent (*or Keeper*) to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (*term of imprisonment*); returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

STATEMENT OF OBJECTS AND REASONS.

No less than three Codes of Criminal Procedure are now in operation in British India: Act X of 1872, amended by Act XI of 1874, which is in force throughout the Mufassal; the High Courts' Act, X of 1875, which is in force in the Presidency-towns, Allahabad and Lahore, and the Presidency Magistrates' Act, IV of 1877, also in force in the Presidency-towns.

Many of the provisions of these Codes merely repeat one another; many of their rules, though dealing with the same subjects, unnecessarily vary in language; and the result is that the bulk of the Indian Statute-book is far greater than need be and that the Courts when construing one Code are often deprived of the guidance of prior decisions on another.

The primary object of this Bill, which has been framed at the suggestion of the Secretary of State, is to recast the Code of 1872, combining with it the substance of the High Courts' Act and the Presidency Magistrates' Act, and incorporating in it the numerous reported decisions on its wording, and thus at last give to India a single and complete Code of Criminal Procedure, and carry out, so far, the policy of providing a simple and uniform system of law for this country. The language and arrangement of Act X of 1872 have, for obvious reasons, been departed from only so far as is necessary for the main purpose of the Bill.

2. Though many of the outlying Acts and Regulations dealing with Criminal Procedure were repealed and re-enacted by Act X of 1872, many more are still untouched, and the secondary object of the present Bill is to consolidate these enactments, which are ten in number:—

Acts.

XXIII of 1840 (Execution of process).
XXXIV of 1850 (State prisoners).
III of 1858 (State prisoners).
XVIII of 1862 (Administration of Criminal Justice in the High Courts).
II of 1869 (Justices of the Peace).
XXII of 1870, sections 2 and 4 (Application to European British subjects of Acts giving summary jurisdiction).

Regulations.

Bengal Regulation III, 1818 (State prisoners).
Bengal Regulation XX of 1825 (Jurisdiction of Courts Martial).
Madras Regulation II, 1819 (State prisoners).
Bombay Regulation XXV, 1827 (State prisoners).

3. The result of consolidating the Acts and Regulations above specified will be to substitute a single Act of 566 sections for fourteen enactments containing 1046 unrepealed sections.

4. The present Bill is divided into nine Parts, the first containing the usual preliminary matter; the second dealing with the constitution and powers of the Criminal Courts and offices; the third containing some general provisions; the fourth treating of the prevention of offences; the fifth, of information to the Police and of their powers to investigate; the sixth, of proceedings in prosecutions; the seventh, of appeal, reference and revision; the eighth, of special proceedings; the ninth, of supplementary provisions.

Preliminary.

5. Part I consists of a single chapter containing the usual preliminary matter. The wording of some of the definitions in Act X of 1872 has been amended and definitions of 'to sign,' 'public prosecutor,' 'pleader,' 'offence,' 'chapter,' 'schedule' and 'place' have been added. The definition of 'European British subject' has been extended to persons naturalized in British India. Words referring to acts done are declared to extend also to illegal omissions, and words such as 'special law,' 'local law,' defined in the Penal Code will have the meanings attached to them respectively by that Code. On the other hand, the definitions of 'inquired into,' 'trial,' 'Magistrate's case,' have been omitted as not needed in the Code in its revised form.

Criminal Courts.

6. Part II (constitution and powers of the Criminal Courts and offices) consists of two chapters, of which the first deals (*a*) with the classes of Criminal Courts, (*b*) with territorial divisions, (*c*) with Courts outside the Presidency-towns, (*d*) with the Courts of the Presidency Magistrates, (*e*) with Justices of the Peace and (*f*) with the suspension and removal of Judges, Magistrates and Justices of the Peace. The second chapter treats of the powers of Judges and Magistrates, the description of offences cognizable by each Court, the sentences which may be passed by Courts of various classes, and the mode of conferring powers on the latter. The changes of the law here made are little more than verbal, save that in section 39 (= Act X of 1872, section 56), as to the continuance of powers of an officer transferred to another local area, words have been introduced to shew clearly that the direction therein mentioned may have preceded the transfer. In connection with section 33 as to power to sentence to imprisonment in default of payment of fine, it will be necessary to pass simultaneously with the Bill a short Act amending section 67 of the Penal Code, by inserting a declaration that such imprisonment shall be simple.

Section 35 declares, in accordance with a decision of the Bombay High Court, that, for the purpose of confirmation or appeal, a combined sentence, in case of simultaneous convictions for several offences, shall be deemed to be a single sentence.

General Provisions.

7. Part III contains certain general provisions which it seems convenient to group together and which, to avoid forward references, must stand near the beginning of the Code. They relate to the following matters: aid and information to the Magistrates and Police: arrest, escape and retaking: processes to compel appearance and production of documents. Here, again, the changes in the law are little more than verbal, save that, to the offences which the public are bound to assist in preventing, has been added (section 41) attempts to injure public property: that the section (44) authorizing, in the case of forcible resistance, the use of necessary means to effect arrests, has been extended to meet the case of attempts to evade them; that power has been given (section 47) to break open the doors of a house for the purpose of liberating persons who have lawfully entered for the purpose of making arrests therein: that persons making arrests have been expressly empowered (section 50) to take from the person arrested any offensive weapons which he may have about him; that the Police have been authorized to arrest, without warrant, deserters from the Navy; and that sections (63, 64) equivalent to Act XXV of 1861, section 112, have been inserted to provide for the retaking of persons escaping or rescued from lawful custody.

8. Under the present Code (Act X of 1872, section 153), summonses issued by Magistrates are ordinarily served "through a Police-officer:" the Bill (section 65) provides that they shall ordinarily be served by an officer of the Court, but that the Magistrate may direct service by the Police. Persons to or with whom a summons is delivered, tendered or left may be required (section 67) to countersign a copy of the original. Provision is made (sections 70, 71) for the service of a summons outside the local jurisdiction of the Magistrate who issues it, and for the proof of such service.

9. Section 72 requires that all warrants of arrest, whether issued in the Presidency-towns or the Mufassal, shall be sealed. Act IV of 1877, section 56, does not in such cases require a seal.

10. Section 85 clears up a doubt as to the commencement of the period provided in the corresponding section (171) of Act X of 1872, for the appearance of a person absconding against whom a warrant has been issued.

11. On the other hand, the power to arrest without warrant persons against whom a hue and cry has been raised is omitted, as that obsolete common-law process is unknown in India, and the section authorizing masters and mates to arrest deserters from ships is omitted, as the matter is sufficiently provided for by the Merchant Shipping Act.

Prevention of Offences.

12. Part IV, which relates to the prevention of offences, comes, it is considered, properly before Part VI, which relates to their prosecution. It comprises six chapters dealing respectively with lawful resistance; security for keeping the peace and for good behaviour; the dispersion of unlawful assemblies; suppression of nuisances; disputes as to immoveable property; and, lastly, the preventive action of the Police.

13. The provision (section 104) relating to lawful resistance to the commission of an offence is new. It declares that such resistance may be made by any person in the cases and to the extent in and to which he may exercise the right of private defence—a right defined and limited by the Penal Code, sections 96—106.

14. In the chapter relating to bonds for keeping the peace, and for good behaviour, provision has been made (section 116) as to the manner of conducting inquiries. We have made it clear in section 124 that a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, and Magistrate of the first class can cancel a bond on the application of a surety. Such Magistrates are also empowered (section 108) to require security for good behaviour.

15. In the chapter (X) on dispersion of unlawful assemblies, volunteers enrolled under the Indian Volunteers Act, 1869, are placed on the same footing as soldiers of Her Majesty's army.

Information to the Police, and their power to investigate.

16. Part V consists of a single chapter relating to information to the Police and their power to investigate. It corresponds with chapter X of Act X of 1872, and sections 379, 380 of the same Act.

17. The words "or that immediate arrest is not necessary," which are to be found in section 117 of Act X of 1872, have been omitted from section 155 of the Bill, as it is not apparent why a police-officer should be debarred from investigating a case of a cognizable offence because he does not at starting feel himself justified in arresting any person.

18. Section 162 makes it clear that confessions to Magistrates shall not only be "taken," but signed and certified, like examinations of accused persons.

19. Power resembling that conferred on Coroners by Act IV of 1871, section 11, has been given (section 174) to Magistrates authorized to hold inquests, to disinter and examine corpses in order to discover the cause of death.

Proceedings in Prosecutions.

20. Part VI treats of proceedings in prosecutions up to appeal, and is divided into seventeen chapters, arranged as follows:—

XV. Jurisdiction of Criminal Courts in Inquiries and Trials.
XVI. Complaints to Magistrates.
XVII. Commencement of Proceedings before Magistrates.
XVIII. Inquiry into cases triable by the Court of Session or High Court.
XIX. The Charge.
XX. Trial of Summons Cases by Magistrates.
XXI. Trial of Warrant Cases by Magistrates.
XXII. Summary Trials.
XXIII. Trials before High Courts and Courts of Session.
XXIV. Tender of Pardon in cases triable by the High Court or Court of Session.
XXV. General Provisions as to Inquiries and Trials.
XXVI. Evidence.
XXVII. The Judgment.
XXVIII. Submission of Sentences for Confirmation.
XXIX. Execution.
XXX. Suspensions, Remissions and Commutations of Sentences.
XXXI. Previous Acquittals or Convictions.

It will be seen that the above-mentioned chapters are arranged, as nearly as may be, according to the chronological order of the events in a prosecution.

Chapter XV (as to the jurisdiction of the Courts in inquiries and trials) deals, first, with the place of inquiry or trial: then with the time of commencing prosecutions: and, thirdly, with the conditions requisite for the initiation of proceedings.

21. "Delay," says Livingston, "inflicts punishment on the innocent, or lessens the force of example by punishing the guilty after the crime he has committed is forgotten." Sections 186-191 accordingly contain rules as to the time within which prosecutions for most offences must be commenced. There will be no limit for prosecutions for the following: offences against the State; offences relating to the Army and Navy; false evidence and offences against public justice; offences relating to coin and Government stamps; offences under the Penal Code, sections 299 to 311, 359 to 373 and 390 to 414; offences under the same Code relating to documents, trade and property-marks and marriage. Three years is the period fixed in case of the following: offences against the public tranquillity; offences by or relating to public servants; contempts of their lawful authority; offences against property other than those against trade and property-marks. For all other offences six months is the period prescribed. The time during which the accused is absent from the jurisdiction of the Court empowered to try him,

or fails to surrender pursuant to a proclamation, will be excluded in computing the prescribed periods.

22. Section 196 requires that the sanction to entertain complaints of certain offences shall, so far as practicable, specify the place in which, and the occasion on which, the offence complained of was committed.

23. Chapter XVI, of complaints to Magistrates, corresponds to sections 144 to 147 of Act X of 1872, but adds (section 202) a provision that a complaint in writing made to a Magistrate not competent to entertain it shall be returned for presentation to the proper tribunal.

24. Chapter XIX, of the charge, extends to the whole of British India the amendments in Act X of 1872, sections 439 to 459, made by Act X of 1875; and with reference to Mr. Justice West's observations in *Reg.* v. *Chand Hur*, 11 Bomb. 241, on the corresponding section (457) of Act X of 1872, section 241 of the Bill has been confined to offences consisting of several particulars, a combination of some only of which constitutes a complete minor offence.

25. The provision (Act X of 1872, section 218) that the accused shall, while making his defence, be allowed to recall and cross-examine the witnesses for the prosecution has been expressly confined (section 259) to cases where the witnesses are present in the Court or its precincts.

26. In chapter XXII, summary trials, the Local Government has been authorised to confer on Benches invested with second or third class powers jurisdiction to try abetments of, and attempts to commit, the offences which they may now try summarily.

27. Chapter XXIII provides a common procedure for the High Court and the Court of Session, preserving, however, the special rules as to juries and their verdicts.

When a juror becomes unable to attend or absents himself, power is given (section 285), with the consent of the prosecutor and the accused, to proceed with the remaining jurors.

Where jurors or assessors have been taken to view the place in which the offence charged is alleged to have been committed, the Court has been empowered (section 296) to exempt them from being immediately brought back.

Where the Sessions Judge disagrees with a verdict of acquittal and submits the case to the High Court, he is required (section 310) to state the offence which he considers to have been committed, and the High Court is empowered to acquit or convict the accused of any offence of which the jury could have convicted him upon the charge framed and placed before it. This, it is believed, is the intention of the corresponding clause of section 263 of Act X of 1872.

28. Much doubt exists as to the offences which may lawfully be compounded. The Exception to section 214 of the Penal Code (in which the law on the subject is contained) is excessively obscure, and this obscurity is increased rather than diminished by the illustrations annexed to that section. The Bill repeals these illustrations; and section 347 declares in unmistakeable language that certain specified offences, and no others, may be compounded. It will be necessary to pass simultaneously with the Bill a short Act declaring that, for the Exception to section 280 of the Penal Code, the following shall be substituted:—

"*Exception.*—The provisions of sections 213 and 214 do not extend to any case in which the offence may lawfully be compounded."

29. In chapter XXVII, as to judgment, section 369 allows the judgments of Mufassal Courts to be written in the mother-tongue of the presiding officer.

30. In chapter XXIX, as to execution, there are no sections corresponding with sections 319, 320 of Act X of 1872. The reason for this omission is that the matter with which they deal does not belong to criminal procedure, but falls within the scope of the Prisoners' Act, 1871; and it is proposed that, simultaneously with the passing of the present Bill, a short Act be passed, substituting for section 33 of the Prisoners' Act, and for section 57 of Act IV of 1877, a section equivalent to Act X of 1872, sections 319, 320.

31. Chapter XXX, as to suspensions, remissions and commutations of sentences.—Where application is made for the suspension or remissions of a sentence, the Government is empowered (section 402) to require the presiding Judge of the Court before which the conviction was had to furnish a statement of the facts proved on the trial, and of any facts bearing on the propriety of granting or refusing the application.

Appeal, Reference and Revision.

32. Part VII deals with appeals, references and the revisional jurisdiction of the High Court.

Section 407 provides that the appeal from a District Magistrate exercising the enhanced powers conferred under section 34 shall lie to the Court of Session in cases in which the sentence has not been submitted to that Court for confirmation, and, when it has been so submitted, to the High Court. This puts the appeals in question on the same footing as appeal from an Assistant Sessions Judge. There seems to be no reason for making any distinction between the two.

33. Section 424, in accordance with a decision of the Madras High Court (I. L. R. 1 Mad. 54), declares that, when an Appellate Court enhances any punishment inflicted by the sentence appealed against, it may inflict punishment of a different kind.

34. In the case of an appeal from an acquittal, section 427 expressly authorizes the High Court to order the accused to be arrested and brought before it, and to commit him to prison pending the disposal of the appeal, or admit him to bail.

35. A section (431) suggested by a decision of the Bombay High Court (I. L. R. 2 Bomb. 564) provides that appeals by persons required to give security for good behaviour or by convicted persons abate on their death, and that appeals against acquittals abate on the death of the accused. The power of revision conferred by section 439 will enable the High Court to alter sentences even after the appeal has abated.

36. Where, in the opinion of the Court of Session or District Magistrate, an accused person has been improperly discharged by an inferior Court, the accused should not be committed without having had an opportunity of shewing cause why the committal should not be made (1 O'K. 98). Provision to this effect has been made by section 436.

37. Section 439 (corresponding with Act X of 1872, section 297) has been framed so as to allow the High Court, when exercising its revisional jurisdiction, to interfere with improper acquittals. There is reason to believe that this change is in accordance with the intention of the framers of Act X of 1872.

Special Proceedings.

38. Part VIII, as to special proceedings, deals with the procedure relating to the following matters:—criminal proceedings against Europeans and Americans: lunatics: contempts of Court and other offences affecting the administration of justice: maintenance of wives and children: State prisoners: proceedings in the nature of *habeas corpus*.

Section 451 removes some differences which exist in the present law between the procedure of the High Courts and Courts of Session in cases in which European British subjects are concerned and which seem unnecessary. In particular, it is provided that, in the Court of Session as well as in the High Court, the requisite moiety of the jury or Assessors may be made up of Americans as well as Europeans.

39. The power given by sections 433 and 434 of Act X of 1872, to discharge from custody or make over to his relative a person acquitted on the ground of insanity, has been extended, in sections 474 and 475 of the Bill, to the case of persons who, being found to be insane at the time of trial, are committed to custody.

40. Section 477 has been framed so as to allow a Court of Session to charge a person for giving false evidence before itself—a power of which such Courts were unintentionally deprived by section 472 of the present Code.

41. Section 487 has been redrawn so as to avoid the difficulty which is felt in determining the meaning of the words "offence committed in contempt of its own authority," which occur in the corresponding section (473) of Act X of 1872.

Supplementary Provisions.

42. Part IX contains certain provisions supplementary to the general rules of procedure contained in the Code. It deals, first, with the public prosecutor, bail, commissions for the examination of witnesses and special rules of evidence. It then contains certain provisions relating to bonds to keep the peace, for good behaviour, for appearance, &c.: the disposal of property regarding which an offence has been committed: the transfer of criminal cases: irregular proceedings, and, lastly, certain miscellaneous matters.

43. Words have been introduced into the section (502) providing for the appointment of a public prosecutor which will have the effect of putting a stop to the practice of appointing a police officer.

44. Section 505 exempts the Advocate General, Standing Counsel, Government Solicitor or other officer empowered by the Local Government from the necessity of obtaining permission to conduct prosecutions.

45. The provisions of the present law as to commissions for the examination of witnesses have been amended in two respects. The Bill (section 515) requires that the interrogatories shall be thought relevant by the Magistrate or Court directing the commission, and power is expressly given (section 518) to stay the inquiry or trial for a specified time reasonably sufficient for the execution and return of the commission.

46. In proving the existence of circumstances as a defence under the 2nd, 3rd, 5th, 6th, 7th, 8th, 9th or 10th Exception to section 499 of the Penal Code, section 521 of the Bill provides that good faith shall be presumed until the contrary appears. This is now the law in the Presidency-towns (Act XVIII of 1862, section 27) and may usefully be extended to the Mufassal.

47. In accordance with a recent rule of the High Court at Bombay, section 528 declares that, when a High Court or Court of Session makes an order for the disposal of property, and cannot through its own officers conveniently deliver the property to the person entitled thereto, the Court may direct its order to be carried into effect by the committing Magistrate.

48. Section 531 provides, in case of a conviction under the Penal Code, sections 292, 293, 501 or 502, for the destruction of the obscene books and defamatory matter in respect of which the conviction was had. It also provides for the destruction of adulterated or noxious food, drink or drugs in respect of which a conviction was had under sections 272—275 of the same Code.

49. Section 536 provides, in accordance with a Minute of Sir B. Peacock, cited I. L. R. 1 Calc. 223, that applications to the High Court for the transfer of cases shall be made by motion supported by affidavit or affirmation.

Schedules.

50. Schedules II and V, which correspond respectively with schedules IV and II of Act X of 1872, have been altered so as to adapt them, not only to the Mufassal Courts, but to those of the Presidency Magistrates.

The lists of powers contained in section 21 *et seq.* of Act X of 1872 have been thrown into Schedules III and IV of the Bill.

51. Excluding the special provisions of the Acts relating respectively to Coroners in the Presidency-towns, extradition, European British vagrants, and criminal tribes, the Bill is now, so far as Mr. Cockerell, Mr. Fitzpatrick and myself have been able to make it, a complete body of criminal procedure. No pains have been spared to render its provisions plain and practical; and in return all competent persons are earnestly asked to point out the mistakes and omissions which they will doubtless discover in so large and complicated a work.

CALCUTTA;
The 28th March 1879.

WHITLEY STOKES.

D. FITZPATRICK,
Secy. to the Govt. of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, MAY 24, 1879.

☞ Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 21st May, 1879, and was referred to a Select Committee:—

No. 5 of 1879.

A Bill to provide for the registration of Trade-marks.

WHEREAS it is expedient to provide for the registration of trade-marks; It is hereby enacted as follows:—

Preamble.

Short title.

1. This Act may be called "The Indian Trade-marks Act, 1879":

Local extent.

It extends to the whole of British India;

Commencement.

and it shall come into force at once.

Interpretation-clause.

2. In this Act, unless there be something repugnant in the subject or context,—

"Trade-mark."

"trade-mark" means a mark consisting of one or more of the following essential particulars (namely):

(*a*) a name of an individual or firm printed, impressed or woven in some particular and distinctive manner, or

(*b*) a written signature or copy of a written signature of an individual or firm, or

(*c*) a distinctive device, mark, heading, label or ticket:

provided that there may be added to any one or more of the said particulars any letters, words or numerals, or combination of letters, words or numerals:

it includes also any special and distinctive word or words, or combination of numerals or letters, used as a trade-mark before the passing of this Act:

"Registered" and "registration."

"registered" and "registration" respectively mean registered and registration under this Act and the rules made hereunder and for the time being in force:

"The Court."

"the Court" means the High Court of Judicature at Fort William.

Appointment of a Registrar.

3. An officer (hereinafter called "the Registrar") shall be appointed from time to time, by name or in virtue of his office, by the Governor General in Council to register trade-marks and the proprietors thereof.

Registration of trade-marks.

4. From and after the first day of January, 1880, no person shall be entitled to institute any suit or other proceeding to prevent, or to recover damages for, the infringement of any trade-mark, unless such trade-mark is registered; but nothing in this section shall apply to any device, mark, name, combination of words, or other matter or thing which has been in use as a trade-mark before the passing of this Act, and which the Registrar has refused to register under this Act.

Characteristics of registered trade-marks.

5. A trade-mark must be registered as belonging to particular goods or classes of goods; and, when registered, shall be assigned

and transmitted only in connexion with the good-will of the business concerned in such particular goods or classes of goods, and shall be determinable with such good-will.

Registration of a trade-mark shall be deemed to be equivalent to public use of such mark.

Title of first proprietor of a trade-mark.

6. The registration of a person as first proprietor of a trade-mark shall be *primâ facie* proof, and, after the expiration of five years from the date of such registration, conclusive proof, of his right to the exclusive use of such trade-mark, subject to the provisions of this Act as to its connexion with the good-will of a business.

Title of proprietor claiming by transmitted proprietorship.

7. Every person registered as proprietor of a trade-mark subsequently to the first person so registered shall, as respects his title to such trade-mark, stand in the same position as if his title were a continuation of the title of the first person so registered.

Rectification of register.

8. If any person who is not for the time being entitled, in accordance with this Act or otherwise in accordance with law, to the exclusive use of a trade-mark is registered as a proprietor of such trade-mark, or

if the Registrar refuses to register, as proprietor of a trade-mark, the name of any person who is for the time being entitled in accordance with this Act or otherwise in accordance with law to the exclusive use of such trade-mark, or

if any mark is registered as a trade-mark which is not authorized to be so registered,

any person aggrieved by such registration or refusal may apply by motion, or in such other manner as the Court may direct, for an order of the Court that the register may be rectified.

The Court may either refuse such application, or it may, if satisfied of the justice of the case, make an order for the rectification of the register and award damages to the party aggrieved.

Case of several persons claiming to be registered in respect of same mark.

9. When each of several persons claims to be registered as proprietor of the same trade-mark, the Registrar may refuse to comply with the claims of any of such persons until their rights have been determined by the Court.

The Registrar may himself submit, or require the claimants to submit, their rights to the Court, by stating a case under section 527 of the Code of Civil Procedure, or in such other manner as the Court may direct.

What Court may decide in proceedings under Act.

10. The Court may, in any proceeding under section eight or section nine, decide—

(*a*) whether a mark is or is not such a trade-mark as is authorized to be registered under this Act;

(*b*) any question as to the right of any person who is party to such proceeding to have his name entered on the register of trade-marks, or to have the name of some other person removed from such register; and

(*c*) any other question that it may be necessary or expedient to decide for the rectification of the register.

Whenever any order has been made rectifying the register, the Court shall by its order direct that due notice of such rectification be given to the Registrar.

Notice to be given by order of Court.

Registration not to be granted without leave of Court in certain cases.

11. The Registrar shall not, without the special leave of the Court, to be given on motion or in such other manner as the Court may direct, register in respect of the same goods or classes of goods—

(*a*) a trade-mark identical with one which is already registered with respect to such goods or classes of goods; or

(*b*) a trade-mark so nearly resembling a trade-mark already registered with respect to such goods or classes of goods as to be calculated to deceive.

Registration when not to be granted.

12. The Registrar shall not register, as part of, or in combination with, a trade-mark, any scandalous designs, or any words, if the exclusive use of such words would not, by reason of their being calculated to deceive or otherwise, be deemed entitled to protection in a Court.

Governor General in Council may make rules to carry out Act.

13. The Governor General in Council may from time to time make rules consistent with this Act as to—

(*a*) the manner in which applications for registration of trade-marks shall be made;

(*b*) the notices to be given by advertisement before the registration of trade-marks;

(*c*) the classification of goods for the purposes of this Act;

(*d*) the registration of first and subsequent proprietors of trade-marks;

(*e*) the fees to be charged for registration of trade-marks, for the continuance of a trade-mark on the register and for granting certificates of refusal to register anything as a trade-mark;

(*f*) the removal from the register of any trade-mark;

(*g*) the form of notices under this Act, the mode of addressing and serving such notices, and the proof of such service;

(*h*) the persons entitled to inspect the register; and

(*i*) generally for the purpose of carrying this Act into effect.

Such rules shall be published in the *Gazette of India*, and shall thereupon have the force of law.

Certificate of Registrar to be evidence.

14. The certificate of the Registrar as to any entry, matter or thing which he is authorized by this Act, or any rules made hereunder, to make or do, shall be evidence of such entry having been made and of the contents thereof, and of such matters and things having been done or left undone.

Saving of marks and devices not capable of being registered under Act.

15. When an application by any person to register as a trade-mark a device, mark, name, word, combination of words, or other matter or thing which has been in use as a trade-mark before the passing of this Act, has been refused, the Registrar shall, at the request of the applicant and on payment by him of the fee prescribed by the rules made under section thirteen, grant him a certificate of such refusal.

A certificate so granted shall be conclusive proof of such refusal.

Saving of existing jurisdiction of Courts.

16. The provisions of this Act conferring a special jurisdiction on the said High Court shall not, except so far as such jurisdiction extends, affect the jurisdiction of any other Court in suits or proceedings relating to trade-marks.

Registrar to rectify register on notice from them.

If the register requires to be rectified in consequence of any proceedings in any such other Court, due notice of such requirement shall be given to the Registrar, and he shall rectify the register accordingly.

STATEMENT OF OBJECTS AND REASONS.

THIS Bill has been prepared, at the request of the Government of Bombay, to meet the wishes of the Mill-owners Association and the Bombay Chamber of Commerce. Both these bodies call the attention of the Local Government to the provisions of the English Trade-marks Registration Acts of 1875 and 1876 (which have been held by the High Court of Bombay not to apply to India), and state that it seems desirable, having regard to the increase of manufactures in this country, and especially of the cotton-manufactures of Bombay, that there should be a law of a similar nature in India.

2. The Bill is nothing more than a reproduction, with the changes required to fit them to the different circumstances of this country, of the provisions of the Statutes 38 & 39 Vic., chapter 91 (An Act to establish a register of Trade-marks), and 39 & 40 Vic., chapter 33 (An Act for the amendment of the Trade-marks Registration Act, 1875). It seems desirable (more especially in the case of laws dealing with large commercial interests), when the object of one of our Acts is merely to extend the provisions of an Imperial Statute to this country, to follow closely the lines of such Statute, so as to make the law in this country as nearly as possible identical with that in England.

3. The Bill provides for the appointment of a Registrar and the registration of trade-marks, and enacts that, after a certain fixed date, no suit shall be brought for the infringement of a trade-mark, unless such trade-mark is registered in accordance with the provisions of the Bill; it further defines the essential particulars of which a trade-mark must hereafter consist; but it saves from the operation of these provisions the trade-marks which are at present in use and entitled to protection as such. The other provisions of the Bill are subsidiary to these, and the only one of them calling for notice here is that by which the High Court at Fort William is appointed the Court for the purposes of the Act. As it is understood that the registry-office will be situate at Calcutta (where alone proprietorship in copyright and specifications of inventions are registered), that Court is obviously the most convenient one to appoint.

WHITLEY STOKES.

The 22nd March, 1879.

D. FITZPATRICK,
Secy. to the Govt. of India,
Legislative Department.

[First publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 21st May, 1879, and was referred to a Select Committee with instructions to report in four weeks:—

No. 6 of 1879.

THE OUDH CIVIL COURTS BILL, 1879.

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SCHEDULE.

A Bill to amend the law relating to Civil Courts in Oudh.

Preamble.

WHEREAS it is expedient to amend the law relating to Civil Courts in Oudh; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called "The Oudh Civil Courts Act, 1879":

Local extent.

It extends to all the territories for the time being administered by the Chief Commissioner of Oudh;

Commencement.

and it shall come into force on the first day of July, 1879.

Repeal of enactments.

2. On and from that day the Acts mentioned in the schedule hereto annexed shall be repealed to the extent specified in the third column thereof.

"District" defined.

3. In this Act, "district" means the area comprised in the local limits of the jurisdiction of the District Judge.

CHAPTER II.

CONSTITUTION OF COURTS.

Grades of Courts.

4. Besides the Courts established under any other enactment for the time being in force, there shall be four grades of Civil Courts in Oudh (namely):—

(1) the Court of the Munsif;
(2) the Court of the Subordinate Judge;
(3) the Court of the District Judge;
(4) the Court of the Judicial Commissioner.

Number of District Judges.

5. The number of District Judges, Subordinate Judges and Munsifs to be appointed under this Act shall be fixed, and may from time to time be altered, by the Local Government.

Appointment of officers under Act.

6. The Governor General in Council may appoint such person as he thinks fit to be Judicial Commissioner.

The District Judges, Subordinate Judges and Munsifs shall be appointed by the Local Government.

Additional Judges.

7. When the business pending before any District Judge requires the aid of Additional Judges for its speedy disposal, the Local Government may, upon the recommendation of the Judicial Commissioner, and with the previous sanction of the Governor General in Council, appoint such Additional Judges as may be requisite.

Such Additional Judges shall perform any of the duties of a Judge under chapter III of this Act that the District Judge may, with the sanction of the Judicial Commissioner, assign to them; and in the performance of such duties they shall exercise the same powers as the District Judge.

Temporary charge of the office of District Judge.

8. In the event of the death of a District Judge, or of his being incapacitated by illness or otherwise for the performance of his duties, or of his absence from the station in which his Court is held, the Additional Judge, or, if there is no Additional Judge attached to such Court, the senior Subordinate Judge of the District, shall, without relinquishing his ordinary duties, assume charge of the Judge's office;

and shall discharge such of the current duties thereof as are connected with the filing of suits and appeals, the issue of processes and the like functions;

and shall continue in charge of the office until it is resumed by the District Judge, or assumed by an officer duly appointed thereto.

Transfer of proceedings on death, &c., of Subordinate Judge.

9. In the event of the death of a Subordinate Judge, or of his being incapacitated by illness or otherwise for the performance of his duties, or of his absence on leave, when no person is appointed to act for him,

the District Judge may transfer all or any of the proceedings pending in the Court of such Subordinate Judge either to his own Court or to the Court of a Subordinate Judge (if any) under his control.

All proceedings transferred under this section shall be disposed of as if they had been instituted in the Court to which they are so transferred.

Principal Civil Court of original jurisdiction.

10. The Court of the District Judge shall be deemed to be the principal Civil Court of original jurisdiction in the district over which his jurisdiction extends.

Control over Civil Courts.

The control over all the Civil Courts in such district is invested in the said District Judge, but subject to the general control of the Judicial Commissioner.

Appointment of ministerial officers of Courts.

11. The Judicial Commissioner and the District Judges, and, subject to the approval of the District Judges to whose control they are respectively subject, the Subordinate Judges and Munsifs, shall appoint the ministerial officers of their Courts.

Transfer of ministerial officers.

12. The Judicial Commissioner or any District Judge may transfer any ministerial officer from any Court under his control to any other Court under his control.

Seals of Courts.

13. Every Court under this Act shall use a seal of such form and dimensions as are for the time being prescribed by the Local Government.

Place of sitting of Courts.

14. The Local Government may fix and from time to time alter the place or places at which any Court under this Act is to be held.

Power to confer Munsif's jurisdiction.

15. The Local Government may, from time to time, by notification in the official Gazette, invest such persons as it thinks fit with the powers of a Munsif, subject to such restrictions in respect of the value of the subject-matter of the suits as may be deemed proper, and withdraw such jurisdiction.

CHAPTER III.

GENERAL JURISDICTION.

Power to fix local limits of jurisdiction.

16. The Local Government shall, by notification in the official Gazette, fix, and may by a like notification from time to time vary, the local limits of the jurisdiction of any Civil Court or person invested with the powers of a Civil Court under this Act.

Extent of original jurisdiction of District Judge;

17. Subject to the provisions of the Code of Civil Procedure, section 15,—

the jurisdiction of a District Judge extends to all original suits cognizable by the Civil Courts.

of Subordinate Judge;

Subject as aforesaid, the jurisdiction of a Subordinate Judge extends to all suits in which the amount or value of the subject-matter in dispute does not exceed ten thousand rupees, and

of Munsif.

the jurisdiction of a Munsif to all suits in which such amount or value does not exceed one thousand rupees.

Appeals from Munsifs.

18. Appeals from the decrees and orders of Munsifs and Subordinate Judges in original suits and proceedings shall, when such appeals are allowed by law, lie to the District Judge:

Provided that the Judicial Commissioner may, from time to time, subject to such restrictions as he may deem fit, order that all or any of the appeals from the decrees and orders of a Munsif shall be preferred to such Subordinate Judge as may be mentioned in the order; and such appeals shall thereupon be preferred accordingly.

Power to refer to Subordinate Judge appeals from Munsifs.

19. Every District Judge may, from time to time, subject to the orders of the Judicial Commissioner, refer to any Subordinate Judge under his control any appeals pending before him from the decrees and orders of Munsifs; and such Subordinate Judge shall hear and dispose of such appeals accordingly.

The District Judge may withdraw any appeals so referred, and hear and dispose of appeals so withdrawn.

Appeals from District and Additional Judges.

20. Appeals from the decrees and orders of District Judges and Additional Judges in original suits and proceedings shall, when such appeals are allowed by law, lie to the Judicial Commissioner.

When Judicial Commissioner may receive second appeal.

21. When the decision of a Subordinate Judge, District Judge or Additional Judge passed in appeal confirms the decree or order of the Court of first instance, such decision shall be final; but when such decision reverses or modifies such decree or order and is not declared by any law for the time being in force to be final, the Judicial Commissioner may receive a second appeal if, on a perusal of the grounds of appeal and of copies of the judgments of the lower Courts, it is of opinion that a further consideration of the case is requisite for the ends of justice.

Position of officers of Courts as regards appeals in which he is interested.

22. No presiding officer of any Court having jurisdiction under this Act shall try any suit or appeal in which he is a party or personally interested, or any appeal against a decree or order passed by himself, or shall adjudicate upon any proceeding connected with or arising out of such suit or appeal.

Mode of disposing of such suits.

When any such suit, appeal or proceeding comes before any such presiding officer, he shall forward the record of the case to the Court to which he is immediately subordinate, with a report of the circumstances regarding the reference.

The superior Court shall thereupon dispose of the case in the manner prescribed by section 25 of Act X of 1877.

In the event of an appeal being preferred to a Judicial Commissioner from a judgment or order passed by him in any other capacity, or in which he has any personal interest, he shall report the facts to the Local Government, which may transfer the case to the High Court of the North-Western Provinces for disposal, or appoint an officer to be an Additional Judicial Commissioner for the disposal of the case.

CHAPTER IV.

SPECIAL JURISDICTION.

23. The Local Government may invest, within such local limits as it from time to time fixes, any District Judge, Additional Judge or Subordinate Judge with the jurisdiction of a Judge of a Court of Small Causes for the trial of suits cognizable by such Courts up to the amount of five hundred rupees, and any Munsif with similar jurisdiction up to the amount of fifty rupees; and may, whenever it thinks fit, withdraw such jurisdiction from the Judge or Munsif so invested.

Power to invest Subordinate Judge and Munsif with Small Cause Court jurisdiction.

24. The Judicial Commissioner may from time to time, by order, authorize any District Judge to transfer to a Subordinate Judge or Munsif under the control of such District Judge any of the proceedings next hereinafter mentioned, or any class of such proceedings specified in such order, and then pending, or thereafter instituted, before such District Judge.

Power to transfer to Subordinate Judge or Munsif certain proceedings pending before District Judge.

The proceedings herein referred to are the following (that is to say):—

(1). Proceedings under Act XL of 1858 (*for making better provision for the care of the persons and property of minors in the Presidency of Fort William in Bengal*), or Act IX of 1861 (*to amend the law relating to minors*).

(2). Applications for permission to sue or appeal as a pauper.

(3). Applications for certificates under Act XXVII of 1860 (*for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons*).

The District Judge may withdraw any proceedings so transferred, and may either dispose of them himself, or, with the sanction of the Judicial Commissioner, transfer them to any other Subordinate Judge or Munsif under his control.

25. Subject to the provisions of the last clause of section twenty-four, all proceedings transferred under that section shall be disposed of by the Subordinate Judge or Munsif (as the case may be) according to the rules prescribed for the guidance of District Judges in like cases:

Disposal of proceedings so transferred.

Provided that an appeal from the order of the Subordinate Judge or Munsif in such cases shall lie to the District Judge.

An appeal from his order thereon shall lie to the Judicial Commissioner, if an appeal from the decision of the District Judge in such proceedings is allowed by the law in force for the time being.

CHAPTER V.

MISCONDUCT OF OFFICERS.

26. The Judicial Commissioner may be suspended or removed by the Governor General in Council.

Suspension and removal of Judicial Commissioner.

27. Any District Judge, Additional Judge, Subordinate Judge or Munsif may be suspended or removed by the Local Government.

Suspension or removal of subordinate judicial officers by Local Government.

28. The Judicial Commissioner may, whenever he sees urgent necessity for so doing, suspend any Subordinate Judge or Munsif under his control.

Suspension of Subordinate Judge or Munsif by Judicial Commissioner.

Whenever the Judicial Commissioner exercises this power, he shall forthwith report to the Local Government the circumstances of the suspension, and the Local Government shall make such order thereon as it thinks fit.

29. Any District Judge may, whenever he sees urgent necessity for so doing, suspend any Munsif under his control.

Suspension of Munsif by District Judge.

Whenever the District Judge suspends any such Munsif, he shall forthwith send to the Local Government, through the Judicial Commissioner, a full report of the case, with the evidence (if any); and the Local Government shall make such order thereon as it thinks fit.

30. The Judicial Commissioner may remove or suspend the ministerial officers of his Court, or fine them in an amount not exceeding one month's salary.

Removal, &c., of ministerial officers of Judicial Commissioner's Court.

31. The Judicial Commissioner, and, subject only to the general control of the Judicial Commissioner, the Judges of the District Courts, may remove or suspend the ministerial officers of such Courts, or fine them in an amount not exceeding one month's salary.

Removal, &c., of ministerial officers of Judges' Courts.

32. Any Subordinate Judge or Munsif may, by order, remove or suspend from office, or fine in an amount not exceeding one month's salary, any ministerial officer of his Court who is guilty of any misconduct or neglect in the performance of the duties of his office. And the District Judge, subject only to the general control of the Local Government, may, on appeal or otherwise, reverse or modify every such order.

Removal, &c., of ministerial officers of Subordinate Judges and Munsifs' Courts.

The Judicial Commissioner (or the District Judge within whose jurisdiction such Court is situate) may by order suspend or remove any such ministerial officer.

33. Any fine imposed under this chapter shall, if the order imposing it so directs, be recovered from the offender's salary.

Recovery of fines.

CHAPTER VI.

MISCELLANEOUS.

34. The Judicial Commissioner may, from time to time, with the previous sanction of the Local Government, make rules—

Petition-writers.

(*a*) declaring what persons shall be permitted to practise as petition-writers in the Court of Oudh;

(*b*) regulating the conduct of persons so practising.

Whoever breaks any rule made under this section shall be punished with fine which may extend to fifty rupees.

35. When a mortgagee shall, under or by virtue of a mortgage executed before the thirteenth of February, 1844, have obtained possession of any land comprised in his mortgage, the mortgagor, or any person claiming through him, shall not bring a suit to redeem the mortgage of such land, any subsequent acknowledgment of the title or right to redeem of the mortgagor, or of any person claiming through him, notwithstanding.

Bar of redemption-suits when mortgage executed before 13th February, 1844.

Nothing herein contained shall be taken to bar a suit for redemption in any case where, by the instrument of mortgage, a term was fixed within which the property comprised therein might be redeemed, and such term had not expired before the thirteenth day of February, 1856: provided that, if any such term had expired before that day, the suit shall be barred, whatever may have been the date on which the instrument was executed.

Redemption-suits not barred where fixed term for redemption had not expired before 13th February, 1856.

36. Subject to such orders as may from time to time be issued by the Governor General in Council, and to the approval of the Local Government, the Judicial Commissioner shall prepare a list of days to be observed in each year as close holidays in the Courts subordinate to him.

Vacations.

Such list shall be published in the local official Gazette, and the said days shall be observed accordingly.

37. All proceedings pending on the first day of July, 1879, shall be heard and disposed of by the Courts established under this Act that would have had jurisdiction if they had been in existence when such proceedings were instituted.

Pending proceedings.

For the purposes of this section, all appeals pending on the said date shall—

(*a*) if preferred from the decrees, orders or decisions of Commissioners,—be deemed to be appeals from District Judges;

(*b*) if preferred from the decrees, orders or decisions of Deputy Commissioners or of Assistant Commissioners, or Extra-Assistant Commissioners acting in exercise of enhanced powers conferred under the Oudh Civil Courts Act, section eleven, clause two,—be deemed to be appeals from Subordinate Judges; and

(*c*) if preferred from the decrees or orders of Assistant Commissioners or Extra-Assistant Commissioners otherwise acting or of Tahsildárs,—be deemed to be appeals from Munsifs.

38. For the purposes of sections eighteen to twenty-one (both inclusive), all decrees, orders and decisions passed before the date on which this Act comes into force shall be deemed—

Appeals from decrees, &c., passed before Act comes into force.

(*a*) if passed by a Commissioner,—to have been passed by a District Judge;

(*b*) if passed by a Deputy Commissioner, or by an Assistant or Extra Assistant Commissioner in exercise of enhanced powers conferred under the Oudh Civil Courts Act, section eleven, clause two,—to have been passed by a Subordinate Judge; and

(*c*) if passed by an Assistant or Extra Assistant Commissioner otherwise than as aforesaid, or by a Tahsildár,—to have been passed by a Munsif.

SCHEDULE.

ACTS REPEALED.

(*See section* 3.)

Number and year.	Title of Act.	Extent of repeal.
Act X of 1870 ...	The Land Acquisition Act, 1870 ...	So much of section 3 as declares the Commissioner of a Division to be a principal Civil Court of original jurisdiction in Oudh.
Act XXXII of 1871 ...	The Oudh Civil Courts Act, 1871	The whole, except section 40.
Act XVIII of 1876 ...	The Oudh Laws Act, 1876 ...	Sections 21, 28 and 43.
Act XIV of 1878 ...	An Act to assimilate certain powers of the Local Governments of the North-Western Provinces and Oudh.	Section 3.

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to bring the law in Oudh with regard to the constitution and jurisdiction of the Civil Courts into harmony with the new state of things which will result from the separation of the judicial and executive branches of the Administration in that Province. The law at present regulating the Civil Courts in Oudh is Act XXXII of 1871 (the Oudh Civil Courts Act, 1871). It was found that, in order to fit that Act to the altered circumstances of Oudh, it would have to be practically reconstructed; and it was therefore determined to adopt the simpler and more convenient course of repealing it altogether, and of embodying such of its provisions as it might be desirable to retain in a new Act.

2. This Bill is in the main an extension to Oudh of the law regulating the Civil Courts in Bengal and the North-Western Provinces, namely, Act VI of 1871 (the Bengal Civil Courts Act, 1871), with certain modifications, which the circumstances of Oudh seem to require.

3. The chief points of variance between the Bill and the Bengal Civil Courts Act are—

1*st*.—The limitation of the original jurisdiction of Sub-Judges to suits in which the value of the subject-matter in dispute does not exceed 10,000 rupees.

2*ndly*.—The declaration of the finality of decisions or orders passed in appeal where the appellate order is in concurrence with that of the Court of first instance.

3*rdly*.—The allowance of a second appeal on the facts as well as on a point of law where the effect of the order or decision of the Appellate Court is to reverse or substantially modify the order or decision of the Court of first instance.

4*thly*.—The alteration of the course of first appeal where the value of the subject-matter of the suit exceeds 5,000 rupees, but does not exceed 10,000 rupees.

4. The reason for the first of these changes is the expediency of suits of great value and importance, and in regard to which an appeal lies as a matter of right to the Privy Council, being tried by the principal Court of original civil jurisdiction.

The second and third points of divergence from the provisions of the Bengal Courts Act comprise simply the maintenance of the principle of the existing law in Oudh in regard to appeals, which has not only worked well hitherto, but has been thought worthy of adoption to some extent for other Provinces.

The fourth change is the natural accompaniment of the first, as its effect is to bring all suits either in the original or appellate stage, where they reach the appellate stage, before the District Court.

5. Sections 23 to 25 of Act XXXII of 1871, giving the Judicial Commissioner power to refer cases to the High Court of the North-Western Provinces, and section 27 of that Act, conferring power to appoint an Additional Judicial Commissioner, have been omitted from the Bill; the former because it does not appear to be used; the latter because it is no longer necessary.

6. Section 21 of the Oudh Laws Act (XVIII of 1876), relating to the management of land attached by the Civil Courts, and section 28 of the same Act, which gives the Judicial Commissioner a power of revising the decisions of the Subordinate Courts, are repealed, because it is considered that these matters are sufficiently provided for by the Code of Civil Procedure.

F. R. COCKERELL.

The 1st May, 1879.

D. FITZPATRICK,
Secy. to the Govt. of India,
Legislative Department.

[First publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 21st May, 1879, and was referred to a Select Committee:—

No. 7 of 1879.

A Bill to provide for the revision of proceedings in trials held under the Military Cantonments Act, 1864, section 20.

WHEREAS it is expedient to provide for the revision of the proceedings in trials held under the twentieth section of Act No. XXII of 1864 (*to make provision for the Administration of Military Cantonments*); It is hereby enacted as follows:—

1. For the last clause of the said section, the following shall be substituted (that is to say):—

New clause substituted in Act XXII of 1864, sec. 20.

"There shall be no appeal in any case tried under this section; but every person trying any such case shall, for the purposes of chapter XXII of the Code of Criminal Procedure, be deemed to be subordinate to the High Court, the Court of Session and the Magistrate of the District."

STATEMENT OF OBJECTS AND REASONS.

IN a case tried some months ago by an officer specially invested, under section 20 of Act XXII of 1864, with power to try breaches of Cantonment rules, the Judges of the Chief Court of the Panjáb, to whom the officer's order was submitted for revision, expressed a doubt as to whether the twenty-second chapter of the Code of Criminal Procedure gave them any power of revision in such a case. They, at the same time, expressed an opinion to the effect that such a power ought to be provided. The Governor General in Council concurs as to the need of such a power, and the present Bill has been drafted to provide it.

WHITLEY STOKES.

The 17th April, 1879.

D. FITZPATRICK,
Secy. to the Govt. of India,
Legislative Department.

The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, MAY 31, 1879.

☞ Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

(Second publication.)

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 21st May, 1879, and was referred to a Select Committee:—

No. 5 of 1879.

A Bill to provide for the registration of Trade-marks.

Preamble.

WHEREAS it is expedient to provide for the registration of trade-marks; It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Indian Trade-marks Act, 1879":

Local extent.

It extends to the whole of British India;

Commencement.

and it shall come into force at once.

Interpretation-clause.

2. In this Act, unless there be something repugnant in the subject or context,—

"Trade-mark."

"trade-mark" means a mark consisting of one or more of the following essential particulars (namely):

(*a*) a name of an individual or firm printed, impressed or woven in some particular and distinctive manner, or

(*b*) a written signature or copy of a written signature of an individual or firm, or

(*c*) a distinctive device, mark, heading, label or ticket:

provided that there may be added to any one or more of the said particulars any letters, words or numerals, or combination of letters, words or numerals:

it includes also any special and distinctive word or words, or combination of numerals or letters, used as a trade-mark before the passing of this Act:

"Registered" and "registration."

"registered" and "registration" respectively mean registered and registration under this Act and the rules made hereunder and for the time being in force:

"The Court."

"the Court" means the High Court of Judicature at Fort William.

Appointment of a Registrar.

3. An officer (hereinafter called "the Registrar") shall be appointed from time to time, by name or in virtue of his office, by the Governor General in Council to register trade-marks and the proprietors thereof.

Registration of trade-marks.

4. From and after the first day of January, 1880, no person shall be entitled to institute any suit or other proceeding to prevent, or to recover damages for, the infringement of any trade-mark, unless such trade-mark is registered; but nothing in this section shall apply to any device, mark, name, combination of words, or other matter or thing which has been in use as a trade-mark before the passing of this Act, and which the Registrar has refused to register under this Act.

Characteristics of registered trade-marks.

5. A trade-mark must be registered as belonging to particular goods or classes of goods; and, when registered, shall be assigned

and transmitted only in connexion with the good-will of the business concerned in such particular goods or classes of goods, and shall be determinable with such good-will.

Registration of a trade-mark shall be deemed to be equivalent to public use of such mark.

Title of first proprietor of a trade-mark.

6. The registration of a person as first proprietor of a trade-mark shall be *primâ facie* proof, and, after the expiration of five years from the date of such registration, conclusive proof, of his right to the exclusive use of such trade-mark, subject to the provisions of this Act as to its connexion with the good-will of a business.

Title of proprietor claiming by transmitted proprietorship.

7. Every person registered as proprietor of a trade-mark subsequently to the first person so registered shall, as respects his title to such trade-mark, stand in the same position as if his title were a continuation of the title of the first person so registered.

Rectification of register.

8. If any person who is not for the time being entitled, in accordance with this Act or otherwise in accordance with law, to the exclusive use of a trade-mark is registered as a proprietor of such trade-mark, or

if the Registrar refuses to register, as proprietor of a trade-mark, the name of any person who is for the time being entitled in accordance with this Act or otherwise in accordance with law to the exclusive use of such trade-mark, or

if any mark is registered as a trade-mark which is not authorized to be so registered,

any person aggrieved by such registration or refusal may apply by motion, or in such other manner as the Court may direct, for an order of the Court that the register may be rectified.

The Court may either refuse such application, or it may, if satisfied of the justice of the case, make an order for the rectification of the register and award damages to the party aggrieved.

Case of several persons claiming to be registered in respect of same mark.

9. When each of several persons claims to be registered as proprietor of the same trade-mark, the Registrar may refuse to comply with the claims of any of such persons until their rights have been determined by the Court.

The Registrar may himself submit, or require the claimants to submit, their rights to the Court, by stating a case under section 527 of the Code of Civil Procedure, or in such other manner as the Court may direct.

What Court may decide in proceedings under Act.

10. The Court may, in any proceeding under section eight or section nine, decide—

(*a*) whether a mark is or is not such a trade-mark as is authorized to be registered under this Act;

(*b*) any question as to the right of any person who is party to such proceeding to have his name entered on the register of trade-marks, or to have the name of some other person removed from such register; and

(*c*) any other question that it may be necessary or expedient to decide for the rectification of the register.

Notice to be given by order of Court.

Whenever any order has been made rectifying the register, the Court shall by its order direct that due notice of such rectification be given to the Registrar.

Registration not to be granted without leave of Court in certain cases.

11. The Registrar shall not, without the special leave of the Court, to be given on motion or in such other manner as the Court may direct, register in respect of the same goods or classes of goods—

(*a*) a trade-mark identical with one which is already registered with respect to such goods or classes of goods; or

(*b*) a trade-mark so nearly resembling a trade-mark already registered with respect to such goods or classes of goods as to be calculated to deceive.

Registration when not to be granted.

12. The Registrar shall not register, as part of, or in combination with, a trade-mark, any scandalous designs, or any words, if the exclusive use of such words would not, by reason of their being calculated to deceive or otherwise, be deemed entitled to protection in a Court.

Governor General in Council may make rules to carry out Act.

13. The Governor General in Council may from time to time make rules consistent with this Act as to—

(*a*) the manner in which applications for registration of trade-marks shall be made;

(*b*) the notices to be given by advertisement before the registration of trade-marks;

(*c*) the classification of goods for the purposes of this Act;

(*d*) the registration of first and subsequent proprietors of trade-marks;

(*e*) the fees to be charged for registration of trade-marks, for the continuance of a trade-mark on the register and for granting certificates of refusal to register anything as a trade-mark;

(*f*) the removal from the register of any trade-mark;

(*g*) the form of notices under this Act, the mode of addressing and serving such notices, and the proof of such service;

(*h*) the persons entitled to inspect the register; and

(*i*) generally for the purpose of carrying this Act into effect.

Such rules shall be published in the *Gazette of India*, and shall thereupon have the force of law.

Certificate of Registrar to be evidence.

14. The certificate of the Registrar as to any entry, matter or thing which he is authorized by this Act, or any rules made hereunder, to make or do, shall be evidence of such entry having been made and of the contents thereof, and of such matters and things having been done or left undone.

Saving of marks and devices not capable of being registered under Act.

15. When an application by any person to register as a trade-mark a device, mark, name, word, combination of words, or other matter or thing which has been in use as a trade-mark before the passing of this Act, has been refused, the Registrar shall, at the request of the applicant and on payment by him of the fee prescribed by the rules made under section thirteen, grant him a certificate of such refusal.

A certificate so granted shall be conclusive proof of such refusal.

Saving of existing jurisdiction of Courts.

16. The provisions of this Act conferring a special jurisdiction on the said High Court shall not, except so far as such jurisdiction extends, affect the jurisdiction of any other Court in suits or proceedings relating to trade-marks.

Registrar to rectify register on notice from them.

If the register requires to be rectified in consequence of any proceedings in any such other Court, due notice of such requirement shall be given to the Registrar, and he shall rectify the register accordingly.

STATEMENT OF OBJECTS AND REASONS.

THIS Bill has been prepared, at the request of the Government of Bombay, to meet the wishes of the Mill-owners Association and the Bombay Chamber of Commerce. Both these bodies call the attention of the Local Government to the provisions of the English Trade-marks Registration Acts of 1875 and 1876 (which have been held by the High Court of Bombay not to apply to India), and state that it seems desirable, having regard to the increase of manufactures in this country, and especially of the cotton-manufactures of Bombay, that there should be a law of a similar nature in India.

2. The Bill is nothing more than a reproduction, with the changes required to fit them to the different circumstances of this country, of the provisions of the Statutes 38 & 39 Vic., chapter 91 (An Act to establish a register of Trade-marks), and 39 & 40 Vic., chapter 33 (An Act for the Amendment of the Trade-marks Registration Act, 1875). It seems desirable (more especially in the case of laws dealing with large commercial interests), when the object of one of our Acts is merely to extend the provisions of an Imperial Statute to this country, to follow closely the lines of such Statute, so as to make the law in this country as nearly as possible identical with that in England.

3. The Bill provides for the appointment of a Registrar and the registration of trade-marks, and enacts that, after a certain fixed date, no suit shall be brought for the infringement of a trade-mark, unless such trade-mark is registered in accordance with the provisions of the Bill; it further defines the essential particulars of which a trade-mark must hereafter consist; but it saves from the operation of these provisions the trade-marks which are at present in use and entitled to protection as such. The other provisions of the Bill are subsidiary to these, and the only one of them calling for notice here is that by which the High Court at Fort William is appointed the Court for the purposes of the Act. As it is understood that the registry-office will be situate at Calcutta (where alone proprietorship in copyright and specifications of inventions are registered), that Court is obviously the most convenient one to appoint.

WHITLEY STOKES.

The 29th March, 1879.

D. FITZPATRICK,
Secy. to the Govt. of India,
Legislative Department.

[Second publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 21st May, 1879, and was referred to a Select Committee with instructions to report in four weeks:—

No. 6 of 1879.

THE OUDH CIVIL COURTS BILL, 1879.

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SCHEDULE.

A Bill to amend the law relating to Civil Courts in Oudh.

Preamble.

WHEREAS it is expedient to amend the law relating to Civil Courts in Oudh; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called "The Oudh Civil Courts Act, 1879":

Local extent.

It extends to all the territories for the time being administered by the Chief Commissioner of Oudh;

Commencement.

and it shall come into force on the first day of July, 1879.

Repeal of enactments.

2. On and from that day the Acts mentioned in the schedule hereto annexed shall be repealed to the extent specified in the third column thereof.

"District" defined.

3. In this Act, "district" means the area comprised in the local limits of the jurisdiction of the District Judge.

CHAPTER II.

CONSTITUTION OF COURTS.

Grades of Courts.

4. Besides the Courts established under any other enactment for the time being in force, there shall be four grades of Civil Courts in Oudh (namely):—

(1) the Court of the Munsif;
(2) the Court of the Subordinate Judge;
(3) the Court of the District Judge;
(4) the Court of the Judicial Commissioner.

Number of District Judges.

5. The number of District Judges, Subordinate Judges and Munsifs to be appointed under this Act shall be fixed, and may from time to time be altered, by the Local Government.

Appointment of officers under Act.

6. The Governor General in Council may appoint such person as he thinks fit to be Judicial Commissioner.

The District Judges, Subordinate Judges and Munsifs shall be appointed by the Local Government.

Additional Judges.

7. When the business pending before any District Judge requires the aid of Additional Judges for its speedy disposal, the Local Government may, upon the recommendation of the Judicial Commissioner and with the previous sanction of the Governor General in Council, appoint such Additional Judges as may be requisite.

Such Additional Judges shall perform any of the duties of a Judge under chapter III of this Act that the District Judge may, with the sanction of the Judicial Commissioner, assign to them; and in the performance of such duties they shall exercise the same powers as the District Judge.

Temporary charge of the office of District Judge.

8. In the event of the death of a District Judge, or of his being incapacitated by illness or otherwise for the performance of his duties, or of his absence from the station in which his Court is held, the Additional Judge, or, if there is no Additional Judge attached to such Court, the senior Subordinate Judge of the District, shall, without relinquishing his ordinary duties, assume charge of the Judge's office;

and shall discharge such of the current duties thereof as are connected with the filing of suits or appeals, the issue of processes and the like functions;

and shall continue in charge of the office until it is resumed by the District Judge, or assumed by an officer duly appointed thereto.

Transfer of proceedings on death, &c., of Subordinate Judge.

9. In the event of the death of a Subordinate Judge, or of his being incapacitated by illness or otherwise for the performance of his duties, or of his absence on leave, when no person is appointed to act for him,

the District Judge may transfer all or any of the proceedings pending in the Court of such Subordinate Judge either to his own Court or to the Court of a Subordinate Judge (if any) under his control.

All proceedings transferred under this section shall be disposed of as if they had been instituted in the Court to which they are so transferred.

Principal Civil Court of original jurisdiction.

10. The Court of the District Judge shall be deemed to be the principal Civil Court of original jurisdiction in the district over which his jurisdiction extends.

Control over Civil Courts.

The control over all the Civil Courts in such district is invested in the said District Judge, but subject to the general control of the Judicial Commissioner.

Appointment of ministerial officers of Courts.

11. The Judicial Commissioner and the District Judges, and, subject to the approval of the District Judges to whose control they are respectively subject, the Subordinate Judges and Munsifs, shall appoint the ministerial officers of their Courts.

Transfer of ministerial officers.

12. The Judicial Commissioner or any District Judge may transfer any ministerial officer from any Court under his control to any other Court under his control.

Seals of Courts.

13. Every Court under this Act shall use a seal of such form and dimensions as are for the time being prescribed by the Local Government.

Place of sitting of Courts.

14. The Local Government may fix and from time to time alter the place or places at which any Court under this Act is to be held.

Power to confer Munsif's jurisdiction.

15. The Local Government may, from time to time, by notification in the official Gazette, invest such persons as it thinks fit with the powers of a Munsif, subject to such restrictions in respect of the value of the subject-matter of the suit as may be deemed proper, and withdraw such jurisdiction.

CHAPTER III.

GENERAL JURISDICTION.

Power to fix local limits of jurisdiction.

16. The Local Government shall, by notification in the official Gazette, fix, and may by a like notification from time to time vary, the local limits of the jurisdiction of any Civil Court or person invested with the powers of a Civil Court under this Act.

Extent of original jurisdiction of District Judge;

17. Subject to the provisions of the Code of Civil Procedure, section 15,—

the jurisdiction of a District Judge extends to all original suits cognizable by the Civil Courts.

of Subordinate Judge;

Subject as aforesaid, the jurisdiction of a Subordinate Judge extends to all suits in which the amount or value of the subject-matter in dispute does not exceed ten thousand rupees, and

of Munsif.

the jurisdiction of a Munsif to all suits in which such amount or value does not exceed one thousand rupees.

Appeals from Munsifs.

18. Appeals from the decrees and orders of Munsifs and Subordinate Judges in original suits and proceedings shall, when such appeals are allowed by law, lie to the District Judge:

Provided that the Judicial Commissioner may, from time to time, subject to such restrictions as he may deem fit, order that all or any of the appeals from the decrees and orders of a Munsif shall be preferred to such Subordinate Judge as may be mentioned in the order; and such appeals shall thereupon be preferred accordingly.

Power to refer to Subordinate Judge appeals from Munsifs.

19. Every District Judge may, from time to time, subject to the orders of the Judicial Commissioner, refer to any Subordinate Judge under his control any appeals pending before him from the decrees and orders of Munsifs; and such Subordinate Judge shall hear and dispose of such appeals accordingly.

The District Judge may withdraw any appeals so referred, and hear and dispose of appeals so withdrawn.

Appeals from District and Additional Judges.

20. Appeals from the decrees and orders of District Judges and Additional Judges in original suits and proceedings shall, when such appeals are allowed by law, lie to the Judicial Commissioner.

When Judicial Commissioner may receive second appeal.

21. When the decision of a Subordinate Judge, District Judge or Additional Judge passed in appeal confirms the decree or order of the Court of first instance, such decision shall be final; but when such decision reverses or modifies such decree or order and is not declared by any law for the time being in force to be final, the Judicial Commissioner may receive a second appeal if, on a perusal of the grounds of appeal and of copies of the judgments of the lower Courts, he is of opinion that a further consideration of the case is requisite for the ends of justice.

Presiding officer of Court not to try suit or appeal in which he is interested.

22. No presiding officer of any Court having jurisdiction under this Act shall try any suit or appeal in which he is a party or personally interested, or any appeal against a decree or order passed by himself, or shall adjudicate upon any proceeding connected with or arising out of such suit or appeal.

Mode of disposing of such suit.

When any such suit, appeal or proceeding comes before any such presiding officer, he shall forthwith transmit the record of the case to the Court to which he is immediately subordinate, with a report of the circumstances attending the reference.

The superior Court shall thereupon dispose of the case in the manner prescribed by section 25 of Act X of 1877.

In the event of an appeal being preferred to a Judicial Commissioner from a judgment or order passed by him in any other capacity, or in which he has any personal interest, he shall report the fact to the Local Government, which may transfer the case to the High Court of the North-Western Provinces for disposal, or appoint an officer to be an Additional Judicial Commissioner for the disposal of the case.

CHAPTER IV.

SPECIAL JURISDICTION.

23. The Local Government may invest, within such local limits as it from time to time fixes, any District Judge, Additional Judge or Subordinate Judge with the jurisdiction of a Judge of a Court of Small Causes for the trial of suits cognizable by such Courts up to the amount of five hundred rupees, and any Munsif with similar jurisdiction up to the amount of fifty rupees; and may, whenever it thinks fit, withdraw such jurisdiction from the Judge or Munsif so invested.

Power to invest Subordinate Judge and Munsif with Small Cause Court jurisdiction.

24. The Judicial Commissioner may from time to time, by order, authorize any District Judge to transfer to a Subordinate Judge or Munsif under the control of such District Judge any of the proceedings next hereinafter mentioned, or any class of such proceedings specified in such order, and then pending, or thereafter instituted, before such District Judge.

Power to transfer to Subordinate Judge or Munsif certain proceedings pending before District Judge.

The proceedings herein referred to are the following (that is to say) :—

(1). Proceedings under Act XL of 1858 (*for making better provision for the care of the persons and property of minors in the Presidency of Fort William in Bengal*), or Act IX of 1861 (*to amend the law relating to minors*).

(2). Applications for permission to sue or appeal as a pauper.

(3). Applications for certificates under Act XXVII of 1860 (*for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons*).

The District Judge may withdraw any proceedings so transferred, and may either dispose of them himself, or, with the sanction of the Judicial Commissioner, transfer them to any other Subordinate Judge or Munsif under his control.

25. Subject to the provisions of the last clause of section twenty-four, all proceedings transferred under that section shall be disposed of by the Subordinate Judge or Munsif (as the case may be) according to the rules prescribed for the guidance of District Judges in like cases:

Disposal of proceedings so transferred.

Provided that an appeal from the order of the Subordinate Judge or Munsif in such cases shall lie to the District Judge.

An appeal from his order thereon shall lie to the Judicial Commissioner, if an appeal from the decision of the District Judge in such proceedings is allowed by the law in force for the time being.

CHAPTER V.

MISCONDUCT OF OFFICERS.

26. The Judicial Commissioner may be suspended or removed by the Governor General in Council.

Suspension and removal of Judicial Commissioner.

27. Any District Judge, Additional Judge, Subordinate Judge or Munsif may be suspended or removed by the Local Government.

Suspension or removal of subordinate judicial officers by Local Government.

28. The Judicial Commissioner may, whenever he sees urgent necessity for so doing, suspend any Subordinate Judge or Munsif under his control.

Suspension of Subordinate Judge or Munsif by Judicial Commissioner.

Whenever the Judicial Commissioner exercises this power, he shall forthwith report to the Local Government the circumstances of the suspension, and the Local Government shall make such order thereon as it thinks fit.

29. Any District Judge may, whenever he sees urgent necessity for so doing, suspend any Munsif under his control.

Suspension of Munsif by District Judge.

Whenever the District Judge suspends any such Munsif, he shall forthwith send to the Local Government, through the Judicial Commissioner, a full report of the case, with the evidence (if any); and the Local Government shall make such order thereon as it thinks fit.

30. The Judicial Commissioner may remove or suspend the ministerial officers of his Court, or fine them in an amount not exceeding one month's salary.

Removal, &c., of ministerial officers of Judicial Commissioner's Court.

31. The Judicial Commissioner, and, subject only to the general control of the Judicial Commissioner, the Judges of the District Courts, may remove or suspend the ministerial officers of such Courts, or fine them in an amount not exceeding one month's salary.

Removal, &c., of ministerial officers of Judges' Courts.

32. Any Subordinate Judge or Munsif may, by order, remove or suspend from office, or fine in an amount not exceeding one month's salary, any ministerial officer of his Court who is guilty of any misconduct or neglect in the performance of the duties of his office. And the District Judge, subject only to the general control of the Local Government, may, on appeal or otherwise, reverse or modify every such order.

Removal, &c., of ministerial officers of Subordinate Judges and Munsifs' Courts.

The Judicial Commissioner (or the District Judge within whose jurisdiction such Court is situate) may by order suspend or remove any such ministerial officer.

33. Any fine imposed under this chapter shall, if the order imposing it so directs, be recovered from the offender's salary.

Recovery of fines.

CHAPTER VI.

MISCELLANEOUS.

34. The Judicial Commissioner may, from time to time, with the previous sanction of the Local Government, make rules—

Petition-writers.

(*a*) declaring what persons shall be permitted to practise as petition-writers in the Court of Oudh;

(*b*) regulating the conduct of persons so practising.

Whoever breaks any rule made under this section shall be punished with fine which may extend to fifty rupees.

35. When a mortgagee shall, under or by virtue of a mortgage executed before the thirteenth of February, 1844, have obtained possession of any land comprised in his mortgage, the mortgagor, or any person claiming through him, shall not bring a suit to redeem the mortgage of such land, any subsequent acknowledgment of the title or right to redeem of the mortgagor, or of any person claiming through him, notwithstanding.

Bar of redemption-suits when mortgage executed before 13th February, 1844.

Nothing herein contained shall be taken to bar a suit for redemption in any case where, by the instrument of mortgage, a term was fixed within which the property comprised therein might be redeemed, and such term had not expired before the thirteenth day of February, 1856: provided that, if any such term had expired before that day, the suit shall be barred, whatever may have been the date on which the instrument was executed.

Redemption-suits not barred where fixed term for redemption had not expired before 13th February, 1856.

36. Subject to such orders as may from time to time be issued by the Governor General in Council, and to the approval of the Local Government, the Judicial Commissioner shall prepare a list of days to be observed in each year as close holidays in the Courts subordinate to him.

Vacations.

Such list shall be published in the local official Gazette, and the said days shall be observed accordingly.

37. All proceedings pending on the first day of July, 1879, shall be heard and disposed of by the Courts established under this Act that would have had jurisdiction if they had been in existence when such proceedings were instituted.

Pending proceedings.

For the purposes of this section, all appeals pending on the said date shall—

(*a*) if preferred from the decrees, orders or decisions of Commissioners,—be deemed to be appeals from District Judges;

(*b*) if preferred from the decrees, orders or decisions of Deputy Commissioners or of Assistant Commissioners, or Extra-Assistant Commissioners acting in exercise of enhanced powers conferred under the Oudh Civil Courts Act, section eleven, clause two,—be deemed to be appeals from Subordinate Judges; and

(*c*) if preferred from the decrees or orders of Assistant Commissioners or Extra-Assistant Commissioners otherwise acting or of Tahsildárs,—be deemed to be appeals from Munsifs.

38. For the purposes of sections eighteen to twenty-one (both inclusive), all decrees, orders and decisions passed before the date on which this Act comes into force shall be deemed—

Appeals from decrees, &c., passed before Act comes into force.

(*a*) if passed by a Commissioner,—to have been passed by a District Judge;

(*b*) if passed by a Deputy Commissioner, or by an Assistant or Extra Assistant Commissioner in exercise of enhanced powers conferred under the Oudh Civil Courts Act, section eleven, clause two,—to have been passed by a Subordinate Judge; and

(*c*) if passed by an Assistant or Extra Assistant Commissioner otherwise than as aforesaid, or by a Tahsildár,—to have been passed by a Munsif.

SCHEDULE.

ACTS REPEALED.

(*See section* 3.)

Number and year.	Title of Act.	Extent of repeal.
Act X of 1870 ...	The Land Acquisition Act, 1870 ...	So much of section 3 as declares the Commissioner of a Division to be a principal Civil Court of original jurisdiction in Oudh.
Act XXXII of 1871 ...	The Oudh Civil Courts Act, 1871	The whole, except section 40.
Act XVIII of 1876 ...	The Oudh Laws Act, 1876 ...	Sections 21, 28 and 43.
Act XIV of 1878 ...	An Act to assimilate certain powers of the Local Governments of the North-Western Provinces and Oudh.	Section 3.

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to bring the law in Oudh with regard to the constitution and jurisdiction of the Civil Courts into harmony with the new state of things which will result from the separation of the judicial and executive branches of the Administration in that Province. The law at present regulating the Civil Courts in Oudh is Act XXXII of 1871 (the Oudh Civil Courts Act, 1871). It was found that, in order to fit that Act to the altered circumstances of Oudh, it would have to be practically reconstructed; and it was therefore determined to adopt the simpler and more convenient course of repealing it altogether, and of embodying such of its provisions as it might be desirable to retain in a new Act.

2. This Bill is in the main an extension to Oudh of the law regulating the Civil Courts in Bengal and the North-Western Provinces, namely, Act VI of 1871 (the Bengal Civil Courts Act, 1871), with certain modifications, which the circumstances of Oudh seem to require.

3. The chief points of variance between the Bill and the Bengal Civil Courts Act are—

1*st*.—The limitation of the original jurisdiction of Sub-Judges to suits in which the value of the subject-matter in dispute does not exceed 10,000 rupees.

2*ndly*.—The declaration of the finality of decisions or orders passed in appeal where the appellate order is in concurrence with that of the Court of first instance.

3*rdly*.—The allowance of a second appeal on the facts as well as on a point of law where the effect of the order or decision of the Appellate Court is to reverse or substantially modify the order or decision of the Court of first instance.

4*thly*.—The alteration of the course of first appeal where the value of the subject-matter of the suit exceeds 5,000 rupees, but does not exceed 10,000 rupees.

4. The reason for the first of these changes is the expediency of suits of great value and importance, and in regard to which an appeal lies as a matter of right to the Privy Council, being tried by the principal Court of original civil jurisdiction.

The second and third points of divergence from the provisions of the Bengal Courts Act comprise simply the maintenance of the principle of the existing law in Oudh in regard to appeals, which has not only worked well hitherto, but has been thought worthy of adoption to some extent for other Provinces.

The fourth change is the natural accompaniment of the first, as its effect is to bring all suits either in the original or appellate stage, where they reach the appellate stage, before the District Court.

5. Sections 23 to 25 of Act XXXII of 1871, giving the Judicial Commissioner power to refer cases to the High Court of the North-Western Provinces, and section 27 of that Act, conferring power to appoint an Additional Judicial Commissioner, have been omitted from the Bill; the former because it does not appear to be used; the latter because it is no longer necessary.

6. Section 21 of the Oudh Laws Act (XVIII of 1876), relating to the management of land attached by the Civil Courts, and section 28 of the same Act, which gives the Judicial Commissioner a power of revising the decisions of the Subordinate Courts, are repealed, because it is considered that these matters are sufficiently provided for by the Code of Civil Procedure.

F. R. COCKERELL.

The 1st May, 1879.

D. FITZPATRICK,
Secy. to the Govt. of India,
Legislative Department.

[Second publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 21st May, 1879, and was referred to a Select Committee:—

No. 7 of 1879.

A Bill to provide for the revision of proceedings in trials held under the Military Cantonments Act, 1864, section 20.

WHEREAS it is expedient to provide for the revision of the proceedings in trials held under the twentieth section of Act No. XXII of 1864 (*to make provision for the Administration of Military Cantonments*); It is hereby enacted as follows:— Preamble.

1. For the last clause of the said section, the following shall be substituted (that is to say):— New clause substituted in Act XXII of 1864, sec. 20.

"There shall be no appeal in any case tried under this section; but every person trying any such case shall, for the purposes of chapter XXII of the Code of Criminal Procedure, be deemed to be subordinate to the High Court, the Court of Session and the Magistrate of the District."

STATEMENT OF OBJECTS AND REASONS.

IN a case tried some months ago by an officer specially invested, under section 20 of Act XXII of 1864, with power to try breaches of Cantonment rules, the Judges of the Chief Court of the Panjáb, to whom the officer's order was submitted for revision, expressed a doubt as to whether the twenty-second chapter of the Code of Criminal Procedure gave them any power of revision in such a case. They, at the same time, expressed an opinion to the effect that such a power ought to be provided. The Governor General in Council concurs as to the need of such a power, and the present Bill has been drafted to provide it.

WHITLEY STOKES,

The 17th April, 1879.

D. FITZPATRICK,
Secy. to the Govt. of India,
Legislative Department.

The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, JUNE 7, 1879.

☞ Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 21st May, 1879, and was referred to a Select Committee:—

No. 5 of 1879.

A Bill to provide for the registration of Trade-marks.

WHEREAS it is expedient to provide for the registration of trade-marks; It is hereby enacted as follows:— Preamble.

1. This Act may be called "The Indian Trade-marks Act, 1879": Short title.

It extends to the whole of British India; Local extent.

and it shall come into force at once. Commencement.

2. In this Act, unless there be something repugnant in the subject or context,— Interpretation-clause.

"trade-mark" means a mark consisting of one or more of the following essential particulars (namely): "Trade-mark."

(*a*) a name of an individual or firm printed, impressed or woven in some particular and distinctive manner, or

(*b*) a written signature or copy of a written signature of an individual or firm, or

(*c*) a distinctive device, mark, heading, label or ticket:

provided that there may be added to any one or more of the said particulars any letters, words or numerals, or combination of letters, words or numerals:

it includes also any special and distinctive word or words, or combination of numerals or letters, used as a trade-mark before the passing of this Act:

"Registered" and "registration." "registered" and "registration" respectively mean registered and registration under this Act and the rules made hereunder and for the time being in force:

"The Court." "the Court" means the High Court of Judicature at Fort William.

3. An officer (hereinafter called "the Registrar") shall be appointed from time to time, by name or in virtue of his office, by the Governor General in Council to register trade-marks and the proprietors thereof. Appointment of a Registrar.

4. From and after the first day of January, 1880, no person shall be entitled to institute any suit or other proceeding to prevent, or to recover damages for, the infringement of any trade-mark, unless such trade-mark is registered; but nothing in this section shall apply to any device, mark, name, combination of words, or other matter or thing which has been in use as a trade-mark before the passing of this Act, and which the Registrar has refused to register under this Act. Registration of trade-marks.

5. A trade-mark must be registered as belonging to particular goods or classes of goods; and, when registered, shall be assigned Characteristics of registered trade-marks.

and transmitted only in connexion with the good-will of the business concerned in such particular goods or classes of goods, and shall be determinable with such good-will.

Registration of a trade-mark shall be deemed to be equivalent to public use of such mark.

Title of first proprietor of a trade-mark.

6. The registration of a person as first proprietor of a trade-mark shall be *primâ facie* proof, and, after the expiration of five years from the date of such registration, conclusive proof, of his right to the exclusive use of such trade-mark, subject to the provisions of this Act as to its connexion with the good-will of a business.

Title of proprietor claiming by transmitted proprietorship.

7. Every person registered as proprietor of a trade-mark subsequently to the first person so registered shall, as respects his title to such trade-mark, stand in the same position as if his title were a continuation of the title of the first person so registered.

Rectification of register.

8. If any person who is not for the time being entitled, in accordance with this Act or otherwise in accordance with law, to the exclusive use of a trade-mark is registered as a proprietor of such trade-mark, or

if the Registrar refuses to register, as proprietor of a trade-mark, the name of any person who is for the time being entitled in accordance with this Act or otherwise in accordance with law to the exclusive use of such trade-mark, or

if any mark is registered as a trade-mark which is not authorized to be so registered,

any person aggrieved by such registration or refusal may apply by motion, or in such other manner as the Court may direct, for an order of the Court that the register may be rectified.

The Court may either refuse such application, or it may, if satisfied of the justice of the case, make an order for the rectification of the register and award damages to the party aggrieved.

Case of several persons claiming to be registered in respect of same mark.

9. When each of several persons claims to be registered as proprietor of the same trade-mark, the Registrar may refuse to comply with the claims of any of such persons until their rights have been determined by the Court.

The Registrar may himself submit, or require the claimants to submit, their rights to the Court, by stating a case under section 527 of the Code of Civil Procedure, or in such other manner as the Court may direct.

What Court may decide in proceedings under Act.

10. The Court may, in any proceeding under section eight or section nine, decide—

(*a*) whether a mark is or is not such a trade-mark as is authorized to be registered under this Act;

(*b*) any question as to the right of any person who is party to such proceeding to have his name entered on the register of trade-marks, or to have the name of some other person removed from such register; and

(*c*) any other question that it may be necessary or expedient to decide for the rectification of the register.

Whenever any order has been made rectifying the register, the Court shall by its order direct that due notice of such rectification be given to the Registrar.

Notice to be given by order of Court.

Registration not to be granted without leave of Court in certain cases.

11. The Registrar shall not, without the special leave of the Court, to be given on motion or in such other manner as the Court may direct, register in respect of the same goods or classes of goods—

(*a*) a trade-mark identical with one which is already registered with respect to such goods or classes of goods; or

(*b*) a trade-mark so nearly resembling a trade-mark already registered with respect to such goods or classes of goods as to be calculated to deceive.

Registration when not to be granted.

12. The Registrar shall not register, as part of, or in combination with, a trade-mark, any scandalous designs, or any words, if the exclusive use of such words would not, by reason of their being calculated to deceive or otherwise, be deemed entitled to protection in a Court.

Governor General in Council may make rules to carry out Act.

13. The Governor General in Council may from time to time make rules consistent with this Act as to—

(*a*) the manner in which applications for registration of trade-marks shall be made;

(*b*) the notices to be given by advertisement before the registration of trade-marks;

(*c*) the classification of goods for the purposes of this Act;

(*d*) the registration of first and subsequent proprietors of trade-marks;

(*e*) the fees to be charged for registration of trade-marks, for the continuance of a trade-mark on the register and for granting certificates of refusal to register anything as a trade-mark;

(*f*) the removal from the register of any trade-mark;

(*g*) the form of notices under this Act, the mode of addressing and serving such notices, and the proof of such service;

(*h*) the persons entitled to inspect the register; and

(*i*) generally for the purpose of carrying this Act into effect.

Such rules shall be published in the *Gazette of India*, and shall thereupon have the force of law.

Certificate of Registrar to be evidence.

14. The certificate of the Registrar as to any entry, matter or thing which he is authorized by this Act, or any rules made hereunder, to make or do, shall be evidence of such entry having been made and of the contents thereof, and of such matters and things having been done or left undone.

Saving of marks and devices not capable of being registered under Act.

15. When an application by any person to register as a trade-mark a device, mark, name, word, combination of words, or other matter or thing which has been in use as a trade-mark before the passing of this Act, has been refused, the Registrar shall, at the request of the applicant and on payment by him of the fee prescribed by the rules made under section thirteen, grant him a certificate of such refusal.

A certificate so granted shall be conclusive proof of such refusal.

Saving of existing jurisdiction of Courts.

16. The provisions of this Act conferring a special jurisdiction on the said High Court shall not, except so far as such jurisdiction extends, affect the jurisdiction of any other Court in suits or proceedings relating to trade-marks.

Registrar to rectify register on notice from them.

If the register requires to be rectified in consequence of any proceedings in any such other Court, due notice of such requirement shall be given to the Registrar, and he shall rectify the register accordingly.

STATEMENT OF OBJECTS AND REASONS.

THIS Bill has been prepared, at the request of the Government of Bombay, to meet the wishes of the Mill-owners Association and the Bombay Chamber of Commerce. Both these bodies call the attention of the Local Government to the provisions of the English Trade-marks Registration Acts of 1875 and 1876 (which have been held by the High Court of Bombay not to apply to India), and state that it seems desirable, having regard to the increase of manufactures in this country, and especially of the cotton-manufactures of Bombay, that there should be a law of a similar nature in India.

2. The Bill is nothing more than a reproduction, with the changes required to fit them to the different circumstances of this country, of the provisions of the Statutes 38 & 39 Vic., chapter 91 (An Act to establish a register of Trade-marks), and 39 & 40 Vic., chapter 33 (An Act for the amendment of the Trade-marks Registration Act, 1875). It seems desirable (more especially in the case of laws dealing with large commercial interests), when the object of one of our Acts is merely to extend the provisions of an Imperial Statute to this country, to follow closely the lines of such Statute, so as to make the law in this country as nearly as possible identical with that in England.

3. The Bill provides for the appointment of a Registrar and the registration of trade-marks, and enacts that, after a certain fixed date, no suit shall be brought for the infringement of a trade-mark, unless such trade-mark is registered in accordance with the provisions of the Bill; it further defines the essential particulars of which a trade-mark must hereafter consist; but it saves from the operation of these provisions the trade-marks which are at present in use and entitled to protection as such. The other provisions of the Bill are subsidiary to these, and the only one of them calling for notice here is that by which the High Court at Fort William is appointed the Court for the purposes of the Act. As it is understood that the registry-office will be situate at Calcutta (where alone proprietorship in copyright and specifications of inventions are registered), that Court is obviously the most convenient one to appoint.

WHITLEY STOKES.

The 29th March, 1879.

D. FITZPATRICK,
Secy. to the Govt. of India,
Legislative Department.

[Third publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 21st May, 1879, and was referred to a Select Committee with instructions to report in four weeks:—

No. 6 of 1879.

THE OUDH CIVIL COURTS BILL, 1879.

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SCHEDULE.

A Bill to amend the law relating to Civil Courts in Oudh.

Preamble.

WHEREAS it is expedient to amend the law relating to Civil Courts in Oudh; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called "The Oudh Civil Courts Act, 1879":

Local extent.

It extends to all the territories for the time being administered by the Chief Commissioner of Oudh;

Commencement.

and it shall come into force on the first day of July, 1879.

Repeal of enactments.

2. On and from that day the Acts mentioned in the schedule hereto annexed shall be repealed to the extent specified in the third column thereof.

"District" defined.

3. In this Act, "district" means the area comprised in the local limits of the jurisdiction of the District Judge.

CHAPTER II.

CONSTITUTION OF COURTS.

Grades of Courts.

4. Besides the Courts established under any other enactment for the time being in force, there shall be four grades of Civil Courts in Oudh (namely):—

(1) the Court of the Munsif;
(2) the Court of the Subordinate Judge;
(3) the Court of the District Judge;
(4) the Court of the Judicial Commissioner.

Number of District Judges.

5. The number of District Judges, Subordinate Judges and Munsifs to be appointed under this Act shall be fixed, and may from time to time be altered, by the Local Government.

Appointment of officers under Act.

6. The Governor General in Council may appoint such person as he thinks fit to be Judicial Commissioner.

The District Judges, Subordinate Judges and Munsifs shall be appointed by the Local Government.

Additional Judges.

7. When the business pending before any District Judge requires the aid of Additional Judges for its speedy disposal, the Local Government may, upon the recommendation of the Judicial Commissioner, and with the previous sanction of the Governor General in Council, appoint such Additional Judges as may be requisite.

Such Additional Judges shall perform any of the duties of a Judge under chapter III of this Act that the District Judge may, with the sanction of the Judicial Commissioner, assign to them; and in the performance of such duties they shall exercise the same powers as the District Judge.

Temporary charge of the office of District Judge.

8. In the event of the death of a District Judge, or of his being incapacitated by illness or otherwise for the performance of his duties, or of his absence from the station in which his Court is held, the Additional Judge, or, if there is no Additional Judge attached to such Court, the senior Subordinate Judge of the District, shall, without relinquishing his ordinary duties, assume charge of the Judge's office;

and shall discharge such of the current duties thereof as are connected with the filing of suits and appeals, the issue of processes and the like functions;

and shall continue in charge of the office until it is resumed by the District Judge, or assumed by an officer duly appointed thereto.

Transfer of proceedings on death, &c., of Subordinate Judge.

9. In the event of the death of a Subordinate Judge, or of his being incapacitated by illness or otherwise for the performance of his duties, or of his absence on leave, when no person is appointed to act for him,

the District Judge may transfer all or any of the proceedings pending in the Court of such Subordinate Judge either to his own Court or to the Court of a Subordinate Judge (if any) under his control.

All proceedings transferred under this section shall be disposed of as if they had been instituted in the Court to which they are so transferred.

Principal Civil Court of original jurisdiction.

10. The Court of the District Judge shall be deemed to be the principal Civil Court of original jurisdiction in the district over which his jurisdiction extends.

Control over Civil Courts.

The control over all the Civil Courts in such district is invested in the said District Judge, but subject to the general control of the Judicial Commissioner.

Appointment of ministerial officers of Courts.

11. The Judicial Commissioner and the District Judges, and, subject to the approval of the District Judges to whose control they are respectively subject, the Subordinate Judges and Munsifs, shall appoint the ministerial officers of their Courts.

Transfer of ministerial officers.

12. The Judicial Commissioner or any District Judge may transfer any ministerial officer from any Court under his control to any other Court under his control.

Seals of Courts.

13. Every Court under this Act shall use a seal of such form and dimensions as are for the time being prescribed by the Local Government.

Place of sitting of Courts.

14. The Local Government may fix and from time to time alter the place or places at which any Court under this Act is to be held.

Power to confer Munsif's jurisdiction.

15. The Local Government may, from time to time, by notification in the official Gazette, invest such persons as it thinks fit with the powers of a Munsif, subject to such restrictions in respect of the value of the subject-matter of the suit as may be deemed proper, and withdraw such jurisdiction.

CHAPTER III.

GENERAL JURISDICTION.

Power to fix local limits of jurisdiction.

16. The Local Government shall, by notification in the official Gazette, fix, and may by a like notification from time to time vary, the local limits of the jurisdiction of any Civil Court or person invested with the powers of a Civil Court under this Act.

Extent of original jurisdiction of District Judge;

17. Subject to the provisions of the Code of Civil Procedure, section 15,—

the jurisdiction of a District Judge extends to all original suits cognizable by the Civil Courts.

of Subordinate Judge;

Subject as aforesaid, the jurisdiction of a Subordinate Judge extends to all suits in which the amount or value of the subject-matter in dispute does not exceed ten thousand rupees, and

of Munsif.

the jurisdiction of a Munsif to all suits in which such amount or value does not exceed one thousand rupees.

Appeals from Munsifs.

18. Appeals from the decrees and orders of Munsifs and Subordinate Judges in original suits and proceedings shall, when such appeals are allowed by law, lie to the District Judge:

Provided that the Judicial Commissioner may, from time to time, subject to such restrictions as he may deem fit, order that all or any of the appeals from the decrees and orders of a Munsif shall be preferred to such Subordinate Judge as may be mentioned in the order; and such appeals shall thereupon be preferred accordingly.

Power to refer to Subordinate Judge appeals from Munsifs.

19. Every District Judge may, from time to time, subject to the orders of the Judicial Commissioner, refer to any Subordinate Judge under his control any appeals pending before him from the decrees and orders of Munsifs; and such Subordinate Judge shall hear and dispose of such appeals accordingly.

The District Judge may withdraw any appeals so referred, and hear and dispose of appeals so withdrawn.

Appeals from District and Additional Judges.

20. Appeals from the decrees and orders of District Judges and Additional Judges in original suits and proceedings shall, when such appeals are allowed by law, lie to the Judicial Commissioner.

When Judicial Commissioner may receive second appeal.

21. When the decision of a Subordinate Judge, District Judge or Additional Judge passed in appeal confirms the decree or order of the Court of first instance, such decision shall be final; but when such decision reverses or modifies such decree or order and is not declared by any law for the time being in force to be final, the Judicial Commissioner may receive a second appeal if, on a perusal of the grounds of appeal and of copies of the judgments of the lower Courts, he is of opinion that a further consideration of the case is requisite for the ends of justice.

Presiding officer of Court not to try suit or appeal in which he is interested.

22. No presiding officer of any Court having jurisdiction under this Act shall try any suit or appeal in which he is a party or personally interested, or any appeal against a decree or order passed by himself, or shall adjudicate upon any proceeding connected with or arising out of such suit or appeal.

Mode of disposing of such suit.

When any such suit, appeal or proceeding comes before any such presiding officer, he shall forthwith transmit the record of the case to the Court to which he is immediately subordinate, with a report of the circumstances attending the reference.

The superior Court shall thereupon dispose of the case in the manner prescribed by section 25 of Act X of 1877.

In the event of an appeal being preferred to a Judicial Commissioner from a judgment or order passed by him in any other capacity, or in which he has any personal interest, he shall report the fact to the Local Government, which may transfer the case to the High Court of the North-Western Provinces for disposal, or appoint an officer to be an Additional Judicial Commissioner for the disposal of the case.

CHAPTER IV.

SPECIAL JURISDICTION.

Power to invest Subordinate Judge and Munsif with Small Cause Court jurisdiction.

23. The Local Government may invest, within such local limits as it from time to time fixes, any District Judge, Additional Judge or Subordinate Judge with the jurisdiction of a Judge of a Court of Small Causes for the trial of suits cognizable by such Courts up to the amount of five hundred rupees, and any Munsif with similar jurisdiction up to the amount of fifty rupees; and may, whenever it thinks fit, withdraw such jurisdiction from the Judge or Munsif so invested.

Power to transfer to Subordinate Judge or Munsif certain proceedings pending before District Judge.

24. The Judicial Commissioner may from time to time, by order, authorize any District Judge to transfer to a Subordinate Judge or Munsif under the control of such District Judge any of the proceedings next hereinafter mentioned, or any class of such proceedings specified in such order, and then pending, or thereafter instituted, before such District Judge.

The proceedings herein referred to are the following (that is to say):—

(1). Proceedings under Act XL of 1858 (*for making better provision for the care of the persons and property of minors in the Presidency of Fort William in Bengal*), or Act IX of 1861 (*to amend the law relating to minors*).

(2). Applications for permission to sue or appeal as a pauper.

(3). Applications for certificates under Act XXVII of 1860 (*for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons*).

The District Judge may withdraw any proceedings so transferred, and may either dispose of them himself, or, with the sanction of the Judicial Commissioner, transfer them to any other Subordinate Judge or Munsif under his control.

Disposal of proceedings so transferred.

25. Subject to the provisions of the last clause of section twenty-four, all proceedings transferred under that section shall be disposed of by the Subordinate Judge or Munsif (as the case may be) according to the rules prescribed for the guidance of District Judges in like cases:

Provided that an appeal from the order of the Subordinate Judge or Munsif in such cases shall lie to the District Judge.

An appeal from his order thereon shall lie to the Judicial Commissioner, if an appeal from the decision of the District Judge in such proceedings is allowed by the law in force for the time being.

CHAPTER V.

MISCONDUCT OF OFFICERS.

Suspension and removal of Judicial Commissioner.

26. The Judicial Commissioner may be suspended or removed by the Governor General in Council.

Suspension or removal of subordinate judicial officers by Local Government.

27. Any District Judge, Additional Judge, Subordinate Judge or Munsif may be suspended or removed by the Local Government.

Suspension of Subordinate Judge or Munsif by Judicial Commissioner.

28. The Judicial Commissioner may, whenever he sees urgent necessity for so doing, suspend any Subordinate Judge or Munsif under his control.

Whenever the Judicial Commissioner exercises this power, he shall forthwith report to the Local Government the circumstances of the suspension, and the Local Government shall make such order thereon as it thinks fit.

Suspension of Munsif by District Judge.

29. Any District Judge may, whenever he sees urgent necessity for so doing, suspend any Munsif under his control.

Whenever the District Judge suspends any such Munsif, he shall forthwith send to the Local Government, through the Judicial Commissioner, a full report of the case, with the evidence (if any); and the Local Government shall make such order thereon as it thinks fit.

Removal, &c., of ministerial officers of Judicial Commissioner's Court.

30. The Judicial Commissioner may remove or suspend the ministerial officers of his Court, or fine them in an amount not exceeding one month's salary.

Removal, &c., of ministerial officers of Judges' Courts.

31. The Judicial Commissioner, and, subject only to the general control of the Judicial Commissioner, the Judges of the District Courts, may remove or suspend the ministerial officers of such Courts, or fine them in an amount not exceeding one month's salary.

Removal, &c., of ministerial officers of Subordinate Judges and Munsifs' Courts.

32. Any Subordinate Judge or Munsif may, by order, remove or suspend from office, or fine in an amount not exceeding one month's salary, any ministerial officer of his Court who is guilty of any misconduct or neglect in the performance of the duties of his office. And the District Judge, subject only to the general control of the Local Government, may, on appeal or otherwise, reverse or modify every such order.

The Judicial Commissioner (or the District Judge within whose jurisdiction such Court is situate) may by order suspend or remove any such ministerial officer.

Recovery of fines.

33. Any fine imposed under this chapter shall, if the order imposing it so directs, be recovered from the offender's salary.

CHAPTER VI.

MISCELLANEOUS.

Petition-writers.

34. The Judicial Commissioner may, from time to time, with the previous sanction of the Local Government, make rules—

(*a*) declaring what persons shall be permitted to practise as petition-writers in the Court of Oudh;

(*b*) regulating the conduct of persons so practising.

Whoever breaks any rule made under this section shall be punished with fine which may extend to fifty rupees.

Bar of redemption-suits when mortgage executed before 13th February, 1844.

35. When a mortgagee shall, under or by virtue of a mortgage executed before the thirteenth of February, 1844, have obtained possession of any land comprised in his mortgage, the mortgagor, or any person claiming through him, shall not bring a suit to redeem the mortgage of such land, any subsequent acknowledgment of the title or right to redeem of the mortgagor, or of any person claiming through him, notwithstanding.

Redemption-suits not barred where fixed term for redemption had not expired before 13th February, 1856.

Nothing herein contained shall be taken to bar a suit for redemption in any case where, by the instrument of mortgage, a term was fixed within which the property comprised therein might be redeemed, and such term had not expired before the thirteenth day of February, 1856: provided that, if any such term had expired before that day, the suit shall be barred, whatever may have been the date on which the instrument was executed.

Vacations.

36. Subject to such orders as may from time to time be issued by the Governor General in Council, and to the approval of the Local Government, the Judicial Commissioner shall prepare a list of days to be observed in each year as close holidays in the Courts subordinate to him.

Such list shall be published in the local official Gazette, and the said days shall be observed accordingly.

...eedings.

... proceedings pending on the first day of July, 1879, shall be heard and disposed of by ...stablished under this Act that would have had jurisdiction if they had been in existence when such proceedings were instituted.

For the purposes of this section, all appeals pending on the said date shall—

(*a*) if preferred from the decrees, orders or decisions of Commissioners,—be deemed to be appeals from District Judges;

(*b*) if preferred from the decrees, orders or decisions of Deputy Commissioners or of Assistant Commissioners, or Extra-Assistant Commissioners acting in exercise of enhanced powers conferred under the Oudh Civil Courts Act, section eleven, clause two,—be deemed to be appeals from Subordinate Judges; and

(*c*) if preferred from the decrees or orders of Assistant Commissioners or Extra-Assistant Commissioners otherwise acting or of Tahsildárs,—be deemed to be appeals from Munsifs.

Appeals from decrees, &c., passed before Act comes into force.

38. For the purposes of sections eighteen to twenty-one (both inclusive), all decrees, orders and decisions passed before the date on which this Act comes into force shall be deemed—

(*a*) if passed by a Commissioner,—to have been passed by a District Judge;

(*b*) if passed by a Deputy Commissioner, or by an Assistant or Extra Assistant Commissioner in exercise of enhanced powers conferred under the Oudh Civil Courts Act, section eleven, clause two,—to have been passed by a Subordinate Judge; and

(*c*) if passed by an Assistant or Extra Assistant Commissioner otherwise than as aforesaid, or by a Tahsildár,—to have been passed by a Munsif.

SCHEDULE.

ACTS REPEALED.

(*See section* 3.)

Number and year.	Title of Act.	Extent of repeal.
... of 1870 ...	The Land Acquisition Act, 1870 ...	So much of section 3 as declares the Commissioner of a Division to be a principal Civil Court of original jurisdiction in Oudh.
XII of 1871 ...	The Oudh Civil Courts Act, 1871	The whole, except section 40.
...I of 1876 ...	The Oudh Laws Act, 1876 ...	Sections 21, 28 and 43.
...of 1878 ...	An Act to assimilate certain powers of the Local Governments of the North-Western Provinces and Oudh.	Section 3.

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to bring the law in Oudh with regard to the constitution and jurisdiction of the Civil Courts into harmony with the new state of things which will result from the separation of the judicial and executive branches of the Administration in that Province. The law at present regulating the Civil Courts in Oudh is Act XXXII of 1871 (the Oudh Civil Courts Act, 1871). It was found that, in order to fit that Act to the altered circumstances of Oudh, it would have to be practically reconstructed; and it was therefore determined to adopt the simpler and more convenient course of repealing it altogether, and of embodying such of its provisions as it might be desirable to retain in a new Act.

2. This Bill is in the main an extension to Oudh of the law regulating the Civil Courts in Bengal and the North-Western Provinces, namely, Act VI of 1871 (the Bengal Civil Courts Act, 1871), with certain modifications, which the circumstances of Oudh seem to require.

3. The chief points of variance between the Bill and the Bengal Civil Courts Act are—

1*st*.—The limitation of the original jurisdiction of Sub-Judges to suits in which the value of the subject-matter in dispute does not exceed 10,000 rupees.

2*ndly*.—The declaration of the finality of decisions or orders passed in appeal where the appellate order is in concurrence with that of the Court of first instance.

3*rdly*.—The allowance of a second appeal on the facts as well as on a point of law where the effect of the order or decision of the Appellate Court is to reverse or substantially modify the order or decision of the Court of first instance.

4*thly*.—The alteration of the course of first appeal where the value of the subject-matter of the suit exceeds 5,000 rupees, but does not exceed 10,000 rupees.

4. The reason for the first of these changes is the expediency of suits of great value and importance, and in regard to which an appeal lies as a matter of right to the Privy Council, being tried by the principal Court of original civil jurisdiction.

The second and third points of divergence from the provisions of the Bengal Courts Act comprise simply the maintenance of the principle of the existing law in Oudh in regard to appeals, which has not only worked well hitherto, but has been thought worthy of adoption to some extent for other Provinces.

The fourth change is the natural accompaniment of the first, as its effect is to bring all suits either in the original or appellate stage, where they reach the appellate stage, before the District Court.

5. Sections 23 to 25 of Act XXXII of 1871, giving the Judicial Commissioner power to refer cases to the High Court of the North-Western Provinces, and section 27 of that Act, conferring power to appoint an Additional Judicial Commissioner, have been omitted from the Bill; the former because it does not appear to be used; the latter because it is no longer necessary.

6. Section 21 of the Oudh Laws Act (XVIII of 1876), relating to the management of land attached by the Civil Courts, and section 28 of the same Act, which gives the Judicial Commissioner a power of revising the decisions of the Subordinate Courts, are repealed, because it is considered that these matters are sufficiently provided for by the Code of Civil Procedure.

F. R. COCKERELL.

The 1st May, 1879.

D. FITZPATRICK,
Secy. to the Govt. of India,
Legislative Department.

[Third publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 21st May, 1879, and was referred to a Select Committee :—

No. 7 of 1879.

A Bill to provide for the revision of proceedings in trials held under the Military Cantonments Act, 1864, section 20.

WHEREAS it is expedient to provide for the revision of the proceedings in trials held under the twentieth section of Act No. XXII of 1864 (*to make provision for the Administration of Military Cantonments*); It is hereby enacted as follows :—

Preamble.

1. For the last clause of the said section the following shall be substituted, and shall be deemed (*that is to say*) to have been an original part of the said section, namely :—

New clause substituted in Act XXII of 1864, sec. 20.

"There shall be no appeal from any sentence of imprisonment, in any case tried under this section, which does not exceed the term of six months, and the person trying any such case shall, for the purposes of chapter XXII of the Code of Criminal Procedure, be deemed to be subordinate to the Court of Session and the Court of Session and the Magistrate of the District."

STATEMENT OF OBJECTS AND REASONS.

IN a case tried some months ago by an officer specially invested, under section 20 of Act XXII of 1864, with power to try breaches of Cantonment rules, the Judges of the Chief Court of the Panjáb, to whom the officer's order was submitted for revision, expressed a doubt as to whether the twenty-second chapter of the Code of Criminal Procedure gave them any power of revision in such a case. They, at the same time, expressed an opinion to the effect that such a power ought to be provided. The Governor General in Council concurs as to the need of such a power, and the present Bill has been drafted to provide it.

WHITLEY STOKES.

The 17th April, 1879.

D. FITZPATRICK,
Secy. to the Govt. of India,
Legislative Department.