

The Gazette 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 III.

Advertisements and Notices by Private Individuals and Corporations.

munication reporting the occurrence was dated 1st December, he was only one day late. He further states that the delay was accidental, and that on his pay-bill for November 1880 being made out, he directed that subscriptions for this child be deducted. He was informed in reply to his application that the fine must be paid and that the Managers would submit his representation to the subscribers at the next general meeting, if he desired it; but that they would be unable to recommend the subscribers to comply with his request. The practice of the Fund has been to exact the penalty of Rs. 50 in all cases where only carelessness or oversight can be pleaded. The case is submitted to the meeting, at the request of Mr. Marindin, for decision.

5. The Managers have received the following further application from Miss Palmer for a reconsideration of her case:—

Dated 4th October 1880.

From—MISS ALICE W. PALMER,
To—The Secretary to the Managers of the Bengal Civil Fund, Calcutta.

I BEG to acknowledge the receipt of your letter of the 24th July. I regret that the Managers of the Bengal Civil Fund have not felt themselves at liberty to recommend my appeal to the favorable consideration of the Members of the Service; for I am sure they must perceive the inequality of the rules, that accord to my half-brother, whose mother is living, and supported by the Fund, what they deny to me, who have no living mother to maintain or assist me.

The fact of my step-mother being on the Fund, is held by the Managers to bar my claim to an increase of allowance until after her death, though no bar to the claim of her son, my half-brother, during her life-time.

The fundamental error, as it appears to me, in the rule regarding the "wife or widow," is its failing to recognise the obvious distinction between a mother and a step-mother, in relation to the daughter. The daughter has a natural right to protection from the mother or "widow," but the step-daughter has none, and may be left at any time, to an unaided and admittedly inadequate provision.

My father, as I have stated in my former appeal, was more than forty years in the service, and contributed to the Fund, as the price of his annuity, more than three times the estimated half value of the pension.

Can it be too late, with the permission of the Managers, to re-open my case, as *special* [redacted] *exceptional* at the next general meeting of the members of the service, or too presumptuous [redacted] t, in again soliciting the support of the Managers which I am certain they would grant [redacted] ly realise the difficulty, or rather the impossibility, of maintaining even a decent ex[redacted]come of one such further

3. It is further suggested that the Managers suppressed the resolution of 28th January 1874. That this is not the case will be apparent from the following extract from the Managers' circular of 13th October 1879, in which they stated the grounds on which they had decided not to recommend that the rules should be amended with retrospective effect from 1st April 1873:—

"The Managers consider it unnecessary to go back further than 31st March 1878 for the adjustment of the accounts. It is a fixed principle in the administration of all systems of insurance that long retrospective effect cannot be given to any distribution of surplus funds. The existing members of a fund are alone entitled to the benefit of a surplus, as they alone bear the chance of having to provide for a deficit. Claims which have become incumbent are represented by separate allotments of funds to provide for them. No risk attaches to them, they have been settled in full, and it would be impossible to manage any institution properly if they were liable to reconsideration. Moreover, the principle of retrospective adjustment, if once admitted, would involve the extinction of the greater part of the surplus, with no appreciable benefit to the Fund. It will be observed that the Actuary's calculation gives only Rs. 6,18,333 as the surplus on 31st March 1873. If, therefore, retrospective effect were given to that date, there would be very little to distribute."

The resolution was also prominently referred to at the meeting of 31st January last, immediately before the vote was taken on the proposal to give retrospective effect to the amendments of the rules from 1st April 1878 only: and the report of the proceedings of that meeting was before the subscribers for the period of two months, required by the rules, before their confirmation of its resolutions was finally accepted. It is stated in the circular that "so long ago as the 30th October 1879, Mr. Cotton protested by letter against the Managers' proposal, but without effect." This letter was communicated by Mr. Cotton to the newspapers simultaneously with its despatch to the Managers; it was referred to in the circular of 22nd November 1879; and it was referred to at the meeting of 31st January, before the vote was taken; Mr. Cotton also informed the Managers unofficially that he did not require a separate reply to his letter; and he afterwards, in March, voted in favour of the resolution, against which he now states that he protested without effect. If Mr. Cotton, the author of the letter, thus adopted the very view against which the letter was chiefly directed, it is very difficult to see how it can be urged that others would have voted differently had their attention been more closely directed to the contents of this letter.

4. From the wording of the first resolution and the language used in the paragraph which precedes it, it would seem that the authors of the circular are of opinion that, under the rules as now amended, the families enumerated do not in any way participate in the increased benefits. As a matter of fact, however, these families are, except in respect of the donation, in exactly the same position, from 1st April 1878, as the families of subscribers who died on or after that date. None of them are subject to the one-sixth deduction; all of them who were motherless on 1st April 1878, and who have since become motherless, draw the increased allowance with effect from the date in question; all the sons draw the special allowance with effect from 1st April 1878. Additions can only be made to benefits by amendments of rules, and retrospective distribution can only be effected by giving retrospective effect to the amendments. The amendments were given retrospective effect from 1st April 1878. They were accordingly to be read as having been in force on that day; and therefore the rule regarding one-sixth deduction ceased to have effect from that day, and every child fulfilling the conditions of being motherless, or, in the cases of sons attaining the age of 16 years on or after that day, was necessarily entitled to the new benefits. The donation, however, could only be given to families which became incumbent on or after that day. It could only be granted under the rules on the decease of the subscriber, and accordingly the family of a subscriber, who had died before 1st April 1878, could not claim it. The deductions of one-sixth were wholly eliminated from the Actuary's calculations of the liabilities of the Fund from 1st April 1878, and at page 7 of his second report, he shows the charges placed on the Fund by the extension from that date of the special allowances to motherless orphans, and by the provisions of special allowances to sons attaining the age of 16. The actual effect, therefore, of the first resolution would be simply to give to certain families arrear payments before 1st April 1878 of allowances which they never expect to get, and which accordingly never entered into their calculations in regulating their expenditure. The donation, for instance, is given avowedly to enable the family to meet the expenses incident on settling in a home. Can it be said that there is any reason in giving in 1880 a donation of £200 or £300 to the family of a subscriber who died in 1874 in order to enable them to establish themselves? The Managers are altogether unable to understand how such a proceeding can be recommended on the ground of "keeping faith with the members of our own Service." They will show further on that the proposal as it stands involves a breach of faith with two other classes—annuitants who retired before 31st March 1873 and died before 31st March 1878, and annuitants now surviving. To deprive the families of the former of benefits given to the families of active subscribers who died during the same period, and to tax the latter indefinitely to provide the necessary funds, would be to act in diametric opposition to the terms of the resolution of January 1874, on which the proposals of the circular profess to proceed.

5. With reference to the second Resolution, the Managers do not know why Mr. G. K. Webster is selected for exceptional treatment. It is the duty of the Managers to inform the subscribers that, if this resolution is adopted, there are many other subscribers who will possess similar claims. The amendment of the rule must have effect from 1st April 1873, if it is taken beyond 1st April 1878; and every invalid annuitant who retired in the interval will come within its purview. Mr. Richardson Evans is precisely in the same position as Mr. Webster: he retired in March 1877, and, like Mr. Webster, secured one-fourth benefits only to his family. Messrs. W. Johnstone, P. Humphrey, E. Waterfield, and G. Graham retired between 1873 and 1878, making up their balances to Rs. 12,500, and securing half benefits. If Mr. Webster is to be admitted to the same position without paying anything, clearly the amounts paid by these gentlemen, not being demandable under the amended rule, must be refunded. Messrs. C. E. C. Merington, H. Priestly, D. W. Marsden, H. M. Rogers, F. Hurley, and E. M. Money have not made up their balance to the minimum of Rs. 6,250, and have consequently ceased to belong to the Fund. If the operation of the amendment is thrown back so as to secure half benefits to Mr. Webster's family, these subscribers must also be restored, and the Fund must undertake liability for their existing or future families. The cost of this measure alone to the Fund would be nearly Rs. 70,000.

6. But the Managers must point out that the proposal to extend special consideration to invalid annuitants who retired between 1873 and 1878 is not reasonable, even on the grounds on which the other proposals of the circular are supposed to rest. The argument of the circular is that the subscribers of 1874, only abstained from utilizing the then existing surplus in certain ways, on the understanding that their families would not lose by the postponement, and that their expectations must be fulfilled. Now, it is clear that those expectations could only extend to measures which had been already discussed. But the proposal to deal specially with invalid annuitants was never mooted till 1879. Clearly, therefore, any invalid subscriber retiring before 1st April 1878 was innocent of any expectation of special benefit of this nature, and the subscribers have not even an imaginary duty to fulfil in regard to him.

7. The Managers cannot accept the proposal to exclude from the additional benefits the families of annuitants who retired from the service before 31st March 1873, but who died before 31st March 1878. The arguments that they were not voters when the resolution of January 1874 was carried, and "were not considered when that vote was passed," are such as have not hitherto been resorted to in dealing with Fund

questions, and they will not, the Managers apprehend, find favour with the subscribers. Though annuitants are, from the accident of their position, debarred from active co-operation in the administration of the Fund, they have, it is needless to say, precisely the same rights in the Fund that active subscribers possess. To exclude them from benefits because they were not present to assert their rights, or to cause themselves to be considered, would be a proceeding out of harmony with the spirit that has hitherto governed the action of the Service. The proposal, however, is impracticable as well as unjust. The same error has been made here as has been made in regard to the position of incumbent families on 1st April 1878. As has already been said, additions can only be made to benefits by amendments of rules, and retrospective distribution can only be effected by giving retrospective effect to the amendments. If it is intended to give retrospective effect to 1st April 1873, every case occurring on or since that date must be dealt with as if the amended rule applied to it. Therefore the families of deceased annuitants must have precisely the same privileges as those of deceased active subscribers, however little the interests of the annuitants in question may have been considered by those who voted away the surplus funds.

8. Before proceeding to discuss the estimate of the cost of the proposed measures, it is necessary for the Managers to advert to the source from which it is sought to obtain the funds required. It is proposed in the circular to meet the increased charges "by a further postponement of the total exemption of annuitants." Now, the resolution of January 1874, on which the circular relies, provided that "any benefits that may be distributed shall have retrospective effect from the 1st April 1873." It is not easy to see how those who rely upon this resolution can propose, not only not to give retrospective effect to one of the benefits decreed, but to postpone it indefinitely. The Managers apprehend that it is not open to those who consider the resolution binding to proceed directly against its terms, in order, amongst other things, to provide funds for a measure which it did not contemplate.

9. It is estimated in the circular that the cost of the proposals would be "about two lakhs, or perhaps rather more than two lakhs;" but no details are given to show the basis on which the estimate was framed. With reference to this point it may be mentioned that, in returning to Mr. Cotton his draft circular, the Managers warned him that many of his statements were open to contradiction, and that the liabilities which his proposal involved would "certainly enormously exceed" his estimate of two lakhs. The proposals are too vague to be made the subject of a precise estimate. In the first place the Managers have shown that the greater part of the effect intended by the signatories is already included under the Resolutions of January, so that the actual effect in regard to the families named is much less than the signatories intend. But, on the other hand, it is clear that the proposals cannot be accepted without entailing several extensions beyond what the circular contemplates. Taking the proposals as they appear to the signatories of the circular, the Managers have no hesitation in saying that the estimate should be multiplied by at least five. Taking them as they must in any case be modified by the considerations which have been detailed above, the Managers present the following estimate of the real cost of giving effect to the amendments of the rules from 1st April 1873, with the exception of that regarding the ordinary subscriptions of annuitants:—

	£
Refund of one-sixth deductions	11,350
Refund of additional subscriptions, composition, &c.	11,460
Increase of £50 to sons	3,050
Increase of 50 per cent. to motherless orphans	11,300
Donations	12,350
Refund to invalid annuitants	1,460
Value of contingent and potential benefits to families of invalid annuitants who have left the Fund, so far as known	5,430
Total ...	56,400

As regards the proposal to retain the ordinary subscriptions of annuitants in order to cover this charge, it must be remembered that these subscriptions have been provisionally retained, on the ground that the proposals already carried out have left the Fund considerably in deficit. Mr. Cotton's proposal would leave the Fund in deficit by 5⅜ lakhs in addition to the present deficit of about 3 lakhs, making a total of at least 8½ lakhs. The retention of 4¼ lakhs would only meet half of this deficit. To carry out the proposals now made, therefore, it would be necessary either to continue the subscriptions of annuitants to both branches for a practically indefinite period, or to impose additional rates on active subscribers. The Managers think it right to inform the subscribers that the first course is not open to them consistently with the undertaking already given by the Service. In 1869 the subscribers decided by a majority of 92 to 11 to amend the rules so as to relieve annuitants of all charges except a composition rate of one-tenth of their subscriptions, which was to be maintained under the erroneous impression that some payment would be required to ensure correct returns of family occurrences. As the Actuary reported that the Fund could not afford this measure in full, it was decided "for the present" to reduce annuitants' subscriptions only by half. But it has always been recognized that the Service is committed to the remission of annuitants' subscriptions as soon as the Fund can afford it. The circular professes to rest upon the general resolution of January 1874,—the provisions of which, however, it proposes to infringe, but it takes no cognizance of a formal amendment of the rules deliberately adopted by the Service, and avowedly only suspended for a time on financial grounds.

10. It remains therefore for the subscribers to decide whether they are willing to impose additional taxation on active members in order that certain families may receive arrear payments, for a period which closed more than two-and-a-half years ago, representing allowances which they never expected to receive and for which the occasion has necessarily passed away, and that a number of invalid annuitants may be placed in a position which, at the time of their retirement, they could not possibly have contemplated. The Managers have little doubt what the decision of the Service will be.

11. In conclusion, the Managers desire me to say that while they are most anxious that all proposals affecting the Fund should receive the fullest possible discussion (and of this they have given ample proof in the communications addressed to the subscribers before the proposals carried in January were formally submitted), and that the records of the Fund Office should be consulted to the fullest extent by every subscriber, they must point out the impossibility of carrying on the administration of a great institution like our Fund, if there is to be no finality in formal amendments of rules. In the present instance the measures for distributing the surplus were fully discussed before they were formulated; they were under consideration by the subscribers in their formal shape for two months before the general meeting was held; they were discussed at the meeting; they were, after being carried with only one dissentient vote in a meeting at which 45 subscribers were present, submitted for two months to the further consideration of the Service, and they were confirmed by an overwhelming majority. Eight months after this confirmation certain gentlemen re-opened the discussion. Even had these gentlemen consistently opposed the resolutions of January, the Managers think that they should have accepted the decision of the majority of the subscribers. But it is a remarkable circumstance that not one of them recorded a vote against the measures which they now so vehemently assail. Three of them voted unreservedly for all the resolutions. The other signatories of the circular did not feel themselves called upon even to return the voting papers supplied to them.

With this exposition of the circumstances, the Managers leave it to the Service to pronounce its decision on the question. In order that Members who cannot be present at the meeting may be able to record their votes on one side or the other, the usual form of proxy is enclosed. The Managers hope that Members of the Service will not fail in these important discussions to exercise their privilege of recording a distinct vote, so that some finality may be attained.

I have, &c.,

COLMAN MACAULAY,

Secretary.

Mr. Cotton has announced in the public papers that he does not intend to bring forward the Resolutions in question: but the Managers have received no communication from him on the subject.

The following letter has since been received by the Managers:—

TO THE MANAGERS OF THE BENGAL CIVIL FUND.

GENTLEMEN,

WE have had under consideration your circular of the 11th instant on the subject of the retrospective effect to be given to the increased benefits from the Fund to the families of subscribers deceased since 1873. We have also read the letter published by Mr. Cotton in to-day's *Englishman*, in which that gentleman announces (for the first time) his withdrawal from the positions originally taken up by him in common with the rest of us.

2. In the circular to which we attached our signatures, we took up two prominent and important positions—the *first*, to the effect that a resolution which had received the formal sanction of the service, and which consequently, under paragraph 2, Articles 17 and 18 of the rules, was "finally adopted" and became "final and conclusive," had never been formally rescinded by the service; and the *second*, that certain increased benefits should be extended to the families of certain specified deceased subscribers with retrospective effect from April 1873.

3. The second of these positions has been, we consider, disposed of by your circular already alluded to. We now understand that it has been your intention to extend to the families of subscribers dying between 1873 and 1878 very much what our first proposal was intended to secure for them, inasmuch as it is now stated that such families are to be included in the increased benefits which are to accrue from April 1878.

4. But our first position remains, in our opinion, intact. We do not find in your reply any specific statement to the effect that the final and conclusive resolution arrived at by the service has been formally cancelled or rescinded by the subscribers, who alone have power in the matter. We do not find that the question of rescission has been ever formally put to the subscribers as it should be. The fact that the resolution of the Managers was "prominently referred to" on the occasion of the vote being taken thereon has not, we consider, that formality which the rules require; and the further argument that the majority of the service voted for the accrual of the increased benefits from April 1878, while it shows indeed that the subscribers were willing to go so far, falls short of a resolve on the part of the service that they should go no further. It is true that in your circular of the 11th instant you state that "the vote was taken on the proposal to give retrospective effect to the amendments of the rules from the 31st April 1878 only." But if you will refer to the report of the meeting held on the 31st January 1880, as well as to the vote paper separately circulated amongst all subscribers, you will find that this word "*only*" occurs in neither; and we think you will agree with us that many who did vote on that occasion may not have understood that they were voting for the entire cancelment of the former resolution of the service, and that the word "only" should not, therefore, have been inserted in the circular-reply. Taking, therefore, into consideration the whole facts of the case as they are now before us, we are of opinion that the resolution of January 1874 should now be formally and specifically cancelled or amended so as to meet the circumstances of the Fund, so as to allow an accrual of increased benefits from April 1878 only.

5. We have only to add that for the accuracy of the statements contained in our previous circular we are not directly responsible. We were not all in a position to satisfy ourselves from a personal inspection of the records of the Fund as to the accuracy of these statements, and some of us accepted them on the distinct declaration (communicated to us) that they were statements of absolute and undeniable facts.

6. We are now content to leave the matter in the hands of the Managers, being satisfied that we have done our duty in bringing what we consider to be an omission to the notice of the service, and that the Managers will be, equally with ourselves, desirous to rectify this omission so as best to suit the interests of all subscribers.

We have, &c.,

G. J. B. T. DALTON.
A. A. WACE.
C. A. WILKINS.
F. C. DAUKES.
J. A. BOURDILLON.
L. C. ABBOTT.

The 25th December 1880.

With reference to the last paragraph of this letter, the Managers are satisfied that the decision arrived at represents fully the wishes of the service at large, and they are of opinion that no further formal action on their part is required.

7. In accordance with Article XXII of the revised rules, the Managers have to report that the Hon'ble J. O'Kinealy having obtained six months' leave of absence from 11th October last, tendered his resignation as an elected manager, and that the Hon'ble H. J. Reynolds was invited to join the Board of Managers in succession to Mr. O'Kinealy.

8. The following is the result of the voting on the resolution of the Special General Meeting of 22nd November:—

"That so much of the amendment of Article VIII of the Rules, adopted at the Half-yearly General Meeting held on 31st January last, as regards the subscriptions of annuitants to the Ordinary Branch of the Fund be held in abeyance."

For	131
Against	10

9. The accounts for the year 1879-80 are submitted.

Abstract of the Accounts of the Bengal Civil Fund for 1879-80.

	Bearing interest at 8 per cent.	Bearing interest at 5 per cent.
UNAPPROPRIATED FUNDS.	Rs. A. P.	Rs. A. P.
By balance on 1st April 1879	39,50,845 14 2	47,62,078 15 3
„ Interest	3,45,907 5 4	2,44,678 13 1
„ subscriptions during the year	2,64,773 2 3	2,02,061 1 1
„ payments by three annuitants in India to complete subscription balance to Rs.	6,742 3 5	.....
„ composition payment by an annuitant in India	1,360 2 0	1,102 9 6
„ ditto from six in England	58 13 8	427 13 0
„ minimum payment by an incumbent under Rule 7	6,257 2 7	1,764 13 5
„ recredit of overpaid pensions in England	1,162 0 7	827 12 1
„ contributions by annuitants in India	5,133 12 8	4,562 15 2
„ ditto paid in England and by absentees on furlough	17,842 13 7	16,256 5 9
„ fine from 12 subscribers, including 7 for unequal age at marriage ...	.....	13,129 7 4
„ transfer from appropiated funds of deduction of one-sixth from pensions under Rule 7.	14,586 4 4	6,617 10 4
„ amount granted by Government for the payment of pensions of families of those subscribers who were killed in the mutiny.	26,459 10 11	7,462 15 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 additional to the ordinary branch on account of alteration of proportion.	87,483 14 1	.....
	47,55,017 3 7	52,60,867 3 9
DEDUCT—		
To transfer to Appropriated Funds—		
„ value of pension of Mrs. J. P. Gubbins, widow, and one son of J. P. Gubbins (annuitant).	19,149 12 6	6,539 6 2
„ ditto of Mrs. G. Udny, widow, one daughter, and one son of G. Udny, (annuitant).	26,860 13 9	9,306 5 0
„ ditto of Mrs. J. Lean, widow, two daughters, and two sons of J. Lean (annuitant).	44,064 1 2	15,924 11 2
„ ditto of Mrs. F. Macnaghten, widow of F. Macnaghten (annuitant) (one-fourth pension).	5,678 0 2	2,079 2 8
„ ditto of a posthumous daughter of G. Ouseley	5,164 6 1	2,133 6 10
„ ditto of Mrs. J. H. Bax Ironside, two daughters, and one son ...	37,315 15 7	13,507 1 11
„ ditto of Mrs. W. T. Trotter, widow of W. T. Trotter (annuitant).	21,467 2 7	7,661 15 0
„ ditto of Mrs. W. H. Smith	21,682 7 0	8,383 5 1
„ ditto of a posthumous son of E. S. Moseley	4,396 7 6	1,644 11 6
„ ditto of Lady J. L. M. Lawrence, widow, one daughter, and one son of Lord Lawrence (annuitant).	28,934 1 7	9,996 1 2
„ ditto of Mrs. F. M. Lind, widow, one daughter, and three sons of F. M. Lind (annuitant).	40,125 7 4	14,029 13 7
„ ditto of Mrs. G. H. Damant	22,903 14 9	8,419 9 11
„ ditto of Mrs. T. F. Harkness, two daughters, and one son ...	37,761 4 6	14,728 13 10
„ ditto of one daughter of A. Dick (annuitant)	5,963 1 7	2,021 5 9
„ ditto of Mrs. T. W. Gribble and one son	29,061 7 7	10,841 1 11
„ ditto of Mrs. E. A. Bradbury and two sons	33,465 13 1	12,623 4 0
„ ditto of Mrs. J. C. Geddes, two daughters, and one son ...	43,159 3 1	16,192 4 11
„ interest thereon	20,866 2 8	4,709 15 5
„ transfer to Appropriated Funds on account of pensions payable by Government.	26,459 10 11	7,462 15 9
„ refund of overpaid subscriptions	590 0 7	717 4 5
„ establishment, &c.	8,563 5 11	2,056 5 4
„ printing charges	920 1 3	253 10 1
„ transfer to ordinary as above	.....	87,483 14 1
	4,84,552 13 2	2,58,716 9 6
Balance on 31st March 1880 ...	42,70,464 6 5	50,02,150 10 3
APPROPRIATED FUNDS.		
By balance on 1st April 1879	56,73,749 6 5	10,51,179 3 4
„ interest	4,28,198 5 5	50,933 10 6
„ transfer from Unappropriated Funds, values of pensions granted to the above seventeen families within the year.	4,27,153 7 10	1,56,032 8 5
„ interest thereon	20,866 2 8	4,709 15 5
„ transfer from Unappropriated Funds on account of pensions payable by Government.	26,459 10 11	7,462 15 9
	65,76,427 1 3	12,70,318 5 5
DEDUCT—		
To pensions paid in England under old rules	1,43,560 0 0	.....
„ ditto ditto new rules	5,54,617 15 8	1,48,097 11 0
„ ditto India ditto	13,606 14 0	3,110 3 0
„ transfer to unappropriated funds of the deductions of one-sixth from pensions under Rule 7.	14,586 4 4	6,617 10 4
	7,26,371 2 0	1,57,825 8 4
Balance on 31st March 1880 ...	58,50,055 15 3	11,12,492 13 1
TOTAL BALANCE ON 31ST MARCH 1880 ...	1,01,20,520 5 8	61,14,643 7 4

INVESTMENT OF THE ABOVE BALANCE.

	Rs. A. P.
Invested Treasury Notes at 8 per cent. ...	90,15,802 5 6
Uninvested at 8 per cent. (since invested)	11,04,718 0 2
Ditto at 5 per cent.	61,14,643 7 4
Total ...	1,62,35,163 13 0

COMPARISON OF THE BALANCE.

		Rs. A. P.
Balance on 31st March 1879 ...	...	1,54,37,853 7 2
Ditto on 31st March 1880 ...	....	1,62,35,163 13 0
Increase	...	7,97,310 5 10

CIVIL FUND OFFICE,
The 31st January 1881.

E. E.
COLMAN MACAULAY,
Secretary and Accountant.

Proposed by *Mr. H. Beverley*, Seconded by *Hon'ble A. T. Maclean*, and carried.

THAT the Managers' proceedings in admitting the families of the late Messrs. D. C. Halkett, D. J. Money, and Sir Cecil Beadon, to the benefits of the Fund, be confirmed.

Proposed by *Mr. John Beames*, Seconded by *Mr. George A. Grierson*, and carried.

THAT the daughter of the Marquis of Tweeddale be brought on the books of the Fund on payment of the minimum fine of Rs. 100, together with all arrears of subscriptions and interest at 8 per cent. as recommended by the Managers.

Proposed by *Mr. D. R. Lyall*, Seconded by *Mr. C. J. Lyall*, and carried.

THAT the reply given by the Managers to Mr. C. R. Marindin be approved.

Proposed by *Mr. W. M. Souttar*, Seconded by *Hon'ble C. D. Field*, and carried.

THAT the accounts for the past year 1879-80 be approved.

Proposed by *The Hon'ble A. Mackenzie*, Seconded by *Mr. D. M. Barbour*, and carried.

THAT the following gentlemen be elected Managers for the ensuing year:—

Hon'ble Mr. Justice McDonell, v.c.; Hon'ble H. J. Reynolds; J. Monro, Esq.; A. Forbes, Esq., and C. A. Wilkins, Esq.

Mr. Cotton said that he rose to make a personal explanation, and also to make a statement which he thought, in the opinion of the subscribers present, would call for explanation from the Board of Management. Although he had no especial authority to do so, he felt that in the remarks he was about to make he might speak both for himself and for the other gentlemen who had joined with him in signing the appeal-circular to the subscribers dated 26th November 1880. That circular was in the hands of all present. It proposed that the increased benefits awarded at the General Meeting of 31st January 1880, should be awarded (in accordance with the Resolution of the 28th January 1874) so as to include the specified families of subscribers who died after the 1st April 1873, but before the 1st April 1878, from which latter date only the benefits were declared by the meeting of 31st January 1880 to have effect. It had subsequently been explained by the Managers, in their circular of the 11th December 1880, that the families of the subscribers who died within this quinquennial period "were, except in respect of the donation, in exactly the same position from 1st April 1878 as the families of subscribers who died on or after that date." So that in point of fact the appeal which he and others thought it necessary to make to the Service had substantially been allowed by the management, and there was no necessity therefore for him to press the resolution of which he had given notice.

He would explain, however, that the authoritative interpretation now given by the Managers, of the retrospective character of the benefits recently awarded, was a novel one and directly inconsistent with the interpretation the Managers had themselves put upon the same point in the circular letter in which they had recommended those benefits for the approval of the Service. In that circular, dated 13th October 1879, it was distinctly explained that the families of suboribers who died before 1st April 1878, would be ineligible for any increased benefits that might be awarded. The arguments of that circular had never been disavowed or contradicted. They had gone abroad to the Service as indicating the policy it was intended to follow in regard to the distribution of benefits, and *Mr. Cotton* for one certainly understood from them, and he believed that almost every member of the Service was also with him in understanding from them, that the families of subscribers who died before 1st April 1878, were excluded from all participation in the increased benefits recently awarded.

In order to justify these remarks and the public action he had taken in consequence of the opinion he held, he would read to the meeting extracts from the Managers' circular of the 13th October 1879. That circular was sent along with a copy of the Actuaries' report, and "submitted proposals for the distribution of the surplus as ascertained by Mr. Sutton." Paragraph 3 of that circular is expressed as follows:—

"3. The Managers consider it unnecessary to go back farther than 31st March 1878 for the adjustment of the accounts. It is a fixed principle in the administration of all systems of insurance that long retrospective effect cannot be given to any distribution of surplus funds. The existing members of a fund are alone entitled to the benefit of a surplus, as they alone bear the chance of having to provide for a deficit."

He begged to call particular attention to the last-quoted sentence. It meant, as plainly as words could say it, that members of the Fund who had died before 1st April 1878 would not be entitled to the benefit of the surplus, and the reason it gave for their exclusion was, that as they were dead and no longer subscribers, it would be impossible to impose upon them any liability to provide for a deficit. Under this interpretation there could be no doubt that the families of the late Messrs. Schalch, Geoghegan, Carpenter, Falcon, and others, enumerated in the appeal which he and his co-signitaries had made to the Service, would be excluded once and for all from any participation in the increased benefits. He would continue reading from the 3rd paragraph of the Managers' circular:—

"Claims which have become incumbent are represented by separate allotment of funds to provide for them. No risk attaches to them, they have been settled in full, and it would be impossible to manage any institution properly if they were liable to reconsideration."

These words also can bear but one meaning. They mean that funds had been appropriated on account of the families of subscribers who died before the 1st April 1878, and that it would be impossible to readjust the amount of appropriated funds so as to admit those families to any subsequently sanctioned increase of benefits.

The same paragraph proceeds:—

"Moreover, the principle of retrospective adjustment, if once admitted, would involve the extinction of the greater part of the surplus, with no appreciable benefit to the Fund."

This sentence, when read with the context of the words which precede it, has no other meaning than that the Managers were opposed to granting increased benefits to the families of any subscriber who died before the 1st April 1878, on the ground that, by so doing, they would swallow up the greater part of the Fund surplus.

The Managers then proceeded, in the circular from which he was quoting, to describe the increased benefits proposed, and to estimate the cost of each. In the seventh paragraph they summarise their remarks, and continue, in language which must clear away the faintest doubt that may have lingered in the mind of any reader, as follows:—

These measures (*i.e.*, above recited benefits) as well as the abolition of the rule regarding one-sixth deductions, the Managers would wish to see introduced at once with retrospective effect from 1st April 1878, the first day of the new quinquennial period,—that is, they will be applied to all pensions which have become incumbent on or after that date."

Here is a distinct exclusion of all pensions which had become incumbent before the 1st April 1878. There is nothing more wanted to show that, in the opinion of the Managers, on the 13th October 1879 the families of all subscribers who had come on the Fund before 1st April 1878 were to be excluded from any participation in the increased benefits. This at least is the view *Mr. Cotton* took, and this is the justification—he ventured to think it was a satisfactory one—that he had now to offer to the Service for the action he had taken. In this view of the case he had recorded a formal written protest from Chittagong, where he was stationed at the time of the last January meeting. At that meeting it is true the subject was just alluded to, but nothing explanatory of the circular of the 13th October, or in any way modifying the observations therein expressed, was elicited from the management.

Mr. Cotton being fully occupied with other concerns was then inclined to let the matter drop, but he was moved to act again on the representation of others who had a personal interest in seeing that the incumbents of the Fund, during the quinquennial period from 1873 to 1878, were not excluded from the increased benefits. He accordingly, on the 6th September 1880, addressed the Secretary to the Fund with the same arguments as those on which his own and his co-signitaries' circular of the 26th November was based, and in order to avoid any division in the Service, asked the Managers to identify themselves with a proposal, that the increased benefits should be distributed with retrospective effect, so as to include the families of all subscribers who died during the quinquennial period from 1873 to 1878, and pointed out that this was in accordance with the Resolution of the 28th January 1874, which enjoined that "any benefits that may be distributed shall have retrospective effect from the 1st April 1873." In reply to this representation *Mr. Cotton* received a letter on the 15th September, in which it was said that the Managers "did not consider that they could profitably enter on a discussion of an informal proposal, made by a single member of the Service, to set aside a Resolution almost unanimously adopted by the Service at a recent General Meeting." There was no mention in this reply that *Mr. Cotton* was labouring under any misapprehension in regard to the actual retrospective distribution of the benefits, or that the Managers in any way repudiated the principles and proposals they had enunciated in their circular of the 13th October 1879.

Failing to get any satisfaction from the management, and relying entirely on the statements of the Managers in their circular of October, which it never occurred to him for one moment to mistrust, *Mr. Cotton* then consulted certain other members of the service as to the course he should pursue, and the result was the issue of the circular-appeal to the Service, dated 28th November 1880. The result of this appeal was that Managers proceeded to make an elaborate exposition of the case for the information of the Service.

The manifesto of the Managers, dated 11th December 1880, was a most valuable document, and although it contained many passages, personal allusions, as well as other points open to much objection, *Mr. Cotton* did not propose to detain the meeting by indulging in any *criticism* in regard to them. He might say in passing that he considered the expression "vehement assault" contained in the penultimate paragraph was quite uncalled for by any of the language used in his own circular. But he did not wish to dwell on such matters. He would refer to the fourth paragraph only, and was glad to express his unqualified satisfaction that the Fund management had now been able to place such an interpretation on the retrospective clause as to admit the families of all subscribers who died before 1st April 1878 to the full benefits now sanctioned (except donation), equally with the families of subscribers who may die, or have died, after that date. The Managers had now virtually conceded what he and his co-signitaries had asked for, and the only regret he had to express was that the Managers had not thought fit to favour him personally with this explanation (which had now, as it were, been furnished at the eleventh hour) when he addressed them in September last on the subject. Had the Managers at that time discussed the matter with him, or supplied him with information, which presumably at that time was available, showing that their October circular was no longer to be accepted as an indication of the Managers' policy, much time and trouble would have been saved.

Mr. Cotton had now completed the personal explanation he had to make to the meeting. He would now ask the Managers to furnish the explanation he thought was due from them to the meeting,—that is to say, he would ask them to reconcile the contradictory statements he had pointed out that afternoon, between the remarks contained in the circular of the 13th October 1879 and those contained in the fourth paragraph of the circular of the 11th December 1880. Before he sat down, however, he wished to make some remarks regarding the distribution of the surplus, with retrospective effect, to the families of invalid annuitants. This was

a point prominently alluded to in the appeal-circular of the 28th November. The name of Mr. Webster was particularly cited in that circular, because from the information available to the drafters of that circular it could not be discovered that any other invalid annuitant occupied a similar position to his. The facts of Mr. Webster's case were that he retired with a family in 1877, and now subscribes at quarter rates, and that under the Resolution of 1880, his wife and children on his death will only get quarter benefits, calculated on the increased allowances now awarded; but if the benefits recently sanctioned are extended as contemplated by the Resolution of 1874, they would be entitled to half benefits calculated on the increased allowances. It is now explained by the Managers that there are other subscribers who possess similar claims to those of Mr. Webster, and that if half benefits were guaranteed to Mr. Webster's family, it would be necessary to restore other subscribers to the Fund, and that the Fund would have to undertake liability for their existing or future families. The cost of such a measure is estimated by the Managers at nearly Rs. 70,000. It appeared, however, to *Mr. Cotton* that this estimate would probably be found to be excessive. He observed that in the Managers' circular of 22nd November 1879, in which the concession of this benefit generally to the families of invalid annuitants was discussed and recommended, it was stated: "The provision will not affect wives married, and children born of such wives after retirement. The cost of the benefit proposed by the Managers will not be great. Cases of this nature are so rare that they cannot be accurately valued." The benefit at that time was considered a very inexpensive one, and yet when the Managers were asked to extend it to the families of the invalid annuitants during a single quinquennial period, they pointed out that for these families only the benefit would cost nearly Rs. 70,000. It occurred to *Mr. Cotton* that when the management were in favour of a proposal, there was a tendency among the Managers to under-estimate its cost; but that when they were opposed to a proposition, they were liable to a tendency to pronounce the cost greater than it really was. In the present case it must be remembered that the benefit proposed "would not effect wives married, and children born of such wives after retirement." It was *Mr. Cotton's* belief that, of the invalid annuitants between 1st April 1873 and 1st April 1878, not above two or three were married at the time of retirement, and it was in his opinion out of the question to say that it would cost nearly Rs. 70,000 to extend the recently sanctioned benefit to the case of these families. Those who retired as bachelors could have no claim on the Fund on account of this benefit. It appeared to *Mr. Cotton* that the Managers had lost sight of this fact, and he questioned therefore the accuracy of their calculations. He threw himself on the favourable consideration of the Managers and of the meeting in dealing with this question. There was no class of subscribers for whom the members of the Service ought to feel greater sympathy than for the invalid annuitants. They were all men cut off from active service in the prime of life, with pitiful annuities hardly sufficient to support existence, and their families, in the event of their death, will be even in still narrower circumstances. It was not for Mr. Webster's family only that he was pleading, but for the families of all other invalid annuitants who had retired between 1873 and 1878, and whose position under the rules was similar to that of Mr. Webster's family. He was sure that if the accounts were again made up, the cost of this concession would come to a very insignificant total compared with the resources of the Fund and the value of the benefit to the family in each individual case. He earnestly hoped that the Managers and the meeting would consider his plea, and, as a special case, or as a special favour, allow the wives married to, and children born of, the invalid annuitants of this quinquennial period, at the time of retirement, the full value of the benefits awarded to the families of invalid annuitants by the Resolutions passed at the last January meeting.

Mr. Westland said he was surprised to find Mr. Cotton, when he rose to address the meeting, instead of offering an apology to the Managers, had proceeded to demand explanations of them. The proceedings which culminated on the resolution of last January had been characterized by the utmost deliberation, having been submitted to the Service for discussion for some months before the meeting, and afterwards in accordance with the rules for confirmation after it; he thought that Mr. Cotton should have been more careful before challenging the resolutions, and re-opening the whole matter by a new agitation. It was only twelve months since he (Mr. Westland) in this same place had complained of Members of the Service rushing into print, and getting up agitations without first making some enquiry as to their facts. Last year's agitation collapsed the moment a simple statement of the fact was made. This year's had collapsed for the same reason even before it came up for discussion.

Mr. Cotton had tried to justify his misapprehension of the facts by quoting from a Circular of the Managers of October 1879, in which they had asked for the opinions of the Service. The fact was that the Managers, after consulting the Service, and receiving, among other communications, one from Mr. Cotton himself, had determined to frame the resolutions so as to give the new benefits more of retrospective effect than they at first indicated; and Mr. Cotton, if he wanted to know what the effect of the resolutions was, should have looked to their wording, and not merely excerpted a statement from the discussions preceding it. At the meeting of January 1880, when the resolutions were brought forward, a valuation of their effect was printed and laid upon the table, where an entry would be found of the very benefits which Mr. Cotton was proposing by his first resolution; and afterwards in the Actuary's report, which was circulated to all the Service, the same entry was made, viz., "present incumbents" upon page

7. If Mr. Cotton had only read the documents sent him, he would never have been under any misapprehension as to the purport of the resolutions.

Then, besides that, Mr. Cotton sent a copy of his proposed circular to the Managers, and was distinctly informed that "many of his statements were open to contradiction." But the only result was, as appeared from a letter now received from Mr. Cotton's co-signatories, that the circular was sent to them for signature, with the assurance that "they were statements of absolute and undeniable facts." It was plainly Mr. Cotton himself and not the Managers who were responsible for the former so completely misunderstanding the facts of the case concerning which he had undertaken to address the Service.

As the other point raised by Mr. Cotton,—the case of the invalid annuitants,—Mr. Westland said that he was very sorry to appear to press hard upon any individual. Mr. Webster was a friend of his own, and he could not but sympathize with him in the misfortunes which had closed to him an Indian career. But the Managers were dealing in this matter with money which they held as trustees, and they would manifestly fail in their duty, if, instead of holding the scales evenly between all parties, they were to give special consideration to the hard cases which happened to come to their personal knowledge, or with which they might have some personal sympathy. Mr. Webster had at the time of his retirement deliberately chosen to insure his life for quarter benefits, and that at a time when no question had been raised about giving any extension in that direction. His case was not distinguishable from that of a person who, after insuring his life in an assurance office for £500, should apply that, in consideration of his special hardship, he might get £1,000 instead, and he would leave the meeting to judge what the Directors' reply to such an application would be. It was manifestly impossible for the Managers to accept Mr. Cotton's motion to separate off Mr. Webster's case for special treatment.

On the question of valuations Mr. Westland warned the meeting of the carefulness necessary in discussing all questions of increased benefits. The Managers drew up careful valuations of all that they themselves proposed, and the details of these were as open to Mr. Cotton as to any other person. All these questions were matters of very serious responsibility, and he warned the service of the extreme danger they would be led into, if they permitted private members to brush aside all careful calculations upon the mere plea that their own inner consciousness gave a result that differed from that arrived at by mathematical processes. He also explained the details of the Rs. 70,000, stated by the Managers as the cost of the application of Mr. Cotton's proposal to such invalid annuitant cases as were known.

Mr. Dampier said that before the subject was dropped, he would like to ask Mr. Westland on behalf of the Managers a question—

If before the next meeting Mr. Cotton were to address the Managers saying that he proposed to bring forward a motion that the service should as a matter of grace admit all subscribers whose cases stood on all fours with that of Mr. Webster, to the extra benefits which had been proposed for Mr Webster, and asking the Managers to assist him in getting up his case by furnishing a list of such members, and of the probable cost which the measure would entail, what answer would the Managers make to such an application?

No one could regret more than he did the growth of what he might term an opposition to the Managers, which was inclined to be overwilling to call them to account for informalities rather than to accept what they did on its merits.

Mr. Barbour pointed out that the question raised by Mr. Dampier was not before the meeting, and that Mr. Westland had no authority to speak for the Managers.

Mr. Westland said that he had no business to answer for the Managers in such a matter, as of course it would come before the Board for settlement, but that for himself he might say that, if Mr. Cotton, or any other member of the Service, desired to bring forward any reasonable proposal, he would give him every facility for obtaining information from the records of the Fund Office; and if Mr. Cotton wished to bring forward such a motion as Mr. Dampier mentioned, he (Mr. Westland) would also be happy to give him personal assistance.

Mr. Dampier said that his question was now completely and satisfactorily answered.

After a vote of thanks to the Chair the meeting dissolved.

CIVIL FUND OFFICE;
The 31st January 1881.

L. R. TOTTENHAM,
Chairman.

Estate of FRANK EGERTON HUDDLESTON, Sub-Assistant Conservator of Forests, Deceased.

Persons who claim to administer to the above estate are hereby called upon to present their claims in the Court of the District Judge of Prome, British Burma, within four months from this date.

ARTHUR HOUGH,
District Judge, Prome.

PROME,
The 12th February 1881.

Ramgurh Company, "Limited."

The Ordinary General Meeting of the Shareholders of this Company will be held in the Company's Registered Office, No. 16, Strand, on Wednesday, the 2nd March, at noon.

MACKINNON, MACKENZIE & Co.,
Agents.

PROMISSORY NOTES.

Caution.

The public are hereby cautioned against purchasing, or in any way dealing with, the Government Promissory Notes No. 016587 of the 4½ per cent. loan of 1879, for Rs. 1,500, and No. 016588 of the 4½ per cent. loan of 1879, for Rs. 20,000; the same having been placed with Messrs. Nicholls & Co. for safe custody only.

G. A. WATSON, *Surgeon-Major,*
Offg. Examiner of Medical Accounts.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, MARCH 5, 1881.

☞ 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.

NOTICE.

Mr. Robert Douglas MacGregor and Mr. Thomas Henderson have been admitted partners in our firm as from 1st January 1881.

DUNCAN BROTHERS & Co.

PROMISSORY NOTES.

Caution.

The public are hereby cautioned against purchasing, or in any way dealing with, the Government Promissory Notes No. 016587 of the 4½ per cent. loan of 1879, for Rs. 1,500, and No. 016588 of the 4½ per cent. loan of 1879, for Rs. 20,000; the same having been placed with Messrs. Nicholls & Co. for safe custody only.

G. A. WATSON, *Surgeon-Major,*
Offg. Examiner of Medical Accounts.

Stolen

The following Government Promissory Notes of 4 per cent. Loan :—

No. 082232 of 1842-43, for Rs. 500.
„ 091249 of 1842-43, „ 500.
„ 007558 of 1835-36, „ 500.
„ 057447 of 1879 „ 500.

And the following Notes have been renewed on Notes stolen from the undersigned :—

MEMO.

Old Notes.	*New Notes.*
No. 037421 of 1854-55, for Rs. 2,000.	No. 043400 of 1854-55, for Rs. 2,000.
No. 034780 of 1854-55, for Rs. 1,000.	No. 043399 of 1854-55, for Rs. 1,000.
No. 012785 of 1835-36, for Rs. 500.	No. 019615 of 1835-36, for Rs. 500.
No. 057448 of 4½ per cent. of 1872, for Rs. 500.	No. A011529 of 4 per cent. of 1879, for Rs. 500.

Payment of the same and 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 proprietors.

RAMLOLL BUDDREEDOSS,
50, Burtollah Street, Burrabazar,
Calcutta.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, MARCH 12, 1881.

☞ 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.

Great Eastern Hotel, Wine & General Purveying Company, "Ld."

Notice is hereby given that an Extraordinary General Meeting of Shareholders of the above Company will be held at 3 o'clock P.M., on Saturday, the 12th March 1881, at Nos. 1, 2 and 3, Old Court House Street, for the purpose of electing an Auditor in the room of Mr. William Nicholls.

Application for the vacancy should be sent in to the Secretary not less than three days before the meeting.

By Order of the Directors,

A. CUMMING,

Secretary.

CALCUTTA,
The 9th February 1881.

PROMISSORY NOTES.

Stolen

The following Government Promissory Notes of 4 per cent. Loan :—

No. 082232 of 1842-43, for Rs 500.
„ 091249 of 1842-43, „ 500.
„ 007558 of 1835-36, „ 500.
„ 057447 of 1879 „ 500.

And the following Notes have been renewed on Notes stolen from the undersigned :—

MEMO.

Old Notes.	*New Notes.*
No. 037421 of 1854-55, for Rs. 2,000.	No. 043400 of 1854-55, for Rs. 2,000.
No. 034780 of 1854-55, for Rs. 1,000.	No. 043399 of 1854-55, for Rs. 1,000.
No. 012785 of 1835-36, for Rs. 500.	No. 019615 of 1835-36, for Rs. 500.
No. 057448 of 4½ per cent. of 1872, for Rs. 500.	No A011529 of 4 per cent. of 1879, for Rs. 500.

Payment of the same and 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 proprietors.

RAMLOLL BUDDREEDOSS,
50, Burtollah Street, Burrabazar,
Calcutta.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, MARCH 19, 1881.

☞ 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.

Stolen.

No.	Loan.	Amount.	Names of the registered proprietors.	Remarks.
		Rs.		
057447	4 per cent. of 1879.	500	D. Magregor . .	Blank endorsed by Damodur Chowbay.
091249	4 per cent. of 1842-43.	500	Major Edward Newbury.	Blank endorsed by Damodur Chowbay.
007558	4 per cent. of 1835-36.	500	Bank of Bengal . .	Blank endorsed by Jadonath Chatterjee.
082232	4 per cent. of 1842-43.	500	Goolab Roy Nahur Sing.	Blank endorsed by Luchmundass.
*037421	4 per cent. of 1854-55.	2,000	Joogul Kissore Balkissun Dass.	Blank endorsed by Russicklall Chunder.
*034780	4 per cent. of 1854-55.	1,000	Sen Sahay Mull .	Blank endorsed by Russicklall Chunder.
*012785	4 per cent. of 1835-36.	500	Bakur Ally . .	Blank endorsed by Mooltanchand Danga.
*057418	4½ per cent. of 1872.	500	D. Magregor . .	Blank endorsed by Damodur Chowbay.

The Notes marked * having been stolen, are renewed in the following numbers :—

No. 043100 of 4 per cent. of 1854-55, for Rs. 2,000, in favor of Gobind Chunder Sen.
„ 043399 of 4 „ „ „ 1,000, „ „
„ 019615 of 4 „ of 1835-36, „ 500, „ „
„ A011529 of Rd. 4 per cent. of 1879, for Rs. 500, „ „

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 favor of the proprietor.

RAMLALL BUDDREEDASS,
No. 50, Banstolla Gullee,
Calcutta.

NOTICE.

The following Resolution passed at the Ninth Annual General Meeting of the Subscribers to the Hindu Family Annuity Fund, held on the 29th January 1881, is published for general information agreeably to Rule 57 :—

"That the Budget Estimate be passed and that the Directors be authorized to draw Rs. 4,617 during the year 1881-82, as provided in Rule 55, from the Deposit Account with the Government of India."

RAM SHUNKER SEN,
Chairman.

GOBINDLAUL ROY,
Secretary.

CALCUTTA,
The 14th March 1881.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, MARCH 26, 1881.

☞ 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.

Stolen.

No.	Loan.	Amount.	Names of the registered proprietors.	Remarks.
		Rs.		
057447	4 per cent. of 1879.	500	D. Magregor . .	Blank endorsed by Damodur Chowbay.
091249	4 per cent. of 1842-43.	500	Major Edward Newbury.	Blank endorsed by Damodur Chowbay.
007558	4 per cent. of 1835-36.	500	Bank of Bengal . .	Blank endorsed by Jadonath Chatterjee.
082232	4 per cent. of 1842-43.	500	Goolab Roy Nahur Sing.	Blank endorsed by Luchmundass.
*037421	4 per cent. of 1854-55.	2,000	Joogul Kissore Balkissun Dass.	Blank endorsed by Russicklall Chunder.
*034780	4 per cent. of 1854-55.	1,000	Sen Sahay Mull .	Blank endorsed by Russicklall Chunder.
*012785	4 per cent. of 1835-36.	500	Bakur Ally . .	Blank endorsed by Mooltanchand Danga.
*057448	4½ per cent. of 1872.	500	D. Magregor . .	Blank endorsed by Damodur Chowbay.

The Notes marked * having been stolen, are renewed in the following numbers:—

No. 043400 of 4 per cent. of 1854-55, for Rs. 2,000, in favor of Govind Chunder Sen.
„ 043399 of 4 „ „ „ 1,000, „ „
„ 019615 of 4 „ of 1835-36, „ 500, „ „
„ A011529 of Rd. 4 per cent. of 1879, for Rs. 500, „ „

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 favor of the proprietor.

RAMLALL BUDDREEDASS,
No. 50, Banstolla Gullee,
Calcutta.

Lost

The Government Promissory Notes described below:—

No. 049515, of the 4½ per cent. of 1872, for Rs. 500, S. J. Moysey;
No. 039090, of the 4 per cent. of 1842-43, for Rs. 500, Bank of Bengal;
No. 039487, of the 4 per cent. of 1842-43, for Rs. 500, S. J. Moysey;

last endorsed to S. J. Stuart, 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, Bank of Bengal, and application is about to be made for the issue of duplicates in favor of the proprietor.

H. G. EVANS,
Mysore State Railway,
Bangalore.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, APRIL 2, 1881.

☞ 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.

Stolen.

No.	Loan.	Amount.	Names of the registered proprietors.	Remarks.
		Rs.		
057447	4 per cent. of 1879.	500	D. Magregor . .	Blank endorsed by Damodur Chowbay.
091249	4 per cent. of 1842-43.	500	Major Edward Newbury.	Blank endorsed by Damodur Chowbay.
007558	4 per cent. of 1835-36.	500	Bank of Bengal . .	Blank endorsed by Jadonath Chatterjee.
082232	4 per cent. of 1842-43.	500	Goolab Roy Nahur Sing.	Blank endorsed by Luchmundass.
*037421	4 per cent. of 1854-55.	2,000	Joogul Kissore Balkissun Dass.	Blank endorsed by Russicklall Chunder.
*034780	4 per cent. of 1854-55.	1,000	Sen Sahay Mull .	Blank endorsed by Russicklall Chunder.
*012785	4 per cent. of 1835-36.	500	Bakur Ally . .	Blank endorsed by Mooltanchand Danga.
*057448	4½ per cent. of 1872.	500	D. Magregor . .	Blank endorsed by Damodur Chowbay.

The Notes marked * having been stolen, are renewed in the following numbers:—

No. 043400 of 4 per cent. of 1854-55, for Rs. 2,000, in favor of Govind Chunder Sen.
„ 043399 of 4 „ „ „ 1,000, „ „
„ 019615 of 4 „ of 1835-36, „ 500, „ „
„ A011529 of Rd. 4 per cent. of 1879, for Rs. 500, „ „

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 favor of the proprietor.

RAMLALL BUDDREEDASS,
No. 50, Banstolla Gullee,
Calcutta.

Lost

The Government Promissory Notes described below :—

No. 049515, of the 4½ per cent. of 1872, for Rs. 500, S. J. Moysey ;
No. 039090, of the 4 per cent. of 1842-43, for Rs. 500, Bank of Bengal ;
No. 039487, of the 4 per cent. of 1842-43, for Rs. 500, S. J. Moysey ;

last endorsed to S. J. Stuart, 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, Bank of Bengal, and application is about to be made for the issue of duplicates in favor of the proprietor.

H. G. EVANS,
Mysore State Railway,
Bangalore.

Lost, Stolen, or Mislaid

The upper half of the Government Promissory Note, No. 055526, of the 4 per cent. loan of 1st May 1865, for Rs. 1,000, originally standing in the name of the New Bank of Bombay, Limited, and last endorsed to Tabitha Edwards, the proprietress, 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, Bombay, and application is about to be made for the issue of a duplicate in favor of the proprietress.

TABITHA FORRESTER, *late* EDWARDS.

UNCOVENANTED SERVICE FAMILY PENSION FUND.

Result of Votes on Circular No. 6, dated 23rd December 1880.

Subject.	For.	Against.
Whether the three children of the late Mr. G. W. Stuart, named in Circular No. 6, dated 23rd December 1880, shall be admitted to pension on payment of all arrears of subscription.	1,330	2

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

CALCUTTA,
The 25th March 1881.

PROMISSORY NOTES.

Lost

The Government Promissory Notes described below :—

No. 049515, of the 4½ per cent. of 1872, for Rs. 500, S. J. Moysey ;
No. 039090, of the 4 per cent. of 1842-43, for Rs. 500, Bank of Bengal ;
No. 039487, of the 4 per cent. of 1842-43, for Rs. 500, S. J. Moysey ;

last endorsed to S. J. Stuart, 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, Bank of Bengal, and application is about to be made for the issue of duplicates in favor of the proprietor.

H. G. EVANS,
Mysore State Railway,
Bangalore.

Lost

Government Promissory Note, No. 050117 of 1842-43, of the 4 per cent. Loan, for Rs. 500. Payment of the above Note and interest due thereupon have been stopped at the Public Debt Office, Bank of Bengal, and application is about to be made for the issue of a duplicate.

DURGAMANI DEBAYA.

Lost, Stolen, or Mislaid

The upper half of the Government Promissory Note, No. 055526, of the 4 per cent. loan of 1st May 1865, for Rs. 1,000, originally standing in the name of the New Bank of Bombay, Limited, and last endorsed to Tabitha Edwards, the proprietress, 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, Bombay, and application is about to be made for the issue of a duplicate in favor of the proprietress.

TABITHA FORRESTER, *late* EDWARDS.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, APRIL 9, 1881.

☞ 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

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, APRIL 16, 1881.

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PART III.

Advertisements and Notices by Private Individuals and Corporations.

NOTICE.

A reward of Rs. 100 will be given to the person who will deliver the following lost Notes :—

No. 74—51870, Calcutta Circle, for Rs. 1,000.
„ „ —56120 „ „ 1,000.

CHUJMAL DOSS.

PROMISSORY NOTES.

Lost

Government Promissory Note, No. 050117 of 1842-43, of the 4 per cent. Loan, for Rs. 500. Payment of the above Note and interest due thereupon have been stopped at the Public Debt Office, Bank of Bengal, and application is about to be made for the issue of a duplicate.

DURGAMANI DEBAYA.

Lost, Stolen, or Mislaid

The upper half of the Government Promissory Note, No. 055526, of the 4 per cent. Loan of 1st May 1865, for Rs. 1,000, originally standing in the name of the New Bank of Bombay, Limited, and last endorsed to Tabitha Edwards, the proprietress, 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, Bombay, and application is about to be made for the issue of a duplicate in favor of the proprietress.

TABITHA FORRESTER, *late* EDWARDS.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, APRIL 23, 1881.

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PART III.

Advertisements and Notices by Private Individuals and Corporations.

JOSEPH WILLIS, Deceased.

Pursuant to an Act of Parliament of the 22nd and 23rd Victoria, chapter 35, intituled "An Act to further amend the Law of Property and to relieve trustees," notice is hereby given, that **all creditors and other persons having any claims or demands upon or against the Estate of Joseph Willis, late of No. 39, Fountain-street, in the Borough of Kingston-upon-Hull, England,** formerly of Goalundo, in the Province of Bengal, in the Empire of India, a Master Mariner, at the time of his death, hereafter mentioned, in the service of the Eastern Bengal Railway Company, who died at No. 39, Fountain-street aforesaid, on the 1st day of October, 1880, and Probate of whose Will was granted by Her Majesty's High Court of Justice at the District Registry attached to the Probate Division thereof at York, on the 17th day of November, 1880, to John Atkinson Harker, of Balmoral-terrace, Anlaby-road, in the Borough of Kingston-upon-Hull aforesaid, gentleman, the Executor therein named, are required to send to us, the undersigned solicitors to the said Executor, on or before the 17th day of May next, full particulars in writing of their claims and demands, after which date the Executor will proceed to distribute the assets of the said deceased amongst the persons entitled thereto, having regard only to the claims of which he shall then have had notice, and the said Executor will not be liable for any part of the assets so distributed to any person of whose debt or claim he shall not then have had notice.

Dated this Twenty-eighth day of March, 1881.

THOMPSON, COOK and BABINGTON,
14, Parliament-street, Hull, England,
Solicitors to the said Executor.

NOTICE.

Persons having claims against the estate of Miss Juliana Laforey Tovey, late of Chandernagore, who died on or about the 11th day of November 1879, are required to present them to the undersigned, one of the executors to the estate, on or before the 31st May next, after which date no claim will be admitted.

R. C. S. MACKENZIE.

1, UPPER WOOD STREET,
CALCUTTA.
The 19th April 1881.

PROMISSORY NOTES.

Lost

Government Promissory Note, No. 050117 of 1842-43, of the 4 per cent. Loan, for **Rs. 500.** Payment of the above Note and interest due thereupon have been stopped at the Public Debt Office, Bank of Bengal, and application is about to be made for the issue of a duplicate.

DURGAMANI DEBAYA.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, APRIL 30, 1881.

☞ 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.

NOTICE.

Persons having claims against the estate of Miss Juliana Laforey Tovey, late of Chandernagore, who died on or about the 11th day of November 1879, are required to present them to the undersigned, one of the executors to the estate, on or before the 31st May next, after which date no claim will be admitted.

R. C. S. MACKENZIE.

1, UPPER WOOD STREET,
CALCUTTA.
The 19th April 1881.

PROMISSORY NOTES.

Destroyed by Rats.

The Government Promissory Note No. $\frac{6827}{8886}$, of the 4 per cent. of 1835-36, for Rs. 500. 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 favour of the proprietor.

RAGUVANS RAI,
Rais of Sakit, Zilla Etah.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, MAY 7, 1881.

☞ 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.

Destroyed by Rats.

The Government Promissory Note No. $\frac{6227}{8886}$, of the 4 per cent. of 1835-36, for Rs. 500. 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 favour of the proprietor.

RAGUVANS RAI,
Rais of Sakit, Zilla Etah.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, MAY 14, 1881.

☞ 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 or Stolen

The Government Promissory Note No. 011498, of the 4 per cent. of 1879, for Rs. 5,000, originally standing in the name of Ram Lal Budri Das and lastly endorsed by Sikri Parshad to "the Registrar, High Court, N.W. P.," 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 has been made for the issue of a duplicate in favour of the proprietor.

S. HARVEY JAMES,
Registrar,
High Court, N. W. P.

ALLAHABAD,
The 5th May 1881.

Lost, Stolen, or Destroyed

The Government Promissory Notes Nos. 056251 and 052900, of the 4 per cent. loan of 1842-43, for Rs. 5,000 each, originally standing in the names of E. D. J. Ezra and the Chartered Mercantile Bank of India, London and China, and last endorsed to the late Gunga Narain Sircar, 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, Bank of Bengal, and application has been made for the issue of duplicates in favour of the executrix to the said Gunga Narain Sircar.

KALLY DASS BOSE,
Manager of the Estate of the late
Gunga Narain Sircar, Chetla.

Destroyed by Rats.

The Government Promissory Note No. $\frac{6627}{8886}$, of the 4 per cent. of 1835-36, for Rs. 500. 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 favour of the proprietor.

RAGUVANS RAI,
Rais of Sakit, Zilla Etah.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, MAY 21, 1881.

☞ 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 or Stolen

The Government Promissory Note No. 011498, of the 4 per cent. of 1879, for Rs. 5,000, originally standing in the name of Ram Lal Budri Das and lastly endorsed by Sikri Parshad to "the Registrar, High Court, N.W. P.," 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 has been made for the issue of a duplicate in favour of the proprietor.

S. HARVEY JAMES,
Registrar,
High Court, N. W. P.

ALLAHABAD,
The 5th May 1881.

Lost, Stolen, or Destroyed

The Government Promissory Notes Nos. 056251 and 052900, of the 4 per cent. loan of 1842-43, for Rs. 5,000, each, originally standing in the names of E. D. J. Ezra and the Chartered Mercantile Bank of India, London and China, and last endorsed to the late Gunga Narain Sircar, 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, Bank of Bengal, and application has been made for the issue of duplicates in favour of the executrix to the said Gunga Narain Sircar.

KALLY DASS BOSE,
Manager of the Estate of the late
Gunga Narain Sircar, Chetla.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, MAY 28, 1881.

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PART III.

Advertisements and Notices by Private Individuals and Corporations.

UNCOVENANTED SERVICE FAMILY PENSION FUND.

Abstract Statement of the Uncovenanted Service Family Pension Fund for the first quarter ending 31st July 1880, compared with the corresponding quarter of the year 1879.

Particulars.	For the 1st quarter ending 31st July 1880.	For the 1st quarter ending 31st July 1879.	Increase.	Decrease.
Balance at credit of the Fund on the Government books at the end of the previous quarter.	Rs. A. P. 69,41,443 13 9	Rs. A. P. 64,91,304 4 7	Rs. A. P. 4,50,139 9 2	Rs. A. P. .....
Add Receipts—				
Subscriptions from May to July in the Widows' Fund	1,10,156 10 4	1,09,713 10 9	442 15 7	.....
Ditto ditto Children's Fund	73,750 0 9	74,381 7 9	.....	631 7 0
Entrance Fees, &c., ditto	410 13 9	519 14 4	.....	109 0 7
Amount transferred from Widows' Fund to Reserve Fund (W. F.) ...	.....	1,39,579 0 0	.....	1,39,579 0 0
Ditto ditto Children's Fund to ditto (C. F.) ...	.....	92,304 0 0	.....	92,304 0 0
Ditto ditto Reserve Widows' Fund to Interest Reserve Fund (W. F.)	47,000 0 0	82,742 0 0	.....	35,742 0 0
Ditto ditto Widows' Fund to Interest Reserve Fund (W. F.) ...	33,929 0 0	53,490 0 0	.....	19,561 0 0
Ditto ditto Reserve Fund (C. F.) to Interest Reserve Fund (C. F.)	22,000 0 0	.....	22,000 0 0	.....
Ditto ditto Children's Fund to ditto (C. F.)	20,807 0 0	.....	20,807 0 0	.....
Ditto ditto Reserve Fund to Widows' Fund	5,29,010 0 0	.....	5,29,010 0 0*	.....
Ditto ditto ditto to Children's Fund	3,60,187 0 0	.....	3,60,187 0 0*	.....
Total Receipts ...	11,97,250 8 10	5,52,730 0 10	A9,32,446 15 7	2,87,926 7 7
GRAND TOTAL ...	81,38,694 6 7	70,44,034 5 5	B13,82,586 8 9	2,87,926 7 7
Deduct Payments—				
Pensions paid to Incumbents in the Widows' Fund	69,156 3 6	68,005 0 8	1,151 2 10	.....
Ditto ditto Children's Fund	51,958 2 4	47,692 7 5	4,265 10 11	.....
Cost of Establishment, including house rent and contingencies	19,870 2 9	18,536 1 0	1,334 1 9	.....
Interest on Reserve Fund passed to Subscribers of over and above 5 years' standing (W. F.)	85,125 3 0	81,412 8 0	3,712 11 0	.....
Ditto ditto ditto ditto (C. F.)	47,777 10 0	51,432 12 0	.....	3,655 2 0
Amounts transferred from Widows' Fund to Reserve Fund and Interest Reserve Fund (W. F.)	33,929 0 0	2,06,213 0 0	.....	1,72,284 0 0
Ditto ditto Children's Fund to Interest Reserve Fund (C. F.) ...	20,807 0 0	1,35,349 0 0	.....	1,14,542 0 0
Ditto ditto Reserve Fund to Widows' Fund and Interest Reserve Fund (W. F.)	5,76,010 0 0	16,108 0 0	5,59,902 0 0	.....
Ditto ditto to Children's Fund and Interest Reserve Fund (C. F.)	3,82,187 0 0	10,445 0 0	3,71,742 0 0	.....
Total Payments ...	12,86,820 5 7	6,35,198 13 1	C9,42,107 10 6	2,90,481 2 0
Net balance in favour of the Fund, exclusive of Interest upon Capital ...	68,51,874 1 0	64,08,840 8 4	D4,40,478 14 3	2,554 10 5
Proportion of Interest on Reserve Fund payable to Subscribers	33,382 12 0	33,337 12 0	45 0 0	.....

	Widows' Fund.	Children's Fund.	Widows' Fund.	Children's Fund.	Widows' Fund.	Children's Fund.	Widows' Fund.	Children's Fund.
Number of Subscribers	1,443	955	1,428	940	15	15	.....	.....
Ditto of Incumbents	335	541	327	513	8	28	.....	.....
Ditto sharing interest on Reserve Fund	864	590	819	557	45	33	.....	.....

* Adjustments made to bring the surplus on the books in accord with the Actuary's valuation, *vide* paragraph 5 of report for 1878-79.

A—Net increase ... ... Rs. 6,44,540 3 0
B— Ditto ... ... ,, 10,94,660 1 2
C— Ditto ... ... ,, 6,61,626 8 6
D— Ditto ... ... ,, 4,43,033 8 8

G. W. MACLEOD,
Acctt. and Collector.

UNCOVENANTED SERVICE FAMILY PENSION FUND OFFICE;
The 28th April 1881.

H. RONALDSON,
JAMES BELL,
} *Auditors.*

Published by order of the Directors,
W. H. RYLAND,
Secretary.

BENGAL CIVIL FUND.

NOTICE.

The Half-yearly General Meeting of Subscribers will be held at the Town Hall on Wednesday, the 27th July next, at 4-30 P.M.

The Managers will propose the following amendments to the Rules:—

In Article V in the last clause before the words "of birth," *insert* "other evidence of the date of," and before the words "be accepted," *insert* "or evidence."

In Articles XXVIII and XXIX after the words "shall have died," *add*—

"or if such member has been divorced from his wife and leaves no widow, or if his widow has been excluded from the Fund under Article XXV."

In Article XXX for the words "or if there be no widow," *substitute*—

"on her admission to the Fund, or if there be no widow, or if such widow has been excluded from the Fund under Article XXV."

COLMAN MACAULAY,
Secretary.

PROMISSORY NOTES.

Lost or Stolen

The Government Promissory Note No. 011498, of the 4 per cent. of 1879, for Rs. 5,000, originally standing in the name of Ram Lal Budri Das and lastly endorsed by Sikri Parshad to "the Registrar, High Court, N.W. P.," 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 has been made for the issue of a duplicate in favour of the proprietor.

S. HARVEY JAMES,
Registrar,
High Court, N. W. P.

ALLAHABAD,
The 5th May 1881.

Lost, Stolen, or Destroyed

The Government Promissory Notes Nos. 056251 and 052900, of the 4 per cent. loan of 1842-43, for Rs. 5,000 each, originally standing in the names of E. D. J. Ezra and the Chartered Mercantile Bank of India, London and China, and last endorsed to the late Gunga Narain Sircar, 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, Bank of Bengal, and application has been made for the issue of duplicates in favour of the executrix to the said Gunga Narain Sircar.

KALLY DASS BOSE,
Manager of the Estate of the late Gunga Narain Sircar, Chetla.

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CALCUTTA, SATURDAY, JUNE 4, 1881.

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PART III.

Advertisements and Notices by Private Individuals and Corporations.

UNCOVENANTED SERVICE FAMILY PENSION FUND.

Abstract Statement of the Uncovenanted Service Family Pension Fund for the second quarter ending 31st October 1880, compared with the corresponding quarter of the year 1879.

PARTICULARS.	For the 2nd quarter ending 31st October 1880.	For the 2nd quarter ending 31st October 1879.	Increase.	Decrease.
	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.
Balance at credit of the Fund on the Government books at the end of the previous quarter.	68,51,874 1 0	64,08,840 8 4	4,43,033 8 8	.....
ADD RECEIPTS—				
Subscriptions from August to October in the Widows' Fund	1,10,327 4 9	1,11,479 4 9	.....	1,152 0 0
Ditto ditto Children's Fund	74,352 10 9	74,230 13 9	121 13 0	.....
Entrance Fees, &c., ditto	331 10 0	285 13 0	45 13 0	.....
Amount written back from Interest on Reserve Fund	128 4 0	.....	128 4 0	.....
TOTAL RECEIPTS ...	1,85,139 13 6	1,85,995 15 6	A295 14 0	1,152 0 0
GRAND TOTAL ...	70,37,013 14 6	65,94,836 7 10	B4,43,329 6 8	1,152 0 0
DEDUCT PAYMENTS—				
Pensions paid to Incumbents in the Widows' Fund	71,320 1 3	68,019 5 5	3,300 11 10	.....
Ditto ditto Children's Fund	52,204 11 7	50,805 14 5	1,398 13 2	.....
Establishment, including office rent and contingencies	15,995 13 8	17,811 0 8	.....	1,815 4 0
TOTAL PAYMENTS ...	1,39,520 9 6	1,36,636 4 6	C4,699 9 0	1,815 4 0
Net balance in favor of the Fund, exclusive of Interest upon Capital ...	68,97,493 5 0	64,58,200 3 4	D4,38,629 13 8	663 4 0
Proportion of Interest on Reserve Fund payable to Subscribers	33,282 12 0	33,237 12 0	45 0 0	.....
TOTAL ...	33,282 12 0	33,237 12 0	45 0 0	.....

	Widows' Fund.	Children's Fund.	Widows' Fund.	Children's Fund.	Widows' Fund.	Children's Fund.	Widows' Fund.	Children's Fund.
Number of Subscribers	1,443	958	1,427	939	16	19	.....	.....
Ditto of Incumbents	339	552	327	522	12	30	.....	.....
Ditto sharing Interest on Reserve Fund	864	590	819	567	45	33	.....	.....

A—Net decrease ... ... Rs. 856 2 0
B—Net increase ... ... ,, 4,42,177 6 8
C— Ditto ... ... ,, 2,884 5 0
D— Ditto ... ... ,, 4,39,293 1 8

G. W. MACLEOD,
Accts. and Collector.

H. RONALDSON,
JAMES BELL, } *Auditors.*

UNCOVENANTED SERVICE FAMILY PENSION FUND OFFICE;
The 30th April 1881.

Published by order of the Directors,
W. H. RYLAND,
Secretary.

PROMISSORY NOTES.

Lost

The undermentioned fourteen Government Promissory Notes, originally standing as detailed below, and last endorsed to Cunchi Jagurlapudy Vencatasoobbiah, 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, Bank of Bengal, and application is about to be made for the issue of duplicates in favour of the proprietor :—

No.	Loan.	Amount.	Originally standing in the name of—
		Rs.	
42809 ...	4 Per Cent. of 30th June 1854	600	A. M. Southerland, Esq.
022431/30078 ...	Ditto ditto ...	900	The Bank of Madras.
019741/25392 ...	Ditto ditto ...	2,500	The Collector of Kristna District.
024498 ...	4½ Per Cent. Transfer Loan of 1879	3,000	Cunchi Jagurlapudy Vencatasoobbiah.
044752/022276 ...	Ditto ditto ...	1,000	The Oriental Bank Corporation, Madras.
044753 ...	Ditto ditto ...	1,000	
024496 ...	Ditto ditto ...	500	E. D. Evezard.
029625 ...	Ditto ditto ...	5,000	Cunchi Jagurlapudy Vencatasoobbiah.
106688 ...	4 Per Cent. of 1st May 1865 ...	1,000	The Chartered Mercantile Bank of India, London, and China.
106686 ...	Ditto ditto ...	1,000	
036554/023748 ...	Ditto ditto ...	2,000	The Bank of Madras.
067785/061686 ...	Ditto ditto ...	2,000	
029091 ...	Reduced 4 Per Cent. of 1879 ...	600	C. A. Ainslie, Admr. of Captain T. R. Ardagh.
004367 ...	4½ Per Cent. of 1878 ...	1,000	The National Bank of India, Limited.

CUNCHI JAGURLAPUDY VENCATASOOBBIAH,
No. 27, Narryana Modelly Street, Peddoo Naick's Petta,
Black Town, Madras.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, JUNE 11, 1881.

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PART III.

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PROMISSORY NOTES.

Lost

The undermentioned fourteen Government Promissory Notes, originally standing as detailed below, and last endorsed to Cunchi Jagurlapudy Vencatasoobbiah, 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, Bank of Bengal, and application is about to be made for the issue of duplicates in favour of the proprietor :—

No.	Loan.	Amount.	Originally standing in the name of—
		Rs.	
42809 ...	4 Per Cent. of 30th June 1854	600	A. M. Southerland, Esq.
022431/30078 ...	Ditto ditto ...	900	The Bank of Madras.
019741/25392 ...	Ditto ditto ...	2,500	The Collector of Kristna District.
024498 ...	4½ Per Cent. Transfer Loan of 1879	3,000	Cunchi Jagurlapudy Vencatasoobbiah.
044752/022276 ...	Ditto ditto ...	1,000	The Oriental Bank Corporation, Madras.
044753 ...	Ditto ditto ...	1,000	
024496 ...	Ditto ditto ...	500	E. D. Evezard.
029625 ...	Ditto ditto ...	5,000	Cunchi Jagurlapudy Vencatasoobbiah.
106688 ...	4 Per Cent. of 1st May 1865 ...	1,000	The Chartered Mercantile Bank of India, London, and China.
106686 ...	Ditto ditto ...	1,000	
036554/023748 ...	Ditto ditto ...	2,000	The Bank of Madras.
067785/061686 ...	Ditto ditto ...	2,000	
029091 ...	Reduced 4 Per Cent. of 1879 ...	600	C. A. Ainslie, Admr. of Captain T. R. Ardagh.
004367 ...	4½ Per Cent. of 1878 ...	1,000	The National Bank of India, Limited.

CUNCHI JAGURLAPUDY VENCATASOOBBIAH,
No. 27, Narryana Modelly Street, Peddoo Naick's Petta,
Black Town, Madras.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, JUNE 18, 1881.

☞ 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 undermentioned fourteen Government Promissory Notes, originally standing as detailed below, and last endorsed to Cunchi Jagurlapudy Vencatasoobbiah, 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, Bank of Bengal, and application is about to be made for the issue of duplicates in favour of the proprietor :—

No.	Loan.	Amount.	Originally standing in the name of—
		Rs.	
42809 ...	4 Per Cent. of 30th June 1854	600	A. M. Southerland, Esq.
022481 ...	Ditto ditto ...	900	The Bank of Madras.
030078 ...	Ditto ditto ...	2,500	The Collector of Kristna District.
019741 ...			
25392			
024498 ...	4½ Per Cent. Transfer Loan of 1879	8,000	Cunchi Jagurlapudy Vencatasoobbiah.
044752 ...	Ditto ditto ...	1,000	The Oriental Bank Corporation, Madras.
044754 ...	Ditto ditto ...	1,000	
044753 ...	Ditto ditto ...	500	E. D. Evezard.
024496 ...	Ditto ditto ...	5,000	Cunchi Jagurlapudy Vencatasoobbiah.
029625 ...	4 Per Cent. of 1st May 1865 ...	1,000	The Chartered Mercantile Bank of India, London, and China.
106688 ...	Ditto ditto ...	1,000	
106686 ...	Ditto ditto ...	2,000	The Bank of Madras.
028554 ...	Ditto ditto ...	2,000	
037146 ...			
067186 ...			
061886			
029091 ...	Reduced 4 Per Cent. of 1879 ...	600	C. A. Ainslie, Admr. of Captain T. R. Ardagh.
004367 ...	4½ Per Cent. of 1878 ...	1,000	The National Bank of India, Limited.

CUNCHI JAGURLAPUDY VENCATASOOBBIAH,
No. 27, Narryana Modelly Street, Peddoo Naick's Petta,
Black Town, Madras.

Destroyed

The Government Promissory Notes, Nos. 103275 and 112831 of the 4 per cent. of 1865, for Rs. 500 each, originally standing in the names of the National Bank of India, Limited, and Ram Jeebun Ghose, respectively, and both last endorsed to Upendra Nath Ghose, Munsiff of Kasba, in District Tipperah in Bengal, 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, Bank of Bengal, and application is about to be made for the issue of duplicates in favour of the proprietor.

UPENDRA NATH GHOSE,
Munsiff of Kasba, in District Tipperah in Bengal, on leave.
Care of Baboo Prova Chunder Ghose, Pleader, Judge's Court, Bulloram Bose's Ghât Street, Bhowanipore, Churruckdangah, Calcutta.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, JUNE 25, 1881.

☞ 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.

Destroyed

The Government Promissory Notes, Nos. 103275 and 112331 of the 4 per cent. of 1865, for Rs. 500 each, originally standing in the names of the National Bank of India, Limited, and Ram Jeebun Ghose, respectively, and both last endorsed to Upendra Nath Ghose, Munsiff of Kasba, in District Tipperah in Bengal, 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, Bank of Bengal, and application is about to be made for the issue of duplicates in favour of the proprietor.

UPENDRA NATH GHOSE,
Munsiff of Kasba, in District Tipperah in Bengal,
on leave.
Care of Baboo Prova Chunder Ghose, Pleader,
Judge's Court, Bulloram Bose's Ghât Street,
Bhowanipore, Churruckdangah, Calcutta.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, JANUARY 1, 1881.

☞ 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 26th December, 1880, and is hereby promulgated for general information :—

ACT No. XVI OF 1880.

An Act to regulate the Traffic on the Madras Irrigation and Canal Company's Canal.

Preamble.

WHEREAS, by the twenty-seventh clause of an Indenture made on the third day of June, one thousand eight hundred and sixty-three, between the Secretary of State for India in Council of the one part, and the Madras Irrigation and Canal Company (hereinafter referred to as "the Company") of the other part, it was, amongst other things, provided that the Company should be authorized and empowered to charge such tolls for navigation, and such fares or rates for the conveyance of passengers, animals and goods, as should not exceed the rates, tolls or fares which should be defined and sanctioned by an Act of the Indian legislature; and that the Company should not in any case charge any higher tolls, fares or rates whatsoever; and whereas it is expedient to define and sanction, for the purposes of the said clause, fares and rates for the conveyance of passengers, animals and goods;

And whereas it is also expedient to empower the Company to make rules for the conveyance of passengers, animals and goods upon, and the use, management and working of, its canal; It is hereby enacted as follows :—

Short title.

Commencement.

1. This Act may be called "The Madras Irrigation and Canal Company's Act, 1880;" and it shall come into force at once.

Fares and rates for conveyance of passengers and goods.

2. The fares and rates specified in the schedule hereto annexed shall be deemed to be the fares and rates defined and sanctioned for the purposes of the said clause.

Company empowered to make working rules for its canal.

3. The Company may, from time to time, make rules for the following purposes, that is to say :—

(*a*) for licensing vessels (other than those of the Company) to navigate the canal and for registering vessels so licensed and denoting upon each its carrying capacity;

(*b*) for fixing the maximum number of passengers or animals, and the maximum amount of goods, which vessels navigating the canal may carry; and

(*c*) generally for regulating the traffic upon, and the use and management of all vessels upon, the canal.

Penalty for breach of rules.

4. 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 one month.

Notification of rules.

5. All such rules shall, when sanctioned by the Governor of Fort St. George in Council and published in the *Fort St. George Gazette*, have the force of law.

Power to cancel rules.

The said Governor in Council may at any time cancel any such rule.

Copy and translation of Act, &c., to be shown at stations and on vessels.

6. A copy of this Act and the rules made hereunder, and of the Time-table and Tariff of Charges which may from time to time be observed for the Company's vessels navigating the canal, shall be exhibited, both in English and in Telugu, in some conspicuous place at each station of the canal, and

in each vessel employed by the Company in conveying passengers, animals or goods over the canal.

Penalty for failure to exhibit copy and translation as required by section 6.

7. Any servant of the Company in charge of any such station or vessel at or in which the provisions of section six are not complied with shall be punished with fine which may extend to ten rupees; and the Company shall forfeit to Government the sum of fifty rupees for every day during which such provisions are not complied with at or in any such station or vessel.

Place of trial.

8. Any person committing any offence against this Act or the rules made under it shall be triable for such offence at any place at which he may be, or which the Governor of Fort St. George in Council may, from time to time, by notification in the official Gazette, direct, as well as in any other place in which he might be tried under any law for the time being in force.

Saving of prosecutions under other laws.

9. 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.

THE SCHEDULE.

(*See section 2.*)

Fares and Rates.

PASSENGERS.

	Pies.
First class, per passenger, per mile or fraction of a mile ...	1·4
Second class, per ditto ditto ...	5·6
Third class, per ditto ditto { Mail (fast)	3·2
{ Ordinary	2·0

ANIMALS.

	Pies.
A horse or mule taken singly, per mile or fraction of a mile ...	14·4
	Annas.
Cattle, horses and mules, per 10 or fraction of 10, per ditto ...	6·0
Calves needing only half the space of a cow, to be reckoned as half.	
Sheep, goats and pigs, per 60 or fraction of 60, per ditto	6·0
Asses, half the rates for horses.	

N.B.—Dogs if conveyed at all will not be charged for, no accommodation being provided for them.

Elephants and camels will not be conveyed at all.

GOODS.

Heavy Goods, i.e., Goods weighing above 180 lbs.

	Pies.
First class (which includes all articles for the time being comprised in the special and first classes, Madras Railway) per ton, per mile or fraction of a mile ...	7·2
Second class (which includes all articles for the time being comprised in the second and third classes, Madras Railway) per ditto, ditto ...	12·8
Third class (which includes all articles for the time being comprised in the fourth and fifth classes, Madras Railway) per ditto, ditto ...	24·0

Fractions of a ton will be charged for proportionately, fractions of 20 lbs. being reckoned as 20 lbs.

N. B.—Carriages or vehicles will not be conveyed.

Parcels.

DISTANCE.	EXCLUSIVE OF COLLECTION AND DELIVERY.									
	10 lbs. and under.	Above 10 and not above 20 lbs.	Above 20 and not above 40 lbs.	Above 40 and not above 60 lbs.	Above 60 and not above 80 lbs.	Above 80 and not above 100 lbs.	Above 100 and not above 120 lbs.	Above 120 and not above 140 lbs.	Above 140 and not above 160 lbs.	Above 160 and not above 180 lbs.
	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.
50 miles and under ...	0 2 6	0 3 9	0 5 0	0 6 3	0 7 6	0 8 9	0 10 0	0 11 3	0 12 6	0 13 9
Above 50 and not above 100 miles	0 5 0	0 7 6	0 10 0	0 12 6	0 15 0	1 1 6	1 4 0	1 6 6	1 9 0	1 11 6
„ 100 „ 150 „	0 7 6	0 11 3	0 15 0	1 2 0	1 6 6	1 10 3	1 14 0	2 1 9	2 5 6	2 9 3
„ 150 „ 200 „	0 10 0	0 15 0	1 4 0	1 9 0	1 14 0	2 3 0	2 8 0	2 13 0	3 2 0	3 7 0

The rates for bread, meat, fish, poultry (dead or alive), ice, fruit, plants, vegetables and flowers will be half parcel-rates as shown above.

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

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, JANUARY 8, 1881.

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 26th December, 1880, and is hereby promulgated for general information:—

ACT No. XVI OF 1880.

An Act to regulate the Traffic on the Madras Irrigation and Canal Company's Canal.

Preamble.

WHEREAS, by the twenty-seventh clause of an Indenture made on the third day of June, one thousand eight hundred and sixty-three, between the Secretary of State for India in Council of the one part, and the Madras Irrigation and Canal Company (hereinafter referred to as "the Company") of the other part, it was, amongst other things, provided that the Company should be authorized and empowered to charge such tolls for navigation, and such fares or rates for the conveyance of passengers, animals and goods, as should not exceed the rates, tolls or fares which should be defined and sanctioned by an Act of the Indian legislature; and that the Company should not in any case charge any higher tolls, fares or rates whatsoever; and whereas it is expedient to define and sanction, for the purposes of the said clause, fares and rates for the conveyance of passengers, animals and goods;

And whereas it is also expedient to empower the Company to make rules for the conveyance of passengers, animals and goods upon, and the use, management and working of, its canal; It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Madras Irrigation and Canal Company's Act, 1880;"

Commencement.

and it shall come into force at once.

Fares and rates for conveyance of passengers and goods.

2. The fares and rates specified in the schedule hereto annexed shall be deemed to be the fares and rates defined and sanctioned for the purposes of the said clause.

Company empowered to make working rules for its canal.

3. The Company may, from time to time, make rules for the following purposes, that is to say:—

(*a*) for licensing vessels (other than those of the Company) to navigate the canal and for registering vessels so licensed and denoting upon each its carrying capacity;

(*b*) for fixing the maximum number of passengers or animals, and the maximum amount of goods, which vessels navigating the canal may carry; and

(*c*) generally for regulating the traffic upon, and the use and management of all vessels upon, the canal.

Penalty for breach of rules.

4. 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 one month.

Notification of rules.

5. All such rules shall, when sanctioned by the Governor of Fort St. George in Council and published in the *Fort St. George Gazette*, have the force of law.

Power to cancel rules.

The said Governor in Council may at any time cancel any such rule.

Copy and translation of Act, &c., to be shown at stations and on vessels.

6. A copy of this Act and the rules made hereunder, and of the Time-table and Tariff of Charges which may from time to time be observed for the Company's vessels navigating the canal, shall be exhibited, both in English and in Telugu, in some conspicuous place at each station of the canal, and

in each vessel employed by the Company in conveying passengers, animals or goods over the canal.

Penalty for failure to exhibit copy and translation as required by section 6.

7. Any servant of the Company in charge of any such station or vessel at or in which the provisions of section six are not complied with shall be punished with fine which may extend to ten rupees; and the Company shall forfeit to Government the sum of fifty rupees for every day during which such provisions are not complied with at or in any such station or vessel.

Place of trial.

8. Any person committing any offence against this Act or the rules made under it shall be triable for such offence at any place at which he may be, or which the Governor of Fort St. George in Council may, from time to time, by notification in the official Gazette, direct, as well as in any other place in which he might be tried under any law for the time being in force.

Saving of prosecutions under other laws.

9. 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.

THE SCHEDULE.

(*See section 2.*)

Fares and Rates.

PASSENGERS.

	Pies.
First class, per passenger, per mile or fraction of a mile ...	14·4
Second class, per ditto ditto ...	5·6
Third class, per ditto ditto { Mail (fast)	3·2
Third class, per ditto ditto { Ordinary	2·0

ANIMALS.

	Pies.
A horse or mule taken singly, per mile or fraction of a mile ...	14·4
	Annas.
Cattle, horses and mules, per 10 or fraction of 10, per ditto ...	6·0
Calves needing only half the space of a cow, to be reckoned as half.	
Sheep, goats and pigs, per 60 or fraction of 60, per ditto	6·0
Asses, half the rates for horses.	

N.B.—Dogs if conveyed at all will not be charged for, no accommodation being provided for them.

Elephants and camels will not be conveyed at all.

GOODS.

Heavy Goods, i.e., Goods weighing above 180 lbs.

	Pies.
First class (which includes all articles for the time being comprised in the special and first classes, Madras Railway) per ton, per mile or fraction of a mile	7·2
Second class (which includes all articles for the time being comprised in the second and third classes, Madras Railway) per ditto, ditto ...	12·8
Third class (which includes all articles for the time being comprised in the fourth and fifth classes, Madras Railway) per ditto, ditto ...	24·0

Fractions of a ton will be charged for proportionately, fractions of 20 lbs. being reckoned as 20 lbs.

N.B.—Carriages or vehicles will not be conveyed.

Parcels.

DISTANCE.	EXCLUSIVE OF COLLECTION AND DELIVERY.									
	10 lbs. and under.	Above 10 and not above 20 lbs.	Above 20 and not above 40 lbs.	Above 40 and not above 60 lbs.	Above 60 and not above 80 lbs.	Above 80 and not above 100 lbs.	Above 100 and not above 120 lbs.	Above 120 and not above 140 lbs.	Above 140 and not above 160 lbs.	Above 160 and not above 180 lbs.
	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.
50 miles and under ...	0 2 6	0 3 9	0 5 0	0 6 3	0 7 6	0 8 9	0 10 0	0 11 3	0 12 6	0 13 9
Above 50 and not above 100 miles	0 5 0	0 7 6	0 10 0	0 12 6	0 15 0	1 1 6	1 4 0	1 6 6	1 9 0	1 11 6
„ 100 „ 150 „	0 7 6	0 11 3	0 15 0	1 2 9	1 6 6	1 10 3	1 14 0	2 1 9	2 5 6	2 9 3
„ 150 „ 200 „	0 10 0	0 15 0	1 4 0	1 9 0	1 14 0	2 3 0	2 8 0	2 13 0	3 2 0	3 7 0

The rates for bread, meat, fish, poultry (dead or alive), ice, fruit, plants, vegetables and flowers will be half parcel-rates as shown above.

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

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 1st January, 1881, and is hereby promulgated for general information:—

ACT No. I OF 1881.

An Act for the determination of claims to Táj Mahal's pension.

Preamble.

WHEREAS, by a treaty dated the 24th Shabán 1244, Hijri, corresponding with the first day of March, 1829, and made between His Majesty the King of Oudh and the Government of the Hon'ble the East India Company, it was (amongst other things) agreed that a certain pension therein specified should be paid by the English Government to one Nawáb Táj Mahal therein named, and that if she should die leaving an heir or heirs the English Government might at its election continue as before such pension to her heirs, or make over to them the principal sum proportionate to such pension according to the rate thereinbefore mentioned;

and whereas the said Táj Mahal is now dead and doubts exist as to who are her heirs, and it is therefore expedient to provide for the appointment of a person to represent her estate for the purpose of receiving such pension;

and whereas the Secretary of State for India in Council is desirous of making over to the persons entitled to receive the said pension the principal sum proportionate thereto as provided in the said treaty, and it is expedient to empower the said Secretary of State in Council to capitalize the said pension pending the appointment of a person as aforesaid; It is hereby enacted as follows:—

Short title. Commencement.

1. This Act may be called "Táj Mahal's Pension Act, 1881"; and it shall come into force at once.

Certificate to be obtained by application to the District Court.

2. Any person considering himself entitled to the said pension or any portion thereof may apply in writing to the Court of the District Judge of Lucknow (hereinafter called the District Court) for a certificate authorizing him to receive the same.

Form of application.

The application shall be in such form and shall contain such particulars as the Governor General in Council may from time to time, by rules to be published in the *Gazette of India*, direct.

Publication of application and notice to persons desiring to oppose it.

3. The District Court shall fix a day for hearing the application, and shall cause to be stuck up in the court-house, and otherwise published or made known at the expense of the applicant in such manner as it thinks fit, a copy of the application, with a notice stating the time and place at which it will be heard, and calling upon all persons claiming to have a better right than the applicant to the grant of the certificate to come in and oppose the application.

Procedure at hearing when no opposition.

4. On the day so fixed, or any subsequent day to which the Court may adjourn the hearing, the Court shall, if no person claiming to have a better right than the applicant to the grant of the certificate is present, hear the application; and if, after recording the evidence produced by the applicant in support of his claim, and making such further enquiry (if any) as it thinks necessary, the Court is of opinion that the applicant has established his claim, it shall make an order for granting him a certificate.

In the event of the applicant not having, in the opinion of the Court, established his claim, it shall make an order dismissing his application.

Procedure in case of opposition.

5. In any case in which any person claiming to have a better right than the applicant to the grant of the certificate is present, the Court shall, after hearing the application and recording the evidence produced by the applicant in support of his claim, hear such person and record the evidence produced by him in support of his claim, and shall then, after making such further enquiry (if any) as it thinks necessary, determine which of the parties (if either) has established his claim to the certificate, and shall make an order for granting the same accordingly.

In the event of neither party having, in the opinion of the Court, established his claim, the Court shall make an order dismissing both the application and the counter-claim.

Appeal to the High Court.

6. When any order dismissing an application under section four, or any order under section five, is made, an appeal by any party to the proceedings, who deems himself aggrieved by such order, shall lie to the High Court, which may make an order dismissing such appeal or granting a certificate, or otherwise reversing or varying the order of the District Court, as it thinks fit.

7. The period of limitation for an appeal under section six shall be sixty days from the date of the order appealed against.

Period of limitation for appeal.

In computing such period, and in all respects not herein specified, the limitation of such appeals shall be governed by the provisions of the Indian Limitation Act, 1877.

8. A certificate granted under this Act shall specify the payments which the person to whom it is granted is entitled to receive, and shall contain such other particulars as the Governor General in Council may from time to time prescribe in this behalf.

Form of certificate.

9. Every certificate granted under section four, or section six,

Effect of certificate.

and every certificate granted under section five, when the period of limitation fixed by section seven has expired without an appeal having been preferred against the order granting such certificate, shall, while it remains in force, be conclusive evidence against the said Secretary of State in Council of the right of the person to whom it has been granted to receive the payments specified therein, and shall, unless or until it is rescinded and the authority rescinding it has given to the said Secretary of State in Council notice of such rescission, empower such person to give to the said Secretary of State in Council a full discharge for any such payment.

10. The said Secretary of State in Council shall not be bound to pay the said pension or any portion thereof to any person claiming the same, except on the production by such person of a certificate, granted in the manner herein provided, authorizing him to receive the same.

No obligation to pay except on production of certificate.

11. Nothing herein contained shall be deemed to affect the right of any person to recover by suit from the holder of a certificate granted under this Act the amount of any payment made to him in virtue of such certificate

Right of third parties against holder of certificate saved.

12. The Court ordering any certificate to be granted under this Act may, if it thinks fit, direct that before such certificate is granted, such security (if any) as it thinks necessary shall be taken from the person to whom such certificate is to be granted, for his rendering an account of the payments to be received by him in virtue of such certificate to any person who may be entitled to recover from him in manner referred to in section eleven the whole or any part of such payments.

Court may take security from grantee of certificate.

13. The District Court may, on the application of any person who has recovered by suit from the holder of a certificate granted under this Act the amount of any payment made to him in virtue of such certificate, grant a certificate to such person in supersession, wholly or in part, as the case may be, of the former certificate.

Court may grant fresh certificate to person who has recovered by suit amount paid to holder of old certificate.

No appeal shall lie from any order under this section.

On the grant of a fresh certificate under this section the former certificate shall be deemed to be rescinded wholly or in part, as the case may be.

Effect of fresh certificate.

14. In all proceedings under this Act the District Court and the High Court shall, as far as may be and except as herein otherwise provided, exercise the powers and follow the procedure conferred on, and prescribed for, a Court of first instance and a Court of appeal respectively by the Code of Civil Procedure: Provided that nothing contained in Chapter XLV of the said Code shall apply to any order made in any such proceeding.

Proceedings to be regulated by Code of Civil Procedure.

15. The provisions of section thirteen of the said Code shall apply to all cases under section five of this Act in which the question of heirship to the said Táj Mahal, having been directly and substantially in issue in a suit in a Court of competent jurisdiction between the claimants, or between parties under whom they or any of them claim, litigating under the same title, has been heard and finally determined by such Court.

Matters decided in civil suits to be treated as *res judicata*.

16. All payments heretofore made by or on behalf of the said Secretary of State in Council under the said treaty shall be deemed to have been made in accordance with law: Provided that nothing in this section shall affect the right of any person to recover by suit the amount of any such payment from the person to whom the same has been made.

Indemnity as to payments already made.

17. The said Secretary of State in Council may, pending the grant of a certificate as hereinbefore provided, invest in securities of the Government of India the principal sum proportionate to the pension of the said Táj Mahal according to the rate mentioned in the said treaty, and may invest the income from time to time resulting from such securities in like securities.

Government empowered to capitalize the amount of the pension.

And, thereupon, all further claim to such pension and income shall cease, and the persons obtaining a certificate in manner hereinbefore provided shall be entitled, in lieu of such pension and income, to the securities aforesaid, together with the uninvested income (if any) which from the date of making such investment has resulted from such securities.

On capitalization, all claim to pension barred.

18. The said Secretary of State in Council shall, without unnecessary delay, invest, in securities of the Government of India, all arrears of such pension due at the time of the passing of this Act, and all such arrears falling due thereafter, and before the investment of the principal sum aforesaid. When any such arrears have been so invested, all further claim in respect thereof shall cease, and the persons obtaining a certificate in manner hereinbefore provided shall, in lieu of such arrears, be entitled to the securities in which they have been invested and the income resulting therefrom.

Arrears of pension accruing before capitalization to be invested.

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

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 1st January, 1881, and is hereby promulgated for general information:—

ACT No. II OF 1881.

An Act to regulate the Navigation of the Pegu and Sittang Canal, and to provide for the protection of the said Canal and the execution of works necessary for its maintenance.

Preamble.

WHEREAS the Government has constructed a canal connecting the waters of the Pegu and Sittang rivers, partly by digging artificial channels and partly by using the water-bed of the Ka-ya-zoo creek; and whereas it is necessary to provide for the navigation, protection and maintenance of the said canal; It is hereby enacted as follows:

Preliminary.

Short title.

1. This Act may be called "The Pegu and Sittang Canal Act, 1881";

Commencement.

and it shall come into force at once.

Interpretation-clause.

2. In this Act, unless there is something repugnant in the subject or context,—

"The canal."

(1) "The canal" means the Pegu and Sittang Canal, and includes—

(*a*) all channels and reservoirs now or hereafter constructed, maintained or controlled by the Government for the supply or storage of water in connection with the said canal, or supplemental thereto, between the Sittang lock, situated at Myit-kyo, on the Sittang river, and the Pegu lock, situated near the village of Sin-o-bo, on the Pegu river;

(*b*) all works, embankments, structures and supply and escape-channels connected with the canal or with the said channels and reservoirs;

(*c*) all lands occupied by the Government for the purposes of the said canal, and all buildings, machinery, fences, gates and other erections, trees, crops, plantations or other produce occupied by, or belonging to, the Government, upon such lands:

"Vessel."

(2) "Vessel" includes boats, rafts, timber and other floating bodies:

"Canal Officer."

(3) "Canal Officer" means an officer appointed under this Act by the Chief Commissioner to exercise control over the canal or any part thereof:

"Superintending Canal Officer."

(4) "Superintending Canal Officer" means an officer exercising general control over the canal.

Power to appoint officers.

3. The Chief Commissioner may from time to time declare, by notification in the *British Burma Gazette*, the officers by whom and the local limits within which, all or any of the powers or duties hereinafter conferred or imposed shall be exercised or performed.

Navigation of the Canal.

Tolls to be levied from vessels using the canal.

4. Such tolls as the Chief Commissioner may from time to time, by notification in the *British Burma Gazette*, direct, shall be levied from all vessels entering or navigating the canal.

Power to detain vessels violating rules.

5. Any vessel entering or navigating the canal contrary to the rules made in that behalf under this Act by the Chief Commissioner, or so as to cause danger to the canal or to the other vessels therein, may be removed or detained, or both removed and detained, by a Canal Officer, or by any other person duly authorized under section three in that behalf.

The owner of any vessel causing damage to the canal, or removed or detained under this section, shall be liable to pay to the Government such charge as the Canal Officer, with the approval of the Superintending Canal Officer, determines to be necessary to defray the cost of repairing such damage, or of such removal or detention, as the case may be.

Power to detain vessel on failure to pay tolls or charges.

6. If any toll or charge due under this Act in respect of any vessel is not paid on demand to the person authorized to collect the same, the Canal Officer may seize and detain such vessel and the furniture thereof, until such toll or charge, together with all expenses arising from such seizure and detention, is paid in full.

Power to seize cargo or goods if charges due thereon are not paid.

7. If any charge due to the Government in respect of any cargo or goods carried in a Government vessel on the canal, or stored on or in lands or warehouses occupied for the purposes of the canal, is not paid on demand to the person authorized to collect the same, the Canal Officer may seize such cargo or goods, and detain it or them until the charge so due, together with all expenses arising from such seizure and detention, is paid in full.

Power to sell property seized under sections 6 and 7.

8. Within a reasonable time after any seizure under section six or section seven, the Canal Officer shall give notice to

the owner or person in charge of the property seized that it, or such portion of it as may be necessary, will, on a day to be named in the notice, but not sooner than twenty-one days from the date of the notice, be sold in satisfaction of the claim on account of which such property is detained, unless the claim is discharged before the day so named;

and if such claim is not so discharged, the Canal Officer may, on such day, sell the property seized, or such part thereof as may be necessary to yield the amount due, together with the expenses of such seizure and sale.

The residue (if any) of such property, and of the proceeds of the sale, shall be made over to the owner or person in charge of the property seized.

Procedure in respect of vessels abandoned and goods unclaimed.

9. If any vessel is found abandoned in the canal, or any cargo or goods carried in a Government vessel on the canal, or stored on or in lands or warehouses occupied for the purposes of the canal, is or are left unclaimed for a period of two months, the Canal Officer may take possession of the same.

Power to sell.

The officer so taking possession shall publish a notice, in such manner as the Chief Commissioner may from time to time by rule direct, that if such vessel and its contents, or such cargo or goods, is or are not claimed previously to a day to be named in the notice, not sooner than thirty days from the date of such notice, he will sell the same; and if such vessel, contents, cargo or goods is or are not so claimed, he may, at any time after the day named in the notice, proceed to sell the same.

Disposal of proceeds of sale.

The said vessel and its contents, and the said cargo or goods, if unsold, or, if a sale has taken place, the proceeds of the sale, after paying all tolls and charges due in respect of the vessel, cargo or goods and all expenses incurred by the Canal Officer on account of the taking possession and sale, shall be made over to the owner of the same, when his ownership is established to the satisfaction of the Canal Officer.

If the Canal Officer is doubtful to whom such property or proceeds should be made over, he may direct the property to be sold and the proceeds to be paid into the district-treasury, there to be held until the right thereto is decided by a Court of competent jurisdiction.

Maintenance of the Canal.

Power of Canal Officer to enter on land and remove obstructions, &c.

10. A Canal Officer, empowered by the Commissioner of the Division generally or specially in this behalf, or any other person acting under the general or special order of such officer, may enter on any land in the neighbourhood of the canal and remove any obstructions, and may close any channels and do any other thing necessary or convenient for the maintenance of the canal.

Power to enter and survey, &c.

11. Any such officer or other person may, for the purposes of any enquiry relating to any part of the canal under the charge of such officer, enter upon any such lands, and undertake surveys or levels thereon, and dig and bore into the subsoil;

and make and set up suitable land-marks, level-marks and water-gauges;

and do all other acts necessary for such purposes;

Power to clear land.

and, where otherwise such enquiry cannot be completed, such officer or other person may cut down and clear away any part of any standing crop, fence or jungle.

Power to enter, to repair and to prevent accidents.

12. In case of any accident happening or being reasonably apprehended to the canal, any such officer or other person may enter upon any such lands, and may execute all works which may be necessary for the purpose of repairing or preventing such accident.

Compensation for damage caused by entry.

13. In every case of entry under section ten, eleven or twelve, the Canal Officer shall tender, as soon as may be reasonably practicable, to the owner or occupiers of the land compensation for any damage which may be occasioned by such entry and by any proceeding under such section.

In case of dispute as to the sufficiency of the amount so tendered, the Canal Officer shall forthwith refer the same for decision by the Deputy Commissioner, whose decision thereon shall be final.

Obtaining Labour and Materials for Work on the Canal.

Procedure for obtaining labour and materials for works urgently required.

14. Whenever it appears to a Canal Officer that, unless some work is immediately executed, such serious damage will happen to the canal as will cause sudden and extensive public injury,

and that the labourers or materials necessary for the proper execution of such work cannot be obtained in the ordinary manner within the time that can be allowed for the execution of such work so as to prevent such damage,

such officer may, by order under his hand, direct that the provisions of this section shall be put into operation for the execution of such work, and thereupon—

(*a*) every able-bodied person whose name appears in the list hereinafter mentioned shall, if required so to do by such officer or by any person authorized by him in this behalf, be bound to assist in the execution of such work by labouring thereon as such officer or other person directs, and

(*b*) such officer or any person authorized by him in this behalf may enter into and upon any immoveable property in the neighbourhood of the Canal, and take possession of, appropriate and remove any trees or bamboos, whether standing or not, and any timber, mats, ropes or other materials found in or upon such property, and use the same for the purposes of such work.

Every person authorized as mentioned in this section shall be deemed to be a public servant within the meaning of the Indian Penal Code.

Deputy Commissioner to prepare list of persons liable to serve.

15. Subject to such rules as the Chief Commissioner may from time to time, with the previous sanction of the Governor General in Council, prescribe in this behalf, the Deputy Commissioners of Rangoon and Shwaygin shall prepare lists of persons residing in the neighbourhood of the canal in the said districts respectively and liable to be required under section fourteen to assist as aforesaid, and may from time to time add to or alter such list or any part thereof.

Payment for labour impressed and materials taken.

16. All persons labouring or detained for the purpose of labouring in compliance with a requisition made under section fourteen, or whose materials may be taken under that section, shall, as soon as may be reasonably practicable, be paid by the Canal Officer for their labour and detention, or for such materials (as the case may be), at a rate not being less than twenty-five per cent. above the highest market-rates for similar labour or materials for the time being prevailing in the neighbourhood.

Any dispute arising between the Canal Officer and any person as to the amount to be paid to such person under this section may be referred by either party to the Deputy Commissioner, whose decision thereon shall be final.

Compensation for damage done in taking materials.

17. Whenever, from the removal, under section fourteen, of any trees, bamboos or other materials, any damage over and above the price payable for such materials results directly to any person, the Canal Officer shall pay to such person such sum as may be agreed upon as compensation for such damage. In case of dispute as to the amount so to be paid, either party may refer such dispute to the Deputy Commissioner, whose decision thereon shall be final.

Offences and Penalties.

Offences under Act.

18. Whoever, without proper authority and voluntarily, does any of the acts following, that is to say:—

(*a*) damages, alters or obstructs the canal;

(*b*) interferes with, increases or diminishes the supply of water in, or the flow of water from, through, over or under the canal;

(*c*) interferes with or alters the flow of water in any river or stream, so as to endanger or damage the canal or render it less useful;

(*d*) corrupts or fouls the water of the canal, so as to render it less fit for the purposes for which it is ordinarily used;

(*e*) causes any vessel to enter or navigate, or to remain at any place in, the canal contrary to the rules for the time being prescribed by the Chief Commissioner for entering, navigating or remaining in the canal;

(*f*) while navigating the canal, neglects to take proper precautions to prevent injury to the canal and to vessels therein;

(*g*) being a person liable to labour under section fourteen, refuses or neglects without reasonable cause so to labour;

(*h*) destroys or moves any land-mark, level-mark or water-gauge fixed by the authority of a Canal Officer;

(*i*) passes, or causes animals or vehicles to pass, on or across any of the works, banks or channels of the canal contrary to rules made under this Act, after he has been desired by a Canal Office to desist therefrom; or

(*j*) pastures any animals on the banks of the canal or knowingly suffers any animals belonging to him or under his charge to graze on such banks;

shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or with both.

Penalty.

Nothing herein contained shall prevent any person from being prosecuted under any other law for any offence punishable under this Act: provided that no person shall be punished twice for the same offence.

Saving of prosecution under other laws.

19. Any fine imposed under this Act upon the owner of any vessel, or the servant or agent of such owner, or any other person in charge of a vessel, for any offence in respect of the navigation of such vessel, may be recovered either in the manner prescribed by the Code of Criminal Procedure, or, if the Magistrate imposing the fine so directs, as though it were a charge under this Act due in respect of such vessel.

Recovery of fines for offences in navigating canal.

20. Any person duly authorized in this behalf under section three may remove from the lands or buildings belonging to the canal, or may arrest without a warrant, and take forthwith before a Magistrate or to the nearest Police-station, to be dealt with according to law, any person who, within his view, commits any of the offences mentioned in clauses (*a*), (*b*) and (*c*) of section eighteen.

Power to arrest without warrant.

Power to make Rules.

Power to make rules.

21. The Chief Commissioner may, subject to the control of the Governor General in Council, from time to time make rules consistent with this Act to regulate the following matters:—

(*a*) the navigation of the canal;

(*b*) the proceedings of any officer who, under any provision of this Act, is required or empowered to take action in any matter;

(*c*) the amount of any tolls leviable under this Act; and

(*d*) generally, to carry out the provisions of this Act.

The Chief Commissioner may, in making any such rule, attach to the breach of it the penalty specified in section eighteen.

Publication of rules.

Such rules shall be published in the *British Burma Gazette*, and shall thereupon have the force of law.

Validation of past proceedings.

Validation of past proceedings.

22. Anything heretofore done which might legally have been done if this Act had been in force shall be deemed to have been done in accordance with law.

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

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, JANUARY 15, 1881.

☞ 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 26th December, 1880, and is hereby promulgated for general information :—

ACT No. XVI OF 1880.

An Act to regulate the Traffic on the Madras Irrigation and Canal Company's Canal.

Preamble.

WHEREAS, by the twenty-seventh clause of an Indenture made on the third day of June, one thousand eight hundred and sixty-three, between the Secretary of State for India in Council of the one part, and the Madras Irrigation and Canal Company (hereinafter referred to as "the Company") of the other part, it was, amongst other things, provided that the Company should be authorized and empowered to charge such tolls for navigation, and such fares or rates for the conveyance of passengers, animals and goods, as should not exceed the rates, tolls or fares which should be defined and sanctioned by an Act of the Indian legislature; and that the Company should not in any case charge any higher tolls, fares or rates whatsoever; and whereas it is expedient to define and sanction, for the purposes of the said clause, fares and rates for the conveyance of passengers, animals and goods;

And whereas it is also expedient to empower the Company to make rules for the conveyance of passengers, animals and goods upon, and the use, management and working of, its canal; It is hereby enacted as follows :—

Short title.

Commencement.

1. This Act may be called "The Madras Irrigation and Canal Company's Act, 1880;" and it shall come into force at once.

Fares and rates for conveyance of passengers and goods.

2. The fares and rates specified in the schedule hereto annexed shall be deemed to be the fares and rates defined and sanctioned for the purposes of the said clause.

Company empowered to make working rules for its canal.

3. The Company may, from time to time, make rules for the following purposes, that is to say :—

(*a*) for licensing vessels (other than those of the Company) to navigate the canal and for registering vessels so licensed and denoting upon each its carrying capacity;

(*b*) for fixing the maximum number of passengers or animals, and the maximum amount of goods, which vessels navigating the canal may carry; and

(*c*) generally for regulating the traffic upon, and the use and management of all vessels upon, the canal.

Penalty for breach of rules.

4. 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 one month.

Notification of rules.

5. All such rules shall, when sanctioned by the Governor of Fort St. George in Council and published in the *Fort St. George Gazette*, have the force of law.

Power to cancel rules.

The said Governor in Council may at any time cancel any such rule.

Copy and translation of Act, &c., to be shown at stations and on vessels.

6. A copy of this Act and the rules made hereunder, and of the Time-table and Tariff of Charges which may from time to time be observed for the Company's vessels navigating the canal, shall be exhibited, both in English and in Telugu, in some conspicuous place at each station of the canal, and

in each vessel employed by the Company in conveying passengers, animals or goods over the canal.

Penalty for failure to exhibit copy and translation as required by section 6.

7. Any servant of the Company in charge of any such station or vessel at or in which the provisions of section six are not complied with shall be punished with fine which may extend to ten rupees; and the Company shall forfeit to Government the sum of fifty rupees for every day during which such provisions are not complied with at or in any such station or vessel.

Place of trial.

8. Any person committing any offence against this Act or the rules made under it shall be triable for such offence at any place at which he may be, or which the Governor of Fort St. George in Council may, from time to time, by notification in the official Gazette, direct, as well as in any other place in which he might be tried under any law for the time being in force.

Saving of prosecutions under other laws.

9. 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.

THE SCHEDULE.

(*See section 2.*)

Fares and Rates.

PASSENGERS.

		Pies.
First class, per passenger, per mile or fraction of a mile	...	14·4
Second class, per ditto ditto	...	5·6
Third class, per ditto ditto	Mail (fast)	3·2
	Ordinary	2·0

ANIMALS.

	Pies.
A horse or mule taken singly, per mile or fraction of a mile ...	14·4
	Annas.
Cattle, horses and mules, per 10 or fraction of 10, per ditto ...	6·0
Calves needing only half the space of a cow, to be reckoned as half.	
Sheep, goats and pigs, per 60 or fraction of 60, per ditto	6·0
Asses, half the rates for horses.	

N.B.—Dogs if conveyed at all will not be charged for, no accommodation being provided for them.

Elephants and camels will not be conveyed at all.

GOODS.

Heavy Goods, i.e., Goods weighing above 180 lbs.

	Pies.
First class (which includes all articles for the time being comprised in the special and first classes, Madras Railway) per ton, per mile or fraction of a mile	7·2
Second class (which includes all articles for the time being comprised in the second and third classes, Madras Railway) per ditto, ditto ...	12·8
Third class (which includes all articles for the time being comprised in the fourth and fifth classes, Madras Railway) per ditto, ditto ...	24·0

Fractions of a ton will be charged for proportionately, fractions of 20 lbs. being reckoned as 20 lbs.

N.B.—Carriages or vehicles will not be conveyed.

Parcels.

DISTANCE.	EXCLUSIVE OF COLLECTION AND DELIVERY.									
	10 lbs. and under.	Above 10 and not above 20 lbs.	Above 20 and not above 40 lbs.	Above 40 and not above 60 lbs.	Above 60 and not above 80 lbs.	Above 80 and not above 100 lbs.	Above 100 and not above 120 lbs.	Above 120 and not above 140 lbs.	Above 140 and not above 160 lbs.	Above 160 and not above 180 lbs.
	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.
50 miles and under ...	0 2 6	0 3 9	0 5 0	0 6 3	0 7 6	0 8 9	0 10 0	0 11 3	0 12 6	0 13 9
Above 50 and not above 100 miles	0 5 0	0 7 6	0 10 0	0 12 6	0 15 0	1 1 6	1 4 0	1 6 6	1 9 0	1 11 6
„ 100 „ 150 „	0 7 6	0 11 3	0 15 0	1 2 9	1 6 6	1 10 3	1 14 0	2 1 9	2 5 6	2 9 3
„ 150 „ 200 „	0 10 0	0 15 0	1 4 0	1 9 0	1 14 0	2 3 0	2 8 0	2 13 0	3 2 0	3 7 0

The rates for bread, meat, fish, poultry (dead or alive), ice, fruit, plants, vegetables and flowers will be half parcel-rates as shown above.

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

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 1st January, 1881, and is hereby promulgated for general information:—

ACT No. I OF 1881.

An Act for the determination of claims to Táj Mahal's pension.

Preamble.

WHEREAS, by a treaty dated the 24th Shabán 1244, Hijri, corresponding with the first day of March, 1829, and made between His Majesty the King of Oudh and the Government of the Hon'ble the East India Company, it was (amongst other things) agreed that a certain pension therein specified should be paid by the English Government to one Nawáb Táj Mahal therein named, and that if she should die leaving an heir or heirs the English Government might at its election continue as before such pension to her heirs, or make over to them the principal sum proportionate to such pension according to the rate thereinbefore mentioned;

and whereas the said Táj Mahal is now dead and doubts exist as to who are her heirs, and it is therefore expedient to provide for the appointment of a person to represent her estate for the purpose of receiving such pension;

and whereas the Secretary of State for India in Council is desirous of making over to the persons entitled to receive the said pension the principal sum proportionate thereto as provided in the said treaty; and it is expedient to empower the said Secretary of State in Council to capitalize the said pension pending the appointment of a person as aforesaid; It is hereby enacted as follows:—

Short title. Commencement.

1. This Act may be called "Táj Mahal's Pension Act, 1881"; and it shall come into force at once.

Certificate to be obtained by application to the District Court.

2. Any person considering himself entitled to the said pension or any portion thereof may apply in writing to the Court of the District Judge of Lucknow (hereinafter called the District Court) for a certificate authorizing him to receive the same.

Form of application.

The application shall be in such form and shall contain such particulars as the Governor General in Council may from time to time, by rules to be published in the *Gazette of India*, direct.

Publication of application and notice to persons desiring to oppose it.

3. The District Court shall fix a day for hearing the application, and shall cause to be stuck up in the court-house, and otherwise published or made known at the expense of the applicant in such manner as it thinks fit, a copy of the application, with a notice stating the time and place at which it will be heard, and calling upon all persons claiming to have a better right than the applicant to the grant of the certificate to come in and oppose the application.

Procedure at hearing when no opposition.

4. On the day so fixed, or any subsequent day to which the Court may adjourn the hearing, the Court shall, if no person claiming to have a better right than the applicant to the grant of the certificate is present, hear the application; and if, after recording the evidence produced by the applicant in support of his claim, and making such further enquiry (if any) as it thinks necessary, the Court is of opinion that the applicant has established his claim, it shall make an order for granting him a certificate.

In the event of the applicant not having, in the opinion of the Court, established his claim, it shall make an order dismissing his application.

Procedure in case of opposition.

5. In any case in which any person claiming to have a better right than the applicant to the grant of the certificate is present, the Court shall, after hearing the application and recording the evidence produced by the applicant in support of his claim, hear such person and record the evidence produced by him in support of his claim, and shall then, after making such further enquiry (if any) as it thinks necessary, determine which of the parties (if either) has established his claim to the certificate, and shall make an order for granting the same accordingly.

In the event of neither party having, in the opinion of the Court, established his claim, the Court shall make an order dismissing both the application and the counter-claim.

Appeal to the High Court.

6. When any order dismissing an application under section four, or any order under section five, is made, an appeal by any party to the proceedings, who deems himself aggrieved by such order, shall lie to the High Court, which may make an order dismissing such appeal or granting a certificate, or otherwise reversing or varying the order of the District Court, as it thinks fit.

7. The period of limitation for an appeal under section six shall be sixty days from the date of the order appealed against.

Period of limitation for appeal.

In computing such period, and in all respects not herein specified, the limitation of such appeals shall be governed by the provisions of the Indian Limitation Act, 1877.

8. A certificate granted under this Act shall specify the payments which the person to whom it is granted is entitled to receive, and shall contain such other particulars as the Governor General in Council may from time to time prescribe in this behalf.

Form of certificate.

9. Every certificate granted under section four, or section six,

Effect of certificate.

and every certificate granted under section five, when the period of limitation fixed by section seven has expired without an appeal having been preferred against the order granting such certificate, shall, while it remains in force, be conclusive evidence against the said Secretary of State in Council of the right of the person to whom it has been granted to receive the payments specified therein, and shall, unless or until it is rescinded and the authority rescinding it has given to the said Secretary of State in Council notice of such rescission, empower such person to give to the said Secretary of State in Council a full discharge for any such payment.

10. The said Secretary of State in Council shall not be bound to pay the said pension or any portion thereof to any person claiming the same, except on the production by such person of a certificate, granted in the manner herein provided, authorizing him to receive the same.

No obligation to pay except on production of certificate.

11. Nothing herein contained shall be deemed to affect the right of any person to recover by suit from the holder of a certificate granted under this Act the amount of any payment made to him in virtue of such certificate.

Right of third parties against holder of certificate saved.

12. The Court ordering any certificate to be granted under this Act may, if it thinks fit, direct that before such certificate is granted, such security (if any) as it thinks necessary shall be taken from the person to whom such certificate is to be granted, for his rendering an account of the payments to be received by him in virtue of such certificate to any person who may be entitled to recover from him in manner referred to in section eleven the whole or any part of such payments.

Court may take security from grantee of certificate.

13. The District Court may, on the application of any person who has recovered by suit from the holder of a certificate granted under this Act the amount of any payment made to him in virtue of such certificate, grant a certificate to such person in supersession, wholly or in part, as the case may be, of the former certificate.

Court may grant fresh certificate to person who has recovered by suit amount paid to holder of old certificate.

No appeal shall lie from any order under this section.

On the grant of a fresh certificate under this section the former certificate shall be deemed to be rescinded wholly or in part, as the case may be.

Effect of fresh certificate.

14. In all proceedings under this Act the District Court and the High Court shall, as far as may be and except as herein otherwise provided, exercise the powers and follow the procedure conferred on, and prescribed for, a Court of first instance and a Court of appeal respectively by the Code of Civil Procedure: Provided that nothing contained in Chapter XLV of the said Code shall apply to any order made in any such proceeding.

Proceedings to be regulated by Code of Civil Procedure.

15. The provisions of section thirteen of the said Code shall apply to all cases under section five of this Act in which the question of heirship to the said Táj Mahal, having been directly and substantially in issue in a suit in a Court of competent jurisdiction between the claimants, or between parties under whom they or any of them claim, litigating under the same title, has been heard and finally determined by such Court.

Matters decided in civil suits to be treated as *res judicata*.

16. All payments heretofore made by or on behalf of the said Secretary of State in Council under the said treaty shall be deemed to have been made in accordance with law: Provided that nothing in this section shall affect the right of any person to recover by suit the amount of any such payment from the person to whom the same has been made.

Indemnity as to payments already made.

17. The said Secretary of State in Council may, pending the grant of a certificate as hereinbefore provided, invest in securities of the Government of India the principal sum proportionate to the pension of the said Táj Mahal according to the rate mentioned in the said treaty, and may invest the income from time to time resulting from such securities in like securities.

Government empowered to capitalize the amount of the pension.

And, thereupon, all further claim to such pension and income shall cease, and the persons obtaining a certificate in manner hereinbefore provided shall be entitled, in lieu of such pension and income, to the securities aforesaid, together with the uninvested income (if any) which from the date of making such investment has resulted from such securities.

On capitalization, all claim to pension barred.

18. The said Secretary of State in Council shall, without unnecessary delay, invest, in securities of the Government of India, all arrears of such pension due at the time of the passing of this Act, and all such arrears falling due thereafter, and before the investment of the principal sum aforesaid. When any such arrears have been so invested, all further claim in respect thereof shall cease, and the persons obtaining a certificate in manner hereinbefore provided shall, in lieu of such arrears, be entitled to the securities in which they have been invested and the income resulting therefrom.

Arrears of pension accruing before capitalization to be invested.

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

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 1st January, 1881, and is hereby promulgated for general information:—

ACT No. II OF 1881.

An Act to regulate the Navigation of the Pegu and Sittang Canal, and to provide for the protection of the said Canal and the execution of works necessary for its maintenance.

WHEREAS the Government has constructed a canal connecting the waters of the Pegu and Sittang rivers, partly by digging artificial channels and partly by using the water-bed of the Ka-ya-zoo creek; and whereas it is necessary to provide for the navigation, protection and maintenance of the said canal; It is hereby enacted as follows:

Preamble.

Preliminary.

Short title.

1. This Act may be called "The Pegu and Sittang Canal Act, 1881";

Commencement.

and it shall come into force at once.

Interpretation-clause.

2. In this Act, unless there is something repugnant in the subject or context,—

"The canal."

(1) "The canal" means the Pegu and Sittang Canal, and includes—

(*a*) all channels and reservoirs now or hereafter constructed, maintained or controlled by the Government for the supply or storage of water in connection with the said canal, or supplemental thereto, between the Sittang lock, situated at Myit-kyo, on the Sittang river, and the Pegu lock, situated near the village of Sin-gó-bo, on the Pegu river;

(*b*) all works, embankments, structures and supply and escape-channels connected with the canal or with the said channels and reservoirs;

(*c*) all lands occupied by the Government for the purposes of the said canal, and all buildings, machinery, fences, gates and other erections, trees, crops, plantations or other produce occupied by, or belonging to, the Government, upon such lands:

(2) "Vessel" includes boats, rafts, timber and other

"Superintending Canal Officer" means an officer appointed under this Act by the Chief Commissioner to exercise [illegible] the canal or any part thereof;

(4) "Superintending Canal Officer" means an officer exercising general control over the canal.

"Superintending Canal Officer."

3. The Chief Commissioner may from time to time declare, by notification in the *British Burma Gazette*, the officers by whom and the local limits within which, all or any of the powers or duties hereinafter conferred or imposed shall be exercised or performed.

Power to appoint officers.

Navigation of the Canal.

4. Such tolls as the Chief Commissioner may from time to time, by notification in the *British Burma Gazette*, direct, shall be levied from all vessels entering or navigating the canal.

Tolls to be levied from vessels using the canal.

5. Any vessel entering or navigating the canal contrary to the rules made in that behalf under this Act by the Chief Commissioner, or so as to cause danger to the canal or to the other vessels therein, may be removed or detained, or both removed and detained, by a Canal Officer, or by any other person duly authorised under section three in that behalf.

Power to detain vessels violating rules.

The owner of any vessel causing damage to the canal, or removed or detained under this section, shall be liable to pay to the Government such charge as the Canal Officer, with the approval of the Superintending Canal Officer, determines to be necessary to defray the cost of repairing such damage, or of such removal or detention, as the case may be.

6. If any toll or charge due under this Act in respect of any vessel is not paid on demand to the person authorized to collect the same, the Canal Officer may seize and detain such vessel and the furniture thereof, until such toll or charge, together with all expenses arising from such seizure and detention, is paid in full.

Power to detain vessel on failure to pay tolls or charges.

7. If any charge due to the Government in respect of any cargo or goods carried in a Government vessel on the canal, or stored on or in lands or warehouses occupied for the purposes of the canal, is not paid on demand to the person authorized to collect the same, the Canal Officer may seize such cargo or goods, and detain it in charge until the charge so due, together with all expenses arising from such seizure and detention, is paid in full.

Power to seize cargo or goods if charges due thereon are not paid.

8. Within a reasonable time after any property seized under section six or section seven, the Canal Officer shall give notice to

Power to sell property seized under sections 6 and 7.

the owner or person in charge of the property seized that it, or such portion of it as may be necessary, will, on a day to be named in the notice, but not sooner than twenty-one days from the date of the notice, be sold in satisfaction of the claim on account of which such property is detained, unless the claim is discharged before the day so named;

and if such claim is not so discharged, the Canal Officer may, on such day, sell the property seized, or such part thereof as may be necessary to yield the amount due, together with the expenses of such seizure and sale.

The residue (if any) of such property, and of the proceeds of the sale, shall be made over to the owner or person in charge of the property seized.

Procedure in respect of vessels abandoned and goods unclaimed.

9. If any vessel is found abandoned in the canal, or any cargo or goods carried in a Government vessel on the canal, or stored on or in lands or warehouses occupied for the purposes of the canal, is or are left unclaimed for a period of two months, the Canal Officer may take possession of the same.

Power to sell.

The officer so taking possession shall publish a notice, in such manner as the Chief Commissioner may from time to time by rule direct, that if such vessel and its contents, or such cargo or goods, is or are not claimed previously to a day to be named in the notice, not sooner than thirty days from the date of such notice, he will sell the same; and if such vessel, contents, cargo or goods is or are not so claimed, he may, at any time after the day named in the notice, proceed to sell the same.

Disposal of proceeds of sale.

The said vessel and its contents, and the said cargo or goods, if unsold, or, if a sale has taken place, the proceeds of the sale, after paying all tolls and charges due in respect of the vessel, cargo or goods and all expenses incurred by the Canal Officer on account of the taking possession and sale, shall be made over to the owner of the same, when his ownership is established to the satisfaction of the Canal Officer.

If the Canal Officer is doubtful to whom such property or proceeds should be made over, he may direct the property to be sold and the proceeds to be paid into the district-treasury, there to be held until the right thereto is decided by a Court of competent jurisdiction.

Maintenance of the Canal.

Power of Canal Officer to enter on land and remove obstructions, &c.

10. A Canal Officer, empowered by the Commissioner of the Division generally or specially in this behalf, or any other person acting under the general or special order of such officer, may enter on any land in the neighbourhood of the canal and remove any obstructions, and may close any channels and do any other thing necessary or convenient for the maintenance of the canal.

Power to enter and survey, &c.

11. Any such officer or other person may, for the purposes of any enquiry relating to any part of the canal under the charge of such officer, enter upon any such lands, and undertake surveys or levels thereon, and dig and bore into the subsoil;

and make and set up suitable land-marks, level-marks and water-gauges;

and do all other acts necessary for such purposes;

Power to clear land.

and, where otherwise such enquiry cannot be completed, such officer or other person may cut down and clear away any part of any standing crop, fence or jungle.

Power to enter, to repair and to prevent accidents.

12. In case of any accident happening or being reasonably apprehended to the canal, any such officer or other person may enter upon any such lands, and may execute all works which may be necessary for the purpose of repairing or preventing such accident.

Compensation for damage caused by entry.

13. In every case of entry under section ten, eleven or twelve, the Canal Officer shall tender, as soon as may be reasonably practicable, to the owner or occupiers of the land compensation for any damage which may be occasioned by such entry and by any proceeding under such section.

In case of dispute as to the sufficiency of the amount so tendered, the Canal Officer shall forthwith refer the same for decision by the Deputy Commissioner, whose decision thereon shall be final.

Obtaining Labour and Materials for Work on the Canal.

Procedure for obtaining labour and materials for works urgently required.

14. Whenever it appears to a Canal Officer that, unless some work is immediately executed, such serious damage will happen to the canal as will cause sudden and extensive public injury,

and that the labourers or materials necessary for the proper execution of such work cannot be obtained in the ordinary manner within the time that can be allowed for the execution of such work so as to prevent such damage,

such officer may, by order under his hand, direct that the provisions of this section shall be put into operation for the execution of such work, and thereupon—

(*a*) every able-bodied person whose name appears in the list hereinafter mentioned shall, if required so to do by such officer or by any person authorized by him in this behalf, be bound to assist in the execution of such work by labouring thereon as such officer or other person directs, and

(*b*) such officer or any person authorized by him in this behalf may enter into and upon any immoveable property in the neighbourhood of the Canal, and take possession of, appropriate and remove any trees or bamboos, whether standing or not, and any timber, mats, ropes or other materials found in or upon such property, and use the same for the purposes of such work.

Every person authorized as mentioned in this section shall be deemed to be a public servant within the meaning of the Indian Penal Code.

Deputy Commissioner to prepare list of persons liable to serve.

15. Subject to such rules as the Chief Commissioner may from time to time, with the previous sanction of the Governor General in

Council, prescribe in this behalf, the Deputy Commissioners of Rangoon and Shwaygin shall prepare lists of persons residing in the neighbourhood of the canal in the said districts respectively and liable to be required under section fourteen to assist as aforesaid, and may from time to time add to or alter such list or any part thereof.

Payment for labour impressed and materials taken.

16. All persons labouring or detained for the purpose of labouring in compliance with a requisition made under section fourteen, or whose materials may be taken under that section, shall, as soon as may be reasonably practicable, be paid by the Canal Officer for their labour and detention, or for such materials (as the case may be), at a rate not being less than twenty-five per cent. above the highest market-rates for similar labour or materials for the time being prevailing in the neighbourhood.

Any dispute arising between the Canal Officer and any person as to the amount to be paid to such person under this section may be referred by either party to the Deputy Commissioner, whose decision thereon shall be final.

Compensation for damage done in taking materials.

17. Whenever, from the removal, under section fourteen, of any trees, bamboos or other materials, any damage over and above the price payable for such materials results directly to any person, the Canal Officer shall pay to such person such sum as may be agreed upon as compensation for such damage. In case of dispute as to the amount so to be paid, either party may refer such dispute to the Deputy Commissioner, whose decision thereon shall be final.

Offences and Penalties.

Offences under Act.

18. Whoever, without proper authority and voluntarily, does any of the acts following, that is to say:—

(*a*) damages, alters or obstructs the canal;

(*b*) interferes with, increases or diminishes the supply of water in, or the flow of water from, through, over or under the canal;

(*c*) interferes with or alters the flow of water in any river or stream, so as to endanger or damage the canal or render it less useful;

(*d*) corrupts or fouls the water of the canal, so as to render it less fit for the purposes for which it is ordinarily used;

(*e*) causes any vessel to enter or navigate, or to remain at any place in, the canal contrary to the rules for the time being prescribed by the Chief Commissioner for entering, navigating or remaining in the canal;

(*f*) while navigating the canal, neglects to take proper precautions to prevent injury to the canal and to vessels therein;

(*g*) being a person liable to labour under section fourteen, refuses or neglects without reasonable cause so to labour;

(*h*) destroys or moves any land-mark, level-mark or water-gauge fixed by the authority of a Canal Officer;

(*i*) [illegible] or causes animals or vehicles to pass, on [illegible] any of the works, banks or channels [illegible] contrary to rules made under this Act, after he has been desired by a Canal Officer to desist therefrom; or

(*j*) pastures any animals on the banks of the canal or knowingly suffers any animals belonging to him or under his charge to graze on such banks;

shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or with both.

Penalty.

Nothing herein contained shall prevent any person from being prosecuted under any other law for any offence punishable under this Act: provided that no person shall be punished twice for the same offence.

Saving of prosecution under other laws.

Recovery of fines for offences in navigating canal.

19. Any fine imposed under this Act upon the owner of any vessel, or the servant or agent of such owner, or any other person in charge of a vessel, for any offence in respect of the navigation of such vessel, may be recovered either in the manner prescribed by the Code of Criminal Procedure, or, if the Magistrate imposing the fine so directs, as though it were a charge under this Act due in respect of such vessel.

Power to arrest without warrant.

20. Any person duly authorized in this behalf under section three may remove from the lands or buildings belonging to the canal, or may arrest without a warrant, and take forthwith before a Magistrate or to the nearest Police-station, to be dealt with according to law, any person who, within his view, commits any of the offences mentioned in clauses (*a*), (*b*) and (*c*) of section eighteen.

Power to make Rules.

Power to make rules.

21. The Chief Commissioner may, subject to the control of the Governor General in Council, from time to time make rules consistent with this Act to regulate the following matters:—

(*a*) the navigation of the canal;

(*b*) the proceedings of any officer who, under any provision of this Act, is required or empowered to take action in any matter;

(*c*) the amount of any tolls leviable under this Act; and

(*d*) generally, to carry out the provisions of this Act.

The Chief Commissioner may, in making any such rule, attach to the breach of it the penalty specified in section eighteen.

Publication of rules.

Such rules shall be published in the *British Burma Gazette*, and shall thereupon have the force of law.

Validation of past proceedings.

Validation of past proceedings.

22. Anything heretofore done which might legally have been done if this Act had been in force shall be deemed to have been done in accordance with law.

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

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, JANUARY 22, 1881.

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 1st January, 1881, and is hereby promulgated for general information :—

ACT No. I OF 1881.

An Act for the determination of claims to Táj Mahal's pension.

Preamble.

WHEREAS, by a treaty dated the 24th Shabán 1244, Hijri, corresponding with the first day of March, 1829, and made between His Majesty the King of Oudh and the Government of the Hon'ble the East India Company, it was (amongst other things) agreed that a certain pension therein specified should be paid by the English Government to one Nawáb Táj Mahal therein named, and that if she should die leaving an heir or heirs the English Government might at its election continue as before such pension to her heirs, or make over to them the principal sum proportionate to such pension according to the rate thereinbefore mentioned;

and whereas the said Táj Mahal is now dead and doubts exist as to who are her heirs, and it is therefore expedient to provide for the appointment of a person to represent her estate for the purpose of receiving such pension;

and whereas the Secretary of State for India in Council is desirous of making over to the persons entitled to receive the said pension the principal sum proportionate thereto as provided in the said treaty, and it is expedient to empower the said Secretary of State in Council to capitalize the said pension pending the appointment of a person as aforesaid; It is hereby enacted as follows :—

Short title. Commencement.

1. This Act may be called "Táj Mahal's Pension Act, 1881"; and it shall come into force at once.

Certificate to be obtained by application to the District Court.

2. Any person considering himself entitled to the said pension or any portion thereof may apply in writing to the Court of the District Judge of Lucknow (hereinafter called the District Court) for a certificate authorizing him to receive the same.

Form of application.

The application shall be in such form and shall contain such particulars as the Governor General in Council may from time to time, by rules to be published in the *Gazette of India*, direct.

Publication of application and notice to persons desiring to oppose it.

3. The District Court shall fix a day for hearing the application, and shall cause to be stuck up in the court-house, and otherwise published or made known at the expense of the applicant in such manner as it thinks fit, a copy of the application, with a notice stating the time and place at which it will be heard, and calling upon all persons claiming to have a better right than the applicant to the grant of the certificate to come in and oppose the application.

Procedure at hearing when no opposition.

4. On the day so fixed, or any subsequent day to which the Court may adjourn the hearing, the Court shall, if no person claiming to have a better right than the applicant to the grant of the certificate is present, hear the application; and if, after recording the evidence produced by the applicant in support of his claim, and making such further enquiry (if any) as it thinks necessary, the Court is of opinion that the applicant has established his claim, it shall make an order for granting him a certificate.

In the event of the applicant not having, in the opinion of the Court, established his claim, it shall make an order dismissing his application.

Procedure in case of opposition.

5. In any case in which any person claiming to have a better right than the applicant to the grant of the certificate is present, the Court shall, after hearing the application and recording the evidence produced by the applicant in support of his claim, hear such person and record the evidence produced by him in support of his claim, and shall then, after making such further enquiry (if any) as it thinks necessary, determine which of the parties (if either) has established his claim to the certificate, and shall make an order for granting the same accordingly.

In the event of neither party having, in the opinion of the Court, established his claim, the Court shall make an order dismissing both the application and the counter-claim.

6. When any order dismissing an application under section four, or any order under section five, is made, an appeal by any party to the proceedings, who deems himself aggrieved by such order, shall lie to the High Court, which may make an order dismissing such appeal or granting a certificate, or otherwise reversing or varying the order of the District Court, as it thinks fit.

Appeal to the High Court.

7. The period of limitation for an appeal under section six shall be sixty days from the date of the order appealed against.

Period of limitation for appeal.

In computing such period, and in all respects not herein specified, the limitation of such appeals shall be governed by the provisions of the Indian Limitation Act, 1877.

8. A certificate granted under this Act shall specify the payments which the person to whom it is granted is entitled to receive, and shall contain such other particulars as the Governor General in Council may from time to time prescribe in this behalf.

Form of certificate.

9. Every certificate granted under section four, or section six,

Effect of certificate.

and every certificate granted under section five, when the period of limitation fixed by section seven has expired without an appeal having been preferred against the order granting such certificate, shall, while it remains in force, be conclusive evidence against the said Secretary of State in Council of the right of the person to whom it has been granted to receive the payments specified therein, and shall, unless or until it is rescinded and the authority rescinding it has given to the said Secretary of State in Council notice of such rescission, empower such person to give to the said Secretary of State in Council a full discharge for any such payment.

10. The said Secretary of State in Council shall not be bound to pay the said pension or any portion thereof to any person claiming the same, except on the production by such person of a certificate, granted in the manner herein provided, authorizing him to receive the same.

No obligation to pay except on production of certificate.

11. Nothing herein contained shall be deemed to affect the right of any person to recover by suit from the holder of a certificate granted under this Act the amount of any payment made to him in virtue of such certificate.

Right of third parties against holder of certificate saved.

12. The Court ordering any certificate to be granted under this Act may, if it thinks fit, direct that before such certificate is granted, such security (if any) as it thinks necessary shall be taken from the person to whom such certificate is to be granted, for his rendering an account of the payments to be received by him in virtue of such certificate to any person who may be entitled to recover from him in manner referred to in section eleven the whole or any part of such payments.

Court may take security from grantee of certificate.

13. The District Court may, on the application of any person who has recovered by suit from the holder of a certificate granted under this Act the amount of any payment made to him in virtue of such certificate, grant a certificate to such person in supersession, wholly or in part, as the case may be, of the former certificate.

Court may grant fresh certificate to person who has recovered by suit amount paid to holder of old certificate.

No appeal shall lie from any order under this section.

On the grant of a fresh certificate under this section the former certificate shall be deemed to be rescinded wholly or in part, as the case may be.

Effect of fresh certificate.

14. In all proceedings under this Act the District Court and the High Court shall, as far as may be and except as herein otherwise provided, exercise the powers and follow the procedure conferred on, and prescribed for, a Court of first instance and a Court of appeal respectively by the Code of Civil Procedure: Provided that nothing contained in Chapter XLV of the said Code shall apply to any order made in any such proceeding.

Proceedings to be regulated by Code of Civil Procedure.

15. The provisions of section thirteen of the said Code shall apply to all cases under section five of this Act in which the question of heirship to the said Táj Mahal, having been directly and substantially in issue in a suit in a Court of competent jurisdiction between the claimants, or between parties under whom they or any of them claim, litigating under the same title, has been heard and finally determined by such Court.

Matters decided in civil suits to be treated as *res judicata*.

16. All payments heretofore made by or on behalf of the said Secretary of State in Council under the said treaty shall be deemed to have been made in accordance with law: Provided that nothing in this section shall affect the right of any person to recover by suit the amount of any such payment from the person to whom the same has been made.

Indemnity as to payments already made.

17. The said Secretary of State in Council may, pending the grant of a certificate as hereinbefore provided, invest in securities of the Government of India the principal sum proportionate to the pension of the said Táj Mahal according to the rate mentioned in the said treaty, and may invest the income from time to time resulting from such securities in like securities.

Government empowered to capitalize the amount of the pension.

And, thereupon, all further claim to such pension and income shall cease, and the persons obtaining a certificate in manner hereinbefore provided shall be entitled, in lieu of such pension and income, to the securities aforesaid, together with the uninvested income (if any) which from the date of making such investment has resulted from such securities.

On capitalization, all claim to pension barred.

18. The said Secretary of State in Council shall, without unnecessary delay, invest, in securities of the Government of India, all arrears of such pension due at the time of the passing of this Act, and all such arrears falling due thereafter, and before the investment of the principal sum aforesaid. When any such arrears have been so invested, all further claim in respect thereof shall cease, and the persons obtaining a certificate in manner hereinbefore provided shall, in lieu of such arrears, be entitled to the securities in which they have been invested and the income resulting therefrom.

Arrears of pension accruing before capitalization to be invested.

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

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 1st January, 1881, and is hereby promulgated for general information:—

ACT No. II OF 1881.

An Act to regulate the Navigation of the Pegu and Sittang Canal, and to provide for the protection of the said Canal and the execution of works necessary for its maintenance.

WHEREAS the Government has constructed a canal connecting the waters of the Pegu and Sittang rivers, partly by digging artificial channels and partly by using the water-bed of the Ka-ya-zoo creek; and whereas it is necessary to provide for the navigation, protection and maintenance of the said canal; It is hereby enacted as follows:

Preamble.

Preliminary.

1. This Act may be called "The Pegu and Sittang Canal Act, 1881";

Short title.

and it shall come into force at once.

Commencement.

2. In this Act, unless there is something repugnant in the subject or context,—

Interpretation-clause.

(1) "The canal" means the Pegu and Sittang Canal,

"The canal."

and includes—

(*a*) all channels and reservoirs now or hereafter constructed, maintained or controlled by the Government for the supply or storage of water in connection with the said canal, or supplemental thereto, between the Sittang lock, situated at Myit-kyo, on the Sittang river, and the Pegu lock, situated near the village of Sin-o-bo, on the Pegu river;

(*b*) all works, embankments, structures and supply and escape-channels connected with the canal or with the said channels and reservoirs;

(*c*) all lands occupied by the Government for the purposes of the said canal, and all buildings, machinery, fences, gates and other erections, trees, crops, plantations or other produce occupied by, or belonging to, the Government, upon such lands:

(2) "Vessel" includes boats, rafts, timber and other floating bodies:

"Vessel."

(3) "Canal Officer" means an officer appointed under this Act by the Chief Commissioner to exercise control over the canal or any part thereof:

"Canal Officer."

(4) "Superintending Canal Officer" means an officer exercising general control over the canal.

"Superintending Canal Officer."

3. The Chief Commissioner may from time to time declare, by notification in the *British Burma Gazette*, the officers by whom and the local limits within which, all or any of the powers or duties hereinafter conferred or imposed shall be exercised or performed.

Power to appoint officers.

Navigation of the Canal.

4. Such tolls as the Chief Commissioner may from time to time, by notification in the *British Burma Gazette*, direct, shall be levied from all vessels entering or navigating the canal.

Tolls to be levied from vessels using the canal.

5. Any vessel entering or navigating the canal contrary to the rules made in that behalf under this Act by the Chief Commissioner, or so as to cause danger to the canal or to the other vessels therein, may be removed or detained, or both removed and detained, by a Canal Officer, or by any other person duly authorized under section three in that behalf.

Power to detain vessels violating rules.

The owner of any vessel causing damage to the canal, or removed or detained under this section, shall be liable to pay to the Government such charge as the Canal Officer, with the approval of the Superintending Canal Officer, determines to be necessary to defray the cost of repairing such damage, or of such removal or detention, as the case may be.

6. If any toll or charge due under this Act in respect of any vessel is not paid on demand to the person authorized to collect the same, the Canal Officer may seize and detain such vessel and the furniture thereof, until such toll or charge, together with all expenses arising from such seizure and detention, is paid in full.

Power to detain vessel on failure to pay tolls or charges.

7. If any charge due to the Government in respect of any cargo or goods carried in a Government vessel on the canal, or stored on or in lands or warehouses occupied for the purposes of the canal, is not paid on demand to the person authorized to collect the same, the Canal Officer may seize such cargo or goods, and detain it or them until the charge so due, together with all expenses arising from such seizure and detention, is paid in full.

Power to seize cargo or goods if charges due thereon are not paid.

8. Within a reasonable time after any seizure under section six or section seven, the Canal Officer shall give notice to

Power to sell property seized under sections 6 and 7.

the owner or person in charge of the property seized that it, or such portion of it as may be necessary, will, on a day to be named in the notice, but not sooner than twenty-one days from the date of the notice, be sold in satisfaction of the claim on account of which such property is detained, unless the claim is discharged before the day so named;

and if such claim is not so discharged, the Canal Officer may, on such day, sell the property seized, or such part thereof as may be necessary to yield the amount due, together with the expenses of such seizure and sale.

The residue (if any) of such property, and of the proceeds of the sale, shall be made over to the owner or person in charge of the property seized.

Procedure in respect of vessels abandoned and goods unclaimed.

9. If any vessel is found abandoned in the canal, or any cargo or goods carried in a Government vessel on the canal, or stored on or in lands or warehouses occupied for the purposes of the canal, is or are left unclaimed for a period of two months, the Canal Officer may take possession of the same.

Power to sell.

The officer so taking possession shall publish a notice, in such manner as the Chief Commissioner may from time to time by rule direct, that if such vessel and its contents, or such cargo or goods, is or are not claimed previously to a day to be named in the notice, not sooner than thirty days from the date of such notice, he will sell the same; and if such vessel, contents, cargo or goods is or are not so claimed, he may, at any time after the day named in the notice, proceed to sell the same.

Disposal of proceeds of sale.

The said vessel and its contents, and the said cargo or goods, if unsold, or, if a sale has taken place, the proceeds of the sale, after paying all tolls and charges due in respect of the vessel, cargo or goods and all expenses incurred by the Canal Officer on account of the taking possession and sale, shall be made over to the owner of the same, when his ownership is established to the satisfaction of the Canal Officer.

If the Canal Officer is doubtful to whom such property or proceeds should be made over, he may direct the property to be sold and the proceeds to be paid into the district-treasury, there to be held until the right thereto is decided by a Court of competent jurisdiction.

Maintenance of the Canal.

Power of Canal Officer to enter on land and remove obstructions, &c.

10. A Canal Officer, empowered by the Commissioner of the Division generally or specially in this behalf, or any other person acting under the general or special order of such officer, may enter on any land in the neighbourhood of the canal and remove any obstructions, and may close any channels and do any other thing necessary or convenient for the maintenance of the canal.

Power to enter and survey, &c.

11. Any such officer or other person may, for the purposes of any enquiry relating to any part of the canal under the charge of such officer, enter upon any such lands, and undertake surveys or levels thereon, and dig and bore into the subsoil;

and make and set up suitable land-marks, level-marks and water-gauges;

and do all other acts necessary for such purposes;

and, where otherwise such enquiry cannot be completed, such officer or other person may cut down and clear away any part of any standing crop, fence or jungle.

Power to clear land.

Power to enter, to repair and to prevent accidents.

12. In case of any accident happening or being reasonably apprehended to the canal, any such officer or other person may enter upon any such lands, and may execute all works which may be necessary for the purpose of repairing or preventing such accident.

Compensation for damage caused by entry.

13. In every case of entry under section ten, eleven or twelve, the Canal Officer shall tender, as soon as may be reasonably practicable, to the owner or occupiers of the land compensation for any damage which may be occasioned by such entry and by any proceeding under such section.

In case of dispute as to the sufficiency of the amount so tendered, the Canal Officer shall forthwith refer the same for decision by the Deputy Commissioner, whose decision thereon shall be final.

Obtaining Labour and Materials for Work on the Canal.

Procedure for obtaining labour and materials for works urgently required.

14. Whenever it appears to a Canal Officer that, unless some work is immediately executed, such serious damage will happen to the canal as will cause sudden and extensive public injury,

and that the labourers or materials necessary for the proper execution of such work cannot be obtained in the ordinary manner within the time that can be allowed for the execution of such work so as to prevent such damage,

such officer may, by order under his hand, direct that the provisions of this section shall be put into operation for the execution of such work, and thereupon—

(*a*) every able-bodied person whose name appears in the list hereinafter mentioned shall, if required so to do by such officer or by any person authorized by him in this behalf, be bound to assist in the execution of such work by labouring thereon as such officer or other person directs, and

(*b*) such officer or any person authorized by him in this behalf may enter into and upon any immoveable property in the neighbourhood of the Canal, and take possession of, appropriate and remove any trees or bamboos, whether standing or not, and any timber, mats, ropes or other materials found in or upon such property, and use the same for the purposes of such work.

Every person authorized as mentioned in this section shall be deemed to be a public servant within the meaning of the Indian Penal Code.

Deputy Commissioner to prepare list of persons liable to serve.

15. Subject to such rules as the Chief Commissioner may from time to time, with the previous sanction of the Governor General in Council, prescribe in this behalf, the Deputy Commissioners of Rangoon and Shwaygin shall prepare lists of persons residing in the neighbourhood of the canal in the said districts respectively and liable to be required under section fourteen to assist as aforesaid, and may from time to time add to or alter such list or any part thereof.

Payment for labour impressed and materials taken.

16. All persons labouring or detained for the purpose of labouring in compliance with a requisition made under section fourteen, or whose materials may be taken under that section, shall, as soon as may be reasonably practicable, be paid by the Canal Officer for their labour and detention, or for such materials (as the case may be), at a rate not being less than twenty-five per cent. above the highest market-rates for similar labour or materials for the time being prevailing in the neighbourhood.

Any dispute arising between the Canal Officer and any person as to the amount to be paid to such person under this section may be referred by either party to the Deputy Commissioner, whose decision thereon shall be final.

Compensation for damage done in taking materials.

17. Whenever, from the removal, under section fourteen, of any trees, bamboos or other materials, any damage over and above the price payable for such materials results directly to any person, the Canal Officer shall pay to such person such sum as may be agreed upon as compensation for such damage. In case of dispute as to the amount so to be paid, either party may refer such dispute to the Deputy Commissioner, whose decision thereon shall be final.

Offences and Penalties.

Offences under Act.

18. Whoever, without proper authority and voluntarily, does any of the acts following, that is to say:—

(*a*) damages, alters or obstructs the canal;

(*b*) interferes with, increases or diminishes the supply of water in, or the flow of water from, through, over or under the canal;

(*c*) interferes with or alters the flow of water in any river or stream, so as to endanger or damage the canal or render it less useful;

(*d*) corrupts or fouls the water of the canal, so as to render it less fit for the purposes for which it is ordinarily used;

(*e*) causes any vessel to enter or navigate, or to remain at any place in, the canal contrary to the rules for the time being prescribed by the Chief Commissioner for entering, navigating or remaining in the canal;

(*f*) while navigating the canal, neglects to take proper precautions to prevent injury to the canal and to vessels therein;

(*g*) being a person liable to labour under section fourteen, refuses or neglects without reasonable cause so to labour;

(*h*) destroys or moves any land-mark, level-mark or water-gauge fixed by the authority of a Canal Officer;

(*i*) passes, or causes animals or vehicles to pass, on or across any of the works, banks or channels of the canal contrary to rules made under this Act, after he has been desired by a Canal Officer to desist therefrom; or

(*j*) pastures any animals on the banks of the canal or knowingly suffers any animals belonging to him or under his charge to graze on such banks;

shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or with both.

Penalty.

Nothing herein contained shall prevent any person from being prosecuted under any other law for any offence punishable under this Act: provided that no person shall be punished twice for the same offence.

Saving of prosecution under other laws.

Recovery of fines for offences in navigating canal.

19. Any fine imposed under this Act upon the owner of any vessel, or the servant or agent of such owner, or any other person in charge of a vessel, for any offence in respect of the navigation of such vessel, may be recovered either in the manner prescribed by the Code of Criminal Procedure, or, if the Magistrate imposing the fine so directs, as though it were a charge under this Act due in respect of such vessel.

Power to arrest without warrant.

20. Any person duly authorized in this behalf under section three may remove from the lands or buildings belonging to the canal, or may arrest without a warrant, and take forthwith before a Magistrate or to the nearest Police-station, to be dealt with according to law, any person who, within his view, commits any of the offences mentioned in clauses (*a*), (*b*) and (*c*) of section eighteen.

Power to make Rules.

Power to make rules.

21. The Chief Commissioner may, subject to the control of the Governor General in Council, from time to time make rules consistent with this Act to regulate the following matters:—

(*a*) the navigation of the canal;

(*b*) the proceedings of any officer who, under any provision of this Act, is required or empowered to take action in any matter;

(*c*) the amount of any tolls leviable under this Act; and

(*d*) generally, to carry out the provisions of this Act.

The Chief Commissioner may, in making any such rule, attach to the breach of it the penalty specified in section eighteen.

Publication of rules.

Such rules shall be published in the *British Burma Gazette*, and shall thereupon have the force of law.

Validation of past proceedings.

Validation of past proceedings.

22. Anything heretofore done which might legally have been done if this Act had been in force shall be deemed to have been done in accordance with law.

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

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 15th January, 1881, and is hereby promulgated for general information :—

ACT No. III OF 1881.

An Act to provide for certain matters relating to Securities of the Government of India.

Preamble.

WHEREAS the Governor General in Council has determined to issue, in respect of the four and a half per cent. loan of 1880, certificates declaring the bearers thereof entitled to the principal sums specified therein, and coupons for the interest payable on such principal sums;

and whereas the Governor General in Council may from time to time desire to issue like certificates, with or without like coupons, in respect of other loans;

and whereas it is expedient to declare the mode in which the title to such certificates and coupons shall be transferable;

and whereas it is also expedient to provide for certain other matters relating to all securities of the Government of India; It is hereby enacted as follows :—

Short title.

Commencement.

1. This Act may be called "The Indian Securities Act, 1881"; and shall come into force at once.

"Government securities."

2. In this Act, "Government securities" includes promissory notes, debentures, loan-certificates, coupons and all other securities issued by the Government of India, whether before or after the passing of this Act.

Certificates and coupons may be transferred and discharged like promissory notes payable to bearer.

3. Whenever the Governor General in Council has issued, in respect of any loan, a certificate declaring the bearer thereof to be entitled to the portion of the loan therein expressed, or a coupon for any amount payable as interest on any portion of such loan, the title to such certificate or coupon may be transferred as if the certificate or coupon were a promissory note payable to bearer;

and, on payment, by or on behalf of the Government, to the bearer of such certificate or coupon, of the amount expressed therein, at or after the date on which it becomes due, the Government shall be discharged as if such certificate or coupon were a promissory note payable to bearer.

No notice of trust.

4. No notice of any trust in respect of any Government security shall be receivable by the Government.

Indorser of Government security not liable for amount thereof.

5. No person shall, merely by reason of his having endorsed any Government security, be liable to pay any money due, whether on account of principal or interest, thereunder.

Signature to Government securities may be printed, &c.

6. The signature of the officer of the Government of India authorized to sign any Government securities on behalf of the Government may be printed, engraved or lithographed, or impressed by such other mechanical process as the Governor General in Council may direct, on such securities.

Any such signature so printed, engraved, lithographed or otherwise impressed shall be as valid as if the same had been subscribed in the proper handwriting of such officer.

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

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 15th January, 1881 and is hereby promulgated for general information :—

ACT No. IV OF 1881.

An Act to enhance the rate of Port-dues leviable at Madras.

Preamble.

WHEREAS it has been determined to construct an artificial harbour for the port of Madras and to defray a portion of the interest on the principal sum expended on the construction of such harbour and of the annual expenses of maintaining the same out of the dues leviable on sea-going vessels of fifteen tons and upwards entering the said port :

And whereas the maximum rate of such dues is fixed by the Indian Ports Act, 1875, section forty-five, and the third part of the first schedule thereto annexed, and the amount of such rate is insufficient to defray such portion of the said interest and expenses in addition to the other charges to meet which the said dues are applicable :

And whereas it is therefore necessary to enhance, to the extent hereinafter mentioned, the maximum rate of dues so leviable ;

It is hereby enacted as follows :—

Short title.

1. This Act may be called "The Madras Port-dues Act, 1881"; and

Commencement.

It shall come into force as soon as the said harbour is, in the opinion of the Local Government, open for the use of sea-going vessels of fifteen tons and upwards, and the said Government has published, in the *Fort St. George Gazette*, a notification to that effect.

Amendment of Part III of the third schedule of Act XII of 1875.

2. In the Indian Ports Act, 1875, first schedule, Part III, the following amendments shall be made, that is to say :—

(*a*) in the first column, the numeral and word "9, Madras" shall be omitted ;

(*b*) in the first column, above the heading "*Eastern Group,*" the word "Madras" shall be inserted ; and

(*c*) opposite the word "Madras" so inserted there shall be inserted—

(1) in the second column, the words "sea-going vessels of fifteen tons and upwards" ; and

(2) in the third column, the words "not exceeding eight annas per ton : Provided that, in the case of vessels employed in the coasting trade not being steamers, the rates shall be one-half the rates chargeable in respect of other vessels."

Certain provisions of that Part to apply to Madras.

3. The provisions contained in the fourth column of the said Part shall, so far as they are applicable, apply to the Port of Madras.

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

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 21st January, 1881, and is hereby promulgated for general information:—

ACT No. V OF 1881.

THE PROBATE AND ADMINISTRATION ACT, 1881.

PREAMBLE.

CHAPTER I.

PRELIMINARY.

SECTIONS.

1. Short title.
   Local extent.
   Commencement.
2. Personal application.
3. Interpretation-clause.

CHAPTER II.

OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.

4. Character and property of executor or administrator as such.
5. Administration with copy annexed of authenticated copy of will proved abroad.
6. Probate only to appointed executor.
7. Appointment express or implied.
8. Persons to whom probate cannot be granted.
9. Grant of probate to several executors simultaneously or at different times.
10. Separate probate of codicil discovered after grant of probate.
    Procedure when different executors appointed by codicil.
11. Accrual of representation to surviving executor.
12. Effect of probate.
13. To whom administration may not be granted.
14. Effect of letters of administration.
15. Acts not validated by administration.
16. Grant of administration where executor has not renounced.
    Exception.
17. Form and effect of renunciation of executorship.
18. Procedure where executor renounces or fails to accept within time limited.
19. Grant of administration to universal or residuary legatee.

SECTIONS.

20. Right to administration of representative of deceased residuary legatee.
21. Grant of administration where no executor, nor residuary legatee, nor representative of such legatee.
22. Citation before grant of administration to legatee other than universal or residuary.
23. To whom administration may be granted.

CHAPTER III.

OF LIMITED GRANTS.

(*a*).—*Grants limited in Duration.*

24. Probate of copy or draft of lost will.
25. Probate of contents of lost or destroyed will.
26. Probate of copy where original exists.
27. Administration until will produced.

(*b*).—*Grants for the Use and Benefit of others having Right.*

28. Administration, with will annexed, to attorney of absent executor.
29. Administration, with will annexed, to attorney of absent person, who, if present, would be entitled to administer.
30. Administration to attorney of absent person entitled to administer in case of intestacy.
31. Administration during minority of sole executor or residuary legatee.
32. Administration during minority of several executors or residuary legatees.
33. Administration for use and benefit of lunatic.
34. Administration *pendente lite*.

(*c*).—*For Special Purposes.*

35. Probate limited to purpose specified in will.
36. Administration with will annexed limited to particular purpose.
37. Administration limited to trust-property.
38. Administration limited to suit.
39. Administration limited to purpose of becoming party to suit to be brought against administrator.
40. Administration limited to collection and preservation of deceased's property.
41. Appointment, as administrator, of person other than one who under ordinary circumstances would be entitled to administration.

(*d*).—*Grants with Exception.*

42. Probate or administration with will annexed subject to exception.
43. Administration with exception.

(*e*).—*Grants of the Rest.*

44. Probate or administration of rest.

(*f*).—*Grants of Effects unadministered.*

SECTIONS.

45. Grant of effects unadministered.
46. Rules as to grants of effects unadministered.
47. Administration when limited grant expired, and still some part of estate unadministered.

CHAPTER IV.

ALTERATION AND REVOCATION OF GRANTS.

48. What errors may be rectified by Court.
49. Procedure where codicil discovered after grant of administration with will annexed.
50. Revocation or annulment for just cause.
"Just cause."

CHAPTER V.

OF THE PRACTICE IN GRANTING AND REVOKING PROBATES AND LETTERS OF ADMINISTRATION.

51. Jurisdiction of District Judge in granting and revoking probates, &c.
52. Power to appoint Delegate of District Judge to deal with non-contentious cases.
53. District Judge's powers as to grant of probate and administration.
54. District Judge may order person to produce testamentary papers.
55. Proceedings of District Judge's Court in relation to probate and administration.
56. When probate or administration may be granted by District Judge.
57. Disposal of application made to Judge of district in which deceased had no fixed abode.
58. Probate and letters of administration may be granted by Delegate.
59. Conclusiveness of probate or letters of administration.
Effect of unlimited probates, &c., granted by certain Courts.
60. Transmission of certificate by Court granting unlimited probate, &c., to other Courts.
61. Conclusiveness of application for probate or administration, if properly made and verified.
62. Petition for probate.
63. In what cases translation of will to be annexed to petition.
Verification of translation by person other than Court translator.
64. Petition for letters of administration.
65. Additional statements in petition for probate, &c.
66. Petition for probate or administration to be signed and verified.
67. Verification of petition for probate by one witness to will.
68. Punishment for false averment in petition or declaration.
69. District Judge may examine petitioner in person,
require further evidence,
and issue citations to inspect proceedings.
Publication of citation.
70. Caveats against grant of probate or administration.
71. Form of caveat.

SECTIONS.

72. After entry of caveat, no proceeding taken on petition until after notice to caveator.
73. District Delegate when not to grant probate or administration.
74. Power to transmit statement to District Judge in doubtful cases where no contention.
75. Procedure where there is contention, or District Delegate thinks probate or letters of administration should be refused in his Court.
76. Grant of probate to be under seal of Court.
Form of such grant.
77. Grant of letters of administration to be under seal of Court.
Form of such grant.
78. Administration-bond.
79. Assignment of administration-bond.
80. Time before which probate or administration shall not be granted.
81. Filing of original wills of which probate or administration with will annexed granted.
82. Grantee of probate or administration alone to sue, &c., until same revoked.
83. Procedure in contentious cases.
84. Payment to executor or administrator before probate or administration revoked.
Right of such executor or administrator to recoup himself.
85. Power to refuse letters of administration.
86. Appeals from orders of District Judge.
87. Concurrent jurisdiction of High Court.

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88. In respect of causes of action surviving deceased, and debts due at death.
89. Demands and rights of suit of or against deceased survive to and against executor or administrator.
90. Power of executor or administrator to dispose of property.
91. Purchase by executor or administrator of deceased's property.
92. Powers of several executors or administrators exerciseable by one.
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94. Powers of administrator of effects unadministered.
95. Powers of administrator during minority.
96. Powers of married executrix or administratrix.

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97. As to deceased's funeral ceremonies.
98. Inventory and account.
99. Inventory to include property in any part of British India.
100. As to property of, and debts owing to, deceased.
101. Expenses to be paid before all debts.
102. Expenses to be paid next after such expenses.
103. Wages for certain services to be next paid, and then other debts.

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104. Save as aforesaid, all debts to be paid equally and rateably.
105. Debts to be paid before legacies.
106. Executor or administrator not bound to pay legacies without indemnity.
107. Abatement of general legacies.
Executor not to pay one legatee in preference to another.
108. Non-abatement of specific legacy when assets sufficient to pay debts.
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110. Rateable abatement of specific legacies.
111. Legacies treated as general for purpose of abatement.

CHAPTER VIII.

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113. Effect of executor's assent to specific legacy.
Nature of assent.
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115. Assent of executor to his own legacy.
Implied assent.
116. Effect of executor's assent.
117. Executor when to deliver legacies.

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OF THE PAYMENT AND APPORTIONMENT OF ANNUITIES.

118. Commencement of annuity when no time fixed by will.
119. When annuity, to be paid quarterly or monthly, first falls due.
120. Date of successive payments when first payment directed to be made within given time, or on day certain.
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OF THE INVESTMENT OF FUNDS TO PROVIDE FOR LEGACIES.

121. Investment of sum bequeathed where legacy, not specific, given for life.
122. Investment of general legacy, to be paid at future time.
Intermediate interest.
123. Procedure when no fund charged with, or appropriated to, annuity.
124. Transfer to residuary legatee of contingent bequest.
125. Investment of residue bequeathed for life, with direction to invest in specified securities.
126. Time and manner of conversion and investment.
Interest payable until investment.
127. Procedure where minor entitled to immediate payment or possession of bequest, and no direction to pay to person on his behalf.

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OF THE PRODUCE AND INTEREST OF LEGACIES.

128. Legatee's title to produce of specific legacy.
129. Residuary legatee's title to produce of residuary fund.

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130. Interest when no time fixed for payment of general legacy.
131. Interest when time fixed.
132. Rate of interest.
133. No interest on arrears of annuity within first year after testator's death.
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OF THE REFUNDING OF LEGACIES.

135. Refund of legacy paid under Judge's orders.
136. No refund if paid voluntarily.
137. Refund when legacy becomes due on performance of condition within further time allowed.
138. When each legatee compellable to refund in proportion.
139. Distribution of assets.
Creditor may follow assets.
140. Creditor may call upon legatee to refund.
141. When legatee, not satisfied or compelled to refund under section 140, cannot oblige one paid in full to refund.
142. When unsatisfied legatee must first proceed against executor, if solvent.
143. Limit to refunding of one legatee to another.
144. Refunding to be without interest.
145. Residue after usual payments to be paid to residuary legatee.

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OF THE LIABILITY OF AN EXECUTOR OR ADMINISTRATOR FOR DEVASTATION.

146. Liability of executor or administrator for devastation.
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CHAPTER XIV.

MISCELLANEOUS.

148. Provisions applied to administrator with will annexed.
149. Saving-clause.
150. Probate and administration in case of persons exempted from Succession Act, to be granted only under this Act.
151. Repeal of portions of Act XXVII of 1860.
152. Grant of probate or administration to supersede certificate under Act XXVII of 1860, or Bombay Regulation VIII of 1827.
153. Amendment of Court-fees Act.
154. Amendment of Hindú Wills Act.
155. Validation of grants of probate and administration made in British Burma.
156. Amendment of Act XV of 1877.

An Act to provide for the grant of Probates of Wills and Letters of Administration to the estates of certain deceased persons.

Preamble.

WHEREAS it is expedient to provide for the grant of probate of wills and letters of administration to the estates of deceased persons in cases to which the

Indian Succession Act, 1865, does not apply; It is hereby enacted as follows:—

CHAPTER I.
PRELIMINARY.

Short title. Local extent. Commencement.

1. This Act may be called "The Probate and Administration Act, 1881": It applies to the whole of British India; and it shall come into force on the first day of April, 1881.

Personal application.

2. Chapters II to XIII, both inclusive, of this Act shall apply in the case of every Hindú, Muhammadan, Buddhist and person exempted under section 332 of the Indian Succession Act, 1865, dying before, on or after the said first day of April, 1881:

Provided that nothing herein contained shall be deemed to render invalid any transfer of property duly made before that day:

Provided also that, except in cases to which the Hindú Wills Act, 1870, applies, no Court in any local area beyond the limits of the towns of Calcutta, Madras and Bombay and the territories for the time being administered by the Chief Commissioner of British Burma, and no High Court in exercise of the concurrent jurisdiction over such local area hereby conferred, shall receive applications for probate or letters of administration until the Local Government has, with the previous sanction of the Governor General in Council, by a notification in the official Gazette, authorized it so to do.

Interpretation-clause.

3. In this Act, unless there be something repugnant in the subject to context,—

"Province" includes any division of British India having a Court of the last resort: — "Province:"

"minor" means any person subject to the Indian Majority Act, 1875, who has not attained his majority within the meaning of that Act, and any other person who has not completed his age of eighteen years; and "minority" means the status of any such person: — "minor:" "minority:"

"will" means the legal declaration of the intentions of the testator with respect to his property, which he desires to be carried into effect after his death: — "will:"

"codicil" means an instrument made in relation to a will, and explaining, altering or adding to its dispositions. It is considered as forming an additional part of the will: — "codicil:"

"specific legacy" means a legacy of specified property: "demonstrative legacy" means a legacy directed to be paid out of specified property: — "specific legacy:" "demonstrative legacy:"

"probate" means the copy of a will certified under the seal of a Court of competent jurisdiction, with a grant of administration to the estate of the testator: — "probate:"

"executor" means a person to whom the execution of the last will of a deceased person is, by the testator's appointment, confided: — "executor:"

"administrator" means a person appointed by competent authority to administer the estate of a deceased person when there is no executor: and — "administrator:"

"District Judge" means the judge of a principal civil court of original jurisdiction. — "District Judge."

CHAPTER II.
OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.

Character and property of executor or administrator as such.

4. The executor or administrator, as the case may be, of a deceased person, is his legal representative for all purposes, and all the property of the deceased person vests in him as such.

But nothing herein contained shall vest in an executor or administrator any property of a deceased person which would otherwise have passed by survivorship to some other person.

Administration with copy annexed of authenticated copy of will proved abroad.

5. When a will has been proved and deposited in a Court of competent jurisdiction, situated beyond the limits of the Province, whether in the British dominions, or in a foreign country, and a properly authenticated copy of the will is produced, letters of administration may be granted with a copy of such copy annexed.

Probate only to appointed executor.

6. Probate can be granted only to an executor appointed by the will.

Appointment express or implied.

7. The appointment may be express or by necessary implication.

Illustrations.

(a.) A wills that C be his executor if B will not. B is appointed executor by implication.

(b.) A gives a legacy to B and several legacies to other persons, among the rest to his daughter-in-law, C, and adds, "but should the within-named C be not living, I do constitute and appoint B my whole and sole executrix." C is appointed executrix by implication.

(c.) A appoints several persons executors of his will and codicils, and his nephew residuary legatee, and in another codicil are these words:—"I appoint my nephew my residuary legatee to discharge all lawful demands against my will and codicils, signed of different dates." The nephew is appointed an executor by implication.

Persons to whom probate cannot be granted.

8. Probate cannot be granted to any person who is a minor or is of unsound mind.

Grant of probate to several executors simultaneously or at different times.

9. When several executors are appointed, probate may be granted to them all simultaneously or at different times.

Illustration.

A is an executor of B's will by express appointment, and C an executor of it by implication. Probate may be granted to A and C at the same time, or to A first and then to C, or to C first then to A.

Separate probate of codicil discovered after grant of probate.

10. If a codicil be discovered after the grant of probate, a separate probate of that codicil may be granted to the executor, if it in no way repeals the appointment of executors made by the will.

Procedure when different executors appointed by codicil.

If different executors are appointed by the codicil, the probate of the will must be revoked, and a new probate granted of the will and the codicil together.

Accrual of representation to surviving executor.

11. When probate has been granted to several executors, and one of them dies, the entire representation of the testator accrues to the surviving executor or executors.

Effect of probate.

12. Probate of a will when granted establishes the will from the death of the testator, and renders valid all intermediate acts of the executor as such.

To whom administration may not be granted.

13. Letters of administration cannot be granted to any person who is a minor or is of unsound mind.

Effect of letters of administration.

14. Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death.

Acts not validated by administration.

15. Letters of administration do not render valid any intermediate acts of the administrator tending to the diminution or damage of the intestate's estate.

Grant of administration where executor has not renounced.

16. When a person appointed an executor has not renounced the executorship, letters of administration shall not be granted to any other person until a citation has been issued calling upon the executor to accept or renounce his executorship;

except that, when one or more of several executors has or have proved a will, the Court may, on the death of the survivor of those who have proved, grant letters of administration without citing those who have not proved. — Exception.

Form and effect of renunciation of executorship.

17. The renunciation may be made orally in the presence of the Judge, or by a writing signed by the person renouncing, and when made shall preclude him from ever thereafter applying for probate of the will appointing him executor.

Procedure where executor renounces or fails to accept within time limited.

18. If the executor renounce, or fail to accept, the executorship within the time limited for the acceptance or refusal thereof, the will may be proved and letters of administration with a copy of the will annexed may be granted to the person who would be entitled to administration in case of intestacy.

Grant of administration to universal or residuary legatee.

19. When the deceased has made a will, but has not appointed an executor, or when he has appointed an executor who is legally incapable or refuses to act, or has died before the testator, or before he has proved the will, or when the executor dies after having proved the will but before he has administered all the estate of the deceased,

an universal or a residuary legatee may be admitted to prove the will, and letters of administration with the will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered.

Right to administration of representative of deceased residuary legatee.

20. When a residuary legatee who has a beneficial interest survives the testator, but dies before the estate has been fully administered, his representative has the same right to administration with the will annexed as such residuary legatee.

Grant of administration where no executor, nor residuary legatee, nor representative of such legatee.

21. When there is no executor and no residuary legatee or representative of a residuary legatee, or he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate, or any other legatee having a beneficial interest, or a creditor, may be admitted to prove the will, and letters of administration may be granted to him or them accordingly.

Citation before grant of administration to legatee other than universal or residuary.

22. Letters of administration with the will annexed shall not be granted to any legatee other than an universal or a residuary legatee, until a citation has been issued and published in the manner hereinafter mentioned, calling on the next-of-kin to accept or refuse letters of administration.

To whom administration may be granted.

23. When the deceased has died intestate, administration of his estate may be granted to any person who, according to the rules for the distribution of the estate of an intestate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate.

When several such persons apply for administration, it shall be in the discretion of the Court to grant it to any one or more of them.

When no such person applies, it may be granted to a creditor of the deceased.

CHAPTER III.
OF LIMITED GRANTS.
(a).—*Grants limited in Duration.*

Probate of copy or draft of lost will.

24. When the will has been lost or mislaid since the testator's death, or has been destroyed by wrong or accident and not by any act of the testator, and a copy or the draft of the will has been preserved, probate may be granted of such copy or draft, limited until the original or a properly authenticated copy of it be produced.

Probate of contents of lost or destroyed will.

25. When the will has been lost or destroyed and no copy has been made nor the draft preserved, probate may be granted of its contents, if they can be established by evidence.

Probate of copy where original exists.

26. When the will is in the possession of a person, residing out of the Province in which application for probate is made, who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, and it is necessary for the interests of the estate that probate should be granted without waiting for the arrival of the original,

probate may be granted of the copy so transmitted, limited until the will or an authenticated copy of it be produced.

Administration until will produced.

27. Where no will of the deceased is forthcoming, but there is reason to believe that there is a will in existence, letters of administration may be granted, limited until the will or an authenticated copy of it be produced.

(b).—Grants for the Use and Benefit of others having Right.

Administration with will annexed to attorney of absent executor.

28. When any executor is absent from the Province in which application is made, and there is no executor within the Province willing to act, letters of administration with the will annexed may be granted to the agent of the absent executor, for the use and benefit of his principal, limited until he shall obtain probate or letters of administration granted to himself.

Administration with will annexed to attorney of absent person, who, if present, would be entitled to administer.

29. When any person to whom, if present, letters of administration with the will annexed might be granted, is absent from the Province, letters of administration with the will annexed may be granted to his agent, limited as above-mentioned.

Administration to attorney of absent person entitled to administer in case of intestacy.

30. When a person entitled to administration in case of intestacy is absent from the Province, and no person equally entitled is willing to act, letters of administration may be granted to the agent of the absent person, limited as before mentioned.

Administration during minority of sole executor or residuary legatee.

31. When a minor is sole executor or sole residuary legatee, letters of administration with the will annexed may be granted to the legal guardian of such minor, or to such other person as the Court shall think fit, until the minor has attained his majority, at which period, and not before, probate of the will shall be granted to him.

Administration during minority of several executors or residuary legatees.

32. When there are two or more minor executors and no executor who has attained majority, or two or more residuary legatees and no residuary legatee who has attained majority, the grant shall be limited until one of them has attained his majority.

Administration for use and benefit of lunatic.

33. If a sole executor or a sole universal or residuary legatee, or a person who would be solely entitled to the estate of the intestate according to the rule for the distribution of intestates' estates, applicable in the case of the deceased, be a minor or lunatic, letters of administration with or without the will annexed, as the case may be, shall be granted to the person to whom the care of his estate has been committed by competent authority, or, if there be no such person, to such other person as the Court thinks fit to appoint, for the use and benefit of the minor or lunatic, until he attains majority or becomes of sound mind, as the case may be.

Administration *pendente lite*.

34. Pending any suit touching the validity of the will of a deceased person, or for obtaining or revoking any probate or any grant of letters of administration, the Court may appoint an administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator, other than the right of distributing such estate; and every such administrator shall be subject to the immediate control of the Court and shall act under its direction.

(c).—For Special Purposes.

Probate limited to purpose specified in will.

35. If an executor be appointed for any limited purpose specified in the will, the probate shall be limited to that purpose, and if he should appoint an agent to take administration on his behalf, the letters of administration with the will annexed shall accordingly be limited.

Administration with will annexed limited to particular purpose.

36. If an executor appointed generally give an authority to an attorney to prove a will on his behalf, and the authority is limited to a particular purpose, the letters of administration with the will annexed shall be limited accordingly.

Administration limited to trust-property.

37. Where a person dies, leaving property of which he was the sole or surviving trustee, or in which he had no beneficial interest on his own account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to such property, may be granted to the beneficiary, or to some other person on his behalf.

Administration limited to suit.

38. When it is necessary that the representative of a person deceased be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other suit which may be commenced in the same or in any other Court between the parties, or any other parties, touching the matters at issue in the said suit, and until a final decree shall be made therein and carried into complete execution.

Administration limited to purpose of becoming party to suit to be brought against administrator.

39. If, at the expiration of twelve months from the date of any probate or letters of administration, the executor or administrator to whom the same has or have been granted is absent from the Province within which the Court that has granted the probate or letters of administration is situate, such Court may grant, to any person whom it thinks fit, letters of administration limited to the purpose of becoming and being made a party to a suit to be brought against the executor or administrator, and carrying the decree which may be made therein into effect.

Administration limited to collection and preservation of deceased's property.

40. In any case in which it appears necessary for preserving the property of a deceased person, the Court within whose district any of the property is situate may grant, to any person whom such Court thinks fit, letters of administration limited to the collection and preservation of the property of the deceased, and giving discharges for debts due to his estate, subject to the directions of the Court.

Appointment, as administrator, of person other than one who under ordinary circumstances would be entitled to administration.

41. When a person has died intestate, or leaving a will of which there is no executor willing and competent to act, or where the executor is, at the time of the death of such person, resident out of the Province, and it appears to the Court to be necessary or convenient to appoint some person to administer the estate or any part thereof other than the person who under ordinary circumstances would be entitled to a grant of administration, the Judge may, in his discretion, having regard to consanguinity, amount of interest, the safety of the estate and probability that it will be properly administered, appoint such person as he thinks fit to be administrator;

and in every such case letters of administration may be limited or not as the Judge thinks fit.

(d).—Grants with Exception.

Probate or administration with will annexed subject to exception.

42. Whenever the nature of the case requires that an exception be made, probate of a will, or letters of administration with the will annexed, shall be granted subject to such exception.

Administration with exception.

43. Whenever the nature of the case requires that an exception be made, letters of administration shall be granted subject to such exception.

(e).—Grants of the Rest.

Probate or administration of rest.

44. Whenever a grant, with exception, of probate or letters of administration, with or without the will annexed, has been made, the person entitled to probate or administration of the remainder of the deceased's estate may take a grant of probate or letters of administration, as the case may be, of the rest of the deceased's estate.

(f).—Grants of Effects unadministered.

Grant of effects unadministered.

45. If the executor to whom probate has been granted has died leaving a part of the testator's estate unadministered, a new representative may be appointed for the purpose of administering such part of the estate.

Rules as to grants of effects unadministered.

46. In granting letters of administration of an estate not fully administered, the Court shall be guided by the same rules as apply to original grants, and shall grant letters of administration to those persons only to whom original grants might have been made.

Administration when limited grant expired, and still some part of estate unadministered.

47. When a limited grant has expired by efflux-ion of time, or the happening of the event or contingency on which it was limited, and there is still some part of the deceased's estate unadministered, letters of administration shall be granted to those persons to whom original grants might have been made.

CHAPTER IV.

ALTERATION AND REVOCATION OF GRANTS.

What errors may be rectified by Court.

48. Errors in names and descriptions, or in setting forth the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the Court, and the grant of probate or letters of administration may be altered and amended accordingly.

Procedure where codicil discovered after grant of administration with will annexed.

49. If, after the grant of letters of administration with the will annexed, a codicil be discovered, it may be added to the grant on due proof and identification, and the grant altered and amended accordingly.

Revocation or annulment for just cause.

50. The grant of probate or letters of administration may be revoked or annulled for just cause.

"Just cause."

Explanation.—Just cause is—

1*st*, that the proceedings to obtain the grant were defective in substance;

2*nd*, that the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case;

3*rd*, that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently;

4*th*, that the grant has become useless and inoperative through circumstances.

Illustrations.

(*a*). The Court by which the grant was made had no jurisdiction.

(*b*). The grant was made without citing parties who ought to have been cited.

(*c*). The will of which probate was obtained was forged or revoked.

(*d*). A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.

(*e*). A has taken administration to the estate of B as if he had died intestate, but a will has since been discovered.

(*f*). Since probate was granted, a later will has been discovered.

(*g*). Since probate was granted, a codicil has been discovered, which revokes or adds to the appointment of executors under the will.

(*h*). The person to whom probate was, or letters of administration were, granted has subsequently become of unsound mind.

CHAPTER V.

OF THE PRACTICE IN GRANTING AND REVOKING PROBATES AND LETTERS OF ADMINISTRATION.

Jurisdiction of District Judge in granting and revoking probates, &c.

51. The District Judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his district.

Power to appoint Delegate of District Judge to deal with non-contentious cases.

52. The High Court may, from time to time, appoint such judicial officers within any district as it thinks fit to act for the District Judge as Delegates to grant probate and letters of administration in non-contentious cases, within such local limits as it may from time to time prescribe:

Provided that, in the case of High Courts not established by Royal Charter, such appointment be

made with the previous sanction of the Local Government.

Persons so appointed shall be called "District Delegates."

District Judge's powers as to grant of probate and administration.

53. The District Judge shall have the like powers and authority in relation to the granting of probate and letters of administration, and all matters connected therewith, as are by law vested in him in relation to any civil suit or proceeding depending in his Court.

District Judge may order person to produce testamentary papers.

54. The District Judge may order any person to produce and bring into Court any paper or writing being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person;

and if it be not shown that any such paper or writing is in the possession or under the control of such person, but there is reason to believe that he has the knowledge of any such paper or writing, the Court may direct him to attend for the purpose of being examined respecting the same,

and he shall be bound to answer such questions as may be put to him by the Court, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like punishment under the Indian Penal Code, in case of default in not attending or in not answering such questions or not bringing in such paper or writing as he would have been subject to in case he had been a party to a suit, and had made such default,

and the costs of the proceeding shall be in the discretion of the Judge.

Proceedings of District Judge's Court in relation to probate and administration.

55. The proceedings of the Court of the District Judge, in relation to the granting of probate and letters of administration, shall, except as hereinafter otherwise provided, be regulated, so far as the circumstances of the case will admit, by the Code of Civil Procedure.

When probate or administration may be granted by District Judge.

56. Probate of the will or letters of administration to the estate of a deceased person may be granted by the District Judge under the seal of his Court, if it appears by a petition, verified as hereinafter mentioned, of the person applying for the same that the testator or intestate, as the case may be, had at the time of his decease a fixed place of abode, or any property, moveable or immoveable, within the jurisdiction of the Judge.

Disposal of application made to Judge of District in which deceased had no fixed abode.

57. When the application is made to the Judge of a District in which the deceased had no fixed abode at the time of his death, the Judge may in his discretion refuse the application, if in his judgment it could be disposed of more justly or conveniently in another district, or, where the application is for letters of administration, grant them absolutely, or limited to the property within his own jurisdiction.

Probate and letters of administration may be granted by Delegate.

58. Probate and letters of administration may, upon application for that purpose to any District Delegate, be granted by him in any case in which there is no contention, if it appears by petition (verified as hereinafter mentioned) that the testator or intestate, as the case may be, at the time of his death had his fixed place of abode within the jurisdiction of such Delegate.

Conclusiveness of probate or letters of administration.

59. Probate or letters of administration shall have effect over all the property, moveable or immoveable, of the deceased throughout the Province in which the same is granted, and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors paying their debts, and all persons delivering up such property to the person to whom such probate or letters of administration shall have been granted:

Effect of unlimited probates, &c., granted by certain Courts.

Provided that probates and letters of administration granted by a High Court established by Royal Charter, or by the Chief Court of the Panjáb, or by the Court of the Recorder of Rangoon, shall, unless otherwise directed by the grant, have like effect throughout the whole of British India.

Transmission of certificate by Court granting unlimited probate, &c., to other Courts.

60. Whenever a grant of probate or letters of administration is made by a Court with such effect as last aforesaid, the Registrar, or such other officer as the Court making the grant appoints in this behalf, shall send to each of the other Courts empowered to make such grants, a certificate to the following effect:—

I, *A. B.*, Registrar [*or as the case may be*] of the High Court of Judicature at [*or as the case may be*], hereby certify that on the day of 188 the High Court of Judicature at [*or as the case may be*] granted probate of the will [*or* letters of administration of the estate] of *C. D.*, late of deceased, to *E. F.* of and *G. H.* of , and that such probate [*or* letters] has [*or* have] effect over all the property of the deceased throughout the whole of British India;

and such certificate shall be filed by the Court receiving the same.

Conclusiveness of application for probate or administration, if properly made and verified.

61. The application for probate or letters of administration, if made and verified in the manner hereinafter mentioned, shall be conclusive for the purpose of authorizing the grant of probate or administration, and no such grant shall be impeached by reason that the testator or intestate had no fixed place of abode, or no property within the district at the time of his death, unless by a proceeding to revoke the grant if obtained by a fraud upon the Court.

Petition for probate.

62. Application for probate or for letters of administration with the will annexed shall be made by a petition distinctly written in English or in the language in ordinary use in proceedings before the Court in which the application is made, with the will, or, in the cases mentioned in sections twenty-four, twenty-five and twenty-six, a copy, draft or statement of the contents thereof annexed, and stating

the time of the testator's death,

that the writing annexed is his last will and testament, or as the case may be,

that it was duly executed,

the amount of assets which are likely to come to the petitioner's hands;

and, where the application is for probate, that the petitioner is the executor named in the will.

In addition to these particulars, the petition shall further state,

when the application is to the District Judge, that the deceased at the time of his death had a fixed place of abode or had some property situate within the jurisdiction of the Judge; and,

when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

In what cases translation of will to be annexed to petition.

63. In cases wherein the will, copy or draft is written in any language other than English, or than that in ordinary use in proceedings before the Court, there shall be a translation thereof annexed to the petition by a translator of the Court, if the language be one for which a translator is appointed; or, if the will, copy or draft be in any other language, then by any person competent to translate the same, in which case such translation shall be verified by that person in the following manner:—

Verification of translation by person other than Court translator.

"I (*A. B.*) do declare that I read and perfectly understand the language and character of the original, and that the above is a true and accurate translation thereof."

Petition for letters of administration.

64. Application for letters of administration shall be made by petition distinctly written as aforesaid, and stating

the time and place of the deceased's death,

the family or other relatives of the deceased, and their respective residences,

the right in which the petitioner claims,

the amount of assets which are likely to come to the petitioner's hands.

In addition to these particulars the petition shall further state,

when the application is to a District Judge, that the deceased at the time of his death had a fixed place of abode or had some property situate within the jurisdiction of the Judge; and

when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

Additional statements in petition for probate, &c.

65. Every person applying to any of the Courts mentioned in the proviso to section fifty-nine for probate of a will or letters of administration of an estate, intended to have effect throughout British India, shall state in his petition, in addition to the matters respectively required by sections sixty-two and sixty-four, that to the best of his belief no application has been made to any other Court for a probate of the same will or for letters of administration of the same estate, intended to have such effect as last aforesaid,

or, where any such application has been made, the Court to which it was made, the person or persons by whom it was made, and the proceedings (if any) had thereon.

And the Court to which any application is made under the proviso to section fifty-nine may, if it think fit, reject the same.

Petition for probate or administration to be signed and verified.

66. The petition for probate or letters of administration shall in all cases be subscribed by the petitioner and his pleader, if any, and shall be verified by the petitioner in the following manner or to the like effect:—

"I (*A. B.*), the petitioner in the above petition, declare that what is stated therein is true to the best of my information and belief."

Verification of petition for probate by one witness to will.

67. Where the application is for probate, or for letters of administration with the will annexed, the petition shall also be verified by at least one of the witnesses to the will (when procurable), in the manner or to the effect following:—

"I (*C. D.*), one of the witnesses to the last will and testament of the testator mentioned in the above petition, declare that I was present and saw the said testator affix his signature (*or* mark) thereto (*as the case may be*) (*or* that the said testator acknowledged the writing annexed to the above petition to be his last will and testament in my presence)."

Punishment for false averment in petition or declaration.

68. If any petition or declaration which is hereby required to be verified contains any averment which the person making the verification knows or believes to be false, such person shall be subject to punishment according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence.

District Judge may examine petitioner in person,

69. In all cases it shall be lawful for the District Judge or District Delegate, if he thinks fit,

to examine the petitioner in person upon oath, and also

require further evidence,

to require further evidence of the due execution of the will, or the right of the petitioner to the letters of administration, as the case may be, and

and issue citations to inspect proceedings.

to issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.

Publication of citation.

The citation shall be fixed up in some conspicuous part of the Court-house, and also in the office of the Collector of the District, and otherwise published or made known in such manner as the Judge or Delegate issuing the same may direct.

Caveats against grant of probate or administration.

70. Caveats against the grant of probate or letters of administration may be lodged with the District Judge or a District Delegate; and immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge; and immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased had his fixed place of abode at the time of his death, and to any other Judge or District Dele-

gate to whom it may appear to the District Judge expedient to transmit the same.

Form of caveat.

71. The caveat shall be to the following effect:—

"Let nothing be done in the matter of the estate of *A. B.*, late of , deceased, who died on the day of at without notice to *C. D.* of ."

After entry of caveat, no proceeding taken on petition until after notice to caveator.

72. No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered with the Judge or District Delegate to whom the application has been made, or notice thereof has been given of its entry with some other Delegate, until after such notice to the person by whom the same has been entered as the Court shall think reasonable.

District Delegate when not to grant probate or administration.

73. A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

Explanation.—By "contention" is understood the appearance of any one in person, or by his recognized agent or by a pleader duly appointed to act on his behalf, to oppose the proceeding.

Power to transmit statement to District Judge in doubtful cases where no contention.

74. In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

Procedure where there is contention, or District Delegate thinks probate or letters of administration should be refused in his Court.

75. In every case in which there is contention, or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any documents that may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge; unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorized to do; and in that case the same shall be sent by him to the District Judge.

Grant of probate to be under seal of Court.

76. Whenever it appears to the Judge or District Delegate that probate of a will should be granted, he shall grant the same under the seal of his Court in manner following:—

Form of such grant.

"I, Judge of the District of , [*or* Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*)] hereby make known that on the day of in the year the last will of , late of , a copy whereof is hereunto annexed, was proved and registered before me, and that administration of the property and credits of the said deceased, and in any way concerning his will, was granted to , the executor in the said will named, he having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same at or before the expiration of six months from the date of this grant, and also to render a true account of the said property and credits within one year from the same date.

The day of 18 ."

Grant of letters of administration to be under seal of Court.

77. Whenever it appears to the District Judge or District Delegate that letters of administration to the estate of a person deceased, with or without a copy of the will annexed, should be granted, he shall grant the same under the seal of his Court in manner following:—

Form of such grant.

"I, , Judge of the District of , [*or* Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*)] hereby make known that on the day of letters of administration (with *or* without the will annexed, *as the case may be*) of the property and credits of , late of , deceased, were granted to , the father (*or as the case may be*) of the deceased, he having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same in this Court at or before the expiration of six months from the date of this grant, and also to render a true account of the said property and credits within one year from the same date.

The day of 18 ."

Administration-bond.

78. Every person to whom any grant of letters of administration is committed, and, if the Judge so direct, any person to whom probate is granted, shall give a bond to the Judge of the District Court to enure for the benefit of the Judge for the time being, with one or more surety or sureties, engaging for the due collection, getting in, and administering the estate of the deceased, which bond shall be in such form as the Judge from time to time by any general or special order directs.

Assignment of administration-bond.

79. The Court may, on application made by petition and on being satisfied that the engagement of any such bond has not been kept, and upon such terms as to security, or providing that the money received be paid into Court, or otherwise as the Court may think fit, assign the same to some proper person, who shall thereupon be entitled to sue on the said bond in his own name as if the same had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon, as trustee for all persons interested, the full amount recoverable in respect of any breach thereof.

Time before which probate or administration shall not be granted.

80. No probate of a will shall be granted until after the expiration of seven clear days, and no letters of administration shall be granted until after the expiration of fourteen clear days, from the day of the testator or intestate's death.

Filing of original wills of which probate or administration with will annexed granted.

81. Until a public registry for wills is established, every District Judge and District Delegate shall file and preserve among the records of his Court all original wills of which probate or letters of administration with the will annexed may be granted by him: and the Local Government shall make regulations for the preservation and inspection of the wills so filed as aforesaid.

Grantee of probate or administration alone to sue, &c., until same revoked.

82. After any grant of probate or letters of administration, no other than the person to whom the same shall have been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, throughout the Province in which the same may have been granted, until such probate or letters of administration shall have been recalled or revoked.

Procedure in contentious cases.

83. In any case before the District Judge in which there is contention, the proceeding shall take, as nearly as may be, the form of a suit, according to the provisions of the Code of Civil Procedure, in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who may have appeared as aforesaid to oppose the grant shall be the defendant.

Payment to executor or administrator before probate or administration revoked.

84. Where any probate is, or letters of administration are, revoked, all payments *bond fide* made to any executor or administrator under such probate or administration before the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same;

Right of such executor or administrator to recoup himself.

and the executor or administrator who shall have acted under any such revoked probate or administration may retain and reimburse himself out of the assets of the deceased in respect of any payments made by him which the person to whom probate or letters of administration shall be afterwards granted might have lawfully made.

Power to refuse letters of administration.

85. Notwithstanding anything hereinbefore contained, it shall, except in cases to which the Hindú Wills Act, 1870, applies, be in the discretion of the Court to make an order refusing, for reasons to be recorded by it in writing, to grant any application for letters of administration made under this Act.

Appeals from orders of District Judge.

86. Every order made by a District Judge or District Delegate by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court under the rules contained in the Code of Civil Procedure applicable to appeals.

Concurrent jurisdiction of High Court.

87. The High Court shall have concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the District Judge.

CHAPTER VI.

OF THE POWERS OF AN EXECUTOR OR ADMINISTRATOR.

In respect of causes of action surviving deceased, and debts due at death.

88. An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and may exercise the same powers for the recovery of debts due to him at the time of his death, as the deceased had when living.

Demands and rights of suit of or against deceased survive to and against executor or administrator.

89. All demands whatsoever, and all rights to prosecute or defend any suit or other proceeding, existing in favour of or against a person at the time of his decease survive to and against his executors or administrators, except causes of action for defamation, assault as defined in the Indian Penal Code, or other personal injuries not causing the death of the party, and except also cases where, after the death of the party, the relief sought could not be enjoyed, or granting it would be nugatory.

Illustration.

(*a*). A collision takes place on a railway in consequence of some neglect or default of the officials, and a passenger is severely hurt, but not so as to cause death. He afterwards dies without having instituted any suit. The cause of action does not survive.

Power of executor or administrator to dispose of property.

90. An executor or administrator has power, with the consent of the Court by which the probate or letters of administration was or were granted, to dispose of the property of the deceased, either wholly or in part, in such manner as he thinks fit:

Provided that the Court may, when granting probate or letters of administration, exempt the executor or administrator from the necessity of obtaining such consent as to the whole or any specified part of the assets of the deceased.

Illustrations.

(*a*). The deceased has made a specific bequest of part of his property. The executor, not having assented to the bequest, sells the subject of it with the consent of the Court. The sale is valid.

(*b*). The executor, in the exercise of his discretion, mortgages a part of the immoveable estate of the deceased with the consent of the Court. The mortgage is valid.

Purchase by executor or administrator of deceased's property.

91. If an executor or administrator purchases, either directly or indirectly, any part of the property of the deceased, the sale is voidable at the instance of any other person interested in the property sold.

Powers of several executors or administrators exerciseable by one.

92. When there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary in the will or grant of letters of administration, be exercised by any one of them who has proved the will or taken out administration.

Illustrations.

(*a*). One of several executors has power to release a debt due to the deceased.

(*b*). One has power to surrender a lease.

(*c*). One has power to sell the property of the deceased, moveable or immoveable.

(*d*). One has power to assent to a legacy.

(*e*). One has power to endorse a promissory note payable to the deceased.

(*f*). The will appoints A, B, C, and D to be executors, and directs that two of them shall be a quorum. No act can be done by a single executor.

93. Upon the death of one or more of several executors or administrators, all the powers of the office become, in the absence of any direction to the contrary in the will or grant of letters of administration, vested in the survivors or survivor.

Survival of powers on death of one of several executors or administrators.

94. The administrator of effects unadministered has, with respect to such effects, the same powers as the original executor or administrator.

Powers of administrator of effects unadministered.

95. An administrator during minority has all the powers of an ordinary administrator.

Powers of administrator during minority.

96. When probate or letters of administration shall have been granted to a married woman, she has all the powers of an ordinary executor or administrator.

Powers of married executrix or administratrix.

CHAPTER VII.

OF THE DUTIES OF AN EXECUTOR OR ADMINISTRATOR.

97. It is the duty of an executor to provide funds for the performance of the necessary funeral ceremonies of the deceased in a manner suitable to his condition, if he has left property sufficient for the purpose.

As to deceased's funeral ceremonies.

98. An executor or administrator shall, within six months from the grant of probate or letters of administration, exhibit in the Court by which the same has or have been granted an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person or persons to which the executor or administrator is entitled in that character, and shall in like manner, within one year from the date aforesaid, exhibit an account of the estate, showing the assets that have come to his hands, and the manner in which they have been applied or disposed of.

Inventory and account.

99. In all cases where it is sought to obtain a grant of probate or letters of administration intended to have effect throughout the whole of British India, the executor, or the person applying for administration shall include in the inventory of the effects of the deceased all his moveable or immoveable property situate in British India:

Inventory to include property in any part of British India.

And the value of such property situate in each Province shall be separately stated in such inventory, and the probate or letters of administration shall be chargeable with a fee corresponding to the entire amount or value of the property affected thereby wheresoever situate within British India.

100. The executor or administrator shall collect, with reasonable diligence, the property of the deceased and the debts that were due to him at the time of his death.

As to property of, and debts owing to, deceased.

101. Funeral expenses to a reasonable amount, according to the degree and quality of the deceased, and death-bed charges, including fees for medical attendance, and board and lodging for one month previous to his death, are to be paid before all debts.

Expenses to be paid before all debts.

102. The expenses of obtaining probate or letters of administration, including the costs incurred for or in respect of any judicial proceedings that may be necessary for administering the estate, are to be paid next after the funeral expenses and death-bed charges.

Expenses to be paid next after such expenses.

103. Wages due for services rendered to the deceased within three months next preceding his death by any labourer, artizan or domestic servant are next to be paid, and then the other debts of the deceased according to their respective priorities (if any).

Wages for certain services to be next paid, and then other debts.

104. Save as aforesaid, no creditor is to have a right of priority over another.

Save as aforesaid, all debts to be paid equally and rateably.

But the executor or administrator shall pay all such debts as he knows of, including his own, equally and rateably, as far as the assets of the deceased will extend.

105. Debts of every description must be paid before any legacy.

Debts to be paid before legacies.

106. If the estate of the deceased is subject to any contingent liabilities, an executor or administrator is not bound to pay any legacy without a sufficient indemnity to meet the liabilities whenever they may become due.

Executor or administrator not bound to pay legacies without indemnity.

107. If the assets, after payment of debts, necessary expenses and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions;

Abatement of general legacies.

and, in the absence of any direction to the contrary in the will, the executor has no right to pay one legatee in preference to another, nor to retain any money on account of a legacy to himself or to any person for whom he is a trustee.

Executor not to pay one legatee in preference to another.

108. Where there is a specific legacy, and the assets are sufficient for the payment of debts and necessary expenses, the thing specified must be delivered to the legatee without any abatement.

Non-abatement of specific legacy when assets sufficient to pay debts.

109. Where there is a demonstrative legacy, and the assets are sufficient for the payment of debts and necessary expenses, the legatee has a preferential claim for payment of his legacy out of the fund from which the legacy is directed to be paid until such fund is exhausted, and if, after the fund is exhausted, part of the legacy still remains unpaid, he is entitled to rank for the remainder against the general assets as for a legacy of the amount of such unpaid remainder.

Right under demonstrative legacy when assets sufficient to pay debts and necessary expenses.

110. If the assets are not sufficient to answer the debts and the specific legacies, an abatement shall be made from the latter rateably in proportion to their respective amounts.

Rateable abatement of specific legacies.

Illustration.

A has bequeathed to B a diamond-ring, valued at 500 rupees, and to C a horse, valued at 1,000 rupees. It is found necessary to sell all the effects of the testator, and his assets, after payment of debts, are only 1,000 rupees. Of this sum rupees 333-5-4 are to be paid to B, and rupees 666-10-8 to C.

111. For the purpose of abatement, a legacy for life, a sum appropriated by the will to produce an annuity, and the value of an annuity when no sum has been appropriated to produce it, shall be treated as general legacies.

Legacies treated as general for purpose of abatement.

CHAPTER VIII.

OF THE EXECUTOR'S ASSENT TO A LEGACY.

112. The assent of the executor is necessary to complete a legatee's title to his legacy.

Assent necessary to complete legatee's title.

Illustrations.

(*a*). A by his will bequeaths to B his Government paper, which is in deposit with the Bank of Bengal. The Bank has no authority to deliver the securities, nor B a right to take possession of them, without the assent of the executor.

(*b*). A by his will has bequeathed to C his house in Calcutta in the tenancy of B. C is not entitled to receive the rents without the assent of the executor.

113. The assent of the executor to a specific bequest shall be sufficient to divest his interest as executor therein, and to transfer the subject of the bequest to the legatee, unless the nature or the circumstances of the property require that it shall be transferred in a particular way.

Effect of executor's assent to specific legacy.

This assent may be verbal, and it may be either express or implied from the conduct of the executor.

Nature of assent.

Illustrations.

(*a*). A horse is bequeathed. The executor requests the legatee to dispose of it, or a third party proposes to purchase the horse from the executor, and he directs him to apply to the legatee. Assent to the legacy is implied.

(*b*). The interest of a fund is directed by the will to be applied for the maintenance of the legatee during his minority. The executor commences so to apply it. This is an assent to the whole of the bequest.

(*c*). A bequest is made of a fund to A, and after him to B. The executor pays the interest of the fund to A. This is an implied assent to the bequest to B.

(*d*). Executors die after paying all the debts of the testator, but before satisfaction of specific legacies. Assent to the legacies may be presumed.

(*e*). A person to whom a specific article has been bequeathed takes possession of it and retains it without any objection on the part of the executor. His assent may be presumed.

114. The assent of an executor to a legacy may be conditional, and if the condition be one which he has a right to enforce, and it is not performed, there is no assent.

Conditional assent.

Illustrations.

(*a*). A bequeathes to B his lands of Sultánpur, which at the date of the will, and at the death of A, were subject to a mortgage for 10,000 rupees. The executor assents to the bequest on condition that B shall within a limited time pay the amount due on the mortgage at the testator's death. The amount is not paid. There is no assent.

(*b*). The executor assents to a bequest on condition that the legatee shall pay him a sum of money. The payment is not made. The assent is nevertheless valid.

115. When the executor is a legatee, his assent to his own legacy is necessary to complete his title to it, in the same way as it is required when the bequest is to another person and his assent may in like manner be express or implied.

Assent of executor to his own legacy.

Assent shall be implied if in his manner of administering the property he does any act which is referable to his character of legatee and is not referable to his character of executor.

Implied assent.

Illustration.

An executor takes the rent of a house or the interest of Government-securities bequeathed to him, and applies it to his own use. This is assent.

116. The assent of the executor to a legacy gives effect to it from the death of the testator.

Effect of executor's assent.

Illustrations.

(*a*). A legatee sells his legacy before it is assented to by the executor. The executor's subsequent assent operates for the benefit of the purchaser, and completes his title to the legacy.

(*b*). A bequeaths 1,000 rupees to B with interest from his death. The executor does not assent to this legacy until the expiration of a year from A's death. B is entitled to interest from the death of A.

117. An executor is not bound to pay or deliver any legacy until the expiration of one year from the testator's death.

Executor when to deliver legacies.

Illustration.

A by his will directs his legacies to be paid within six months after his death. The executor is not bound to pay them before the expiration of a year.

CHAPTER IX.

OF THE PAYMENT AND APPORTIONMENT OF ANNUITIES.

118. Where an annuity is given by the will, and no time is fixed for its commencement, it shall commence from the testator's death, and the first payment shall be made at the expiration of a year next after that event.

Commencement of annuity when no time fixed by will.

119. Where there is a direction that the annuity shall be paid quarterly or monthly, the first payment shall be due at the end of the first quarter or first month, as the case may be, after the testator's death, and shall, if the executor think fit, be paid when due; but the executor shall not be bound to pay it till the end of the year.

When annuity, to be paid quarterly or monthly, first falls due.

120. Where there is a direction that the first payment of an annuity shall be made within one month or any other division of time from the death of the testator, or on a day certain, the successive payments are to be made on the anniversary of the earliest day on which the will authorizes the first payment to be made;

Date of successive payments when first payment directed to be made within given time, or on day certain.

and if the annuitant dies in the interval between the times of payment, an apportionment of the annuity shall be paid to his representatives.

Apportionment where annuitant dies between times of payment.

CHAPTER X.

OF THE INVESTMENT OF FUNDS TO PROVIDE FOR LEGACIES.

Investment of sum bequeathed where legacy, not specific, given for life.

121. Where a legacy, not being a specific legacy, is given for life, the sum bequeathed shall at the end of the year be invested in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct, and the proceeds thereof shall be paid to the legatee as the same shall accrue due.

Investment of general legacy, to be paid at future time.

122. Where a general legacy is given to be paid at a future time, the executor shall invest a sum sufficient to meet it in securities of the kind mentioned in the last preceding section.

Intermediate interest.

The intermediate interest shall form part of the residue of the testator's estate.

Procedure when no fund charged with, or appropriated to, annuity.

123. Where an annuity is given and no fund is charged with its payment or appropriated by the will to answer it, a Government-annuity of the specified amount shall be purchased, or,

if no such annuity can be obtained, then a sum sufficient to produce the annuity shall be invested for that purpose in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct.

Transfer to residuary legatee or contingent bequest.

124. Where a bequest is contingent, the executor is not bound to invest the amount of the legacy, but may transfer the whole residue of the estate to the residuary legatee (if any) on his giving sufficient security for the payment of the legacy if it shall become due.

Investment of residue bequeathed for life, with direction to invest in specified securities.

125. Where the testator has bequeathed the residue of his estate to a person for life with a direction that it shall be invested in certain specified securities, so much of the estate as is not at the time of his death invested in securities of the specified kind shall be converted into money and invested in such securities.

Time and manner of conversion and investment.

126. Such conversion and investment as are contemplated by the last preceding section shall be made at such times and in such manner as the executor in his discretion thinks fit;

and, until such conversion and investment shall be completed, the person who would be for the time being entitled to the income of the fund when so invested shall receive interest at the rate of six per cent. per annum upon the market-value (to be computed as of the date of the testator's death) of such part of the fund as shall not yet have been so invested.

Interest payable until investment.

Procedure where minor entitled to immediate payment or possession of bequest, and no direction to pay to person on his behalf.

127. Where, by the terms of a bequest, the legatee is entitled to the immediate payment or possession of the money or thing bequeathed, but is a minor, and there is no direction in the will to pay it to any person on his behalf, the executor or administrator shall pay or deliver the same into the Court of the District Judge by whom, or by whose District Delegate, the probate was, or letters of administration with the will annexed were, granted, to the account of the legatee, unless the legatee be a ward of the Court of Wards; and, if the legatee be a ward of the Court of Wards, the legacy shall be paid into that Court to his account;

and such payment into the Court of the District Judge, or into the Court of Wards, as the case may be, shall be a sufficient discharge for the money so paid;

and such money, when paid in, shall be invested in the purchase of Government securities, which, with the interest thereon, shall be transferred or paid to the person entitled thereto, or otherwise applied for his benefit, as the Judge or the Court of Wards, as the case may be, may direct.

CHAPTER XI.

OF THE PRODUCE AND INTEREST OF LEGACIES.

Legatee's title to produce of specific legacy.

128. The legatee of a specific legacy is entitled to the clear produce thereof, if any, from the testator's death.

Exception.—A specific bequest, contingent in its terms, does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy.

The clear produce of it forms part of the residue of the testator's estate.

Illustrations.

(*a*). A bequeathes his flock of sheep to B. Between the death of A and delivery by his executor the sheep are shorn, or some of the ewes produce lambs. The wool and lambs are the property of B.

(*b*). A bequeathes his Government-securities to B, but postpones the delivery of them till the death of C. The interest which falls due between the death of A and the death of C belongs to B, and must, unless he is a minor, be paid to him as it is received.

(*c*). The testator bequeathes all his four per cent. Government promissory notes to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the notes, but the interest which accrues in respect of them, between the testator's death and A's completing 18 forms part of the residue.

Residuary legatee's title to produce of residuary fund.

129. The legatee under a general residuary bequest is entitled to the produce of the residuary fund from the testator's death.

Exception.—A general residuary bequest contingent in its terms does not comprise the income which may accrue upon the fund bequeathed between the death of the testator and the vesting of the legacy.

Such income goes as undisposed of.

Illustrations.

(*a*). The testator bequeathes the residue of his property to A, a minor, to be paid to him when he shall complete the age of 18. The income from the testator's death belongs to A.

(*b*). The testator bequeathes the residue of his property to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the residue. The income which has accrued in respect of it since the testator's death goes as undisposed of.

Interest when no time fixed for payment of general legacy.

130. Where no time has been fixed for the payment of a general legacy, interest begins to run from the expiration of one year from the testator's death.

Exceptions.—(1). Where the legacy is bequeathed in satisfaction of a debt, interest runs from the death of the testator.

(2). Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, the legacy shall bear interest from the death of the testator.

(3). Where a sum is bequeathed to a minor with a direction to pay for his maintenance out of it, interest is payable from the death of the testator.

Interest when time fixed.

131. Where a time has been fixed for the payment of a general legacy, interest begins to run from the time so fixed.

The interest up to such time forms part of the residue of the testator's estate.

Exception.—Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, and the legatee is a minor, the legacy shall bear interest from the death of the testator, unless a specific sum is given by the will for maintenance, or unless the will contains a direction to the contrary.

Rate of interest.

132. The rate of interest shall be six per cent. per annum.

No interest on arrears of annuity within first year after testator's death.

133. No interest is payable on the arrears of an annuity within the first year from the death of the testator, although a period earlier than the expiration of that year may have been fixed by the will for making the first payment of the annuity.

Interest on sum to be invested to produce annuity.

134. Where a sum of money is directed to be invested to produce an annuity, interest is payable on it from the death of the testator.

CHAPTER XII.

OF THE REFUNDING OF LEGACIES.

Refund of legacy paid under Judge's orders.

135. An executor who has paid a legacy under the order of a Judge, is entitled to call upon the legatee to refund in the event of the assets proving insufficient to pay all the legacies.

No refund if paid voluntarily.

136. When an executor has voluntarily paid a legacy, he cannot call upon a legatee to refund in the event of the assets proving insufficient to pay all the legacies.

Refund when legacy becomes due on performance of condition within further time allowed.

137. When the time prescribed by the will for the performance of a condition has elapsed, without the condition having been performed, and the executor has thereupon, without fraud, distributed the assets; in such case, if further time has, under the second clause of this section, been allowed for the performance of the condition, and the condition has been performed accordingly, the legacy cannot be claimed from the executor, but those to whom he has paid it are liable to refund the amount.

Where the will requires an act to be performed by the legatee within a specified time, either as a condition to be fulfilled before the legacy is enjoyed, or as a condition upon the non-fulfilment of which the subject-matter of the bequest is to go over to another person, or the bequest is to cease to have effect, the act must be performed within the time specified, unless the performance of it be prevented by fraud, in which case such further time shall be allowed as is requisite to make up for the delay caused by such fraud.

When each legatee compellable to refund in proportion.

138. When the executor has paid away the assets in legacies, and he is afterwards obliged to discharge a debt of which he had no previous notice, he is entitled to call upon each legatee to refund in proportion.

Distribution of assets.

139. Where an executor or administrator has given such notices as the High Court may, by any general rule to be made from time to time, prescribe, for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets, or any part thereof, in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he has not had notice at the time of such distribution;

Creditor may follow assets.

but nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, in the hands of the persons who may have received the same respectively.

Creditor may call upon legatee to refund.

140. A creditor who has not received payment of his debt may call upon a legatee who has received payment of his legacy to refund, whether the assets of the testator's estate were or were not sufficient at the time of his death to pay both debts and legacies, and whether the payment of the legacy by the executor was voluntary or not.

When legatee, not satisfied or compelled to refund under section 140, cannot oblige one paid in full to refund.

141. If the assets were sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy, or who has been compelled to refund under the last preceding section, cannot oblige one who has received payment in full to refund, whether the legacy were paid to him with or without suit, although the assets have subsequently become deficient by the wasting of the executor.

When unsatisfied legatee must first proceed against executor, if solvent.

142. If the assets were not sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy must, before he can call on a satisfied legatee to refund, first proceed against the executor if he is solvent; but, if the executor is insolvent or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion.

Limit to refunding of one legatee to another.

143. The refunding of one legatee to another shall not exceed the sum by which the satisfied legatee ought to have contributed if the estate had been properly administered.

Illustration.

A has bequeathed 240 rupees to B, 480 rupees to C and 720 rupees to D. The assets are only 1,200 rupees. If properly administered would give 200 rupees to B, 400 rupees to C and 600 rupees to D. C and D have received their legacies in full, leaving B unpaid. B can oblige C to refund 200 rupees, and D to refund 400 rupees.

Refunding to be without interest.

144. The refunding of one legatee to another shall be without interest, and all contributions shall be made

145. The surplus or residue of the deceased's property, after payment of debts and legacies, shall be paid to the residuary legatee when any has been appointed by the will.

Residue after usual payments to be paid to residuary legatee.

CHAPTER XIII.

OF THE LIABILITY OF AN EXECUTOR OR ADMINISTRATOR FOR DEVASTATION.

146. When an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned.

Liability of executor or administrator for devastation.

Illustrations.

(*a*). The executor pays out of the estate an unfounded claim. He is liable to make good the loss caused by the payment.

(*b*). The deceased had a valuable lease renewable by notice, which the executor neglects to give at the proper time. The executor is liable to make good the loss caused by the neglect.

(*c*). The deceased had a lease of less value than the rent payable for it, but terminable on notice at a particular time. The executor neglects to give the notice. He is liable to make good the loss.

147. When an executor or administrator occasions a loss to the estate by neglecting to get in any part of the property of the deceased, he is liable to make good the amount.

For neglect to get in any part of property.

Illustrations.

(*a*). The executor absolutely releases a debt due to the deceased from a solvent person, or compounds with a debtor who is able to pay in full. The executor is liable to make good the amount so lost.

(*b*). The executor neglects to sue for a debt till the debtor is able to plead the Act for the limitation of suits, and the debt is thereby lost to the estate. The executor is liable to make good the amount of the debt.

CHAPTER XIV.

MISCELLANEOUS.

148. In Chapters VIII, IX, X and XII of this Act the provisions as to an executor shall apply also to an *administrator with the will annexed.*

Provisions applied to administrator with will annexed.

149. Nothing herein contained shall—

Saving-clause.

(*a*) validate any testamentary disposition which would *otherwise have been invalid ;*

(*b*) invalidate any such disposition which would otherwise have been valid ;

(*c*) deprive any person of any right of maintenance to which he would otherwise have been entitled ; or

(*d*) affect the rights, duties and privileges of the Administrator General *of Bengal, Madras or* Bombay.

150. No proceedings to obtain probate of a will, or letters of administration to the estate, of any Hindú, Muhammadan, Buddhist or person exempted under section 332 of the Indian Succession Act, 1865, shall be instituted in any Court in British India except under this Act.

Probate and administration in case of persons exempted from Succession Act, to be granted only under this Act.

151. In Act No. XXVII of 1860 (*An Act for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons*), sections 15 and 16 and the proviso to section 18 shall be repealed.

Repeal of portions of Act XXVII of 1860.

152. The grant of probate or letters of administration under this Act in respect of any property shall be deemed to supersede any certificate previously granted in respect of the same property under the said Act No. XXVII of 1860, or Bombay Regulation No. VIII of 1827 ; and when, at the time of the grant of such probate or letters, any suit or other proceeding instituted by the holder of such certificate regarding such property is pending, the person to whom such grant is made shall, on applying to the Court in which such suit or proceeding is pending, be entitled to take the place of such holder in such suit or proceeding :

Grant of probate or administration to supersede certificate under Act XXVII of 1860, or Bombay Regulation VIII of 1827.

Provided that, when any certificate is superseded under this section, all payments made to the holder of such certificate in ignorance of such supersession *shall be held good against* claims under the probate or letters of administration.

153. In the Court-fees Act, 1870, schedule I, Nos. 11 and 12, in the third column, after the words "amount or value," the following shall be inserted, namely :—

Amendment of Court-fees Act.

"Provided that, when after a certificate has been granted as aforesaid in respect of any estate, probate or letters of administration is or are granted in respect of the same estate, the fee payable *in respect of such latter grant* shall be reduced by the amount of the fee paid in respect of the former grant."

154. The following amendments shall be made in the Hindú Wills Act, 1870 (namely) :—

Amendment of Hindú Wills Act.

(*a*). For the portion of *section two* commencing with the words "sections one hundred and seventy-nine" and ending with the words "administrator with the will annexed," the words "and section one hundred and eighty-seven" *shall be substituted.*

(*b*). The third clause of section three and the last clause of section six shall be repealed.

(*c*). In section six, for the words "one hundred and three and one hundred and eighty-two" the words "and one hundred and three" shall be substituted.

155. All grants of probate of the will or letters of administration to the estate of any deceased Hindú, Muhammadan or Buddhist, or any person exempted under section 332 of the Indian Succession Act, 1865, which, before this Act comes into force have been made in British Burma, shall, whenever such grant would have been lawful if this Act had been in force, be deemed to have been made in accordance with law.

Validation of grants of probate and administration made in British Burma.

156. In the second schedule to the Indian Limitation Act, 1877, No. 43, after the figures "321," the following shall be inserted, namely—"or under the Probate and Administration Act, 1881, section 139 or 140."

Amendment of Act XV of 1877.

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

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 21st January, 1881, and is hereby promulgated for general information :—

ACT No. VI OF 1881.

An Act to make further provision for the grant of Probate and Letters of Administration in non-contentious cases.

WHEREAS it is expedient to make further provision for the grant of probate and letters of administration in non-contentious cases ; It is hereby enacted as follows :—

Preamble.

1. This Act may be called "The District Delegates Act, 1881" :

Short title.

It extends to the whole of British India ;

Extent.

and it shall come into force on the first day of April, 1881.

Commencement.

2. After section 235 of the Indian Succession Act, 1865, the following section shall be added :—

Addition of section after section 235 of Succession Act.

"235A. The High Court may, from time to time, appoint such judicial officers *within any district* as it thinks fit, to act for the District Judge as Delegates to grant probate and letters of administration in non-contentious cases, within such local limits as it may from time to time prescribe :

Power to appoint Delegate of District Judge to deal with non-contentious cases.

"Provided that, in the case of High Courts not established by Royal Charter, such appointment be made with the previous sanction of the Local Government.

"Persons so appointed shall be called 'District Delegates'."

3. After section 241 of the said Act, the following section shall be added :—

Addition of section after section 241 of same Act.

"241A. Probate and letters of administration may, upon application for that purpose to any District Delegate, be granted by him in any case in which there is no contention, if it appears by petition (verified as hereinafter mentioned) that the testator or intestate, as the case may be, at the time of his death resided within the jurisdiction of such Delegate."

Probate and letters of administration may be granted by Delegate.

4. To sections 244 and 246 of the said Act, respectively, the following words shall be added :—

Addition to sections 244 and 246 of same Act.

"and when the application is to a District Delegate, the petition shall further state that the deceased at the time of his death resided within the jurisdiction of such Delegate."

5. For section 251 of the said Act, the following section shall be substituted :—

Substitution of section for section 251 of same Act.

"251. Caveats against the grant of probate or administration may be lodged with the District Judge or a District Delegate ; and immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge ; and immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased resided at the time of his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same."

Caveats against grant of probate or administration.

6. In section 253 of the said Act, after the word "Judge" the words "or officer," and after the word "made" the words "or notice thereof has been given of its entry with *some other* Delegate," shall be inserted.

Amendment of section 253 of same Act.

7. After section 253 of the said Act, the following sections shall be added :—

Addition of sections after section 253 of same Act.

"253A. A District Delegate shall not grant probate or letters of administration in any case in which *there is contention* as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

District Delegate when not to grant probate or administration.

"*Explanation.*—By 'contention' is understood the appearance of any one in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf to oppose the proceeding.

"253B. In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in

Power to transmit statement to District Judge in doubtful cases where no contention.

relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

"253C. In every case in which there is contention, or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any documents that may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge; unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorized to do; and in that case the same shall be sent by him to the District Judge."

Procedure where there is contention, or District Delegate thinks probate or letters of administration should be refused in his Court.

8. In the said Act, sections 254 and 255, respectively, after the words "I, Judge of the District of ," the words "(*or* Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*))"; and in section 308, after the words "District Judge by whom" the words "or by whose District Delegate" shall be inserted.

Amendment of sections 254, 255 and 308 of same Act.

9. In the said Act, sections 246, 250, 255 and 259, after the words "District Judge," and in section 250 and section 254 (when it first occurs) after the word "Judge," the words "or District Delegate" shall be inserted respectively.

Introduction of the words "or District Delegate" in certain sections of same Act.

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

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 21st January, 1881, and is hereby promulgated for general information:—

ACT No. VII OF 1881.

An Act to amend Bengal Act No. IX of 1880 (the Cess Act, 1880).

WHEREAS it is expedient to amend Bengal Act No. IX of 1880 (the Cess Act, 1880); It is hereby enacted as follows:—

Preamble.

1. In the said Act, after section sixty-four, the following sections shall be inserted, and shall be deemed to have been so inserted on from the date on which such Act came into force:—

Amendment of Bengal Act No. IX of 1880.

"64A. All sums due to the holder of any estate or tenure under the provisions of this chapter, in respect of any land held rent-free, may be recovered by such holder from any owner or holder of such rent-free land, or from any occupier of the same, by any means and any process by which the amount might be recovered if it were due on account of rent of a transferable tenure or holding, and subject to the same rules as to limitation:

Holders of estates, &c., how to recover from holders of rent-free lands.

"Provided that, if any such objection as is mentioned in section 53, has been made before the Collector, no proceedings shall be commenced, and no proceedings which have been commenced shall be continued, for recovery of cess in respect of the lands which are the subject of such objection, until such objection shall have been disposed of by the Collector.

"64B. In every suit for the recovery of any such sum, the person to whom the sum is due may proceed at his option either against the owner or holder of the rent-free land in respect of which such amount is due, or against the occupier thereof; and any decree obtained in such suit against any occupier of such land shall have the same effect and be followed by the same consequences in respect of the execution of such decree against the owner or holder of such land, and in respect of the sale of such land in such execution, as if the suit had been brought and the decree given against such owner or holder of such land, but shall have effect against such occupier personally so long only as he remains in occupation of such land, and no longer."

Owner, holder or occupier of rent-free lands may be sued.
Decree against occupier tantamount to decree against owner.

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

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, JANUARY 29, 1881.

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 15th January, 1881, and is hereby promulgated for general information:—

Act No. III of 1881.

An Act to declare certain matters relating to Securities of the Government of India.

Preamble.

WHEREAS the Governor General in Council has determined to issue, in respect of the four and a half per cent. loan of 1880, certificates declaring the bearers thereof entitled to the principal sums specified therein, and coupons for the interest payable on such principal sums;

and whereas the Governor General in Council may from time to time desire to issue like certificates, with or without like coupons, in respect of other loans;

and whereas it is expedient to declare the mode in which the title to such certificates and coupons shall be transferable;

and whereas it is also expedient to provide for certain other matters relating to all securities of the Government of India; It is hereby enacted as follows:—

Short title.

Commencement.

1. This Act may be called "The Indian Securities Act, 1881"; and shall come into force at once.

"Government securities."

2. In this Act, "Government securities" includes promissory notes, debentures, loan-certificates, coupons and all other securities issued by the Government of India, whether before or after the passing of this Act.

Certificates and coupons may be transferred and discharged like promissory notes payable to bearer.

3. Whenever the Governor General in Council has issued, in respect of any loan, a certificate declaring the bearer thereof to be entitled to the portion of the loan therein expressed, or a coupon for any amount payable as interest on any portion of such loan, the title to such certificate or coupon may be transferred as if the certificate or coupon were a promissory note payable to bearer;

and, on payment, by or on behalf of the Government, to the bearer of such certificate or coupon, of the amount expressed therein, at or after the date on which it becomes due, the Government shall be discharged as if such certificate or coupon were a promissory note payable to bearer.

No notice of trust.

4. No notice of any trust in respect of any Government security shall be receivable by the Government.

Indorser of Government security not liable for amount thereof.

5. No person shall, merely by reason of his having endorsed any Government security, be liable to pay any money due, whether on account of principal or interest, thereunder.

Signature to Government securities may be printed, &c.

6. The signature of the officer of the Government of India authorized to sign any Government securities on behalf of the Government may be printed, engraved or lithographed, or impressed by such other mechanical process as the Governor General in Council may direct, on such securities.

Any such signature so printed, engraved, lithographed or otherwise impressed shall be as valid as if the same had been subscribed in the proper handwriting of such officer.

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

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 15th January, 1881, and is hereby promulgated for general information :—

ACT No. IV OF 1881.

An Act to enhance the rate of Port-dues leviable at Madras.

Preamble.

WHEREAS it has been determined to construct an artificial harbour for the port of Madras and to defray a portion of the interest on the principal sum expended on the construction of such harbour and the annual expenses of maintaining the same [illegible] leviable on sea-going vessels of fifteen tons and upwards entering the said port :

And whereas the maximum rate of such dues is fixed by the Indian Ports Act, 1875, section forty-two, [illegible] the first schedule thereto annexed, and the amount of such rate is insufficient to defray such portion of the said interest and expenses in addition to the other charges to meet which the said dues are applicable :

And whereas it is therefore necessary to enhance, to the extent hereinafter mentioned, the maximum rate of dues so leviable ;

It is hereby enacted as follows :—

Short title. Commencement.

1. This Act may be called "The Madras Port-dues Act, 1881"; and

It shall come into force as soon as the said harbour is, in the opinion of the Local Government, open for the use of sea-going vessels of fifteen tons and upwards, and the said Government has published, in the *Fort St. George Gazette*, a notification to that effect.

Amendment of Part III of the third schedule of Act XII of 1875.

2. In the Indian Ports Act, 1875, [illegible] ule, Part III, the following amendments shall be made, that is to say :—

(*a*) in the first column, the numeral and word "9, Madras" shall be omitted ;

(*b*) in the first column, above the heading "*Eastern Group,*" the word "Madras" shall be inserted ; and

(*c*) opposite the word "Madras" so inserted there shall be inserted—

(1) in the second column, the words "sea-going vessels of fifteen tons and upwards" ; and

(2) in the third column, the words "not exceeding eight annas per ton : Provided that, in the case of vessels employed in the coasting trade not being steamers, the rates shall be one-half the rates chargeable in respect of other vessels."

Certain provisions of that Part to apply to Madras.

3. The provisions contained in the fourth column of the said Part shall, so far as they are applicable, apply to the Port of Madras.

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

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 21st January, 1881, and is hereby promulgated for general information:—

ACT No. V OF 1881.

THE PROBATE AND ADMINISTRATION ACT, 1881.

PREAMBLE.

CHAPTER I.

PRELIMINARY.

SECTIONS.
1. Short title.
Local extent.
Commencement.
2. Personal application.
3. Interpretation-clause.

CHAPTER II.

OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.

4. Character and property of executor or administrator as such.
5. Administration with copy annexed of authenticated copy of will proved abroad.
6. Probate only to appointed executor.
7. Appointment express or implied.
8. Persons to whom probate cannot be granted.
9. Grant of probate to several executors simultaneously or at different times.
10. Separate probate of codicil discovered after grant of probate.
Procedure when different executors appointed by codicil.
11. Accrual of representation to surviving executor.
12. Effect of probate.
13. To whom administration may not be granted.
14. Effect of letters of administration.
15. Acts not validated by administration.
16. Grant of administration where executor has not renounced.
Exception.
17. Form and effect of renunciation of executorship.
18. Procedure where executor renounces or fails to accept within time limited.
19. Grant of administration to universal or residuary legatee.

SECTIONS.
20. Right to administration of representative of deceased residuary legatee.
21. Grant of administration where no executor, nor residuary legatee, nor representative of such legatee.
22. Citation before grant of administration to legatee other than universal or residuary.
23. To whom administration may be granted.

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OF LIMITED GRANTS.

(*a*).—*Grants limited in Duration.*

24. Probate of copy or draft of lost will.
25. Probate of contents of lost or destroyed will.
26. Probate of copy where original exists.
27. Administration until will produced.

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28. Administration, with will annexed, to attorney of absent executor.
29. Administration, with will annexed, to attorney of absent person, who, if present, would be entitled to administer.
30. Administration to attorney of absent person entitled to administer in case of intestacy.
31. Administration during minority of sole executor or residuary legatee.
32. Administration during minority of several executors or residuary legatees.
33. Administration for use and benefit of lunatic.
34. Administration *pendente lite*.

(*c*).—*For Special Purposes.*

35. Probate limited to purpose specified in will.
36. Administration with will annexed limited to particular purpose.
37. Administration limited to trust-property.
38. Administration limited to suit.
39. Administration limited to purpose of becoming party to suit to be brought against administrator.
40. Administration limited to collection and preservation of deceased's property.
41. Appointment, as administrator, of person other than one who under ordinary circumstances would be entitled to administration.

(*d*).—*Grants with Exception.*

42. Probate or administration with will annexed subject to exception.
43. Administration with exception.

(*e*).—*Grants of the Rest.*

44. Probate or administration of rest.

(*f*).—*Grants of Effects unadministered.*

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45. Grant of effects unadministered.
46. Rules as to grants of effects unadministered.
47. Administration when limited grant expired, and still some part of estate unadministered.

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48. What errors may be rectified by Court.
49. Procedure where codicil discovered after grant of administration with will annexed.
50. Revocation or annulment for just cause.
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OF THE PRACTICE IN GRANTING AND REVOKING PROBATES AND LETTERS OF ADMINISTRATION.

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52. Power to appoint Delegate of District Judge to deal with non-contentious cases.
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55. Proceedings of District Judge's Court in relation to probate and administration.
56. When probate or administration may be granted by District Judge.
57. Disposal of application made to Judge of district in which deceased had no fixed abode.
58. Probate and letters of administration may be granted by Delegate.
59. Conclusiveness of probate or letters of administration.
Effect of unlimited probates, &c., granted by certain Courts.
60. Transmission of certificate by Court granting unlimited probate, &c., to other Courts.
61. Conclusiveness of application for probate or administration, if properly made and verified.
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63. In what cases translation of will to be annexed to petition.
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72. After entry of caveat, no proceeding taken on petition until after notice to caveator.
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75. Procedure where there is contention, or District Delegate thinks probate or letters of administration should be refused in his Court.
76. Grant of probate to be under seal of Court.
Form of such grant.
77. Grant of letters of administration to be under seal of Court.
Form of such grant.
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79. Assignment of administration-bond.
80. Time before which probate or administration shall not be granted.
81. Filing of original wills of which probate or administration with will annexed granted.
82. Grantee of probate or administration alone to sue, &c., until same revoked.
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85. Power to refuse letters of administration.
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91. Purchase by executor or administrator of deceased's property.
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94. Powers of administrator of effects unadministered.
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101. Expenses to be paid before all debts.
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103. Wages for certain services to be next paid, and then other debts.

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154. Amendment of Hindú Wills Act.
155. Validation of grants of probate and administration made in British Burma.
156. Amendment of Act XV of 1877.

An Act to provide for the grant of Probates of Wills and Letters of Administration to the estates of certain deceased persons.

Preamble.

WHEREAS it is expedient to provide for the grant of probate of wills and letters of administration to the estates of deceased persons in cases to which the

Indian Succession Act, 1865, does not apply; It is hereby enacted as follows:—

CHAPTER I.
PRELIMINARY.

Short title. Local extent. Commencement.

1. This Act may be called "The Probate and Administration Act, 1881": It applies to the whole of British India; and it shall come into force on the first day of April, 1881.

Personal application.

2. Chapters II to XIII, both inclusive, of this Act shall apply in the case of every Hindú, Muhammadan, Buddhist and person exempted under section 332 of the Indian Succession Act, 1865, dying before, on or after the said first day of April, 1881:

Provided that nothing herein contained shall be deemed to render invalid any transfer of property duly made before that day:

Provided also that, except in cases to which the Hindú Wills Act, 1870, applies, no Court in any local area beyond the limits of the towns of Calcutta, Madras and Bombay and the territories for the time being administered by the Chief Commissioner of British Burma, and no High Court in exercise of the concurrent jurisdiction over such local area hereby conferred, shall receive applications for probate or letters of administration until the Local Government has, with the previous sanction of the Governor General in Council, by a notification in the official Gazette, authorized it so to do.

Interpretation-clause.

3. In this Act, unless there be something repugnant in the subject to context,—

"Province" includes any division of British India having a Court of the last resort: — "Province:"

"minor" means any person subject to the Indian Majority Act, 1875, who has not attained his majority within the meaning of that Act, and any other person who has not completed his age of eighteen years; and "minority" means the status of any such person: — "minor:" "minority:"

"will" means the legal declaration of the intentions of the testator with respect to his property, which he desires to be carried into effect after his death: — "will:"

"codicil" means an instrument made in relation to a will, and explaining, altering or adding to its dispositions. It is considered as forming an additional part of the will: — "codicil:"

"specific legacy" means a legacy of specified property; "demonstrative legacy" means a legacy directed to be paid out of specified property: — "specific legacy:" "demonstrative legacy:"

"probate" means the copy of a will certified under the seal of a Court of competent jurisdiction, with a grant of administration to the estate of the testator: — "probate:"

"executor" means a person to whom the execution of the last will of a deceased person is, by the testator's appointment, confided: — "executor:"

"administrator" means a person appointed by competent authority to administer the estate of a deceased person when there is no executor: and — "administrator:"

"District Judge" means the judge of a principal civil court of original jurisdiction. — "District Judge."

CHAPTER II.
OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.

Character and property of executor or administrator as such.

4. The executor or administrator, as the case may be, of a deceased person, is his legal representative for all purposes, and all the property of the deceased person vests in him as such.

But nothing herein contained shall vest in an executor or administrator any property of a deceased person which would otherwise have passed by survivorship to some other person.

Administration with copy annexed of authenticated copy of will proved abroad.

5. When a will has been proved and deposited in a Court of competent jurisdiction, situated beyond the limits of the Province, whether in the British dominions, or in a foreign country, and a properly authenticated copy of the will is produced, letters of administration may be granted with a copy of such copy annexed.

Probate only to appointed executor.

6. Probate can be granted only to an executor appointed by the will.

Appointment express or implied.

7. The appointment may be express or by necessary implication.

Illustrations.

(*a*.) A wills that C be his executor if B will not. B is appointed executor by implication.

(*b*.) A gives a legacy to B and several legacies to other persons, among the rest to his daughter-in-law, C, and adds, "but should the within-named C be not living, I do constitute and appoint B my whole and sole executrix." C is appointed executrix by implication.

(*c*.) A appoints several persons executors of his will and codicils, and his nephew residuary legatee, and in another codicil are these words:—"I appoint my nephew my residuary legatee to discharge all lawful demands against my will and codicils, signed of different dates." The nephew is appointed an executor by implication.

Persons to whom probate cannot be granted.

8. Probate cannot be granted to any person who is a minor or is of unsound mind.

Grant of probate to several executors simultaneously or at different times.

9. When several executors are appointed, probate may be granted to them all simultaneously or at different times.

Illustration.

A is an executor of B's will by express appointment, and C an executor of it by implication. Probate may be granted to A and C at the same time, or to A first and then to C, or to C first then to A.

Separate probate of codicil discovered after grant of probate.

10. If a codicil be discovered after the grant of probate, a separate probate of that codicil may be granted to the executor, if it in no way repeals the appointment of executors made by the will.

Procedure when different executors appointed by codicil.

If different executors are appointed by the codicil, the probate of the will must be revoked, and a new probate granted of the will and the codicil together.

Accrual of representation to surviving executor.

11. When probate has been granted to several executors, and one of them dies, the entire representation of the testator accrues to the surviving executor or executors.

Effect of probate.

12. Probate of a will when granted establishes the will from the death of the testator, and renders valid all intermediate acts of the executor as such.

To whom administration may not be granted.

13. Letters of administration cannot be granted to any person who is a minor or is of unsound mind.

Effect of letters of administration.

14. Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death.

Acts not validated by administration.

15. Letters of administration do not render valid any intermediate acts of the administrator tending to the diminution or damage of the intestate's estate.

Grant of administration where executor has not renounced.

16. When a person appointed an executor has not renounced the executorship, letters of administration shall not be granted to any other person until a citation has been issued calling upon the executor to accept or renounce his executorship;

except that, when one or more of several executors has or have proved a will, the Court may, on the death of the survivor of those who have proved, grant letters of administration without citing those who have not proved. — Exception.

Form and effect of renunciation of executorship.

17. The renunciation may be made orally in the presence of the Judge, or by a writing signed by the person renouncing, and when made shall preclude him from ever thereafter applying for probate of the will appointing him executor.

Procedure where executor renounces or fails to accept within time limited.

18. If the executor renounce, or fail to accept, the executorship within the time limited for the acceptance or refusal thereof, the will may be proved and letters of administration with a copy of the will annexed may be granted to the person who would be entitled to administration in case of intestacy.

Grant of administration to universal or residuary legatee.

19. When the deceased has made a will, but has not appointed an executor, or

when he has appointed an executor who is legally incapable or refuses to act, or has died before the testator, or before he has proved the will, or

when the executor dies after having proved the will but before he has administered all the estate of the deceased,

an universal or a residuary legatee may be admitted to prove the will, and letters of administration with the will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered.

Right to administration of representative of deceased residuary legatee.

20. When a residuary legatee who has a beneficial interest survives the testator, but dies before the estate has been fully administered, his representative has the same right to administration with the will annexed as such residuary legatee.

Grant of administration where no executor, nor residuary legatee, nor representative of such legatee.

21. When there is no executor and no residuary legatee or representative of a residuary legatee, or he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate, or any other legatee having a beneficial interest, or a creditor, may be admitted to prove the will, and letters of administration may be granted to him or them accordingly.

Citation before grant of administration to legatee other than universal or residuary.

22. Letters of administration with the will annexed shall not be granted to any legatee other than an universal or a residuary legatee, until a citation has been issued and published in the manner hereinafter mentioned, calling on the next-of-kin to accept or refuse letters of administration.

To whom administration may be granted.

23. When the deceased has died intestate, administration of his estate may be granted to any person who, according to the rules for the distribution of the estate of an intestate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate.

When several such persons apply for administration, it shall be in the discretion of the Court to grant it to any one or more of them.

When no such person applies, it may be granted to a creditor of the deceased.

CHAPTER III.
OF LIMITED GRANTS.

(*a*).—*Grants limited in Duration.*

Probate of copy or draft of lost will.

24. When the will has been lost or mislaid since the testator's death, or has been destroyed by wrong or accident and not by any act of the testator, and a copy or the draft of the will has been preserved, probate may be granted of such copy or draft, limited until the original or a properly authenticated copy of it be produced.

Probate of contents of lost or destroyed will.

25. When the will has been lost or destroyed and no copy has been made nor the draft preserved, probate may be granted of its contents, if they can be established by evidence.

Probate of copy where original exists.

26. When the will is in the possession of a person, residing out of the Province in which application for probate is made, who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, and it is necessary for the interests of the estate that probate should be granted without waiting for the arrival of the original,

probate may be granted of the copy so transmitted, limited until the will or an authenticated copy of it be produced.

Administration until will produced.

27. Where no will of the deceased is forthcoming, but there is reason to believe that there is a will in existence, letters of administration may be granted, limited until the will or an authenticated copy of it be produced.

(b).—Grants for the Use and Benefit of others having Right.

Administration with will annexed to attorney of absent executor.

28. When any executor is absent from the Province in which application is made, and there is no executor within the Province willing to act, letters of administration with the will annexed may be granted to the agent of the absent executor, for the use and benefit of his principal, limited until he shall obtain probate or letters of administration granted to himself.

Administration with will annexed to attorney of absent person, who, if present, would be entitled to administer.

29. When any person to whom, if present, letters of administration with the will annexed might be granted, is absent from the Province, letters of administration with the will annexed may be granted to his agent, limited as above-mentioned.

Administration to attorney of absent person entitled to administer in case of intestacy.

30. When a person entitled to administration in case of intestacy is absent from the Province, and no person equally entitled is willing to act, letters of administration may be granted to the agent of the absent person, limited as before mentioned.

Administration during minority of sole executor or residuary legatee.

31. When a minor is sole executor or sole residuary legatee, letters of administration with the will annexed may be granted to the legal guardian of such minor, or to such other person as the Court shall think fit, until the minor has attained his majority, at which period, and not before, probate of the will shall be granted to him.

Administration during minority of several executors or residuary legatees.

32. When there are two or more minor executors and no executor who has attained majority, or two or more residuary legatees and no residuary legatee who has attained majority, the grant shall be limited until one of them has attained his majority.

Administration for use and benefit of lunatic.

33. If a sole executor or a sole universal or residuary legatee, or a person who would be solely entitled to the estate of the intestate according to the rule for the distribution of intestates' estates, applicable in the case of the deceased, be a minor or lunatic, letters of administration with or without the will annexed, as the case may be, shall be granted to the person to whom the care of his estate has been committed by competent authority, or, if there be no such person, to such other person as the Court thinks fit to appoint, for the use and benefit of the minor or lunatic, until he attains majority or becomes of sound mind, as the case may be.

Administration *pendente lite*.

34. Pending any suit touching the validity of the will of a deceased person, or for obtaining or revoking any probate or any grant of letters of administration, the Court may appoint an administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator, other than the right of distributing such estate; and every such administrator shall be subject to the immediate control of the Court and shall act under its direction.

(c).—For Special Purposes.

Probate limited to purpose specified in will.

35. If an executor be appointed for any limited purpose specified in the will, the probate shall be limited to that purpose, and if he should appoint an agent to take administration on his behalf, the letters of administration with the will annexed shall accordingly be limited.

Administration with will annexed limited to particular purpose.

36. If an executor appointed generally give an authority to an attorney to prove a will on his behalf, and the authority is limited to a particular purpose, the letters of administration with the will annexed shall be limited accordingly.

Administration limited to trust-property.

37. Where a person dies, leaving property of which he was the sole or surviving trustee, or in which he had no beneficial interest on his own account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to such property, may be granted to the beneficiary, or to some other person on his behalf.

Administration limited to suit.

38. When it is necessary that the representative of a person deceased be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other suit which may be commenced in the same or in any other Court between the parties, or any other parties, touching the matters at issue in the said suit, and until a final decree shall be made therein and carried into complete execution.

Administration limited to purpose of becoming party to suit to be brought against administrator.

39. If, at the expiration of twelve months from the date of any probate or letters of administration, the executor or administrator to whom the same has or have been granted is absent from the Province within which the Court that has granted the probate or letters of administration is situate, such Court may grant, to any person whom it thinks fit, letters of administration limited to the purpose of becoming and being made a party to a suit to be brought against the executor or administrator, and carrying the decree which may be made therein into effect.

Administration limited to collection and preservation of deceased's property.

40. In any case in which it appears necessary for preserving the property of a deceased person, the Court within whose district any of the property is situate may grant, to any person whom such Court thinks fit, letters of administration limited to the collection and preservation of the property of the deceased, and giving discharges for debts due to his estate, subject to the directions of the Court.

Appointment, as administrator, of person other than one who under ordinary circumstances would be entitled to administration.

41. When a person has died intestate, or leaving a will of which there is no executor willing and competent to act, or where the executor is, at the time of the death of such person, resident out of the Province, and it appears to the Court to be necessary or convenient to appoint some person to administer the estate or any part thereof other than the person who under ordinary circumstances would be entitled to a grant of administration, the Judge may, in his discretion, having regard to consanguinity, amount of interest, the safety of the estate and probability that it will be properly administered, appoint such person as he thinks fit to be administrator;

and in every such case letters of administration may be limited or not as the Judge thinks fit.

(d).—Grants with Exception.

Probate or administration with will annexed subject to exception.

42. Whenever the nature of the case requires that an exception be made, probate of a will, or letters of administration with the will annexed, shall be granted subject to such exception.

Administration with exception.

43. Whenever the nature of the case requires that an exception be made, letters of administration shall be granted subject to such exception.

(e).—Grants of the Rest.

Probate or administration of rest.

44. Whenever a grant, with exception, of probate or letters of administration, with or without the will annexed, has been made, the person entitled to probate or administration of the remainder of the deceased's estate may take a grant of probate or letters of administration, as the case may be, of the rest of the deceased's estate.

(f).—Grants of Effects unadministered.

Grant of effects unadministered.

45. If the executor to whom probate has been granted has died leaving a part of the testator's estate unadministered, a new representative may be appointed for the purpose of administering such part of the estate.

Rules as to grants of effects unadministered.

46. In granting letters of administration of an estate not fully administered, the Court shall be guided by the same rules as apply to original grants, and shall grant letters of administration to those persons only to whom original grants might have been made.

Administration when limited grant expired, and still some part of estate unadministered.

47. When a limited grant has expired by efflux-ion of time, or the happening of the event or contingency on which it was limited, and there is still some part of the deceased's estate unadministered, letters of administration shall be granted to those persons to whom original grants might have been made.

CHAPTER IV.

ALTERATION AND REVOCATION OF GRANTS.

What errors may be rectified by Court.

48. Errors in names and descriptions, or in setting forth the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the Court, and the grant of probate or letters of administration may be altered and amended accordingly.

Procedure where codicil discovered after grant of administration with will annexed.

49. If, after the grant of letters of administration with the will annexed, a codicil be discovered, it may be added to the grant on due proof and identification, and the grant altered and amended accordingly.

Revocation or annulment for just cause.

50. The grant of probate or letters of administration may be revoked or annulled for just cause.

"Just cause."

Explanation.—Just cause is—

1*st*, that the proceedings to obtain the grant were defective in substance;

2*nd*, that the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case;

3*rd*, that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently;

4*th*, that the grant has become useless and inoperative through circumstances.

Illustrations.

(*a*). The Court by which the grant was made had no jurisdiction.

(*b*). The grant was made without citing parties who ought to have been cited.

(*c*). The will of which probate was obtained was forged or revoked.

(*d*). A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.

(*e*). A has taken administration to the estate of B as if he had died intestate, but a will has since been discovered.

(*f*). Since probate was granted, a later will has been discovered.

(*g*). Since probate was granted, a codicil has been discovered, which revokes or adds to the appointment of executors under the will.

(*h*). The person to whom probate was, or letters of administration were, granted has subsequently become of unsound mind.

CHAPTER V.

OF THE PRACTICE IN GRANTING AND REVOKING PROBATES AND LETTERS OF ADMINISTRATION.

Jurisdiction of District Judge in granting and revoking probates, &c.

51. The District Judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his district.

Power to appoint Delegate of District Judge to deal with non-contentious cases.

52. The High Court may, from time to time, appoint such judicial officers within any district as it thinks fit to act for the District Judge as Delegates to grant probate and letters of administration in non-contentious cases, within such local limits as it may from time to time prescribe:

Provided that, in the case of High Courts not established by Royal Charter, such appointment be

made with the previous sanction of the Local Government.

Persons so appointed shall be called "District Delegates."

District Judge's powers as to grant of probate and administration.

53. The District Judge shall have the like powers and authority in relation to the granting of probate and letters of administration, and all matters connected therewith, as are by law vested in him in relation to any civil suit or proceeding depending in his Court.

District Judge may order person to produce testamentary papers.

54. The District Judge may order any person to produce and bring into Court any paper or writing being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person;

and if it be not shown that any such paper or writing is in the possession or under the control of such person, but there is reason to believe that he has the knowledge of any such paper or writing, the Court may direct him to attend for the purpose of being examined respecting the same,

and he shall be bound to answer such questions as may be put to him by the Court, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like punishment under the Indian Penal Code, in case of default in not attending or in not answering such questions or not bringing in such paper or writing as he would have been subject to in case he had been a party to a suit, and had made such default,

and the costs of the proceeding shall be in the discretion of the Judge.

Proceedings of District Judge's Court in relation to probate and administration.

55. The proceedings of the Court of the District Judge, in relation to the granting of probate and letters of administration, shall, except as hereinafter otherwise provided, be regulated, so far as the circumstances of the case will admit, by the Code of Civil Procedure.

When probate or administration may be granted by District Judge.

56. Probate of the will or letters of administration to the estate of a deceased person may be granted by the District Judge under the seal of his Court, if it appears by a petition, verified as hereinafter mentioned, of the person applying for the same that the testator or intestate, as the case may be, had at the time of his decease a fixed place of abode, or any property, moveable or immoveable, within the jurisdiction of the Judge.

Disposal of application made to Judge of District in which deceased had no fixed abode.

57. When the application is made to the Judge of a District in which the deceased had no fixed abode at the time of his death, the Judge may in his discretion refuse the application, if in his judgment it could be disposed of more justly or conveniently in another district, or, where the application is for letters of administration, grant them absolutely, or limited to the property within his own jurisdiction.

Probate and letters of administration may be granted by Delegate.

58. Probate and letters of administration may, upon application for that purpose to any District Delegate, be granted by him in any case in which there is no contention, if it appears by petition (verified as hereinafter mentioned) that the testator or intestate, as the case may be, at the time of his death had his fixed place of abode within the jurisdiction of such Delegate.

Conclusiveness of probate or letters of administration.

59. Probate or letters of administration shall have effect over all the property, moveable or immoveable, of the deceased throughout the Province in which the same is granted, and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors paying their debts, and all persons delivering up such property to the person to whom such probate or letters of administration shall have been granted:

Effect of unlimited probates, &c., granted by certain Courts.

Provided that probates and letters of administration granted by a High Court established by Royal Charter, or by the Chief Court of the Panjáb, or by the Court of the Recorder of Rangoon, shall, unless otherwise directed by the grant, have like effect throughout the whole of British India.

Transmission of certificate by Court granting unlimited probate, &c., to other Courts.

60. Whenever a grant of probate or letters of administration is made by a Court with such effect as last aforesaid, the Registrar, or such other officer as the Court making the grant appoints in this behalf, shall send to each of the other Courts empowered to make such grants, a certificate to the following effect:—

I, *A. B.*, Registrar [*or as the case may be*] of the High Court of Judicature at [*or as the case may be*], hereby certify that on the day of 188 the High Court of Judicature at [*or as the case may be*] granted probate of the will [*or* letters of administration of the estate] of *C. D.*, late of deceased, to *E. F.* of and *G. H.* of , and that such probate [*or* letters] has [*or* have] effect over all the property of the deceased throughout the whole of British India;

and such certificate shall be filed by the Court receiving the same.

Conclusiveness of application for probate or administration, if properly made and verified.

61. The application for probate or letters of administration, if made and verified in the manner hereinafter mentioned, shall be conclusive for the purpose of authorizing the grant of probate or administration, and no such grant shall be impeached by reason that the testator or intestate had no fixed place of abode, or no property within the district at the time of his death, unless by a proceeding to revoke the grant if obtained by a fraud upon the Court.

Petition for probate.

62. Application for probate or for letters of administration with the will annexed shall be made by a petition distinctly written in English or in the language in ordinary use in proceedings before the Court in which the application is made, with the will, or, in the cases mentioned in sections twenty-four, twenty-five and twenty-six, a copy, draft or statement of the contents thereof annexed, and stating

the time of the testator's death,

that the writing annexed is his last will and testament, or as the case may be,

that it was duly executed,

the amount of assets which are likely to come to the petitioner's hands;

and, where the application is for probate, that the petitioner is the executor named in the will.

In addition to these particulars, the petition shall further state,

when the application is to the District Judge, that the deceased at the time of his death had a fixed place of abode or had some property situate within the jurisdiction of the Judge; and,

when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

In what cases translation of will to be annexed to petition.

63. In cases wherein the will, copy or draft is written in any language other than English, or than that in ordinary use in proceedings before the Court, there shall be a translation thereof annexed to the petition by a translator of the Court, if the language be one for which a translator is appointed; or, if the will, copy or draft be in any other language, then by any person competent to translate the same, in which case such translation shall be verified by that person in the following manner:—

Verification of translation by person other than Court translator.

"I (*A. B.*) do declare that I read and perfectly understand the language and character of the original, and that the above is a true and accurate translation thereof."

Petition for letters of administration.

64. Application for letters of administration shall be made by petition distinctly written as aforesaid, and stating

the time and place of the deceased's death,

the family or other relatives of the deceased, and their respective residences,

the right in which the petitioner claims,

the amount of assets which are likely to come to the petitioner's hands.

In addition to these particulars the petition shall further state,

when the application is to a District Judge, that the deceased at the time of his death had a fixed place of abode or had some property situate within the jurisdiction of the Judge; and

when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

Additional statements in petition for probate, &c.

65. Every person applying to any of the Courts mentioned in the proviso to section fifty-nine for probate of a will or letters of administration of an estate, intended to have effect throughout British India, shall state in his petition, in addition to the matters respectively required by sections sixty-two and sixty-four, that to the best of his belief no application has been made to any other Court for a probate of the same will or for letters of administration of the same estate, intended to have such effect as last aforesaid,

or, where any such application has been made, the Court to which it was made, the person or persons by whom it was made, and the proceedings (if any) had thereon.

And the Court to which any application is made under the proviso to section fifty-nine may, if it think fit, reject the same.

Petition for probate or administration to be signed and verified.

66. The petition for probate or letters of administration shall in all cases be subscribed by the petitioner and his pleader, if any, and shall be verified by the petitioner in the following manner or to the like effect:—

"I (*A. B.*), the petitioner in the above petition, declare that what is stated therein is true to the best of my information and belief."

Verification of petition for probate by one witness to will.

67. Where the application is for probate, or for letters of administration with the will annexed, the petition shall also be verified by at least one of the witnesses to the will (when procurable), in the manner or to the effect following:—

"I (*C. D.*), one of the witnesses to the last will and testament of the testator mentioned in the above petition, declare that I was present and saw the said testator affix his signature (*or* mark) thereto (*as the case may be*) (*or* that the said testator acknowledged the writing annexed to the above petition to be his last will and testament in my presence)."

Punishment for false averment in petition or declaration.

68. If any petition or declaration which is hereby required to be verified contains any averment which the person making the verification knows or believes to be false, such person shall be subject to punishment according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence.

District Judge may examine petitioner in person,

69. In all cases it shall be lawful for the District Judge or District Delegate, if he thinks fit,

to examine the petitioner in person upon oath, and also

require further evidence,

to require further evidence of the due execution of the will, or the right of the petitioner to the letters of administration, as the case may be, and

and issue citations to inspect proceedings.

to issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.

Publication of citation.

The citation shall be fixed up in some conspicuous part of the Court-house, and also in the office of the Collector of the District, and otherwise published or made known in such manner as the Judge or Delegate issuing the same may direct.

Caveats against grant of probate or administration.

70. Caveats against the grant of probate or letters of administration may be lodged with the District Judge or a District Delegate; and immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge; and immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased had his fixed place of abode at the time of his death, and to any other Judge or District Dele-

gate to whom it may appear to the District Judge expedient to transmit the same.

Form of caveat.

71. The caveat shall be to the following effect:—

"Let nothing be done in the matter of the estate of *A. B.*, late of , deceased, who died on the day of at without notice to *C. D.* of ."

After entry of caveat, no proceeding taken on petition until after notice to caveator.

72. No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered with the Judge or District Delegate to whom the application has been made, or notice thereof has been given of its entry with some other Delegate, until after such notice to the person by whom the same has been entered as the Court shall think reasonable.

District Delegate when not to grant probate or administration.

73. A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

Explanation.—By "contention" is understood the appearance of any one in person, or by his recognized agent or by a pleader duly appointed to act on his behalf, to oppose the proceeding.

Power to transmit statement to District Judge in doubtful cases where no contention.

74. In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

Procedure where there is contention, or District Delegate thinks probate or letters of administration should be refused in his Court.

75. In every case in which there is contention, or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any documents that may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge; unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorized to do; and in that case the same shall be sent by him to the District Judge.

Grant of probate to be under seal of Court.

76. Whenever it appears to the Judge or District Delegate that probate of a will should be granted, he shall grant the same under the seal of his Court in manner following:—

"I, Judge of the District of ,

Form of such grant.

[*or* Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*)] hereby make known that on the day of in the year the last will of , late of , a copy whereof is hereunto annexed, was proved and registered before me, and that administration of the property and credits of the said deceased, and in any way concerning his will, was granted to , the executor in the said will named, he having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same at or before the expiration of six months from the date of this grant, and also to render a true account of the said property and credits within one year from the same date.

The day of 18 ."

Grant of letters of administration to be under seal of Court.

77. Whenever it appears to the District Judge or District Delegate that letters of administration to the estate of a person deceased, with or without a copy of the will annexed, should be granted, he shall grant the same under the seal of his Court in manner following:—

"I, , Judge of the District of ,

Form of such grant.

[*or* Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*)] hereby make known that on the day of letters of administration (with *or* without the will annexed, *as the case may be*) of the property and credits of , late of , deceased, were granted to , the father (*or as the case may be*) of the deceased, he having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same in this Court at or before the expiration of six months from the date of this grant, and also to render a true account of the said property and credits within one year from the same date.

The day of 18 ."

Administration-bond.

78. Every person to whom any grant of letters of administration is committed, and, if the Judge so direct, any person to whom probate is granted, shall give a bond to the Judge of the District Court to enure for the benefit of the Judge for the time being, with one or more surety or sureties, engaging for the due collection, getting in, and administering the estate of the deceased, which bond shall be in such form as the Judge from time to time by any general or special order directs.

Assignment of administration-bond.

79. The Court may, on application made by petition and on being satisfied that the engagement of any such bond has not been kept, and upon such terms as to security, or providing that the money received be paid into Court, or otherwise as the Court may think fit, assign the same to some proper person, who shall thereupon be entitled to sue on the said bond in his own name as if the same had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon, as trustee for all persons interested, the full amount recoverable in respect of any breach thereof.

Time before which probate or administration shall not be granted.

80. No probate of a will shall be granted until after the expiration of seven clear days, and no letters of administration shall be granted until after the expiration of fourteen clear days, from the day of the testator or intestate's death.

Filing of original wills, of which probate or administration with will annexed granted.

81. Until a public registry for wills is established, every District Judge and District Delegate shall file and preserve among the records of his Court all original wills of which probate or letters of administration with the will annexed may be granted by him: and the Local Government shall make regulations for the preservation and inspection of the wills so filed as aforesaid.

Grantee of probate or administration alone to sue, &c., until same revoked.

82. After any grant of probate or letters of administration, no other than the person to whom the same shall have been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, throughout the Province in which the same may have been granted, until such probate or letters of administration shall have been recalled or revoked.

Procedure in contentious cases.

83. In any case before the District Judge in which there is contention, the proceeding shall take, as nearly as may be, the form of a suit, according to the provisions of the Code of Civil Procedure, in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who may have appeared as aforesaid to oppose the grant shall be the defendant.

Payment to executor or administrator before probate or administration revoked.

84. Where any probate is, or letters of administration are, revoked, all payments *bonâ fide* made to any executor or administrator under such probate or administration before the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same;

and the executor or administrator who shall have acted under any such revoked probate or administration may retain and reimburse himself out of the assets of the deceased in respect of any payments made by him which the person to whom probate or letters of administration shall be afterwards granted might have lawfully made.

Right of such executor or administrator to recoup himself.

Power to refuse letters of administration.

85. Notwithstanding anything hereinbefore contained, it shall, except in cases to which the Hindú Wills Act, 1870, applies, be in the discretion of the Court to make an order refusing, for reasons to be recorded by it in writing, to grant any application for letters of administration made under this Act.

Appeals from orders of District Judge.

86. Every order made by a District Judge or District Delegate by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court under the rules contained in the Code of Civil Procedure applicable to appeals.

Concurrent jurisdiction of High Court.

87. The High Court shall have concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the District Judge.

CHAPTER VI.

OF THE POWERS OF AN EXECUTOR OR ADMINISTRATOR.

In respect of causes of action surviving deceased, and debts due at death.

88. An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and may exercise the same powers for the recovery of debts due to him at the time of his death, as the deceased had when living.

Demands and rights of suit of or against deceased survive to and against executor or administrator.

89. All demands whatsoever, and all rights to prosecute or defend any suit or other proceeding, existing in favour of or against a person at the time of his decease survive to and against his executors or administrators, except causes of action for defamation, assault as defined in the Indian Penal Code, or other personal injuries not causing the death of the party, and except also cases where, after the death of the party, the relief sought could not be enjoyed, or granting it would be nugatory.

Illustration.

(*a*). A collision takes place on a railway in consequence of some neglect or default of the officials, and a passenger is severely hurt, but not so as to cause death. He afterwards dies without having instituted any suit. The cause of action does not survive.

Power of executor or administrator to dispose of property.

90. An executor or administrator has power, with the consent of the Court by which the probate or letters of administration was or were granted, to dispose of the property of the deceased, either wholly or in part, in such manner as he thinks fit:

Provided that the Court may, when granting probate or letters of administration, exempt the executor or administrator from the necessity of obtaining such consent as to the whole or any specified part of the assets of the deceased.

Illustrations.

(*a*). The deceased has made a specific bequest of part of his property. The executor, not having assented to the bequest, sells the subject of it with the consent of the Court. The sale is valid.

(*b*). The executor, in the exercise of his discretion, mortgages a part of the immoveable estate of the deceased with the consent of the Court. The mortgage is valid.

Purchase by executor or administrator of deceased's property.

91. If an executor or administrator purchases, either directly or indirectly, any part of the property of the deceased, the sale is voidable at the instance of any other person interested in the property sold.

Powers of several executors or administrators exerciseable by one.

92. When there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary in the will or grant of letters of administration, be exercised by any one of them who has proved the will or taken out administration.

Illustrations.

(*a*). One of several executors has power to release a debt due to the deceased.

(*b*). One has power to surrender a lease.

(*c*). One has power to sell the property of the deceased, moveable or immoveable.

(*d*). One has power to assent to a legacy.

(*e*). One has power to endorse a promissory note payable to the deceased.

(*f*). The will appoints A, B, C, and D to be executors, and directs that two of them shall be a quorum. No act can be done by a single executor.

93. Upon the death of one or more of several executors or administrators, all the powers of the office become, in the absence of any direction to the contrary in the will or grant of letters of administration, vested in the survivors or survivor.

Survival of powers on death of one of several executors or administrators.

94. The administrator of effects unadministered has, with respect to such effects, the same powers as the original executor or administrator.

Powers of administrator of effects unadministered.

95. An administrator during minority has all the powers of an ordinary administrator.

Powers of administrator during minority.

96. When probate or letters of administration shall have been granted to a married woman, she has all the powers of an ordinary executor or administrator.

Powers of married executrix or administratrix.

CHAPTER VII.

OF THE DUTIES OF AN EXECUTOR OR ADMINISTRATOR.

97. It is the duty of an executor to provide funds for the performance of the necessary funeral ceremonies of the deceased in a manner suitable to his condition, if he has left property sufficient for the purpose.

As to deceased's funeral ceremonies.

98. An executor or administrator shall, within six months from the grant of probate or letters of administration, exhibit in the Court by which the same has or have been granted an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person or persons to which the executor or administrator is entitled in that character, and shall in like manner, within one year from the date aforesaid, exhibit an account of the estate, showing the assets that have come to his hands, and the manner in which they have been applied or disposed of.

Inventory and account.

99. In all cases where it is sought to obtain a grant of probate or letters of administration intended to have effect throughout the whole of British India, the executor, or the person applying for administration shall include in the inventory of the effects of the deceased all his moveable or immoveable property situate in British India:

Inventory to include property in any part of British India.

And the value of such property situate in each Province shall be separately stated in such inventory, and the probate or letters of administration shall be chargeable with a fee corresponding to the entire amount or value of the property affected thereby wheresoever situate within British India.

100. The executor or administrator shall collect, with reasonable diligence, the property of the deceased and the debts that were due to him at the time of his death.

As to property of, and debts owing to, deceased.

101. Funeral expenses to a reasonable amount, according to the degree and quality of the deceased, and death-bed charges, including fees for medical attendance, and board and lodging for one month previous to his death, are to be paid before all debts.

Expenses to be paid before all debts.

102. The expenses of obtaining probate or letters of administration, including the costs incurred for or in respect of any judicial proceedings that may be necessary for administering the estate, are to be paid next after the funeral expenses and death-bed charges.

Expenses to be paid next after such expenses.

103. Wages due for services rendered to the deceased within three months next preceding his death by any labourer, artizan or domestic servant are next to be paid, and then the other debts of the deceased according to their respective priorities (if any).

Wages for certain services to be next paid, and then other debts.

104. Save as aforesaid, no creditor is to have a right of priority over another.

Save as aforesaid, all debts to be paid equally and rateably.

But the executor or administrator shall pay all such debts as he knows of, including his own, equally and rateably, as far as the assets of the deceased will extend.

105. Debts of every description must be paid before any legacy.

Debts to be paid before legacies.

106. If the estate of the deceased is subject to any contingent liabilities, an executor or administrator is not bound to pay any legacy without a sufficient indemnity to meet the liabilities whenever they may become due.

Executor or administrator not bound to pay legacies without indemnity.

107. If the assets, after payment of debts, necessary expenses and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions;

Abatement of general legacies.

and, in the absence of any direction to the contrary in the will, the executor has no right to pay one legatee in preference to another, nor to retain any money on account of a legacy to himself or to any person for whom he is a trustee.

Executor not to pay one legatee in preference to another.

108. Where there is a specific legacy, and the assets are sufficient for the payment of debts and necessary expenses, the thing specified must be delivered to the legatee without any abatement.

Non-abatement of specific legacy when assets sufficient to pay debts.

109. Where there is a demonstrative legacy, and the assets are sufficient for the payment of debts and necessary expenses, the legatee has a preferential claim for payment of his legacy out of the fund from which the legacy is directed to be paid until such fund is exhausted, and if, after the fund is exhausted, part of the legacy still remains unpaid, he is entitled to rank for the remainder against the general assets as for a legacy of the amount of such unpaid remainder.

Right under demonstrative legacy when assets sufficient to pay debts and necessary expenses.

110. If the assets are not sufficient to answer the debts and the specific legacies, an abatement shall be made from the latter rateably in proportion to their respective amounts.

Rateable abatement of specific legacies.

Illustration.

A has bequeathed to B a diamond-ring, valued at 500 rupees, and to C a horse, valued at 1,000 rupees. It is found necessary to sell all the effects of the testator, and his assets, after payment of debts, are only 1,000 rupees. Of this sum rupees 333-5-4 are to be paid to B, and rupees 666-10-8 to C.

111. For the purpose of abatement, a legacy for life, a sum appropriated by the will to produce an annuity, and the value of an annuity when no sum has been appropriated to produce it, shall be treated as general legacies.

Legacies treated as general for purpose of abatement.

CHAPTER VIII.

OF THE EXECUTOR'S ASSENT TO A LEGACY.

112. The assent of the executor is necessary to complete a legatee's title to his legacy.

Assent necessary to complete legatee's title.

Illustrations.

(*a*). A by his will bequeaths to B his Government paper, which is in deposit with the Bank of Bengal. The Bank has no authority to deliver the securities, nor B a right to take possession of them, without the assent of the executor.

(*b*). A by his will has bequeathed to C his house in Calcutta in the tenancy of B. C is not entitled to receive the rents without the assent of the executor.

113. The assent of the executor to a specific bequest shall be sufficient to divest his interest as executor therein, and to transfer the subject of the bequest to the legatee, unless the nature or the circumstances of the property require that it shall be transferred in a particular way.

Effect of executor's assent to specific legacy.

This assent may be verbal, and it may be either express or implied from the conduct of the executor.

Nature of assent.

Illustrations.

(*a*). A horse is bequeathed. The executor requests the legatee to dispose of it, or a third party proposes to purchase the horse from the executor, and he directs him to apply to the legatee. Assent to the legacy is implied.

(*b*). The interest of a fund is directed by the will to be applied for the maintenance of the legatee during his minority. The executor commences so to apply it. This is an assent to the whole of the bequest.

(*c*). A bequest is made of a fund to A, and after him to B. The executor pays the interest of the fund to A. This is an implied assent to the bequest to B.

(*d*). Executors die after paying all the debts of the testator, but before satisfaction of specific legacies. Assent to the legacies may be presumed.

(*e*). A person to whom a specific article has been bequeathed takes possession of it and retains it without any objection on the part of the executor. His assent may be presumed.

114. The assent of an executor to a legacy may be conditional, and if the condition be one which he has a right to enforce, and it is not performed, there is no assent.

Conditional assent.

Illustrations.

(*a*). A bequeathes to B his lands of Sultánpur, which at the date of the will, and at the death of A, were subject to a mortgage for 10,000 rupees. The executor assents to the bequest on condition that B shall within a limited time pay the amount due on the mortgage at the testator's death. The amount is not paid. There is no assent.

(*b*). The executor assents to a bequest on condition that the legatee shall pay him a sum of money. The payment is not made. The assent is nevertheless valid.

115. When the executor is a legatee, his assent to his own legacy is necessary to complete his title to it, in the same way as it is required when the bequest is to another person and his assent may in like manner be express or implied.

Assent of executor to his own legacy.

Assent shall be implied if in his manner of administering the property he does any act which is referable to his character of legatee and is not referable to his character of executor.

Implied assent.

Illustration.

An executor takes the rent of a house or the interest of Government-securities bequeathed to him, and applies it to his own use. This is assent.

116. The assent of the executor to a legacy gives effect to it from the death of the testator.

Effect of executor's assent.

Illustrations.

(*a*). A legatee sells his legacy before it is assented to by the executor. The executor's subsequent assent operates for the benefit of the purchaser, and completes his title to the legacy.

(*b*). A bequeaths 1,000 rupees to B with interest from his death. The executor does not assent to this legacy until the expiration of a year from A's death. B is entitled to interest from the death of A.

117. An executor is not bound to pay or deliver any legacy until the expiration of one year from the testator's death.

Executor when to deliver legacies.

Illustration.

A by his will directs his legacies to be paid within six months after his death. The executor is not bound to pay them before the expiration of a year.

CHAPTER IX.

OF THE PAYMENT AND APPORTIONMENT OF ANNUITIES.

118. Where an annuity is given by the will, and no time is fixed for its commencement, it shall commence from the testator's death, and the first payment shall be made at the expiration of a year next after that event.

Commencement of annuity when no time fixed by will.

119. Where there is a direction that the annuity shall be paid quarterly or monthly, the first payment shall be due at the end of the first quarter or first month, as the case may be, after the testator's death, and shall, if the executor think fit, be paid when due; but the executor shall not be bound to pay it till the end of the year.

When annuity, to be paid quarterly or monthly, first falls due.

120. Where there is a direction that the first payment of an annuity shall be made within one month or any other division of time from the death of the testator, or on a day certain, the successive payments are to be made on the anniversary of the earliest day on which the will authorizes the first payment to be made;

Date of successive payments when first payment directed to be made within given time, or on day certain.

and if the annuitant dies in the interval between the times of payment, an apportioned share of the annuity shall be paid to his representative.

Apportionment where annuitant dies between times of payment.

CHAPTER X.

OF THE INVESTMENT OF FUNDS TO PROVIDE FOR LEGACIES.

121. Where a legacy, not being a specific legacy, is given for life, the sum bequeathed shall at the end of the year be invested in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct, and the proceeds thereof shall be paid to the legatee as the same shall accrue due.

Investment of sum bequeathed where legacy, not specific, given for life.

122. Where a general legacy is given to be paid at a future time, the executor shall invest a sum sufficient to meet it in securities of the kind mentioned in the last preceding section.

Investment of general legacy, to be paid at future time.

The intermediate interest shall form part of the residue of the testator's estate.

Intermediate interest.

123. Where an annuity is given and no fund is charged with its payment or appropriated by the will to answer it, a Government-annuity of the specified amount shall be purchased, or,

Procedure when no fund charged with, or appropriated to, annuity.

if no such annuity can be obtained, then a sum sufficient to produce the annuity shall be invested for that purpose in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct.

124. Where a bequest is contingent, the executor is not bound to invest the amount of the legacy, but may transfer the whole residue of the estate to the residuary legatee (if any) on his giving sufficient security for the payment of the legacy if it shall become due.

Transfer to residuary legatee or contingent bequest.

125. Where the testator has bequeathed the residue of his estate to a person for life with a direction that it shall be invested in certain specified securities, so much of the estate as is not at the time of his death invested in securities of the specified kind shall be converted into money and invested in such securities.

Investment of residue bequeathed for life, with direction to invest in specified securities.

126. Such conversion and investment as are contemplated by the last preceding section shall be made at such times and in such manner as the executor in his discretion thinks fit;

Time and manner of conversion and investment.

and, until such conversion and investment shall be completed, the person who would be for the time being entitled to the income of the fund when so invested shall receive interest at the rate of six per cent. per annum upon the market-value (to be computed as of the date of the testator's death) of such part of the fund as shall not yet have been so invested.

Interest payable until investment.

127. Where, by the terms of a bequest, the legatee is entitled to the immediate payment or possession of the money or thing bequeathed, but is a minor, and there is no direction in the will to pay it to any person on his behalf, the executor or administrator shall pay or deliver the same into the Court of the District Judge by whom, or by whose District Delegate, the probate was, or letters of administration with the will annexed were, granted, to the account of the legatee, unless the legatee be a ward of the Court of Wards; and, if the legatee be a ward of the Court of Wards, the legacy shall be paid into that Court to his account;

Procedure where minor entitled to immediate payment or possession of bequest, and no direction to pay to person on his behalf.

and such payment into the Court of the District Judge, or into the Court of Wards, as the case may be, shall be a sufficient discharge for the money so paid;

and such money, when paid in, shall be invested in the purchase of Government securities, which, with the interest thereon, shall be transferred or paid to the person entitled thereto, or otherwise applied for his benefit, as the Judge or the Court of Wards, as the case may be, may direct.

CHAPTER XI.

OF THE PRODUCE AND INTEREST OF LEGACIES.

128. The legatee of a specific legacy is entitled to the clear produce thereof, if any, from the testator's death.

Legatee's title to produce of specific legacy.

Exception.—A specific bequest, contingent in its terms, does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy.

The clear produce of it forms part of the residue of the testator's estate.

Illustrations.

(*a*). A bequeathes his flock of sheep to B. Between the death of A and delivery by his executor the sheep are shorn, or some of the ewes produce lambs. The wool and lambs are the property of B.

(*b*). A bequeathes his Government-securities to B, but postpones the delivery of them till the death of C. The interest which falls due between the death of A and the death of C belongs to B, and must, unless he is a minor, be paid to him as it is received.

(*c*). The testator bequeathes all his four per cent. Government promissory notes to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the notes, but the interest which accrues in respect of them, between the testator's death and A's completing 18 forms part of the residue.

129. The legatee under a general residuary bequest is entitled to the produce of the residuary fund from the testator's death.

Residuary legatee's title to produce of residuary fund.

Exception.—A general residuary bequest contingent in its terms does not comprise the income which may accrue upon the fund bequeathed between the death of the testator and the vesting of the legacy.

Such income goes as undisposed of.

Illustrations.

(*a*). The testator bequeathes the residue of his property to A, a minor, to be paid to him when he shall complete the age of 18. The income from the testator's death belongs to A.

(*b*). The testator bequeathes the residue of his property to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the residue. The income which has accrued in respect of it since the testator's death goes as undisposed of.

130. Where no time has been fixed for the payment of a general legacy, interest begins to run from the expiration of one year from the testator's death.

Interest when no time fixed for payment of general legacy.

Exceptions.—(1). Where the legacy is bequeathed in satisfaction of a debt, interest runs from the death of the testator.

(2). Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, the legacy shall bear interest from the death of the testator.

(3). Where a sum is bequeathed to a minor with a direction to pay for his maintenance out of it, interest is payable from the death of the testator.

131. Where a time has been fixed for the payment of a general legacy, interest begins to run from the time so fixed.

Interest when time fixed.

The interest up to such time forms part of the residue of the testator's estate.

Exception.—Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, and the legatee is a minor, the legacy shall bear interest from the death of the testator, unless a specific sum is given by the will for maintenance, or unless the will contains a direction to the contrary.

132. The rate of interest shall be six per cent. per annum.

Rate of interest.

133. No interest is payable on the arrears of an annuity within the first year from the death of the testator, although a period earlier than the expiration of that year may have been fixed by the will for making the first payment of the annuity.

No interest on arrears of annuity within first year after testator's death.

134. Where a sum of money is directed to be invested to produce an annuity, interest is payable on it from the death of the testator.

Interest on sum to be invested to produce annuity.

CHAPTER XII.

OF THE REFUNDING OF LEGACIES.

135. An executor who has paid a legacy under the order of a Judge, is entitled to call upon the legatee to refund in the event of the assets proving insufficient to pay all the legacies.

Refund of legacy paid under Judge's orders.

136. When an executor has voluntarily paid a legacy, he cannot call upon a legatee to refund in the event of the assets proving insufficient to pay all the legacies.

No refund if paid voluntarily.

137. When the time prescribed by the will for the performance of a condition has elapsed, without the condition having been performed, and the executor has thereupon, without fraud, distributed the assets; in such case, if further time has, under the second clause of this section, been allowed for the performance of the condition, and the condition has been performed accordingly, the legacy cannot be claimed from the executor, but those to whom he has paid it are liable to refund the amount.

Refund when legacy becomes due on performance of condition within further time allowed.

Where the will requires an act to be performed by the legatee within a specified time, either as a condition to be fulfilled before the legacy is enjoyed, or as a condition upon the non-fulfilment of which the subject-matter of the bequest is to go over to another person, or the bequest is to cease to have effect, the act must be performed within the time specified, unless the performance of it be prevented by fraud, in which case such further time shall be allowed as is requisite to make up for the delay caused by such fraud.

138. When the executor has paid away the assets in legacies, and he is afterwards obliged to discharge a debt of which he had no previous notice, he is entitled to call upon each legatee to refund in proportion.

When each legatee compellable to refund in proportion.

139. Where an executor or administrator has given such notices as the High Court may, by any general rule to be made from time to time, prescribe, for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets, or any part thereof, in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he has not had notice at the time of such distribution;

Distribution of assets.

but nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, in the hands of the persons who may have received the same respectively.

Creditor may follow assets.

140. A creditor who has not received payment of his debt may call upon a legatee who has received payment of his legacy to refund, whether the assets of the testator's estate were or were not sufficient at the time of his death to pay both debts and legacies, and whether the payment of the legacy by the executor was voluntary or not.

Creditor may call upon legatee to refund.

141. If the assets were sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy, or who has been compelled to refund under the last preceding section, cannot oblige one who has received payment in full to refund, whether the legacy were paid to him with or without suit, although the assets have subsequently become deficient by the wasting of the executor.

When legatee, not satisfied or compelled to refund under section 140, cannot oblige one paid in full to refund.

142. If the assets were not sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy must, before he can call on a satisfied legatee to refund, first proceed against the executor if he is solvent; but, if the executor is insolvent or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion.

When unsatisfied legatee must first proceed against executor, if solvent.

143. The refunding of one legatee to another shall not exceed the sum by which the satisfied legacy ought to have been reduced if the estate had been properly administered.

Limit to refunding of one legatee to another.

Illustration.

A has bequeathed 240 rupees to B, 480 rupees to C, and 720 rupees to D. The assets are only 1,200 rupees, and if properly administered would give 200 rupees to B, 400 rupees to C, and 600 rupees to D. C and D have been paid their legacies in full, leaving nothing to B. B can oblige C to refund 80 rupees, and D to refund 120 rupees.

144. The refunding shall in all cases be without interest.

Refunding to be without interest.

145. The surplus or residue of the deceased's property, after payment of debts and legacies, shall be paid to the residuary legatee when any has been appointed by the will.

Residue after usual payments to be paid to residuary legatee.

CHAPTER XIII.

OF THE LIABILITY OF AN EXECUTOR OR ADMINISTRATOR FOR DEVASTATION.

146. When an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned.

Liability of executor or administrator for devastation.

Illustrations.

(*a*). The executor pays out of the estate an unfounded claim. He is liable to make good the loss caused by the payment.

(*b*). The deceased had a valuable lease renewable by notice, which the executor neglects to give at the proper time. The executor is liable to make good the loss caused by the neglect.

(*c*). The deceased had a lease of less value than the rent payable for it, but terminable on notice at a particular time. The executor neglects to give the notice. He is liable to make good the loss.

147. When an executor or administrator occasions a loss to the estate by neglecting to get in any part of the property of the deceased, he is liable to make good the amount.

For neglect to get in any part of property.

Illustrations.

(*a*). The executor absolutely releases a debt due to the deceased from a solvent person, or compounds with a debtor who is able to pay in full. The executor is liable to make good the amount so lost.

(*b*). The executor neglects to sue for a debt till the debtor is able to plead the Act for the limitation of suits, and the debt is thereby lost to the estate. The executor is liable to make good the amount of the debt.

CHAPTER XIV.

MISCELLANEOUS.

148. In Chapters VIII, IX, X and XII of this Act the provisions as to an executor shall apply also to an administrator with the will annexed.

Provisions applied to administrator with will annexed.

149. Nothing herein contained shall—

Saving-clause.

(*a*) validate any testamentary disposition which would otherwise have been invalid;

(*b*) invalidate any such disposition which would otherwise have been valid;

(*c*) deprive any person of any right of maintenance to which he would otherwise have been entitled; or

(*d*) affect the rights, duties and privileges of the Administrator General of Bengal, Madras or Bombay.

150. No proceedings to obtain probate of a will, or letters of administration to the estate, of any Hindú, Muhammadan, Buddhist or person exempted under section 332 of the Indian Succession Act, 1865, shall be instituted in any Court in British India except under this Act.

Probate and administration in case of persons exempted from Succession Act, to be granted only under this Act.

151. In Act No. XXVII of 1860 (*An Act for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons*), sections 15 and 16 and the proviso to section 13 shall be repealed.

Repeal of portions of Act XXVII of 1860.

152. The grant of probate or letters of administration under this Act in respect of any property shall be deemed to supersede any certificate previously granted in respect of the same property under the said Act No. XXVII of 1860, or Bombay Regulation No. VIII of 1827; and when, at the time of the grant of such probate or letters, any suit or other proceeding instituted by the holder of such certificate regarding such property is pending, the person to whom such grant is made shall, on applying to the Court in which such suit or proceeding is pending, be entitled to take the place of such holder in such suit or proceeding:

Grant of probate or administration to supersede certificate under Act XXVII of 1860, or Bombay Regulation VIII of 1827.

Provided that, when any certificate is superseded under this section, all payments made to the holder of such certificate in ignorance of such supersession shall be held good against claims under the probate or letters of administration.

153. In the Court-fees Act, 1870, schedule I, Nos. 11 and 12, in the third column, after the words "amount or value," the following shall be inserted, namely:—

Amendment of Court-fees Act.

"Provided that, when after a certificate has been granted as aforesaid in respect of any estate, probate or letters of administration is or are granted in respect of the same estate, the fee payable in respect of such latter grant shall be reduced by the amount of the fee paid in respect of the former grant."

154. The following amendments shall be made in the Hindú Wills Act, 1870 (namely):—

Amendment of Hindú Wills Act.

(*a*). For the portion of section two commencing with the words "sections one hundred and seventy-nine" and ending with the words "administrator with the will annexed," the words "and section one hundred and eighty-seven" shall be substituted.

(*b*). The third clause of section three and the last clause of section six shall be repealed.

(*c*). In section six, for the words "one hundred and three and one hundred and eighty-two" the words "and one hundred and three" shall be substituted.

155. All grants of probate of the will or letters of administration to the estate of any deceased Hindú, Muhammadan or Buddhist, or any person exempted under section 332 of the Indian Succession Act, 1865, which, before this Act comes into force have been made in British Burma, shall, whenever such grant would have been lawful if this Act had been in force, be deemed to have been made in accordance with law.

Validation of grants of probate and administration made in British Burma.

156. In the second schedule to the Indian Limitation Act, 1877, No. 43, after the figures "321," the following shall be inserted, namely—"or under the Probate and Administration Act, 1881, section 139 or 140."

Amendment of Act XV of 1877.

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

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 21st January, 1881, and is hereby promulgated for general information:—

ACT No. VI OF 1881.

An Act to make further provision for the grant of Probate and Letters of Administration in non-contentious cases.

WHEREAS it is expedient to make further provision for the grant of probate and letters of administration in non-contentious cases; It is hereby enacted as follows:—

Preamble.

1. This Act may be called "The District Delegates Act, 1881":

Short title.

It extends to the whole of British India;

Extent.

and it shall come into force on the first day of April, 1881.

Commencement.

2. After section 235 of the Indian Succession Act, 1865, the following section shall be added:—

Addition of section after section 235 of Succession Act.

"235A. The High Court may, from time to time, appoint such judicial officers within any district as it thinks fit, to act for the District Judge as Delegates to grant probate and letters of administration in non-contentious cases, within such local limits as it may from time to time prescribe:

Power to appoint Delegate of District Judge to deal with non-contentious cases.

"Provided that, in the case of High Courts not established by Royal Charter, such appointment be made with the previous sanction of the Local Government.

"Persons so appointed shall be called 'District Delegates'."

3. After section 241 of the said Act, the following section shall be added:—

Addition of section after section 241 of same Act.

"241A. Probate and letters of administration may, upon application for that purpose to any District Delegate, be granted by him in any case in which there is no contention, if it appears by petition (verified as hereinafter mentioned) that the testator or intestate, as the case may be, at the time of his death resided within the jurisdiction of such Delegate."

Probate and letters of administration may be granted by Delegate.

4. To sections 244 and 246 of the said Act, respectively, the following words shall be added:—

Addition to sections 244 and 246 of same Act.

"and when the application is to a District Delegate, the petition shall further state that the deceased at the time of his death resided within the jurisdiction of such Delegate."

5. For section 251 of the said Act, the following section shall be substituted:—

Substitution of section for section 251 of same Act.

"251. Caveats against the grant of probate or administration may be lodged with the District Judge or a District Delegate; and immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge; and immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate; if any, within whose jurisdiction it is alleged the deceased resided at the time of his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same."

Caveats against grant of probate or administration.

6. In section 253 of the said Act, after the word "Judge" the words "or officer," and after the word "made" the words "or notice has been given of its entry with some other Delegate," shall be inserted.

Amendment of section 253 of same Act.

7. After section 253 of the said Act, the following sections shall be added:—

Addition of sections after section 253 of same Act.

"253A. A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

District Delegate when not to grant probate or administration.

"*Explanation.*—By 'contention' is understood the appearance of any one in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf to oppose the proceeding.

"253B. In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in

Power to transmit statement to District Judge in doubtful cases where no contention.

relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

"253C. In every case in which there is contention, or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any documents that may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge; unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorized to do; and in that case the same shall be sent by him to the District Judge."

Procedure where there is contention, or District Delegate thinks probate or letters of administration should be refused in his Court.

8. In the said Act, sections 254 and 255, respectively, after the words "I, Judge of the District of ," the words "(*or* Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*))"; and in section 308, after the words "District Judge by whom" the words "or by whose District Delegate" shall be inserted.

Amendment of sections 254, 255 and 308 of same Act.

9. In the said Act, sections 246, 250, 255 and 259, after the words "District Judge," and in section 250 and section 254 (when it first occurs) after the word "Judge," the words "or District Delegate" shall be inserted respectively.

Introduction of the words "or District Delegate" in certain sections of same Act.

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

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 21st January, 1881, and is hereby promulgated for general information:—

ACT No. VII OF 1881.

An Act to amend Bengal Act No. IX of 1880 (the Cess Act, 1880).

WHEREAS it is expedient to amend Bengal Act No. IX of 1880 (the Cess Act, 1880); It is hereby enacted as follows:—

Preamble.

1. In the said Act, after section sixty-four, the following sections shall be inserted, and shall be deemed to have been so inserted on and from the date on which such Act came into force:—

Amendment of Bengal Act No. IX of 1880.

"64A. All sums due to the holder of any estate or tenure under the provisions of this chapter, in respect of any land held rent-free, may be recovered by such holder from any owner or holder of such rent-free land, or from any occupier of the same, by any means and any process by which the amount might be recovered if it were due on account of rent of a transferable tenure or holding, and subject to the same rules as to limitation:

Holders of estates, &c., how to recover from holders of rent-free lands.

"Provided that, if any such objection as is mentioned in section 53, has been made before the Collector, no proceedings shall be commenced, and no proceedings which have been commenced shall be continued, for recovery of cess in respect of the lands which are the subject of such objection, until such objection shall have been disposed of by the Collector.

"64B. In every suit for the recovery of any such sum, the person to whom the sum is due may proceed at his option either against the owner or holder of the rent-free land in respect of which such amount is due, or against the occupier thereof; and any decree obtained in such suit against any occupier of such land shall have the same effect and be followed by the same consequences in respect of the execution of such decree against the owner or holder of such land, and in respect of the sale of such land in such execution, as if the suit had been brought and the decree given against such owner or holder of such land, but shall have effect against such occupier personally so long only as he remains in occupation of such land, and no longer."

Owner, holder or occupier of rent-free lands may be sued.

Decree against occupier tantamount to decree against owner.

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

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, FEBRUARY 5, 1881.

☞ 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 15th January, 1881, and is hereby promulgated for general information :—

ACT No. III OF 1881.

An Act to provide for certain matters relating to Securities of the Government of India.

WHEREAS the Governor General in Council has determined to issue, in respect of the four and a half per cent. loan of 1880, certificates declaring the bearers thereof entitled to the principal sums specified therein, and coupons for the interest payable on such principal sums; Preamble.

and whereas the Governor General in Council may from time to time desire to issue like certificates, with or without like coupons, in respect of other loans;

and whereas it is expedient to declare the mode in which the title to such certificates and coupons shall be transferable;

and whereas it is also expedient to provide for certain other matters relating to all securities of the Government of India; It is hereby enacted as follows :—

Short title. Commencement.

1. This Act may be called "The Indian Securities Act, 1881"; and shall come into force at once.

"Government securities."

2. In this Act, "Government securities" includes promissory notes, debentures, loan-certificates, coupons and all other securities issued by the Government of India, whether before or after the passing of this Act.

Certificates and coupons may be transferred and discharged like promissory notes payable to bearer.

3. Whenever the Governor General in Council has issued, in respect of any loan, a certificate declaring the bearer thereof to be entitled to the portion of the loan therein expressed, or a coupon for any amount payable as interest on any portion of such loan, the title to such certificate or coupon may be transferred as if the certificate or coupon were a promissory note payable to bearer;

and, on payment, by or on behalf of the Government, to the bearer of such certificate or coupon, of the amount expressed therein, at or after the date on which it becomes due, the Government shall be discharged as if such certificate or coupon were a promissory note payable to bearer.

No notice of trust.

4. No notice of any trust in respect of any Government security shall be receivable by the Government.

Indorser of Government security not liable for amount thereof.

5. No person shall, merely by reason of his having endorsed any Government security, be liable to pay any money due, whether on account of principal or interest, thereunder.

Signature to Government securities may be printed, &c.

6. The signature of the officer of the Government of India authorized to sign any Government securities on behalf of the Government may be printed, engraved or lithographed, or impressed by such other mechanical process as the Governor General in Council may direct, on such securities.

Any such signature so printed, engraved, lithographed or otherwise impressed shall be as valid as if the same had been subscribed in the proper handwriting of such officer.

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

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 15th January, 1881, and is hereby promulgated for general information :—

ACT No. IV OF 1881.

An Act to enhance the rate of Port-dues leviable at Madras.

Preamble.

WHEREAS it has been determined to construct an artificial harbour for the port of Madras and to defray a portion of the interest on the principal sum expended on the construction of such harbour and of the annual expenses of maintaining the same out of the dues leviable on sea-going vessels of fifteen tons and upwards entering the said port :

And whereas the maximum rate of such dues is fixed by the Indian Ports Act, 1875, section forty-five, and the third part of the first schedule thereto annexed, and the amount of such rate is insufficient to defray such portion of the said interest and expenses in addition to the other charges to meet which the said dues are applicable :

And whereas it is therefore necessary to enhance, to the extent hereinafter mentioned, the maximum rate of dues so leviable ;

It is hereby enacted as follows :—

Short title.

1. This Act may be called "The Madras Port-dues Act, 1881"; and

Commencement.

It shall come into force as soon as the said harbour is, in the opinion of the Local Government, open for the use of sea-going vessels of fifteen tons and upwards, and the said Government has published, in the *Fort St. George Gazette*, a notification to that effect.

Amendment of Part III of the third schedule of Act XII of 1875.

2. In the Indian Ports Act, 1875, first schedule, Part III, the following amendments shall be made, that is to say :—

(*a*) in the first column, the numeral and word "9, Madras" shall be omitted ;

(*b*) in the first column, above the heading "*Eastern Group,*" the word "Madras" shall be inserted ; and

(*c*) opposite the word "Madras" so inserted there shall be inserted—

(1) in the second column, the words "sea-going vessels of fifteen tons and upwards" ; and

(2) in the third column, the words "not exceeding eight annas per ton : Provided that, in the case of vessels employed in the coasting trade not being steamers, the rates shall be one-half the rates chargeable in respect of other vessels."

Certain provisions of that Part to apply to Madras.

3. The provisions contained in the fourth column of the said Part shall, so far as they are applicable, apply to the Port of Madras.

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

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 21st January, 1881, and is hereby promulgated for general information:—

ACT No. V OF 1881.

THE PROBATE AND ADMINISTRATION ACT, 1881.

PREAMBLE.

CHAPTER I.

PRELIMINARY.

SECTIONS.
1. Short title.
Local extent.
Commencement.
2. Personal application.
3. Interpretation-clause.

CHAPTER II.

OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.

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5. Administration with copy annexed of authenticated copy of will proved abroad.
6. Probate only to appointed executor.
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8. Persons to whom probate cannot be granted.
9. Grant of probate to several executors simultaneously or at different times.
10. Separate probate of codicil discovered after grant of probate.
Procedure when different executors appointed by codicil.
11. Accrual of representation to surviving executor.
12. Effect of probate.
13. To whom administration may not be granted.
14. Effect of letters of administration.
15. Acts not validated by administration.
16. Grant of administration where executor has not renounced.
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17. Form and effect of renunciation of executorship.
18. Procedure where executor renounces or fails to accept within time limited.
19. Grant of administration to universal or residuary legatee.
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20. Right to administration of representative of deceased residuary legatee.
21. Grant of administration where no executor, nor residuary legatee, nor representative of such legatee.
22. Citation before grant of administration to legatee other than universal or residuary.
23. To whom administration may be granted.

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24. Probate of copy or draft of lost will.
25. Probate of contents of lost or destroyed will.
26. Probate of copy where original exists.
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28. Administration, with will annexed, to attorney of absent executor.
29. Administration, with will annexed, to attorney of absent person, who, if present, would be entitled to administer.
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31. Administration during minority of sole executor or residuary legatee.
32. Administration during minority of several executors or residuary legatees.
33. Administration for use and benefit of lunatic.
34. Administration *pendente lite*.

(*c*).—*For Special Purposes.*
35. Probate limited to purpose specified in will.
36. Administration with will annexed limited to particular purpose.
37. Administration limited to trust-property.
38. Administration limited to suit.
39. Administration limited to purpose of becoming party to suit to be brought against administrator.
40. Administration limited to collection and preservation of deceased's property.
41. Appointment, as administrator, of person other than one who under ordinary circumstances would be entitled to administration.

(*d*).—*Grants with Exception.*
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(*e*).—*Grants of the Rest.*
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OF THE PRACTICE IN GRANTING AND REVOKING PROBATES AND LETTERS OF ADMINISTRATION.

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57. Disposal of application made to Judge of district in which deceased had no fixed abode.
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59. Conclusiveness of probate or letters of administration.
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75. Procedure where there is contention, or District Delegate thinks probate or letters of administration should be refused in his Court.
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Form of such grant.
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Form of such grant.
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79. Assignment of administration-bond.
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82. Grantee of probate or administration alone to sue, &c., until same revoked.
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An Act to provide for the grant of Probates of Wills and Letters of Administration to the estates of certain deceased persons.

Preamble.

WHEREAS it is expedient to provide for the grant of probate of wills and letters of administration to the estates of deceased persons in cases to which the

Indian Succession Act, 1865, does not apply; It is hereby enacted as follows:—

CHAPTER I.
PRELIMINARY.

Short title. Local extent. Commencement.

1. This Act may be called "The Probate and Administration Act, 1881":

It applies to the whole of British India;

and it shall come into force on the first day of April, 1881.

Personal application.

2. Chapters II to XIII, both inclusive, of this Act shall apply in the case of every Hindú, Muhammadan, Buddhist and person exempted under section 332 of the Indian Succession Act, 1865, dying before, on or after the said first day of April, 1881:

Provided that nothing herein contained shall be deemed to render invalid any transfer of property duly made before that day:

Provided also that, except in cases to which the Hindú Wills Act, 1870, applies, no Court in any local area beyond the limits of the towns of Calcutta, Madras and Bombay and the territories for the time being administered by the Chief Commissioner of British Burma, and no High Court in exercise of the concurrent jurisdiction over such local area hereby conferred, shall receive applications for probate or letters of administration until the Local Government has, with the previous sanction of the Governor General in Council, by a notification in the official Gazette, authorized it so to do.

Interpretation-clause. "Province." "minor." "minority." "will." "codicil." "specific legacy." "demonstrative legacy." "probate." "executor." "administrator." "District Judge."

3. In this Act, unless there be something repugnant in the subject to context,—

"Province" includes any division of British India having a Court of the last resort:

"minor" means any person subject to the Indian Majority Act, 1875, who has not attained his majority within the meaning of that Act, and any other person who has not completed his age of eighteen years; and "minority" means the status of any such person:

"will" means the legal declaration of the intentions of the testator with respect to his property, which he desires to be carried into effect after his death:

"codicil" means an instrument made in relation to a will, and explaining, altering or adding to its dispositions. It is considered as forming an additional part of the will:

"specific legacy" means a legacy of specified property:

"demonstrative legacy" means a legacy directed to be paid out of specified property:

"probate" means the copy of a will certified under the seal of a Court of competent jurisdiction, with a grant of administration to the estate of the testator:

"executor" means a person to whom the execution of the last will of a deceased person is, by the testator's appointment, confided:

"administrator" means a person appointed by competent authority to administer the estate of a deceased person when there is no executor: and

"District Judge" means the judge of a principal civil court of original jurisdiction.

CHAPTER II.
OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.

Character and property of executor or administrator as such.

4. The executor or administrator, as the case may be, of a deceased person, is his legal representative for all purposes, and all the property of the deceased person vests in him as such.

But nothing herein contained shall vest in an executor or administrator any property of a deceased person which would otherwise have passed by survivorship to some other person.

Administration with copy annexed of authenticated copy of will proved abroad.

5. When a will has been proved and deposited in a Court of competent jurisdiction, situated beyond the limits of the Province, whether in the British dominions, or in a foreign country, and a properly authenticated copy of the will is produced, letters of administration may be granted with a copy of such copy annexed.

Probate only to appointed executor.

6. Probate can be granted only to an executor appointed by the will.

Appointment express or implied.

7. The appointment may be express or by necessary implication.

Illustrations.

(*a*.) A wills that C be his executor if B will not. B is appointed executor by implication.

(*b*.) A gives a legacy to B and several legacies to other persons, among the rest to his daughter-in-law, C, and adds, "but should the within-named C be not living, I do constitute and appoint B my whole and sole executrix." C is appointed executrix by implication.

(*c*.) A appoints several persons executors of his will and codicils, and his nephew residuary legatee, and in another codicil are these words:—"I appoint my nephew my residuary legatee to discharge all lawful demands against my will and codicils, signed of different dates." The nephew is appointed an executor by implication.

Persons to whom probate cannot be granted.

8. Probate cannot be granted to any person who is a minor or is of unsound mind.

Grant of probate to several executors simultaneously or at different times.

9. When several executors are appointed, probate may be granted to them all simultaneously or at different times.

Illustration.

A is an executor of B's will by express appointment, and C an executor of it by implication. Probate may be granted to A and C at the same time, or to A first and then to C, or to C first then to A.

Separate probate of codicil discovered after grant of probate.

10. If a codicil be discovered after the grant of probate, a separate probate of that codicil may be granted to the executor, if it in no way repeals the appointment of executors made by the will.

Procedure when different executors appointed by codicil.

If different executors are appointed by the codicil, the probate of the will must be revoked, and a new probate granted of the will and the codicil together.

Accrual of representation to surviving executor.

11. When probate has been granted to several executors, and one of them dies, the entire representation of the testator accrues to the surviving executor or executors.

Effect of probate.

12. Probate of a will when granted establishes the will from the death of the testator, and renders valid all intermediate acts of the executor as such.

To whom administration may not be granted.

13. Letters of administration cannot be granted to any person who is a minor or is of unsound mind.

Effect of letters of administration.

14. Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death.

Acts not validated by administration.

15. Letters of administration do not render valid any intermediate acts of the administrator tending to the diminution or damage of the intestate's estate.

Grant of administration where executor has not renounced.

16. When a person appointed an executor has not renounced the executorship, letters of administration shall not be granted to any other person until a citation has been issued calling upon the executor to accept or renounce his executorship;

Exception.

except that, when one or more of several executors has or have proved a will, the Court may, on the death of the survivor of those who have proved, grant letters of administration without citing those who have not proved.

Form and effect of renunciation of executorship.

17. The renunciation may be made orally in the presence of the Judge, or by a writing signed by the person renouncing, and when made shall preclude him from ever thereafter applying for probate of the will appointing him executor.

Procedure where executor renounces or fails to accept within time limited.

18. If the executor renounce, or fail to accept, the executorship within the time limited for the acceptance or refusal thereof, the will may be proved and letters of administration with a copy of the will annexed may be granted to the person who would be entitled to administration in case of intestacy.

Grant of administration to universal or residuary legatee.

19. When the deceased has made a will, but has not appointed an executor, or

when he has appointed an executor who is legally incapable or refuses to act, or has died before the testator, or before he has proved the will, or

when the executor dies after having proved the will but before he has administered all the estate of the deceased,

an universal or a residuary legatee may be admitted to prove the will, and letters of administration with the will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered.

Right to administration of representative of deceased residuary legatee.

20. When a residuary legatee who has a beneficial interest survives the testator, but dies before the estate has been fully administered, his representative has the same right to administration with the will annexed as such residuary legatee.

Grant of administration where no executor, nor residuary legatee, nor representative of such legatee.

21. When there is no executor and no residuary legatee or representative of a residuary legatee, or he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate, or any other legatee having a beneficial interest, or a creditor, may be admitted to prove the will, and letters of administration may be granted to him or them accordingly.

Citation before grant of administration to legatee other than universal or residuary.

22. Letters of administration with the will annexed shall not be granted to any legatee other than an universal or a residuary legatee, until a citation has been issued and published in the manner hereinafter mentioned, calling on the next-of-kin to accept or refuse letters of administration.

To whom administration may be granted.

23. When the deceased has died intestate, administration of his estate may be granted to any person who, according to the rules for the distribution of the estate of an intestate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate.

When several such persons apply for administration, it shall be in the discretion of the Court to grant it to any one or more of them.

When no such person applies, it may be granted to a creditor of the deceased.

CHAPTER III.
OF LIMITED GRANTS.

(a).—Grants limited in Duration.

Probate of copy or draft of lost will.

24. When the will has been lost or mislaid since the testator's death, or has been destroyed by wrong or accident and not by any act of the testator, and a copy or the draft of the will has been preserved, probate may be granted of such copy or draft, limited until the original or a properly authenticated copy of it be produced.

Probate of contents of lost or destroyed will.

25. When the will has been lost or destroyed and no copy has been made nor the draft preserved, probate may be granted of its contents, if they can be established by evidence.

Probate of copy where original exists.

26. When the will is in the possession of a person, residing out of the Province in which application for probate is made, who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, and it is necessary for the interests of the estate that probate should be granted without waiting for the arrival of the original

probate may be granted of the copy so transmitted, limited until the will or an authenticated copy of it be produced.

Administration until will produced.

27. Where no will of the deceased is forthcoming, but there is reason to believe that there is a will in existence, letters of administration may be granted, limited until the will or an authenticated copy of it be produced.

(b).—Grants for the Use and Benefit of others having Right.

Administration with will annexed to attorney of absent executor.

28. When any executor is absent from the Province in which application is made, and there is no executor within the Province willing to act, letters of administration with the will annexed may be granted to the agent of the absent executor, for the use and benefit of his principal, limited until he shall obtain probate or letters of administration granted to himself.

Administration with will annexed to attorney of absent person, who, if present, would be entitled to administer.

29. When any person to whom, if present, letters of administration with the will annexed might be granted, is absent from the Province, letters of administration with the will annexed may be granted to his agent, limited as above-mentioned.

Administration to attorney of absent person entitled to administer in case of intestacy.

30. When a person entitled to administration in case of intestacy is absent from the Province, and no person equally entitled is willing to act, letters of administration may be granted to the agent of the absent person, limited as before mentioned.

Administration during minority of sole executor or residuary legatee.

31. When a minor is sole executor or sole residuary legatee, letters of administration with the will annexed may be granted to the legal guardian of such minor, or to such other person as the Court shall think fit, until the minor has attained his majority, at which period, and not before, probate of the will shall be granted to him.

Administration during minority of several executors or residuary legatees.

32. When there are two or more minor executors and no executor who has attained majority, or two or more residuary legatees and no residuary legatee who has attained majority, the grant shall be limited until one of them has attained his majority.

Administration for use and benefit of lunatic.

33. If a sole executor or a sole universal or residuary legatee, or a person who would be solely entitled to the estate of the intestate according to the rule for the distribution of intestates' estates, applicable in the case of the deceased, be a minor or lunatic, letters of administration with or without the will annexed, as the case may be, shall be granted to the person to whom the care of his estate has been committed by competent authority, or, if there be no such person, to such other person as the Court thinks fit to appoint, for the use and benefit of the minor or lunatic, until he attains majority or becomes of sound mind, as the case may be.

Administration *pendente lite.*

34. Pending any suit touching the validity of the will of a deceased person, or for obtaining or revoking any probate or any grant of letters of administration, the Court may appoint an administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator, other than the right of distributing such estate; and every such administrator shall be subject to the immediate control of the Court and shall act under its direction.

(c).—For Special Purposes.

Probate limited to purpose specified in will.

35. If an executor be appointed for any limited purpose specified in the will, the probate shall be limited to that purpose, and if he should appoint an agent to take administration on his behalf, the letters of administration with the will annexed shall accordingly be limited.

Administration with will annexed limited to particular purpose.

36. If an executor appointed generally give an authority to an attorney to prove a will on his behalf, and the authority is limited to a particular purpose, the letters of administration with the will annexed shall be limited accordingly.

Administration limited to trust-property.

37. Where a person dies, leaving property of which he was the sole or surviving trustee, or in which he had no beneficial interest on his own account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to such property, may be granted to the beneficiary, or to some other person on his behalf.

Administration limited to suit.

38. When it is necessary that the representative of a person deceased be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other suit which may be commenced in the same or in any other Court between the parties, or any other parties, touching the matters at issue in the said suit, and until a final decree shall be made therein and carried into complete execution.

Administration limited to purpose of becoming party to suit to be brought against administrator.

39. If, at the expiration of twelve months from the date of any probate or letters of administration, the executor or administrator to whom the same has or have been granted is absent from the Province within which the Court that has granted the probate or letters of administration is situate, such Court may grant, to any person whom it thinks fit, letters of administration limited to the purpose of becoming and being made a party to a suit to be brought against the executor or administrator, and carrying the decree which may be made therein into effect.

Administration limited to collection and preservation of deceased's property.

40. In any case in which it appears necessary for preserving the property of a deceased person, the Court within whose district any of the property is situate may grant, to any person whom such Court thinks fit, letters of administration limited to the collection and preservation of the property of the deceased, and giving discharges for debts due to his estate, subject to the directions of the Court.

Appointment, as administrator, of person other than one who under ordinary circumstances would be entitled to administration.

41. When a person has died intestate, or leaving a will of which there is no executor willing and competent to act, or where the executor is, at the time of the death of such person, resident out of the Province, and it appears to the Court to be necessary or convenient to appoint some person to administer the estate or any part thereof other than the person who under ordinary circumstances would be entitled to a grant of administration, the Judge may, in his discretion, having regard to consanguinity, amount of interest, the safety of the estate and probability that it will be properly administered, appoint such person as he thinks fit to be administrator;

and in every such case letters of administration may be limited or not as the Judge thinks fit.

(d).—Grants with Exception.

Probate or administration with will annexed subject to exception.

42. Whenever the nature of the case requires that an exception be made, probate of a will, or letters of administration with the will annexed, shall be granted subject to such exception.

Administration with exception.

43. Whenever the nature of the case requires that an exception be made, letters of administration shall be granted subject to such exception.

(e).—Grants of the Rest.

Probate or administration of rest.

44. Whenever a grant, with exception, of probate or letters of administration, with or without the will annexed, has been made, the person entitled to probate or administration of the remainder of the deceased's estate may take a grant of probate or letters of administration, as the case may be, of the rest of the deceased's estate.

(f).—Grants of Effects unadministered.

Grant of effects unadministered.

45. If the executor to whom probate has been granted has died leaving a part of the testator's estate unadministered, a new representative may be appointed for the purpose of administering such part of the estate.

Rules as to grants of effects unadministered.

46. In granting letters of administration of an estate not fully administered, the Court shall be guided by the same rules as apply to original grants, and shall grant letters of administration to those persons only to whom original grants might have been made.

Administration when limited grant expired, but still some part of estate unadministered.

47. When a limited grant has expired by efflux-ion of time, or the happening of the event or contingency on which it was limited, and there is still some part of the deceased's estate unadministered, letters of administration shall be granted to those persons to whom original grants might have been made.

CHAPTER IV.

ALTERATION AND REVOCATION OF GRANTS.

What errors may be rectified by Court.

48. Errors in names and descriptions, or in setting forth the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the Court, and the grant of probate or letters of administration may be altered and amended accordingly.

Procedure where codicil discovered after grant of administration with will annexed.

49. If, after the grant of letters of administration with the will annexed, a codicil be discovered, it may be added to the grant on due proof and identification, and the grant altered and amended accordingly.

Revocation or annulment for just cause.

50. The grant of probate or letters of administration may be revoked or annulled for just cause.

"Just cause."

Explanation.—Just cause is—

1*st*, that the proceedings to obtain the grant were defective in substance;

2*nd*, that the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case;

3*rd*, that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently;

4*th*, that the grant has become useless and inoperative through circumstances.

Illustrations.

(*a*). The Court by which the grant was made had no jurisdiction.

(*b*). The grant was made without citing parties who ought to have been cited.

(*c*). The will of which probate was obtained was forged or revoked.

(*d*). A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.

(*e*). A has taken administration to the estate of B as if he had died intestate, but a will has since been discovered.

(*f*). Since probate was granted, a later will has been discovered.

(*g*). Since probate was granted, a codicil has been discovered, which revokes or adds to the appointment of executors under the will.

(*h*). The person to whom probate was, or letters of administration were, granted has subsequently become of unsound mind.

CHAPTER V.

OF THE PRACTICE IN GRANTING AND REVOKING PROBATES AND LETTERS OF ADMINISTRATION.

Jurisdiction of District Judge in granting and revoking probates, &c.

51. The District Judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his district.

Power to appoint Delegate of District Judge to deal with non-contentious cases.

52. The High Court may, from time to time, appoint such judicial officers within any district as it thinks fit to act for the District Judge as Delegates to grant probate and letters of administration in non-contentious cases, within such local limits as it may from time to time prescribe:

Provided that, in the case of High Courts not established by Royal Charter, such appointment be

made with the previous sanction of the Local Government.

Persons so appointed shall be called "District Delegates."

District Judge's powers as to grant of probate and administration.

53. The District Judge shall have the like powers and authority in relation to the granting of probate and letters of administration, and all matters connected therewith, as are by law vested in him in relation to any civil suit or proceeding depending in his Court.

District Judge may order person to produce testamentary papers.

54. The District Judge may order any person to produce and bring into Court any paper or writing being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person;

and if it be not shown that any such paper or writing is in the possession or under the control of such person, but there is reason to believe that he has the knowledge of any such paper or writing, the Court may direct him to attend for the purpose of being examined respecting the same,

and he shall be bound to answer such questions as may be put to him by the Court, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like punishment under the Indian Penal Code, in case of default in not attending or in not answering such questions or not bringing in such paper or writing as he would have been subject to in case he had been a party to a suit, and had made such default,

and the costs of the proceeding shall be in the discretion of the Judge.

Proceedings of District Judge's Court in relation to probate and administration.

55. The proceedings of the Court of the District Judge, in relation to the granting of probate and letters of administration, shall, except as hereinafter otherwise provided, be regulated, so far as the circumstances of the case will admit, by the Code of Civil Procedure.

When probate or administration may be granted by District Judge.

56. Probate of the will or letters of administration to the estate of a deceased person may be granted by the District Judge under the seal of his Court, if it appears by a petition, verified as hereinafter mentioned, of the person applying for the same that the testator or intestate, as the case may be, had at the time of his decease a fixed place of abode, or any property, moveable or immoveable, within the jurisdiction of the Judge.

Disposal of application made to Judge of District in which deceased had no fixed abode.

57. When the application is made to the Judge of a District in which the deceased had no fixed abode at the time of his death, the Judge may in his discretion refuse the application, if in his judgment it could be disposed of more justly or conveniently in another district, or, where the application is for letters of administration, grant them absolutely, or limited to the property within his own jurisdiction.

Probate and letters of administration may be granted by Delegate.

58. Probate and letters of administration may, upon application for that purpose to any District Delegate, be granted by him in any case in which there is no contention, if it appears by petition (verified as hereinafter mentioned) that the testator or intestate, as the case may be, at the time of his death had his fixed place of abode within the jurisdiction of such Delegate.

Conclusiveness of probate or letters of administration.

59. Probate or letters of administration shall have effect over all the property, moveable or immoveable, of the deceased throughout the Province in which the same is granted, and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors paying their debts, and all persons delivering up such property to the person to whom such probate or letters of administration shall have been granted:

Effect of unlimited probates, &c., granted by certain Courts.

Provided that probates and letters of administration granted by a High Court established by Royal Charter, or by the Chief Court of the Panjáb, or by the Court of the Recorder of Rangoon, shall, unless otherwise directed by the grant, have like effect throughout the whole of British India.

Transmission of certificate by Court granting unlimited probate, &c., to other Courts.

60. Whenever a grant of probate or letters of administration is made by a Court with such effect as last aforesaid, the Registrar, or such other officer as the Court making the grant appoints in this behalf, shall send to each of the other Courts empowered to make such grants, a certificate to the following effect:—

I, *A. B.*, Registrar [*or as the case may be*] of the High Court of Judicature at [*or as the case may be*], hereby certify that on the day of 188 the High Court of Judicature at [*or as the case may be*] granted probate of the will [*or* letters of administration of the estate] of *C. D.*, late of deceased, to *E. F.* of and *G. H.* of , and that such probate [*or* letters] has [*or* have] effect over all the property of the deceased throughout the whole of British India;

and such certificate shall be filed by the Court receiving the same.

Conclusiveness of application for probate or administration, if properly made and verified.

61. The application for probate or letters of administration, if made and verified in the manner hereinafter mentioned, shall be conclusive for the purpose of authorizing the grant of probate or administration, and no such grant shall be impeached by reason that the testator or intestate had no fixed place of abode, or no property within the district at the time of his death, unless by a proceeding to revoke the grant if obtained by a fraud upon the Court.

Petition for probate.

62. Application for probate or for letters of administration with the will annexed shall be made by a petition distinctly written in English or in the language in ordinary use in proceedings before the Court in which the application is made, with the will, or, in the cases mentioned in sections twenty-four, twenty-five and twenty-six, a copy, draft or statement of the contents thereof annexed, and stating

the time of the testator's death,

that the writing annexed is his last will and testament, or as the case may be,

that it was duly executed,

the amount of assets which are likely to come to the petitioner's hands;

and, where the application is for probate, that the petitioner is the executor named in the will.

In addition to these particulars, the petition shall further state,

when the application is to the District Judge, that the deceased at the time of his death had a fixed place of abode or had some property situate within the jurisdiction of the Judge; and,

when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

In what cases translation of will to be annexed to petition.

63. In cases wherein the will, copy or draft is written in any language other than English, or than that in ordinary use in proceedings before the Court, there shall be a translation thereof annexed to the petition by a translator of the Court, if the language be one for which a translator is appointed; or, if the will, copy or draft be in any other language, then by any person competent to translate the same, in which case such translation shall be verified by that person in the following manner:—

Verification of translation by person other than Court translator.

"I (*A. B.*) do declare that I read and perfectly understand the language and character of the original, and that the above is a true and accurate translation thereof."

Petition for letters of administration.

64. Application for letters of administration shall be made by petition distinctly written as aforesaid, and stating

the time and place of the deceased's death,

the family or other relatives of the deceased, and their respective residences,

the right in which the petitioner claims,

the amount of assets which are likely to come to the petitioner's hands.

In addition to these particulars the petition shall further state,

when the application is to a District Judge, that the deceased at the time of his death had a fixed place of abode or had some property situate within the jurisdiction of the Judge; and,

when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

Additional statements in petition for probate, &c.

65. Every person applying to any of the Courts mentioned in the proviso to section fifty-nine for probate of a will or letters of administration of an estate, intended to have effect throughout British India, shall state in his petition, in addition to the matters respectively required by sections sixty-two and sixty-four, that to the best of his belief no application has been made to any other Court for a probate of the same will or for letters of administration of the same estate, intended to have such effect as last aforesaid,

or, where any such application has been made, the Court to which it was made, the person or persons by whom it was made, and the proceedings (if any) had thereon.

And the Court to which any application is made under the proviso to section fifty-nine may, if it think fit, reject the same.

Petition for probate or administration to be signed and verified.

66. The petition for probate or letters of administration shall in all cases be subscribed by the petitioner and his pleader, if any, and shall be verified by the petitioner in the following manner or to the like effect:—

"I (*A. B.*), the petitioner in the above petition, declare that what is stated therein is true to the best of my information and belief."

Verification of petition for probate by one witness to will.

67. Where the application is for probate, or for letters of administration with the will annexed, the petition shall also be verified by at least one of the witnesses to the will (when procurable), in the manner or to the effect following:—

"I (*C. D.*), one of the witnesses to the last will and testament of the testator mentioned in the above petition, declare that I was present and saw the said testator affix his signature (*or* mark) thereto (*as the case may be*) (*or* that the said testator acknowledged the writing annexed to the above petition to be his last will and testament in my presence)."

Punishment for false averment in petition or declaration.

68. If any petition or declaration which is hereby required to be verified contains any averment which the person making the verification knows or believes to be false, such person shall be subject to punishment according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence.

District Judge may examine petitioner in person,

69. In all cases it shall be lawful for the District Judge or District Delegate, if he thinks fit,

to examine the petitioner in person upon oath, and also

require further evidence,

to require further evidence of the due execution of the will, or the right of the petitioner to the letters of administration, as the case may be, and

and issue citations to inspect proceedings.

to issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.

Publication of citation.

The citation shall be fixed up in some conspicuous part of the Court-house, and also in the office of the Collector of the District, and otherwise published or made known in such manner as the Judge or Delegate issuing the same may direct.

Caveats against grant of probate or administration.

70. Caveats against the grant of probate or letters of administration may be lodged with the District Judge or a District Delegate; and immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge; and immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased had his fixed place of abode at the time of his death, and to any other Judge or District Dele-

gate to whom it may appear to the District Judge expedient to transmit the same.

Form of caveat.

71. The caveat shall be to the following effect:—

"Let nothing be done in the matter of the estate of *A. B.*, late of , deceased, who died on the day of at without notice to *C. D.* of ."

After entry of caveat, no proceeding taken on petition until after notice to caveator.

72. No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered with the Judge or District Delegate to whom the application has been made, or notice thereof has been given of its entry with some other Delegate, until after such notice to the person by whom the same has been entered as the Court shall think reasonable.

District Delegate when not to grant probate or administration.

73. A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

Explanation.—By "contention" is understood the appearance of any one in person, or by his recognized agent or by a pleader duly appointed to act on his behalf, to oppose the proceeding.

Power to transmit statement to District Judge in doubtful cases where no contention.

74. In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

Procedure where there is contention, or District Delegate thinks probate or letters of administration should be refused in his Court.

75. In every case in which there is contention, or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any documents that may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge; unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorized to do; and in that case the same shall be sent by him to the District Judge.

Grant of probate to be under seal of Court.

76. Whenever it appears to the Judge or District Delegate that probate of a will should be granted, he shall grant the same under the seal of his Court in manner following:—

"I, Judge of the District of ,

Form of such grant.

[*or* Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*)] hereby make known that on the day of in the year the last will of , late of , a copy whereof is hereunto annexed, was proved and registered before me, and that administration of the property and credits of the said deceased, and in any way concerning his will, was granted to , the executor in the said will named, he having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same at or before the expiration of six months from the date of this grant, and also to render a true account of the said property and credits within one year from the same date.

The day of 18 ."

Grant of letters of administration to be under seal of Court.

77. Whenever it appears to the District Judge or District Delegate that letters of administration to the estate of a person deceased, with or without a copy of the will annexed, should be granted, he shall grant the same under the seal of his Court in manner following:—

"I, , Judge of the District of ,

Form of such grant.

[*or* Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*)] hereby make known that on the day of letters of administration (with *or* without the will annexed, *as the case may be*) of the property and credits of , late of , deceased, were granted to , the father (*or as the case may be*) of the deceased, he having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same in this Court at or before the expiration of six months from the date of this grant, and also to render a true account of the said property and credits within one year from the same date.

The day of 18 ."

Administration-bond.

78. Every person to whom any grant of letters of administration is committed, and, if the Judge so direct, any person to whom probate is granted, shall give a bond to the Judge of the District Court to enure for the benefit of the Judge for the time being, with one or more surety or sureties, engaging for the due collection, getting in, and administering the estate of the deceased, which bond shall be in such form as the Judge from time to time by any general or special order directs.

Assignment of administration-bond.

79. The Court may, on application made by petition and on being satisfied that the engagement of any such bond has not been kept, and upon such terms as to security, or providing that the money received be paid into Court, or otherwise as the Court may think fit, assign the same to some proper person, who shall thereupon be entitled to sue on the said bond in his own name as if the same had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon, as trustee for all persons interested, the full amount recoverable in respect of any breach thereof.

Time before which probate or administration shall not be granted.

80. No probate of a will shall be granted until after the expiration of seven clear days, and no letters of administration shall be granted until after the expiration of fourteen clear days, from the day of the testator or intestate's death.

Filing of original wills of which probate or administration with will annexed granted.

81. Until a public registry for wills is established, every District Judge and District Delegate shall file and preserve among the records of his Court all original wills of which probate or letters of administration with the will annexed may be granted by him: and the Local Government shall make regulations for the preservation and inspection of the wills so filed as aforesaid.

Grantee of probate or administration alone to sue, &c., until same revoked.

82. After any grant of probate or letters of administration, no other than the person to whom the same shall have been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, throughout the Province in which the same may have been granted, until such probate or letters of administration shall have been recalled or revoked.

Procedure in contentious cases.

83. In any case before the District Judge in which there is contention, the proceeding shall take, as nearly as may be, the form of a suit, according to the provisions of the Code of Civil Procedure, in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who may have appeared as aforesaid to oppose the grant shall be the defendant.

Payment to executor or administrator before probate or administration revoked.

84. Where any probate is, or letters of administration are, revoked, all payments *bonâ fide* made to any executor or administrator under such probate or administration before the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same;

Right of such executor or administrator to recoup himself.

and the executor or administrator who shall have acted under any such revoked probate or administration may retain and reimburse himself out of the assets of the deceased in respect of any payments made by him which the person to whom probate or letters of administration shall be afterwards granted might have lawfully made.

Power to refuse letters of administration.

85. Notwithstanding anything hereinbefore contained, it shall, except in cases to which the Hindú Wills Act, 1870, applies, be in the discretion of the Court to make an order refusing, for reasons to be recorded by it in writing, to grant any application for letters of administration made under this Act.

Appeals from orders of District Judge.

86. Every order made by a District Judge or District Delegate by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court under the rules contained in the Code of Civil Procedure applicable to appeals.

Concurrent jurisdiction of High Court.

87. The High Court shall have concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the District Judge.

CHAPTER VI.

OF THE POWERS OF AN EXECUTOR OR ADMINISTRATOR.

In respect of causes of action surviving deceased, and debts due at death.

88. An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and may exercise the same powers for the recovery of debts due to him at the time of his death, as the deceased had when living.

Demands and rights of suit of or against deceased survive to and against executor or administrator.

89. All demands whatsoever, and all rights to prosecute or defend any suit or other proceeding, existing in favour of or against a person at the time of his decease survive to and against his executors or administrators, except causes of action for defamation, assault as defined in the Indian Penal Code, or other personal injuries not causing the death of the party, and except also cases where, after the death of the party, the relief sought could not be enjoyed, or granting it would be nugatory.

Illustration.

(*a*). A collision takes place on a railway in consequence of some neglect or default of the officials, and a passenger is severely hurt, but not so as to cause death. He afterwards dies without having instituted any suit. The cause of action does not survive.

Power of executor or administrator to dispose of property.

90. An executor or administrator has power, with the consent of the Court by which the probate or letters of administration was or were granted, to dispose of the property of the deceased, either wholly or in part, in such manner as he thinks fit:

Provided that, the Court may, when granting probate or letters of administration, exempt the executor or administrator from the necessity of obtaining such consent as to the whole or any specified part of the assets of the deceased.

Illustrations.

(*a*). The deceased has made a specific bequest of part of his property. The executor, not having assented to the bequest, sells the subject of it with the consent of the Court. The sale is valid.

(*b*). The executor, in the exercise of his discretion, mortgages a part of the immoveable estate of the deceased with the consent of the Court. The mortgage is valid.

Purchase by executor or administrator of deceased's property.

91. If an executor or administrator purchases, either directly or indirectly, any part of the property of the deceased, the sale is voidable at the instance of any other person interested in the property sold.

Powers of several executors or administrators exercisable by one.

92. When there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary in the will or grant of letters of administration, be exercised by any one of them who has proved the will or taken out administration.

Illustrations.

(*a*). One of several executors has power to release a debt due to the deceased.

(*b*). One has power to surrender a lease.

(*c*). One has power to sell the property of the deceased, moveable or immoveable.

(*d*). One has power to assent to a legacy.

(*e*). One has power to endorse a promissory note payable to the deceased.

(*f*). The will appoints A, B, C, and D to be executors, and directs that two of them shall be a quorum. No act can be done by a single executor.

93. Upon the death of one or more of several executors or administrators, all the powers of the office become, in the absence of any direction to the contrary in the will or grant of letters of administration, vested in the survivors or survivor.

Survival of powers on death of one of several executors or administrators.

94. The administrator of effects unadministered has, with respect to such effects, the same powers as the original executor or administrator.

Powers of administrator of effects unadministered.

95. An administrator during minority has all the powers of an ordinary administrator.

Powers of administrator during minority.

96. When probate or letters of administration shall have been granted to a married woman, she has all the powers of an ordinary executor or administrator.

Powers of married executrix or administratrix.

CHAPTER VII.

OF THE DUTIES OF AN EXECUTOR OR ADMINISTRATOR.

97. It is the duty of an executor to provide funds for the performance of the necessary funeral ceremonies of the deceased in a manner suitable to his condition, if he has left property sufficient for the purpose.

As to deceased's funeral ceremonies.

98. An executor or administrator shall, within six months from the grant of probate or letters of administration, exhibit in the Court by which the same has or have been granted an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person or persons to which the executor or administrator is entitled in that character, and shall in like manner, within one year from the date aforesaid, exhibit an account of the estate, showing the assets that have come to his hands, and the manner in which they have been applied or disposed of.

Inventory and account.

99. In all cases where it is sought to obtain a grant of probate or letters of administration intended to have effect throughout the whole of British India, the executor, or the person applying for administration shall include in the inventory of the effects of the deceased all his moveable or immoveable property situate in British India:

And the value of such property situate in each Province shall be separately stated in such inventory, and the probate or letters of administration shall be chargeable with a fee corresponding to the entire amount or value of the property affected thereby wheresoever situate within British India.

Inventory to include property in any part of British India.

100. The executor or administrator shall collect, with reasonable diligence, the property of the deceased and the debts that were due to him at the time of his death.

As to property of, and debts owing to, deceased.

101. Funeral expenses to a reasonable amount, according to the degree and quality of the deceased, and death-bed charges, including fees for medical attendance, and board and lodging for one month previous to his death, are to be paid before all debts.

Expenses to be paid before all debts.

102. The expenses of obtaining probate or letters of administration, including the costs incurred for or in respect of any judicial proceedings that may be necessary for administering the estate, are to be paid next after the funeral expenses and death-bed charges.

Expenses to be paid next after such expenses.

103. Wages due for services rendered to the deceased within three months next preceding his death by any labourer, artizan or domestic servant are next to be paid, and then the other debts of the deceased according to their respective priorities (if any).

Wages for certain services to be next paid, and then other debts.

104. Save as aforesaid, no creditor is to have a right of priority over another.

Save as aforesaid, all debts to be paid equally and rateably.

But the executor or administrator shall pay all such debts as he knows of, including his own, equally and rateably, as far as the assets of the deceased will extend.

105. Debts of every description must be paid before any legacy.

Debts to be paid before legacies.

106. If the estate of the deceased is subject to any contingent liabilities, an executor or administrator is not bound to pay any legacy without a sufficient indemnity to meet the liabilities whenever they may become due.

Executor or administrator not bound to pay legacies without indemnity.

107. If the assets, after payment of debts, necessary expenses and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions;

Abatement of general legacies.

and, in the absence of any direction to the contrary in the will, the executor has no right to pay one legatee in preference to another, nor to retain any money on account of a legacy to himself or to any person for whom he is a trustee.

Executor not to pay one legatee in preference to another.

108. Where there is a specific legacy, and the assets are sufficient for the payment of debts and necessary expenses, the thing specified must be delivered to the legatee without any abatement.

Non-abatement of specific legacy when assets sufficient to pay debts.

109. Where there is a demonstrative legacy, and the assets are sufficient for the payment of debts and necessary expenses, the legatee has a preferential claim for payment of his legacy out of the fund from which the legacy is directed to be paid until such fund is exhausted, and if, after the fund is exhausted, part of the legacy still remains unpaid, he is entitled to rank for the remainder against the general assets as for a legacy of the amount of such unpaid remainder.

Right under demonstrative legacy when assets sufficient to pay debts and necessary expenses.

110. If the assets are not sufficient to answer the debts and the specific legacies, an abatement shall be made from the latter rateably in proportion to their respective amounts.

Rateable abatement of specific legacies.

Illustration.

A has bequeathed to B a diamond-ring, valued at 500 rupees, and to C a horse, valued at 1,000 rupees. It is found necessary to sell all the effects of the testator, and his assets, after payment of debts, are only 1,000 rupees. Of this sum rupees 333-5-4 are to be paid to B, and rupees 666-10-8 to C.

111. For the purpose of abatement, a legacy for life, a sum appropriated by the will to produce an annuity, and the value of an annuity when no sum has been appropriated to produce it, shall be treated as general legacies.

Legacies treated as general for purpose of abatement.

CHAPTER VIII.

OF THE EXECUTOR'S ASSENT TO A LEGACY.

112. The assent of the executor is necessary to complete a legatee's title to his legacy.

Assent necessary to complete legatee's title.

Illustrations.

(*a*). A by his will bequeaths to B his Government paper, which is in deposit with the Bank of Bengal. The Bank has no authority to deliver the securities, nor B a right to take possession of them, without the assent of the executor.

(*b*). A by his will has bequeathed to C his house in Calcutta in the tenancy of B. C is not entitled to receive the rents without the assent of the executor.

113. The assent of the executor to a specific bequest shall be sufficient to divest his interest as executor therein, and to transfer the subject of the bequest to the legatee, unless the nature or the circumstances of the property require that it shall be transferred in a particular way.

Effect of executor's assent to specific legacy.

This assent may be verbal, and it may be either express or implied from the conduct of the executor.

Nature of assent.

Illustrations.

(*a*). A horse is bequeathed. The executor requests the legatee to dispose of it, or a third party proposes to purchase the horse from the executor, and he directs him to apply to the legatee. Assent to the legacy is implied.

(*b*). The interest of a fund is directed by the will to be applied for the maintenance of the legatee during his minority. The executor commences so to apply it. This is an assent to the whole of the bequest.

(*c*). A bequest is made of a fund to A, and after him to B. The executor pays the interest of the fund to A. This is an implied assent to the bequest to B.

(*d*). Executors die after paying all the debts of the testator, but before satisfaction of specific legacies. Assent to the legacies may be presumed.

(*e*). A person to whom a specific article has been bequeathed takes possession of it and retains it without any objection on the part of the executor. His assent may be presumed.

114. The assent of an executor to a legacy may be conditional, and if the condition be one which he has a right to enforce, and it is not performed, there is no assent.

Conditional assent.

Illustrations.

(*a*). A bequeathes to B his lands of Sultánpur, which at the date of the will, and at the death of A, were subject to a mortgage for 10,000 rupees. The executor assents to the bequest on condition that B shall within a limited time pay the amount due on the mortgage at the testator's death. The amount is not paid. There is no assent.

(*b*). The executor assents to a bequest on condition that the legatee shall pay him a sum of money. The payment is not made. The assent is nevertheless valid.

115. When the executor is a legatee, his assent to his own legacy is necessary to complete his title to it, in the same way as it is required when the bequest is to another person and his assent may in like manner be express or implied.

Assent of executor to his own legacy.

Assent shall be implied if in his manner of administering the property he does any act which is referable to his character of legatee and is not referable to his character of executor.

Implied assent.

Illustration.

An executor takes the rent of a house or the interest of Government-securities bequeathed to him, and applies it to his own use. This is assent.

116. The assent of the executor to a legacy gives effect to it from the death of the testator.

Effect of executor's assent.

Illustrations.

(*a*). A legatee sells his legacy before it is assented to by the executor. The executor's subsequent assent operates for the benefit of the purchaser, and completes his title to the legacy.

(*b*). A bequeaths 1,000 rupees to B with interest from his death. The executor does not assent to this legacy until the expiration of a year from A's death. B is entitled to interest from the death of A.

117. An executor is not bound to pay or deliver any legacy until the expiration of one year from the testator's death.

Executor when to deliver legacies.

Illustration.

A by his will directs his legacies to be paid within six months after his death. The executor is not bound to pay them before the expiration of a year.

CHAPTER IX.

OF THE PAYMENT AND APPORTIONMENT OF ANNUITIES.

118. Where an annuity is given by the will, and no time is fixed for its commencement, it shall commence from the testator's death, and the first payment shall be made at the expiration of a year next after that event.

Commencement of annuity when no time fixed by will.

119. Where there is a direction that the annuity shall be paid quarterly or monthly, the first payment shall be due at the end of the first quarter or first month, as the case may be, after the testator's death, and shall, if the executor think fit, be paid when due; but the executor shall not be bound to pay it till the end of the year.

When annuity, to be paid quarterly or monthly, first falls due.

120. Where there is a direction that the first payment of an annuity shall be made within one month or any other division of time from the death of the testator, or on a day certain, the successive payments are to be made on the anniversary of the earliest day on which the will authorizes the first payment to be made;

Date of successive payments when first payment directed to be made within given time, or on day certain.

and if the annuitant dies in the interval between the times of payment, an apportioned share of the annuity shall be paid to his representative.

Apportionment where annuitant dies between times of payment.

CHAPTER X.

OF THE INVESTMENT OF FUNDS TO PROVIDE FOR LEGACIES.

121. Where a legacy, *not being a specific legacy*, is given for life, the sum bequeathed shall at the end of the year be invested in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct, and the proceeds thereof shall be paid to the legatee as the same shall accrue due.

Investment of sum bequeathed where legacy, not specific, given for life.

122. Where a general legacy is given to be paid at a future time, the executor shall invest a sum sufficient to meet it in *securities of the* kind mentioned in the last preceding section.

Investment of general legacy, to be paid at future time.

The intermediate interest shall form part of the residue of the testator's estate.

Intermediate interest.

123. Where an annuity is given *and no fund* is charged with its payment or appropriated by the will to answer it, a Government-annuity of the specified amount shall be purchased, or,

Procedure when no fund charged with, or appropriated to, annuity.

if *no such annuity can be obtained*, then a sum sufficient to produce the annuity shall be invested for that purpose in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct.

124. Where a bequest is contingent, the executor is not bound to invest the amount of the legacy, but may transfer the whole residue of the estate to the residuary legatee (if any) on his giving sufficient security for the payment of the legacy if it shall become due.

Transfer to residuary legatee or contingent bequest.

125. Where the testator has bequeathed the residue of his estate to a person for life with a direction that it shall be invested in certain specified securities, so much of the estate as is not at the time of his death invested in securities of the specified kind shall be converted into money and invested in such securities.

Investment of residue bequeathed for life, with direction to invest in specified securities.

126. Such conversion and investment as are contemplated by the last preceding section shall be made at such times and in such manner as the executor in his discretion thinks fit:

Time and manner of conversion and investment.

and, until such conversion and investment shall be completed, the person who would be for the time being entitled to the income of the fund when so invested shall receive interest at the rate of six per cent. per annum upon the market-value (to be computed as of the date of the testator's death) of such part of the fund as shall not yet have been so invested.

Interest payable until investment.

127. Where, by the terms of a bequest, the legatee is entitled to the immediate payment or possession of the money or thing bequeathed, but is a minor, and there is no direction in the will to pay it to any person on his behalf, the executor or administrator shall pay or deliver the same into the Court of the District Judge by whom, or by whose District Delegate, the probate was, or letters of administration with the will annexed were, granted, to the account of the legatee, unless the legatee be a ward of the Court of Wards; and, if the legatee be a ward of the Court of Wards, the legacy shall be paid into that Court to his account;

Procedure where minor entitled to immediate payment or possession of bequest, and no direction to pay to person on his behalf.

and such payment into the Court of the District Judge, or into the Court of Wards, as the case may be, shall be a sufficient discharge for the money so paid;

and such money, when paid in, shall be invested in the purchase of Government securities, which, with the interest thereon, shall be transferred or paid to the person entitled thereto, or otherwise applied for his benefit, as the Judge or the Court of Wards, as the case may be, may direct.

CHAPTER XI.

OF THE PRODUCE AND INTEREST OF LEGACIES.

128. The legatee of a specific legacy is entitled to the clear produce thereof, if any, from the testator's death.

Legatee's title to produce of specific legacy.

Exception.—A specific bequest, contingent in its terms, does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy.

The clear produce of it forms part of the residue of the testator's estate.

Illustrations.

(*a*). A bequeathes his flock of sheep to B. Between the death of A and delivery by his executor the sheep are shorn, or some of the ewes produce lambs. The wool and lambs are the property of B.

(*b*). A bequeathes his Government-securities to B, but postpones the delivery of them till the death of C. The interest which falls due between the death of A and the death of C belongs to B, and must, unless he is a minor, be paid to him as it is received.

(*c*). The testator bequeathes all his four per cent. Government promissory notes to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the notes, but the interest which accrues in respect of them, between the testator's death and A's completing 18 forms part of the residue.

129. The legatee under a general residuary bequest is entitled to the produce of the residuary fund from the testator's death.

Residuary legatee's title to produce of residuary fund.

Exception.—A general residuary bequest contingent in its terms does not comprise the income which may accrue upon the fund bequeathed between the death of the testator and the vesting of the legacy.

Such income goes as undisposed of.

Illustrations.

(*a*). The testator bequeathes the residue of his property to A, a minor, to be paid to him when he shall complete the age of 18. The income from the testator's death belongs to A.

(*b*). The testator bequeathes the residue of his property to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the residue. The income which has accrued in respect of it since the testator's death goes as undisposed of.

130. Where no time has been fixed for the payment of a general legacy, interest begins to run from the expiration of one year from the testator's death.

Interest when no time fixed for payment of general legacy.

Exceptions.—(1). Where the legacy is bequeathed in satisfaction of a debt, interest runs from the death of the testator.

(2). Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, the legacy shall bear interest from the death of the testator.

(3). Where a sum is bequeathed to a minor with a direction to pay for his maintenance out of it, interest is payable from the death of the testator.

131. Where a time has been fixed for the payment of a general legacy, interest begins to run from the time so fixed.

Interest when time fixed.

The interest up to such time forms part of the residue of the testator's estate.

Exception.—Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, and the legatee is a minor, the legacy shall bear interest from the death of the testator, unless a specific sum is given by the will for maintenance, or unless the will contains a direction to the contrary.

132. The rate of interest shall be six per cent. per annum.

Rate of interest.

133. No interest is payable on the arrears of an annuity within the first year from the death of the testator, although a period earlier than the expiration of that year may have been fixed by the will for making the first payment of the annuity.

No interest on arrears of annuity within first year after testator's death.

134. Where a sum of money is directed to be invested to produce an annuity, interest is payable on it from the death of the testator.

Interest on sum to be invested to produce annuity.

CHAPTER XII.

OF THE REFUNDING OF LEGACIES.

135. An executor who has paid a legacy under the order of a Judge, is entitled to call upon the legatee to refund in the event of the assets proving insufficient to pay all the legacies.

Refund of legacy paid under Judge's orders.

136. When an executor has voluntarily paid a legacy, he cannot call upon a legatee to refund in the event of the assets proving insufficient to pay all the legacies.

No refund if paid voluntarily.

137. When the time prescribed by the will for the performance of a condition has elapsed, without the condition having been performed, and the executor has thereupon, without fraud, distributed the assets; in such case, if further time has, under the second clause of this section, been allowed for the performance of the condition, and the condition has been performed accordingly, the legacy cannot be claimed from the executor, but those to whom he has paid it are liable to refund the amount.

Refund when legacy becomes due on performance of condition within further time allowed.

Where the will requires an act to be performed by the legatee within a specified time, either as a condition to be fulfilled before the legacy is enjoyed, or as a condition upon the non-fulfilment of which the subject-matter of the bequest is to go over to another person, or the bequest is to cease to have effect, the act must be performed within the time specified, unless the performance of it be prevented by fraud, in which case such further time shall be allowed as is requisite to make up for the delay caused by such fraud.

138. When the executor has paid away the assets in legacies, and he is afterwards obliged to discharge a debt of which he had no previous notice, he is entitled to call upon each legatee to refund in proportion.

When each legatee compellable to refund in proportion.

139. Where an executor or administrator has given such notices as the High Court may, by any general rule to be made from time to time, prescribe, for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets, or any part thereof, in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he has not had notice at the time of such distribution;

Distribution of assets.

but nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, in the hands of the persons who may have received the same respectively.

Creditor may follow assets.

140. A creditor who has not received payment of his debt may call upon a legatee who has received payment of his legacy to refund, whether the assets of the testator's estate were or were not sufficient at the time of his death to pay both debts and legacies, and whether the payment of the legacy by the executor was voluntary or not.

Creditor may call upon legatee to refund.

141. If the assets were sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy, or who has been compelled to refund under the last preceding section, cannot oblige one who has received payment in full to refund, whether the legacy were paid to him with or without suit, although the assets have subsequently become deficient by the wasting of the executor.

When legatee, not satisfied or compelled to refund under section 140, cannot oblige one paid in full to refund.

142. If the assets were not sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy must, before he can call on a satisfied legatee to refund, first proceed against the executor if he is solvent; but, if the executor is insolvent or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion.

When unsatisfied legatee must first proceed against executor, if solvent.

143. The refunding of one legatee to another shall not exceed the sum by which the satisfied legacy ought to have been reduced if the estate had been properly administered.

Limit to refunding of one legatee to another.

Illustration.

A has bequeathed 240 rupees to B, 480 rupees to C, and 720 rupees to D. The assets are only 1,200 rupees, and if properly administered would give 200 rupees to B, 400 rupees to C, and 600 rupees to D. C and D have been paid their legacies in full, leaving nothing to B. B can oblige C to refund 80 rupees, and D to refund 120 rupees.

144. The refunding shall in all cases be without interest.

Refunding to be without interest.

145. The surplus or residue of the deceased's property, after payment of debts and legacies, shall be paid to the residuary legatee when any has been appointed by the will.

Residue after usual payments to be paid to residuary legatee.

CHAPTER XIII.

OF THE LIABILITY OF AN EXECUTOR OR ADMINISTRATOR FOR DEVASTATION.

146. When an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned.

Liability of executor or administrator for devastation.

Illustrations.

(*a*). The executor pays out of the estate an unfounded claim. He is liable to make good the loss caused by the payment.

(*b*). The deceased had a valuable lease renewable by notice, which the executor neglects to give at the proper time. The executor is liable to make good the loss caused by the neglect.

(*c*). The deceased had a lease of less value than the rent payable for it, but terminable on notice at a particular time. The executor neglects to give the notice. He is liable to make good the loss.

147. When an executor or administrator occasions a loss to the estate by neglecting to get in any part of the property of the deceased, he is liable to make good the amount.

For neglect to get in any part of property.

Illustrations.

(*a*). The executor absolutely releases a debt due to the deceased from a solvent person, or compounds with a debtor who is able to pay in full. The executor is liable to make good the amount so lost.

(*b*). The executor neglects to sue for a debt till the debtor is able to plead the Act for the limitation of suits, and the debt is thereby lost to the estate. The executor is liable to make good the amount of the debt.

CHAPTER XIV.

MISCELLANEOUS.

148. In Chapters VIII, IX, X and XII of this Act the provisions as to an executor shall apply also to an administrator with the will annexed.

Provisions applied to administrator with will annexed.

149. Nothing herein contained shall—

Saving-clause.

(*a*) validate any testamentary disposition which would otherwise have been invalid;

(*b*) invalidate any such disposition which would otherwise have been valid;

(*c*) deprive any person of any right of maintenance to which he would otherwise have been entitled; or

(*d*) affect the rights, duties and privileges of the Administrator General of Bengal, Madras or Bombay.

150. No proceedings to obtain probate of a will, or letters of administration to the estate, of any Hindú, Muhammadan, Buddhist or person exempted under section 332 of the Indian Succession Act, 1865, shall be instituted in any Court in British India except under this Act.

Probate and administration in case of persons exempted from Succession Act, to be granted only under this Act.

151. In Act No. XXVII of 1860 (*An Act for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons*), sections 15 and 16 and the proviso to section 13 shall be repealed.

Repeal of portions of Act XXVII of 1860.

152. The grant of probate or letters of administration under this Act in respect of any property shall be deemed to supersede any certificate previously granted in respect of the same property under the said Act No. XXVII of 1860, or Bombay Regulation No. VIII of 1827; and when, at the time of the grant of such probate or letters, any suit or other proceeding instituted by the holder of such certificate regarding such property is pending, the person to whom such grant is made shall, on applying to the Court in which such suit or proceeding is pending, be entitled to take the place of such holder in such suit or proceeding:

Provided that, when any certificate is superseded under this section, all payments made to the holder of such certificate in ignorance of such supersession shall be held good against claims under the probate or letters of administration.

Grant of probate or administration to supersede certificate under Act XXVII of 1860, or Bombay Regulation VIII of 1827.

153. In the Court-fees Act, 1870, schedule I, Nos. 11 and 12, in the third column, after the words "amount or value," the following shall be inserted, namely:—

"Provided that, when after a certificate has been granted as aforesaid in respect of any estate, probate or letters of administration is or are granted in respect of the same estate, the fee payable in respect of such latter grant shall be reduced by the amount of the fee paid in respect of the former grant."

Amendment of Court-fees Act.

154. The following amendments shall be made in the Hindú Wills Act, 1870 (namely):—

Amendment of Hindú Wills Act.

(*a*). For the portion of section two commencing with the words "sections one hundred and seventy-nine" and ending with the words "administrator with the will annexed," the words "and section one hundred and eighty-seven" shall be substituted.

(*b*). The third clause of section three and the last clause of section six shall be repealed.

(*c*). In section six, for the words "one hundred and three and one hundred and eighty-two" the words "and one hundred and three" shall be substituted.

155. All grants of probate of the will or letters of administration to the estate of any deceased Hindú, Muhammadan or Buddhist, or any person exempted under section 332 of the Indian Succession Act, 1865, which, before this Act comes into force have been made in British Burma, shall, whenever such grant would have been lawful if this Act had been in force, be deemed to have been made in accordance with law.

Validation of grants of probate and administration made in British Burma.

156. In the second schedule to the Indian Limitation Act, 1877, No. 43, after the figures "321," the following shall be inserted, namely—"or under the Probate and Administration Act, 1881, section 139 or 140."

Amendment of Act XV of 1877.

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

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 21st January, 1881, and is hereby promulgated for general information:—

ACT No. VI OF 1881.

An Act to make further provision for the grant of Probate and Letters of Administration in non-contentious cases.

WHEREAS it is expedient to make further provision for the grant of probate and letters of administration in non-contentious cases; It is hereby enacted as follows:—

Preamble.

1. This Act may be called "The District Delegates Act, 1881":

Short title.

It extends to the whole of British India;

Extent.

and it shall come into force on the first day of April, 1881.

Commencement.

2. After section 235 of the Indian Succession Act, 1865, the following section shall be added:—

Addition of section after section 235 of Succession Act.

"235A. The High Court may, from time to time, appoint such judicial officers within any district as it thinks fit, to act for the District Judge as Delegates to grant probate and letters of administration in non-contentious cases, within such local limits as it may from time to time prescribe:

Power to appoint Delegate of District Judge to deal with non-contentious cases.

"Provided that, in the case of High Courts not established by Royal Charter, such appointment be made with the previous sanction of the Local Government.

"Persons so appointed shall be called 'District Delegates'."

3. After section 241 of the said Act, the following section shall be added:—

Addition of section after section 241 of same Act.

"241A. Probate and letters of administration may, upon application for that purpose to any District Delegate, be granted by him in any case in which there is no contention, if it appears by petition (verified as hereinafter mentioned) that the testator or intestate, as the case may be, at the time of his death resided within the jurisdiction of such Delegate."

Probate and letters of administration may be granted by Delegate.

4. To sections 244 and 246 of the said Act, respectively, the following words shall be added:—

Addition to sections 244 and 246 of same Act.

"and when the application is to a District Delegate, the petition shall further state that the deceased at the time of his death resided within the jurisdiction of such Delegate."

5. For section 251 of the said Act, the following section shall be substituted:—

Substitution of section for section 251 of same Act.

"251. Caveats against the grant of probate or administration may be lodged with the District Judge or a District Delegate; and immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge; and immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased resided at the time of his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same."

Caveats against grant of probate or administration.

6. In section 253 of the said Act, after the word "Judge" the words "or officer," and after the word "made" the words "or notice has been given of its entry with some other Delegate," shall be inserted.

Amendment of section 253 of same Act.

7. After section 253 of the said Act, the following sections shall be added:—

Addition of sections after section 253 of same Act.

"253A. A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

District Delegate when not to grant probate or administration.

"*Explanation.*—By 'contention' is understood the appearance of any one in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf to oppose the proceeding.

"253B. In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in

Power to transmit statement to District Judge in doubtful cases where no contention.

relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

"253C. In every case in which there is contention, or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any documents that may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge; unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorized to do; and in that case the same shall be sent by him to the District Judge."

Procedure where there is contention, or District Delegate thinks probate or letters of administration should be refused in his Court.

8. In the said Act, sections 254 and 255, respectively, after the words "I, Judge of the District of ," the words "(*or* Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*))"; and in section 308, after the words "District Judge by whom" the words "or by whose District Delegate" shall be inserted.

Amendment of sections 254, 255 and 308 of same Act.

9. In the said Act, sections 246, 250, 255 and 259, after the words "District Judge," and in section 250 and section 254 (when it first occurs) after the word "Judge," the words "or District Delegate" shall be inserted respectively.

Introduction of the words "or District Delegate" in certain sections of same Act.

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

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 21st January, 1881, and is hereby promulgated for general information:—

ACT No. VII OF 1881.

An Act to amend Bengal Act No. IX of 1880 (the Cess Act, 1880).

WHEREAS it is expedient to amend Bengal Act No. IX of 1880 (the Cess Act, 1880); It is hereby enacted as follows:—

Preamble.

1. In the said Act, after section sixty-four, the following sections shall be inserted, and shall be deemed to have been so inserted on and from the date on which such Act came into force:—

Amendment of Bengal Act No. IX of 1880.

"64A. All sums due to the holder of any estate or tenure under the provisions of this chapter, in respect of any land held rent-free, may be recovered by such holder from any owner or holder of such rent-free land, or from any occupier of the same, by any means and any process by which the amount might be recovered if it were due on account of rent of a transferable tenure or holding, and subject to the same rules as to limitation:

Holders of estates, &c., how to recover from holders of rent-free lands.

"Provided that, if any such objection as is mentioned in section 53, has been made before the Collector, no proceedings shall be commenced, and no proceedings which have been commenced shall be continued, for recovery of cess in respect of the lands which are the subject of such objection, until such objection shall have been disposed of by the Collector.

"64B. In every suit for the recovery of any such sum, the person to whom the sum is due may proceed at his option either against the owner or holder of the rent-free land in respect of which such amount is due, or against the occupier thereof; and any decree obtained in such suit against any occupier of such land shall have the same effect and be followed by the same consequences in respect of the execution of such decree against the owner or holder of such land, and in respect of the sale of such land in such execution, as if the suit had been brought and the decree given against such owner or holder of such land, but shall have effect against such occupier personally so long only as he remains in occupation of such land, and no longer."

Owner, holder or occupier of rent-free lands may be sued.
Decree against occupier tantamount to decree against owner.

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

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, FEBRUARY 12, 1881.

☞ 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 5th February, 1881, and is hereby promulgated for general information :—

ACT No. VIII OF 1881.

THE PETROLEUM ACT, 1881.

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THE SCHEDULE.

An Act to regulate the importation, possession and transport of Petroleum and other fluids of a like nature.

WHEREAS it is expedient to regulate the importation, possession and transport of petroleum and other fluids of a like nature; It is hereby enacted as follows :—

Preamble.

Preliminary.

Short title. Commencement. **1.** This Act may be called "The Petroleum Act, 1881"; and it shall come into force on the first day of July, 1881.

Local extent. The provisions of this Act relating to dangerous petroleum, and the importation of petroleum, extend to the whole of British India. The rest of this Act extends only to such local areas as the Local Government may, from time to time, by notification in the official Gazette, direct.

Repeal of enactments. **2.** The Indian Ports Act, 1875, section thirty-seven, and Bengal Act No. III of 1865 (*to make better provision for the prevention of injury from fire in Ports, and to provide for the safe keeping of Inflammable Oils in Ports and places within the Provinces under the control of the Lieutenant-Governor of Bengal*) are hereby repealed.

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

"petroleum" includes also the liquids commonly known by the names of rock oil, Rangoon oil, Burma oil, kerosine, paraffine oil, mineral oil, petroline, gasoline, benzol, benzoline, benzine and any inflammable liquid that is made from petroleum, coal, schist, shale, peat or any other bituminous substance, or from any products of petroleum,

"petroleum:"

but it does not include any oil ordinarily used for lubricating purposes, and having its flashing point at or above two hundred and fifty degrees of Fahrenheit's thermometer.

Explanation.—The flashing point of petroleum means the lowest temperature at which the petroleum yields a vapour which will furnish a momentary flash or flame when tested with the apparatus and in the manner described in the Schedule hereto annexed:

"dangerous petroleum" means petroleum having its flashing point below seventy-three degrees of Fahrenheit's thermometer:

"dangerous petroleum:"

"import:"

"import" means to bring into British India by sea or land:

and "importation" means the bringing into British India as aforesaid:

"transport" means to remove from one place to another within British India.

"transport:"

Dangerous Petroleum.

4. No quantity of dangerous petroleum exceeding forty gallons shall be imported or transported, or kept by any one person or on the same premises, except under, and in accordance with the conditions of, a license from the Local Government granted as next hereinafter provided.

Dangerous petroleum in quantities exceeding 40 gallons.

Application for license to import, transport or possess such petroleum.

Every application for such a license shall be in writing, and shall declare—

(*a*) the quantity of such petroleum which it is desired to import, transport or possess, as the case may be;

(*b*) the purpose for which the applicant believes that such petroleum will be used; and

(*c*) that petroleum other than dangerous petroleum cannot be used for such purpose.

Power to grant license.

If the Local Government sees reason to believe that such petroleum will be used for such purpose, and that no petroleum other than dangerous petroleum can be used for such purpose, it may grant such license for the importation, transport or possession (as the case may be) of such petroleum, absolutely or subject to such conditions as it thinks fit.

5. No quantity of dangerous petroleum equal to or less than forty gallons shall be kept or transported without a license:

Dangerous petroleum in quantities not exceeding 40 gallons.

Provided that nothing in this section shall apply in any case when the quantity of such petroleum kept by any one person or on the same premises, or transported, does not exceed three gallons, and such petroleum is placed in separate glass, earthenware or metal vessels, each of which contains not more than a pint and is securely stopped.

Vessels containing dangerous petroleum to be marked.

6. All dangerous petroleum—

(*a*) which is kept at any place after seven days from the date on which it is imported, or

(*b*) which is transported, or

(*c*) which is sold or exposed for sale,

shall be contained in vessels which shall bear an indelible mark or a label in conspicuous characters, stating the nature of the contents thereof.

Petroleum generally.

7. The Local Government may, from time to time, make rules consistent with this Act to regulate the importation of petroleum, and in particular—

Power to make rules as to the importation of petroleum.

(*a*) for ascertaining the quantity and description of any petroleum on board a ship;

(*b*) to provide for the delivery, by the master of a ship or the consignees of the cargo, of samples of petroleum before such petroleum is landed from such ship, and for the testing thereof;

(*c*) to determine the ports at which only petroleum may be imported; and

(*d*) to regulate the time and mode of, and the precautions to be taken on, landing or transhipping any petroleum.

In this section—

"ship" includes anything made for the conveyance by water of human beings or property:

"ship:"

"master" includes every person (except a Pilot or Harbour Master) having for the time being the charge or control of a ship.

"master."

8. No quantity of petroleum exceeding five hundred gallons shall be kept by any one person or on the same premises or shall be transported except under, and in accordance with the conditions of, a license granted under this Act.

Possession and transport of petroleum.

9. The Local Government may, from time to time, make rules consistent with this Act as to the granting of licenses to possess or transport petroleum in cases where such licenses are by law required.

Power to make rules as to such possession and transport.

Such rules may provide for the following among other matters, that is to say—

in the case of licenses to possess petroleum—

(*a*) the nature and situation of the premises for which they may be granted, and

(*b*) the inspection of such premises and the testing of petroleum found thereon;

in the case of licenses to transport petroleum—

(*c*) the manner in which the petroleum shall be packed, the mode of transit, and the route by which it is to be taken, and

(*d*) the stoppage and inspection of it during transit;

in the case of both such licenses—

(*e*) the authority by which the license may be granted;

(*f*) the fee to be charged for it;

(*g*) the quantity of petroleum it is to cover;

(*h*) the conditions which may be inserted in it;

(*j*) the time during which it is to continue in force; and

(*k*) the renewal of the license.

10. Any officer specially authorized by name or by virtue of his office in this behalf by the Local Government may require any dealer in petroleum to show him any place, and any of the vessels, in which any petroleum in his possession is stored or contained, to give him such assistance as he may require for examining the same, and to deliver to him samples of such petroleum on payment of the value of such samples.

Power to inspect and require dealer to sell samples.

11. When any such officer has, in exercise of the powers conferred by section ten, or by purchase, obtained a sample of petroleum in the possession of a dealer, he may give a notice in writing to such dealer informing him that he is about to test such sample or cause the same to be tested with the apparatus and in the manner described in the schedule hereto annexed, at a time and place to be fixed in such notice, and that such person or his agent may be present at such testing.

Notice to be given when officer proposes to test samples.

12. On any such testing, if it appears to the officer or other person so testing that the petroleum from which such sample has been taken is or is not dangerous petroleum, such officer or other person may certify such fact, and the certificate so given shall be receivable as evidence in any proceedings which may be taken under this Act against the dealer in whose possession such petroleum was found, and shall, until the contrary is proved, be evidence of the fact stated therein; and a certified copy of such certificate shall be given gratis to the dealer at his request.

Certificate as to result of such testing.

Penalties.

13. Any person who, in contravention of this Act or of any rules made hereunder, imports, possesses or transports any petroleum, and any person who otherwise contravenes any such rules or any condition contained in a license granted hereunder, shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Penalty for illegal importation, &c., of petroleum.

14. Any person keeping, transporting, selling or exposing for sale petroleum in vessels not marked or labelled as prescribed by section six shall be punished with fine which may extend to fifty rupees.

Penalty for keeping, transporting, selling or exposing for sale petroleum in contravention of section 6.

15. Any dealer in petroleum who refuses or neglects to show to any officer authorized under section ten any place, or any of the vessels, in which petroleum in his possession is stored or contained, or to give him such assistance as he may require for examining the same, or to give him samples of such petroleum on payment of the value of such samples, shall be punished with fine which may extend to two hundred rupees.

Penalty for refusing to comply with section 10.

16. In any case in which an offence under section thirteen or section fourteen has been committed, the convicting Magistrate may direct that—

Confiscation of petroleum.

(*a*) the petroleum in respect of which the offence has been committed, or

(*b*) where the offender is importing or transporting or is in possession of any petroleum exceeding the quantity (if any) which he is permitted to import, transport or possess, as the case may be, the whole of the petroleum which he is importing, or transporting, or is in possession of,

shall, together with the tins or other vessels in which it is contained, be confiscated.

17. The criminal jurisdiction under this Act shall, in the towns of Calcutta, Madras and Bombay, be exercised by a Presidency Magistrate, and elsewhere by a Magistrate of the first class or (where specially empowered by the Local Government to try cases under this Act) a Magistrate of the second class.

Jurisdiction.

Miscellaneous.

18. All rules made by the Local Government under this Act shall be published in the official Gazette, and shall, on the expiry of one month from the date of such publication, have the force of law:

Rules when to have force of law.

Provided that no such rule shall be so published without the previous sanction of the Governor General in Council.

19. The Governor General in Council may, from time to time, by notification in the *Gazette of India*, apply the whole or any portion of this Act to any inflammable fluid other than petroleum, and may by such notification fix, in substitution for the quantities of petroleum fixed by sections four, five and eight, the quantities of such fluid to which these sections shall apply.

Power to apply this Act to other fluids.

The Governor General in Council may by a like notification cancel any notification issued under this section.

THE SCHEDULE.

Specification explanatory of the Test Apparatus.

The following is a description of the details of the apparatus:—

The oil-cup consists of a cylindrical vessel 2″ diameter, $2\frac{2}{10}$″ height (internal), with outward projecting rim $\frac{5}{10}$″ wide, $\frac{3}{8}$″ from the top and $1\frac{3}{8}$″ from the bottom of the cup. It is made of gun-metal or brass (17 B. W. G.), tinned inside. A bracket, consisting of a short stout piece of wire, bent upwards and terminating in a point, is fixed to the inside of the cup to serve as a gauge. The distance of the point from the bottom of the cup is $1\frac{1}{2}$″. The cup is provided with a close-fitting overlapping cover made of brass (22 B. W. G.) which carries the thermometer and test-lamp. The latter is suspended from two supports from the side by means of trunnions, upon which it may be made to oscillate: it is provided with a spout the mouth of which is $\frac{1}{16}$″ in diameter. The socket which is to hold the thermometer is fixed at such an angle, and its length is so adjusted that the bulb of the thermometer, when inserted to its full depth, shall be $1\frac{1}{2}$″ below the centre of the lid.

The cover is provided with three square holes, one in the centre $\frac{5}{10}$″ by $\frac{4}{10}$″, and two smaller ones, $\frac{3}{10}$″ by $\frac{2}{10}$″, close to the sides and opposite each other. These three holes may be closed and uncovered by means of a slide moving in grooves, and having perforations corresponding to those on the lid.

In moving the slide so as to uncover the holes, the oscillating lamp is caught by a pin fixed in the slide, and tilted in such a way as to bring the end of the spout just below the surface of the lid. Upon the slide being pushed back so as to cover the holes, the lamp returns to its original position.

Upon the cover, in front of, and in line with, the mouth of the lamp, is fixed a white bead the dimensions of which represent the size of the test flame to be used.

The bath or heated vessel consists of two flat-bottomed copper cylinders (24 B. W. G.), an inner one of 3″ diameter and $2\frac{1}{2}$″ height, and an outer one of $5\frac{1}{2}$″ diameter and $5\frac{3}{4}$″ height; they are soldered to a circular copper plate (20 B. W. G.) perforated in the centre, which forms the top of the

bath, in such a manner as to enclose the space between the two cylinders, but leaving access to the inner cylinder. The top of the bath projects both outwards and inwards about $\frac{3}{8}''$, that is, its diameter is about $\frac{6}{8}''$ greater than that of the body of the bath, while the diameter of the circular opening in the centre is about the same amount less than that of the inner copper cylinder. To the inner projection of the top is fastened, by six small screws, a flat ring of ebonite, the screws being sunk below the surface of the ebonite to avoid metallic contact between the bath and the oil-cup. The exact distance between the sides and bottom of the bath of the oil-lamp is $1\frac{1}{2}''$. A split socket similar to that on the cover of the oil-cup, but set at a right angle, allows a thermometer to be inserted into the space between the two cylinders. The bath is further provided with a funnel, an overflow pipe, and two loop handles.

The bath rests upon a cast-iron tripod stand, to the ring of which is attached a copper cylinder or jacket (24 B. W. G.), flanged at the top, and of such dimensions that the bath, while firmly resting on the iron ring, just touches with its projecting top the inward-turned flange. The diameter of this outer jacket is $6\frac{1}{2}''$. One of the three legs of the stand serves as support for the spirit-lamp, attached to it by means of a small swing bracket. The distance of the wick-holder from the bottom of the bath is $1''$.

Two thermometers are provided with the apparatus, the one for ascertaining the temperature of the bath, the other for determining the flashing-point. The thermometer for ascertaining the temperature of the water has a long bulb and a space at the top. Its range is from about 90° to 190° Fahrenheit. The scale (in degrees of Fahrenheit) is marked on an ivory back fastened to the tube in the usual way; it is fitted with a metal collar fitting the socket, and the part of the tube below the scale should have a length of about $3\frac{1}{2}''$ measured from the lower end of the scale to the end of the bulb. The thermometer for ascertaining the temperature of the oil is fitted with collar and ivory scale in a similar manner to the one described. It has a round bulb, a space at the top, and ranges from about 55° F. to 150° F.; it measures from end of ivory back to bulb $2\frac{1}{4}''$.

NOTE.—A model apparatus is deposited at the office of the Chemical Examiner to Government at Calcutta.

Directions for applying the Test.

1. The test-apparatus is to be placed for use in a position where it is not exposed to currents of air or draughts.

2. The heating vessel or water-bath is filled by pouring water into the funnel until it begins to flow out at the spout of the vessel. The temperature of the water at the commencement of the test is to be 130° Fahrenheit, and this is attained in the first instance either by mixing hot and cold water in the bath, or in a vessel from which the bath is filled, until the thermometer which is provided for testing the temperature of the water gives the proper indication; or by heating the water with the spirit-lamp (which is attached to the stand of the apparatus) until the required temperature is indicated.

If the water has been heated too highly, it is easily reduced to 130° by pouring in cold water little by little (to replace a portion of the warm water) until the thermometer gives the proper reading.

When a test has been completed, this water-bath is again raised to 130° by placing the lamp underneath, and the result is readily obtained while the petroleum cup is being emptied, cooled, and refilled with a fresh sample to be tested. The lamp is then turned on its swivel from under the apparatus, and the next test is proceeded with.

3. The test-lamp is prepared for use by fitting it with a piece of flat plaited candlewick, and filling it with colza or rape-oil up to the lower edge of the opening of the spout or wick-tube. The lamp is trimmed so that when lighted it gives a flame of about 0·15 of an inch diameter, and this size of flame, which is represented by the projecting white bead on the cover of the oil-cup, is readily maintained by simple manipulation from time to time with a small wire trimmer.

When gas is available it may be conveniently used in place of the little oil-lamp, and for this purpose a test-flame arrangement for use with gas may be substituted for the lamp.

4. The bath having been raised to the proper temperature, the oil to be tested is introduced into the petroleum cup, being poured in slowly until the level of the liquid just reaches the point of the gauge which is fixed in the cup. In warm weather the temperature of the room in which the samples to be tested have been kept should be observed in the first instance, and, if it exceeds 65°, the samples to be tested should be cooled down (to about 60°) by immersing the bottle containing them in cold water, or by any other convenient method. The lid of the cup, with the slide closed, is then put on, and the cup is put into the bath or heating vessel. The thermometer in the lid of the cup has been adjusted so as to have its bulb just immersed in the liquid, and its position is not under any circumstances to be altered. When the cup has been placed in the proper position, the scale of the thermometer faces the operator.

5. The test-lamp is then placed in position upon the lid of the cup, the lead line or pendulum,* which has been fixed in a convenient position in front of the operator, is set in motion, and the rise of the thermometer in the petroleum cup is watched. When the temperature has reached about 66°, the operation of testing is to be commenced, the test-flame being applied once for every rise of one degree in the following manner:—

The slide is slowly drawn open while the pendulum performs three oscillations, and is closed during the fourth oscillation.

NOTE.—If it is desired to employ the test-apparatus to determine the flashing-points of oils of very low volatility, the mode of proceeding is to be modified as follows:—

The air-chamber which surrounds the cup is filled with cold water to a depth of $1\frac{1}{2}$ inches, and the heating vessel or water-bath is filled as usual, but also with cold water. The lamp is then placed under the apparatus and kept there during the entire operation. If a very heavy oil is being dealt with, the operation may be commenced with water previously heated to 120°, instead of with cold water.

* This pendulum is two (2) feet in length from the point of suspension to the centre of gravity of the weight.

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

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, FEBRUARY 19, 1881.

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 5th February, 1881, and is hereby promulgated for general information:—

ACT No. VIII OF 1881.

THE PETROLEUM ACT, 1881.

CONTENTS.

PREAMBLE.

Preliminary.

SECTIONS.

1. Short title.
   Commencement.
   Local extent.
2. Repeal of enactments.
3. Interpretation-clause.

Dangerous Petroleum.

4. Dangerous petroleum in quantities exceeding 40 gallons.
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14. Penalty for keeping, transporting, selling or exposing for sale petroleum in contravention of section 6.
15. Penalty for refusing to comply with section 10.
16. Confiscation of petroleum.
17. Jurisdiction.

Miscellaneous.

18. Rules when to have force of law.
19. Power to apply this Act to other fluids.

THE SCHEDULE.

An Act to regulate the importation, possession and transport of Petroleum and other fluids of a like nature.

WHEREAS it is expedient to regulate the importation, possession and transport of petroleum and other fluids of a like nature; It is hereby enacted as follows:— Preamble.

Preliminary.

1. This Act may be called "The Petroleum Act, 1881"; and it shall come into force on the first day of July, 1881. Short title. Commencement.

The provisions of this Act relating to dangerous petroleum, and the importation of petroleum, extend to the whole of British India. The rest of this Act extends only to such local areas as the Local Government may, from time to time, by notification in the official Gazette, direct. Local extent.

2. The Indian Ports Act, 1875, section thirty-seven, and Bengal Act No. III of 1865 (*to make better provision for the prevention of injury from fire in Ports, and to provide for the safe keeping of Inflammable Oils in Ports and places within the Provinces under the control of the Lieutenant-Governor of Bengal*) are hereby repealed. Repeal of enactments.

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

"petroleum" includes also the liquids commonly known by the names of rock oil, Rangoon oil, Burma oil, kerosine, paraffine oil, mineral oil, petroline, gasoline, benzol, benzoline, benzine and any inflammable liquid that is made from petroleum, coal, schist, shale, peat or any other bituminous substance, or from any products of petroleum,

"petroleum:"

but it does not include any oil ordinarily used for lubricating purposes, and having its flashing point at or above two hundred and fifty degrees of Fahrenheit's thermometer.

Explanation.—The flashing point of petroleum means the lowest temperature at which the petroleum yields a vapour which will furnish a momentary flash or flame when tested with the apparatus and in the manner described in the Schedule hereto annexed:

"dangerous petroleum" means petroleum having its flashing point below seventy-three degrees of Fahrenheit's thermometer:

"dangerous petroleum:"

"import" means to bring into British India by sea or land:

"import:"

and "importation" means the bringing into British India as aforesaid:

"transport" means to remove from one place to another within British India.

"transport:"

Dangerous Petroleum.

4. No quantity of dangerous petroleum exceeding forty gallons shall be imported or transported, or kept by any one person or on the same premises, except under, and in accordance with the conditions of, a license from the Local Government granted as next hereinafter provided.

Dangerous petroleum in quantities exceeding 40 gallons.

Application for license to import, transport or possess such petroleum.

Every application for such a license shall be in writing, and shall declare—

(*a*) the quantity of such petroleum which it is desired to import, transport or possess, as the case may be;

(*b*) the purpose for which the applicant believes that such petroleum will be used; and

(*c*) that petroleum other than dangerous petroleum cannot be used for such purpose.

If the Local Government sees reason to believe that such petroleum will be used for such purpose, and that no petroleum other than dangerous petroleum can be used for such purpose, it may grant such license for the importation, transport or possession (as the case may be) of such petroleum, absolutely or subject to such conditions as it thinks fit.

Power to grant license.

5. No quantity of dangerous petroleum equal to or less than forty gallons shall be kept or transported without a license:

Dangerous petroleum in quantities not exceeding 40 gallons.

Provided that nothing in this section shall apply in any case when the quantity of such petroleum kept by any one person or on the same premises, or transported, does not exceed three gallons, and such petroleum is placed in separate glass, earthenware or metal vessels, each of which contains not more than a pint and is securely stopped.

Vessels containing dangerous petroleum to be marked.

6. All dangerous petroleum—

(*a*) which is kept at any place after seven days from the date on which it is imported, or

(*b*) which is transported, or

(*c*) which is sold or exposed for sale,

shall be contained in vessels which shall bear an indelible mark or a label in conspicuous characters, stating the nature of the contents thereof.

Petroleum generally.

7. The Local Government may, from time to time, make rules consistent with this Act to regulate the importation of petroleum, and in particular—

Power to make rules as to the importation of petroleum.

(*a*) for ascertaining the quantity and description of any petroleum on board a ship;

(*b*) to provide for the delivery, by the master of a ship or the consignees of the cargo, of samples of petroleum before such petroleum is landed from such ship, and for the testing thereof;

(*c*) to determine the ports at which only petroleum may be imported; and

(*d*) to regulate the time and mode of, and the precautions to be taken on, landing or transhipping any petroleum.

In this section—

"ship" includes anything made for the conveyance by water of human beings or property:

"ship:"

"master" includes every person (except a Pilot or Harbour Master) having for the time being the charge or control of a ship.

"master."

8. No quantity of petroleum exceeding five hundred gallons shall be kept by any one person or on the same premises or shall be transported except under, and in accordance with the conditions of, a license granted under this Act.

Possession and transport of petroleum.

9. The Local Government may, from time to time, make rules consistent with this Act as to the granting of licenses to possess or transport petroleum in cases where such licenses are by law required.

Power to make rules as to such possession and transport.

Such rules may provide for the following among other matters, that is to say—

in the case of licenses to possess petroleum—

(*a*) the nature and situation of the premises for which they may be granted, and

(*b*) the inspection of such premises and the testing of petroleum found thereon;

in the case of licenses to transport petroleum—

(*c*) the manner in which the petroleum shall be packed, the mode of transit, and the route by which it is to be taken, and

(*d*) the stoppage and inspection of it during transit;

in the case of both such licenses—

(*e*) the authority by which the license may be granted;

(*f*) the fee to be charged for it;

(*g*) the quantity of petroleum it is to cover;

(*h*) the conditions which may be inserted in it;

(*j*) the time during which it is to continue in force; and

(*k*) the renewal of the license.

10. Any officer specially authorized by name or by virtue of his office in this behalf by the Local Government may require any dealer in petroleum to show him any place, and any of the vessels, in which any petroleum in his possession is stored or contained, to give him such assistance as he may require for examining the same, and to deliver to him samples of such petroleum on payment of the value of such samples.

Power to inspect and require dealer to sell samples.

11. When any such officer has, in exercise of the powers conferred by section ten, or by purchase, obtained a sample of petroleum in the possession of a dealer, he may give a notice in writing to such dealer informing him that he is about to test such sample or cause the same to be tested with the apparatus and in the manner described in the schedule hereto annexed, at a time and place to be fixed in such notice, and that such person or his agent may be present at such testing.

Notice to be given when officer proposes to test samples.

12. On any such testing, if it appears to the officer or other person so testing that the petroleum from which such sample has been taken is or is not dangerous petroleum, such officer or other person may certify such fact, and the certificate so given shall be receivable as evidence in any proceedings which may be taken under this Act against the dealer in whose possession such petroleum was found, and shall, until the contrary is proved, be evidence of the fact stated therein; and a certified copy of such certificate shall be given gratis to the dealer at his request.

Certificate as to result of such testing.

Penalties.

13. Any person who, in contravention of this Act or of any rules made hereunder, imports, possesses or transports any petroleum, and any person who otherwise contravenes any such rules or any condition contained in a license granted hereunder, shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Penalty for illegal importation, &c., of petroleum.

14. Any person keeping, transporting, selling or exposing for sale petroleum in vessels not marked or labelled as prescribed by section six shall be punished with fine which may extend to fifty rupees.

Penalty for keeping, transporting, selling or exposing for sale petroleum in contravention of section 6.

15. Any dealer in petroleum who refuses or neglects to show to any officer authorized under section ten any place, or any of the vessels, in which petroleum in his possession is stored or contained, or to give him such assistance as he may require for examining the same, or to give him samples of such petroleum on payment of the value of such samples, shall be punished with fine which may extend to two hundred rupees.

Penalty for refusing to comply with section 10.

16. In any case in which an offence under section thirteen or section fourteen has been committed, the convicting Magistrate may direct that—

Confiscation of petroleum.

(*a*) the petroleum in respect of which the offence has been committed, or

(*b*) where the offender is importing or transporting or is in possession of any petroleum exceeding the quantity (if any) which he is permitted to import, transport or possess, as the case may be, the whole of the petroleum which he is importing, or transporting, or is in possession of,

shall, together with the tins or other vessels in which it is contained, be confiscated.

17. The criminal jurisdiction under this Act shall, in the towns of Calcutta, Madras and Bombay, be exercised by a Presidency Magistrate, and elsewhere by a Magistrate of the first class or (where specially empowered by the Local Government to try cases under this Act) a Magistrate of the second class.

Jurisdiction.

Miscellaneous.

18. All rules made by the Local Government under this Act shall be published in the official Gazette, and shall, on the expiry of one month from the date of such publication, have the force of law:

Rules when to have force of law.

Provided that no such rule shall be so published without the previous sanction of the Governor General in Council.

19. The Governor General in Council may, from time to time, by notification in the *Gazette of India*, apply the whole or any portion of this Act to any inflammable fluid other than petroleum, and may by such notification fix, in substitution for the quantities of petroleum fixed by sections four, five and eight, the quantities of such fluid to which these sections shall apply.

Power to apply this Act to other fluids.

The Governor General in Council may by a like notification cancel any notification issued under this section.

THE SCHEDULE.

Specification explanatory of the Test Apparatus.

The following is a description of the details of the apparatus:—

The oil-cup consists of a cylindrical vessel 2″ diameter, $2\frac{2}{10}$″ height (internal), with outward projecting rim $\frac{5}{10}$″ wide, $\frac{3}{8}$″ from the top and $1\frac{1}{8}$″ from the bottom of the cup. It is made of gun-metal or brass (17 B. W. G.), tinned inside. A bracket, consisting of a short stout piece of wire, bent upwards and terminating in a point, is fixed to the inside of the cup to serve as a gauge. The distance of the point from the bottom of the cup is $1\frac{1}{4}$″. The cup is provided with a close-fitting overlapping cover made of brass (22 B. W. G.) which carries the thermometer and test-lamp. The latter is suspended from two supports from the side by means of trunnions, upon which it may be made to oscillate: it is provided with a spout the mouth of which is $\frac{1}{16}$″ in diameter. The socket which is to hold the thermometer is fixed at such an angle, and its length is so adjusted that the bulb of the thermometer, when inserted to its full depth, shall be $1\frac{1}{2}$″ below the centre of the lid.

The cover is provided with three square holes, one in the centre $\frac{6}{10}$″ by $\frac{4}{10}$″, and two smaller ones, $\frac{3}{10}$″ by $\frac{3}{10}$″, close to the sides and opposite each other. These three holes may be closed and uncovered by means of a slide moving in grooves, and having perforations corresponding to those on the lid.

In moving the slide so as to uncover the holes, the oscillating lamp is caught by a pin fixed in the slide, and tilted in such a way as to bring the end of the spout just below the surface of the lid. Upon the slide being pushed back so as to cover the holes, the lamp returns to its original position.

Upon the cover, in front of, and in line with, the mouth of the lamp, is fixed a white bead the dimensions of which represent the size of the test flame to be used.

The bath or heated vessel consists of two flat-bottomed copper cylinders (24 B. W. G.), an inner one of 3″ diameter and $2\frac{1}{2}$″ height, and an outer one of $5\frac{1}{4}$″ diameter and $5\frac{3}{4}$″ height; they are soldered to a circular copper plate (20 B. W. G.) perforated in the centre, which forms the top of the

bath, in such a manner as to enclose the space between the two cylinders, but leaving access to the inner cylinder. The top of the bath projects both outwards and inwards about $\frac{3}{8}''$, that is, its diameter is about $\frac{3}{8}''$ greater than that of the body of the bath, while the diameter of the circular opening in the centre is about the same amount less than that of the inner copper cylinder. To the inner projection of the top is fastened, by six small screws, a flat ring of ebonite, the screws being sunk below the surface of the ebonite to avoid metallic contact between the bath and the oil-cup. The exact distance between the sides and bottom of the bath of the oil-lamp is $1\frac{1}{2}''$. A split socket similar to that on the cover of the oil-cup, but set at a right angle, allows a thermometer to be inserted into the space between the two cylinders. The bath is further provided with a funnel, an overflow pipe, and two loop handles.

The bath rests upon a cast-iron tripod stand, to the ring of which is attached a copper cylinder or jacket (24 B. W. G.), flanged at the top, and of such dimensions that the bath, while firmly resting on the iron ring, just touches with its projecting top the inward-turned flange. The diameter of this outer jacket is $6\frac{1}{2}''$. One of the three legs of the stand serves as support for the spirit-lamp, attached to it by means of a small swing bracket. The distance of the wick-holder from the bottom of the bath is $1''$.

Two thermometers are provided with the apparatus, the one for ascertaining the temperature of the bath, the other for determining the flashing-point. The thermometer for ascertaining the temperature of the water has a long bulb and a space at the top. Its range is from about 90° to 190° Fahrenheit. The scale (in degrees of Fahrenheit) is marked on an ivory back fastened to the tube in the usual way; it is fitted with a metal collar fitting the socket, and the part of the tube below the scale should have a length of about $3\frac{1}{2}''$ measured from the lower end of the scale to the end of the bulb. The thermometer for ascertaining the temperature of the oil is fitted with collar and ivory scale in a similar manner to the one described. It has a round bulb, a space at the top, and ranges from about 55° F. to 150° F.; it measures from end of ivory back to bulb $2\frac{1}{2}''$.

NOTE.—A model apparatus is deposited at the office of the Chemical Examiner to Government at Calcutta.

Directions for applying the Test.

1. The test-apparatus is to be placed for use in a position where it is not exposed to currents of air or draughts.

2. The heating vessel or water-bath is filled by pouring water into the funnel until it begins to flow out at the spout of the vessel. The temperature of the water at the commencement of the test is to be 130° Fahrenheit, and this is attained in the first instance either by mixing hot and cold water in the bath, or in a vessel from which the bath is filled, until the thermometer which is provided for testing the temperature of the water gives the proper indication; or by heating the water with the spirit-lamp (which is attached to the stand of the apparatus) until the required temperature is indicated.

If the water has been heated too highly, it is easily reduced to 130° by pouring in cold water little by little (to replace a portion of the warm water) until the thermometer gives the proper reading.

When a test has been completed, this water-bath is again raised to 130° by placing the lamp underneath, and the result is readily obtained while the petroleum cup is being emptied, cooled, and refilled with a fresh sample to be tested. The lamp is then turned on its swivel from under the apparatus, and the next test is proceeded with.

3. The test-lamp is prepared for use by fitting it with a piece of flat plaited candlewick, and filling it with colza or rape-oil up to the lower edge of the opening of the spout or wick-tube. The lamp is trimmed so that when lighted it gives a flame of about 0·15 of an inch diameter, and this size of flame, which is represented by the projecting white bead on the cover of the oil-cup, is readily maintained by simple manipulation from time to time with a small wire trimmer.

When gas is available it may be conveniently used in place of the little oil-lamp, and for this purpose a test-flame arrangement for use with gas may be substituted for the lamp.

4. The bath having been raised to the proper temperature, the oil to be tested is introduced into the petroleum cup, being poured in slowly until the level of the liquid just reaches the point of the gauge which is fixed in the cup. In warm weather the temperature of the room in which the samples to be tested have been kept should be observed in the first instance, and, if it exceeds 65°, the samples to be tested should be cooled down (to about 60°) by immersing the bottle containing them in cold water, or by any other convenient method. The lid of the cup, with the slide closed, is then put on, and the cup is put into the bath or heating vessel. The thermometer in the lid of the cup has been adjusted so as to have its bulb just immersed in the liquid, and its position is not under any circumstances to be altered. When the cup has been placed in the proper position, the scale of the thermometer faces the operator.

5. The test-lamp is then placed in position upon the lid of the cup, the lead line or pendulum,* which has been fixed in a convenient position in front of the operator, is set in motion, and the rise of the thermometer in the petroleum cup is watched. When the temperature has reached about 66°, the operation of testing is to be commenced, the test-flame being applied once for every rise of one degree in the following manner:—

The slide is slowly drawn open while the pendulum performs three oscillations, and is closed during the fourth oscillation.

NOTE.—If it is desired to employ the test-apparatus to determine the flashing-points of oils of very low volatility, the mode of proceeding is to be modified as follows:—

The air-chamber which surrounds the cup is filled with cold water to a depth of $1\frac{1}{2}$ inches, and the heating vessel or water-bath is filled as usual, but also with cold water. The lamp is then placed under the apparatus and kept there during the entire operation. If a very heavy oil is being dealt with, the operation may be commenced with water previously heated to 120°, instead of with cold water.

* This pendulum is two (2) feet in length from the point of suspension to the centre of gravity of the weight.

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

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, FEBRUARY 26, 1881.

☞ 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 5th February, 1881, and is hereby promulgated for general information:—

ACT No. VIII OF 1881.

THE PETROLEUM ACT, 1881.

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PREAMBLE.

Preliminary.

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1. Short title.
   Commencement.
   Local extent.
2. Repeal of enactments.
3. Interpretation-clause.

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4. Dangerous petroleum in quantities exceeding 40 gallons.
   Application for license to import, transport or possess such petroleum.
   Power to grant license.
5. Dangerous petroleum in quantities not exceeding 40 gallons.
6. Vessels containing dangerous petroleum to be marked.

Petroleum generally.

7. Power to make rules as to the importation of petroleum.
8. Possession and transport of petroleum.
9. Power to make rules as to such possession and transport.
10. Power to inspect and require dealer to sell samples.
11. Notice to be given when officer proposes to test samples.
12. Certificate as to result of such testing.

Penalties.

13. Penalty for illegal importation, &c., of petroleum.
14. Penalty for keeping, transporting, selling or exposing for sale petroleum in contravention of section 6.
15. Penalty for refusing to comply with section 10.
16. Confiscation of petroleum.
17. Jurisdiction.

Miscellaneous.

18. Rules when to have force of law.
19. Power to apply this Act to other fluids.

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An Act to regulate the importation, possession and transport of Petroleum and other fluids of a like nature.

Preamble.

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Preliminary.

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1. This Act may be called "The Petroleum Act, 1881"; and it shall come into force on the first day of July, 1881.

Local extent.

The provisions of this Act relating to dangerous petroleum, and the importation of petroleum, extend to the whole of British India. The rest of this Act extends only to such local areas as the Local Government may, from time to time, by notification in the official Gazette, direct.

Repeal of enactments.

2. The Indian Ports Act, 1875, section thirty-seven, and Bengal Act No. III of 1865 (*to make better provision for the prevention of injury from fire in Ports, and to provide for the safe keeping of Inflammable Oils in Ports and places within the Provinces under the control of the Lieutenant-Governor of Bengal*) are hereby repealed.

Interpretation-clause.

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

"petroleum" includes also the liquids commonly known by the names of rock oil, Rangoon oil, Burma oil, kerosine, paraffine oil, mineral oil, petroline, gasoline, benzol, benzoline, benzine and any inflammable liquid that is made from petroleum, coal, schist, shale, peat or any other bituminous substance, or from any products of petroleum,

"petroleum:"

but it does not include any oil ordinarily used for lubricating purposes, and having its flashing point at or above two hundred and fifty degrees of Fahrenheit's thermometer.

Explanation.—The flashing point of petroleum means the lowest temperature at which the petroleum yields a vapour which will furnish a momentary flash or flame when tested with the apparatus and in the manner described in the Schedule hereto annexed:

"dangerous petroleum" means petroleum having its flashing point below seventy-three degrees of Fahrenheit's thermometer:

"dangerous petroleum:"

"import" means to bring into British India by sea or land:

"import:"

and "importation" means the bringing into British India as aforesaid:

"transport" means to remove from one place to another within British India.

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Dangerous Petroleum.

4. No quantity of dangerous petroleum exceeding forty gallons shall be imported or transported, or kept by any one person or on the same premises, except under, and in accordance with the conditions of, a license from the Local Government granted as next hereinafter provided.

Dangerous petroleum in quantities exceeding 40 gallons.

Application for license to import, transport or possess such petroleum.

Every application for such a license shall be in writing, and shall declare—

(*a*) the quantity of such petroleum which it is desired to import, transport or possess, as the case may be;

(*b*) the purpose for which the applicant believes that such petroleum will be used; and

(*c*) that petroleum other than dangerous petroleum cannot be used for such purpose.

If the Local Government sees reason to believe that such petroleum will be used for such purpose, and that no petroleum other than dangerous petroleum can be used for such purpose, it may grant such license for the importation, transport or possession (as the case may be) of such petroleum, absolutely or subject to such conditions as it thinks fit.

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Provided that nothing in this section shall apply in any case when the quantity of such petroleum kept by any one person or on the same premises, or transported, does not exceed three gallons, and such petroleum is placed in separate glass, earthenware or metal vessels, each of which contains not more than a pint and is securely stopped.

Vessels containing dangerous petroleum to be marked.

6. All dangerous petroleum—

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(*b*) which is transported, or

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shall be contained in vessels which shall bear an indelible mark or a label in conspicuous characters, stating the nature of the contents thereof.

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(*a*) for ascertaining the quantity and description of any petroleum on board a ship;

(*b*) to provide for the delivery, by the master of a ship or the consignees of the cargo, of samples of petroleum before such petroleum is landed from such ship, and for the testing thereof;

(*c*) to determine the ports at which only petroleum may be imported; and

(*d*) to regulate the time and mode of, and the precautions to be taken on, landing or transhipping any petroleum.

In this section—

"ship" includes anything made for the conveyance by water of human beings or property:

"ship:"

"master" includes every person (except a Pilot or Harbour Master) having for the time being the charge or control of a ship.

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8. No quantity of petroleum exceeding five hundred gallons shall be kept by any one person or on the same premises or shall be transported except under, and in accordance with the conditions of, a license granted under this Act.

Possession and transport of petroleum.

9. The Local Government may, from time to time, make rules consistent with this Act as to the granting of licenses to possess or transport petroleum in cases where such licenses are by law required.

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Such rules may provide for the following among other matters, that is to say—

in the case of licenses to possess petroleum—

(*a*) the nature and situation of the premises for which they may be granted, and

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(*c*) the manner in which the petroleum shall be packed, the mode of transit, and the route by which it is to be taken, and

(*d*) the stoppage and inspection of it during transit;

in the case of both such licenses—

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(*f*) the fee to be charged for it;

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(*j*) the time during which it is to continue in force; and

(*k*) the renewal of the license.

10. Any officer specially authorized by name or by virtue of his office in this behalf by the Local Government may require any dealer in petroleum to show him any place, and any of the vessels, in which any petroleum in his possession is stored or contained, to give him such assistance as he may require for examining the same, and to deliver to him samples of such petroleum on payment of the value of such samples.

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Notice to be given when officer proposes to test samples.

dealer, he may give a notice in writing to such dealer informing him that he is about to test such sample or cause the same to be tested with the apparatus and in the manner described in the schedule hereto annexed, at a time and place to be fixed in such notice, and that such person or his agent may be present at such testing.

12. On any such testing, if it appears to the officer or other person so testing that the petroleum from which such sample has been taken is or is not dangerous petroleum, such officer or other person may certify such fact, and the certificate so given shall be receivable as evidence in any proceedings which may be taken under this Act against the dealer in whose possession such petroleum was found, and shall, until the contrary is proved, be evidence of the fact stated therein; and a certified copy of such certificate shall be given gratis to the dealer at his request.

Certificate as to result of such testing.

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13. Any person who, in contravention of this Act or of any rules made hereunder, imports, possesses or transports any petroleum, and any person who otherwise contravenes any such rules or any condition contained in a license granted hereunder, shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

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14. Any person keeping, transporting, selling or exposing for sale petroleum in vessels not marked or labelled as prescribed by section six shall be punished with fine which may extend to fifty rupees.

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15. Any dealer in petroleum who refuses or neglects to show to any officer authorized under section ten any place, or any of the vessels, in which petroleum in his possession is stored or contained, or to give him such assistance as he may require for examining the same, or to give him samples of such petroleum on payment of the value of such samples, shall be punished with fine which may extend to two hundred rupees.

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(*a*) the petroleum in respect of which the offence has been committed, or

(*b*) where the offender is importing or transporting or is in possession of any petroleum exceeding the quantity (if any) which he is permitted to import, transport or possess, as the case may be, the whole of the petroleum which he is importing, or transporting, or is in possession of,

shall, together with the tins or other vessels in which it is contained, be confiscated.

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18. All rules made by the Local Government under this Act shall be published in the official Gazette, and shall, on the expiry of one month from the date of such publication, have the force of law:

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Provided that no such rule shall be so published without the previous sanction of the Governor General in Council.

19. The Governor General in Council may, from time to time, by notification in the *Gazette of India*, apply the whole or any portion of this Act to any inflammable fluid other than petroleum, and may by such notification fix, in substitution for the quantities of petroleum fixed by sections four, five and eight, the quantities of such fluid to which these sections shall apply.

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Specification explanatory of the Test Apparatus.

The following is a description of the details of the apparatus:—

The oil-cup consists of a cylindrical vessel 2″ diameter, $2\frac{2}{10}$″ height (internal), with outward projecting rim $\frac{5}{10}$″ wide, $\frac{3}{8}$″ from the top and $1\frac{1}{8}$″ from the bottom of the cup. It is made of gun-metal or brass (17 B. W. G.), tinned inside. A bracket, consisting of a short stout piece of wire, bent upwards and terminating in a point, is fixed to the inside of the cup to serve as a gauge. The distance of the point from the bottom of the cup is $1\frac{1}{2}$″. The cup is provided with a close-fitting overlapping cover made of brass (22 B. W. G.) which carries the thermometer and test-lamp. The latter is suspended from two supports from the side by means of trunnions, upon which it may be made to oscillate: it is provided with a spout the mouth of which is $\frac{1}{16}$″ in diameter. The socket which is to hold the thermometer is fixed at such an angle, and its length is so adjusted that the bulb of the thermometer, when inserted to its full depth, shall be $1\frac{1}{2}$″ below the centre of the lid.

The cover is provided with three square holes, one in the centre $\frac{5}{10}$″ by $\frac{4}{10}$″, and two smaller ones, $\frac{3}{10}$″ by $\frac{2}{10}$″, close to the sides and opposite each other. These three holes may be closed and uncovered by means of a slide moving in grooves, and having perforations corresponding to those on the lid.

In moving the slide so as to uncover the holes, the oscillating lamp is caught by a pin fixed in the slide, and tilted in such a way as to bring the end of the spout just below the surface of the lid. Upon the slide being pushed back so as to cover the holes, the lamp returns to its original position.

Upon the cover, in front of, and in line with, the mouth of the lamp, is fixed a white bead the dimensions of which represent the size of the test flame to be used.

The bath or heated vessel consists of two flat-bottomed copper cylinders (24 B. W. G.), an inner one of 3″ diameter and $2\frac{1}{2}$″ height, and an outer one of $5\frac{1}{2}$″ diameter and $5\frac{3}{4}$″ height; they are soldered to a circular copper plate (20 B. W. G.) perforated in the centre, which forms the top of the

bath, in such a manner as to enclose the space between the two cylinders, but leaving access to the inner cylinder. The top of the bath projects both outwards and inwards about $\frac{3}{8}''$, that is, its diameter is about $\frac{6}{8}''$ greater than that of the body of the bath, while the diameter of the circular opening in the centre is about the same amount less than that of the inner copper cylinder. To the inner projection of the top is fastened, by six small screws, a flat ring of ebonite, the screws being sunk below the surface of the ebonite to avoid metallic contact between the bath and the oil-cup. The exact distance between the sides and bottom of the bath of the oil-lamp is $1\frac{1}{2}''$. A split socket similar to that on the cover of the oil-cup, but set at a right angle, allows a thermometer to be inserted into the space between the two cylinders. The bath is further provided with a funnel, an overflow pipe, and two loop handles.

The bath rests upon a cast-iron tripod stand, to the ring of which is attached a copper cylinder or jacket (24 B. W. G.), flanged at the top, and of such dimensions that the bath, while firmly resting on the iron ring, just touches with its projecting top the inward-turned flange. The diameter of this outer jacket is $6\frac{1}{2}''$. One of the three legs of the stand serves as support for the spirit-lamp, attached to it by means of a small swing bracket. The distance of the wick-holder from the bottom of the bath is $1''$.

Two thermometers are provided with the apparatus, the one for ascertaining the temperature of the bath, the other for determining the flashing-point. The thermometer for ascertaining the temperature of the water has a long bulb and a space at the top. Its range is from about 90° to 190° Fahrenheit. The scale (in degrees of Fahrenheit) is marked on an ivory back fastened to the tube in the usual way; it is fitted with a metal collar fitting the socket, and the part of the tube below the scale should have a length of about $3\frac{1}{2}''$ measured from the lower end of the scale to the end of the bulb. The thermometer for ascertaining the temperature of the oil is fitted with collar and ivory scale in a similar manner to the one described. It has a round bulb, a space at the top, and ranges from about 55° F. to 150° F.; it measures from end of ivory back to bulb $2\frac{1}{4}''$.

NOTE.—A model apparatus is deposited at the office of the Chemical Examiner to Government at Calcutta.

Directions for applying the Test.

1. The test-apparatus is to be placed for use in a position where it is not exposed to currents of air or draughts.

2. The heating vessel or water-bath is filled by pouring water into the funnel until it begins to flow out at the spout of the vessel. The temperature of the water at the commencement of the test is to be 130° Fahrenheit, and this is attained in the first instance either by mixing hot and cold water in the bath, or in a vessel from which the bath is filled, until the thermometer which is provided for testing the temperature of the water gives the proper indication; or by heating the water with the spirit-lamp (which is attached to the stand of the apparatus) until the required temperature is indicated.

If the water has been heated too highly, it is easily reduced to 130° by pouring in cold water little by little (to replace a portion of the warm water) until the thermometer gives the proper reading.

When a test has been completed, this water-bath is again raised to 130° by placing the lamp underneath, and the result is readily obtained while the petroleum cup is being emptied, cooled, and refilled with a fresh sample to be tested. The lamp is then turned on its swivel from under the apparatus, and the next test is proceeded with.

3. The test-lamp is prepared for use by fitting it with a piece of flat plaited candlewick, and filling it with colza or rape-oil up to the lower edge of the opening of the spout or wick-tube. The lamp is trimmed so that when lighted it gives a flame of about 0·15 of an inch diameter, and this size of flame, which is represented by the projecting white bead on the cover of the oil-cup, is readily maintained by simple manipulation from time to time with a small wire trimmer.

When gas is available it may be conveniently used in place of the little oil-lamp, and for this purpose a test-flame arrangement for use with gas may be substituted for the lamp.

4. The bath having been raised to the proper temperature, the oil to be tested is introduced into the petroleum cup, being poured in slowly until the level of the liquid just reaches the point of the gauge which is fixed in the cup. In warm weather the temperature of the room in which the samples to be tested have been kept should be observed in the first instance, and, if it exceeds 65°, the samples to be tested should be cooled down (to about 60°) by immersing the bottle containing them in cold water, or by any other convenient method. The lid of the cup, with the slide closed, is then put on, and the cup is put into the bath or heating vessel. The thermometer in the lid of the cup has been adjusted so as to have its bulb just immersed in the liquid, and its position is not under any circumstances to be altered. When the cup has been placed in the proper position, the scale of the thermometer faces the operator.

5. The test-lamp is then placed in position upon the lid of the cup, the lead line or pendulum,* which has been fixed in a convenient position in front of the operator, is set in motion, and the rise of the thermometer in the petroleum cup is watched. When the temperature has reached about 66°, the operation of testing is to be commenced, the test-flame being applied once for every rise of one degree in the following manner:—

The slide is slowly drawn open while the pendulum performs three oscillations, and is closed during the fourth oscillation.

NOTE.—If it is desired to employ the test-apparatus to determine the flashing-points of oils of very low volatility, the mode of proceeding is to be modified as follows:—

The air-chamber which surrounds the cup is filled with cold water to a depth of $1\frac{1}{2}$ inches, and the heating vessel or water-bath is filled as usual, but also with cold water. The lamp is then placed under the apparatus and kept there during the entire operation. If a very heavy oil is being dealt with, the operation may be commenced with water previously heated to 120°, instead of with cold water.

* This pendulum is two (2) feet in length from the point of suspension to the centre of gravity of the weight.

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

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 25th February, 1881, and is hereby promulgated for general information:—

ACT NO. IX OF 1881.

An Act to amend the Administrator General's Act, 1874.

Preamble.

WHEREAS Hindús, Muhammadans and Buddhists are exempted from the operation of certain provisions of the Administrator General's Act, 1874, but are subject to the operation of certain other provisions of the said Act, and it is expedient that Pársís should be exempted from, and be subject to, the operation of the said Act to the same extent as Hindús, Muhammadans and Buddhists; and whereas it is expedient to amend the said Act in other particulars hereinafter appearing; It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Administrator General's Act, 1881":

Commencement.

and shall come into force at once.

Amendment of sections 16, 17, 18 and 64 of Administrator General's Act, 1874.

2. In sections 16, 17, 18 and 64, respectively, of the said Act, between the word "Muhammadan" and the words "or Buddhist," wherever they occur, the word "Pársí" shall be inserted.

New section inserted after section 23 of same.

3. After section twenty-three of the same Act, the following section shall be inserted:—

Effect of probate or letters granted to Administrator General.

"23A. Probate or letters of administration granted by the High Court at Calcutta, Madras or Bombay to the Administrator General of the Presidency of Bengal, Madras or Bombay, as the case may be, shall have effect over all the property and estate, moveable or immoveable, of the deceased throughout such Presidency, and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors paying their debts and all persons delivering up such property to such Administrator General: Provided that the High Court may direct, by its grant, that such probate or letters of administration shall have like effect throughout either or both of the other Presidencies.

"Whenever a grant of probate or letters of administration is made by a High Court to the Administrator General, with such effect as last aforesaid, the Registrar of such Court shall send to each of the other two High Courts a certificate that such grant has been made, and such certificate shall be filed by the Court receiving the same."

New section substituted for section 28 of same.

4. For section twenty-eight of the same Act, the following section shall be substituted:—

Distribution of assets.

"28. When the Administrator General has given such notices as would have been given by the High Court in an administration-suit, for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets or any part thereof in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he had not notice at the time of such distribution; and no notice of any claim shall affect him unless proceedings to enforce such claim are commenced within one month after the giving of such notice and prosecuted without unreasonable delay.

"Nothing herein contained shall prejudice the right of any creditor or other claimant to follow the assets or any part thereof in the hands of the persons who may have received the same respectively."

Amendment of sections 36 and 37 of same.

5. In section thirty-six of the same Act, the words "not being a Hindú, Muhammadan or Buddhist, or exempted under the Indian Succession Act, 1865, section three hundred and thirty-two, from the operation of that Act" shall be repealed; and in section thirty-seven of the same Act, after the words "effects of the deceased," the following shall be inserted, namely:—"and such deceased was not a Hindú, Muhammadan, Pársí or Buddhist, or exempted under the Indian Succession Act, 1865, section three hundred and thirty-two, from the operation of that Act."

Amendment of section 38 of same.

6. In section thirty-eight of the same Act, for the words "such certificate" the words "certificate under section thirty-six or thirty-

seven" shall be substituted; and the words "which oath or affirmation the Administrator General is hereby authorized to administer or take" shall be repealed.

New section inserted after section 55 of same.

7. After section fifty-five of the same Act, the following section shall be inserted:—

Commission on assets collected beyond Presidency.

"55A. Notwithstanding anything hereinbefore contained, an Administrator General of a Presidency obtaining probate or letters of administration operating in another Presidency shall be entitled to the same rate of commission in respect of the collection and distribution of assets collected in such Presidency as the Administrator General of such Presidency would have been entitled to if such assets had been collected and distributed by him, and to no higher rate."

New section inserted before section 61 of same.

8. Before section sixty-one of the same Act, the following section shall be inserted:—

Power to examine on oath.

"60A. The Administrator General may, whenever he desires, for the purposes of this Act, to satisfy himself regarding any question of fact, examine upon oath or affirmation (which he is hereby authorized to administer or take) any person who is willing to be so examined by him regarding such question."

Saving of letters and certificates already granted.

9. Nothing herein contained shall affect any probate, letters of administration or certificate granted or vested under the said Act before the passing of this Act.

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

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 25th February, 1881, and is hereby promulgated for general information:—

ACT No. X OF 1881.

An Act to amend the Coroners' Act, 1871, and for other purposes.

Preamble.

WHEREAS under the Coroners' Act, 1871, the local limits of the jurisdiction of the Coroner of Madras are made co-extensive with the local limits of the ordinary original civil jurisdiction of the High Court;

and whereas it is expedient to empower the Local Government to alter the local limits of the said Coroner's jurisdiction;

and whereas it is also expedient to amend the said Act in other particulars hereinafter appearing;

and whereas it is also expedient to correct an error in section nine of Madras Act No. VIII of 1867 (*an Act to incorporate the Police of the Town of Madras with the general Police of the Madras Presidency, and for other purposes*) as amended by the Code of Criminal Procedure; It is hereby enacted as follows:—

Short title.

Commencement.

1. This Act may be called "The Coroners' Act, 1881," and shall come into force on the passing thereof.

Partial repeal of Act IV of 1871, section 1.

2. The second clause of the first section of the Coroners' Act, 1871, is hereby repealed.

Power to alter local limits of jurisdiction of Coroner of Madras.

3. The Governor of Fort St. George in Council may, from time to time, with the previous sanction of the Governor General in Council, by notification in the *Fort St. George Gazette*, alter the local limits of the jurisdiction of the Coroner of Madras:

Provided that such limits shall not extend beyond the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Madras.

Sections 133 to 135 of Act X of 1872 to extend to area excluded from Coroner's jurisdiction.

4. When, in exercise of the power conferred by section three, any area within the local limits of the said ordinary original civil jurisdiction is excluded from the local limits of the Coroner's jurisdiction, sections one hundred and thirty-three to one hundred and thirty-five (both inclusive) of the Code of Criminal Procedure shall extend to such area while so excluded, and all functions assigned to a Magistrate by those sections shall be discharged by the Commissioner of Police.

Act IV of 1871, section 8, amended.

5. In section eight of the Coroners' Act, 1871, for the words "is informed," the words "has reason to believe" shall be substituted.

Section 17 of same Act amended.

6. For the first two clauses of section seventeen of the Coroners' Act, 1871, the following shall be substituted, that is to say:—

"It shall be the duty of all persons acquainted with the circumstances attending the death to appear before the inquest as witnesses: the Coroner shall enquire of such circumstances and the cause of death, and, if before or during the enquiry he is informed that any person, whether within or without the local limits of his jurisdiction, can give evidence or produce any document material thereto, may issue a summons requiring him to attend and give evidence or produce such document on the inquest.

"Any person disobeying such summons shall be deemed to have committed an offence under section one hundred and seventy-four, section one hundred and seventy-five or section one hundred and seventy-six of the Indian Penal Code, as the case may be."

Addition to section 20 of same Act.

7. To section twenty of the Coroners' Act, 1871, the following clause shall be added, that is to say:—

"For the purposes of section twenty-six of the Indian Evidence Act, 1872, a Coroner shall be deemed to be a Magistrate."

New section substituted for section 9 of Madras Act VIII of 1867.

8. For section nine of the said Madras Act No. VIII of 1867, the following section shall be substituted:—

Law to govern Town Police.

"9. The Town Police shall be governed by all the provisions of the Criminal Procedure Code contained in sections 89, 91 to 103 (both inclusive), 108, 109, 110, 111, 112, 114, 116, 117

(first part), 118, 119, 120, 123, 124, 125, 127, 128, 129, 131, 136, 139, 140, 141, 142, 144, 147, chapter XII, sections 159, 161, 163 to 170 (both inclusive), 174 to 185 (both inclusive), chapter XXVII (except section 385), sections 415 to 420 (both inclusive) and 480, so far as they are applicable :

"Provided always, that the officer in charge of a Police-station shall not be required to bind over the prosecutor and witnesses as directed in section 123 of the said Code, if their immediate attendance can be procured without recognizances."

Act X of 1872, schedule V, in part repealed.

9. The portion of schedule V of the Code of Criminal Procedure, under the heading "Acts of the Governor of Madras in Council," shall be read as if the letter and figure "s. 9" in the first column, and all the words and figures in the second and third columns, opposite the said letter and figure, were omitted.

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

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 25th February, 1881, and is hereby promulgated for general information :—

ACT No. XI OF 1881.

An Act to give power to prohibit the levy of municipal taxes in certain cases.

Preamble.

WHEREAS it is expedient to empower the Governor General in Council to prohibit, in certain cases, the levy of municipal taxes payable by persons in the military service or by the Secretary of State for India in Council; It is hereby enacted as follows :—

Short title.

1. This Act may be called "The Municipal Taxation Act, 1881."

[illegible]

"Municipal Committee" defined.

2. In this Act "Municipal Committee" includes a Municipal Corporation or a body of Municipal Commissioners constituted by or under the provisions of any enactment for the time being in force.

[illegible] prohibit the levy by a Municipal Committee of any specified tax—

[illegible] payable by any person subject to the Army Act and Regulation Act, 1879, or the Indian [illegible] who is compelled by the exigencies of [illegible] to reside within the limits of a municipality;

(*b*) payable by the Secretary of State for India in Council.

The Governor General in Council may, by a like order, rescind any such prohibition.

Secretary of State in Council to pay taxes referred to in section 3, clause (*a*).

4. So long as any order made under section three, prohibiting the levy of a tax on any person mentioned in clause (*a*) of that section, remains in force, the Secretary of State for India in Council shall be liable to pay to the Municipal Committee mentioned in the order the amount which otherwise would have been payable to such Committee by such person :

Provided that the said Secretary of State in Council shall not be liable to pay any sum in respect of any horse which such person is bound by the regulations of the service to which he belongs, to keep.

Payments to be made in lieu of taxes referred to in section 3, clause [illegible]

5. So long as any order made under section three, prohibiting the levy of any tax payable by the Secretary of State for India in Council, remains in force, the [illegible] shall be liable to pay to the Municipal Committee mentioned in the order such sum as may be agreed upon between [illegible] and the person appointed in this behalf by the Local Government, or, failing such agreement, such sum as the Local Government may, having regard to all the circumstances of the case, from time to time determine to be fair and reasonable.

Decision of questions arising under this Act.

6. If any question arises whether any duty is military duty within the meaning of this Act, the decision of the Governor General in Council thereon shall be conclusive.

If any question arises whether any person is compelled as aforesaid to reside within the limits of a municipality, or is bound as aforesaid to keep any horse, the decision thereon of such authority as the Governor General in Council may, from time to time, appoint in this behalf shall be conclusive.

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

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 25th February, 1881, and is hereby promulgated for general information :—

ACT No. XI OF 1881.

An Act to give power to prohibit the levy of municipal taxes in certain cases.

WHEREAS it is expedient to empower the Governor General in Council to prohibit, in certain cases, the levy of municipal taxes payable by persons in the military service or by the Secretary of State for India in Council; It is hereby enacted as follows :— Preamble.

Short title. 1. This Act may be called "The Municipal Taxation Act, 1881."

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

Commencement. and shall come into force at once.

"Municipal Committee" defined. 2. In this Act "Municipal Committee" includes a Municipal Corporation or a body of Municipal Commissioners constituted by or under the provisions of any enactment for the time being in force.

Power to prohibit levy of tax. 3. Notwithstanding anything contained in any enactment for the time being in force, the Governor General in Council may, by an order in writing, prohibit the levy by a Municipal Committee of any specified tax—

(*a*) payable by any person subject to the Army Discipline and Regulation Act, 1879, or the Indian Articles of War, who is compelled by the exigencies of military duty to reside within the limits of a municipality; or

(*b*) payable by the Secretary of State for India in Council.

The Governor General in Council may, by a like order, rescind any such prohibition.

Secretary of State in Council to pay taxes referred to in section 3, clause (*a*). 4. So long as any order made under section three, prohibiting the levy of a tax on any person mentioned in clause (*a*) of that section, remains in force, the Secretary of State for India in Council shall be liable to pay to the Municipal Committee mentioned in the order the amount which otherwise would have been payable to such Committee by such person :

Provided that the said Secretary of State in Council shall not be liable to pay any sum in respect of any horse which such person is bound by the regulations of the service to which he belongs, to keep.

Payments to be made in lieu of taxes referred to in section 3, clause (*b*). 5. So long as any order made under section three, prohibiting the levy of any tax payable by the Secretary of State for India in Council, remains in force, the said Secretary of State in Council shall be liable to pay to the Municipal Committee, in lieu of such tax, such sums (if any) as an officer from time to time appointed in this behalf by the Local Government may, having regard to all the circumstances of the case, from time to time determine to be fair and reasonable.

Decision of questions arising under this Act. 6. If any question arises whether any duty is military duty within the meaning of this Act, the decision of the Governor General in Council thereon shall be conclusive.

If any question arises whether any person is compelled as aforesaid to reside within the limits of a municipality, or is bound as aforesaid to keep any horse, the decision thereon of such authority as the Governor General in Council may, from time to time, appoint in this behalf shall be conclusive.

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

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, MARCH 5, 1881.

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 25th February, 1881, and is hereby promulgated for general information:—

ACT NO. IX OF 1881.

An Act to amend the Administrator General's Act, 1874.

Preamble.

WHEREAS Hindús, Muhammadans and Buddhists are exempted from the operation of certain provisions of the Administrator General's Act, 1874, but are subject to the operation of certain other provisions of the said Act, and it is expedient that Pársís should be exempted from, and be subject to, the operation of the said Act to the same extent as Hindús, Muhammadans and Buddhists; and whereas it is expedient to amend the said Act in other particulars hereinafter appearing; It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Administrator General's Act, 1881":

Commencement.

and shall come into force at once.

Amendment of sections 16, 17, 18 and 64 of Administrator General's Act, 1874.

2. In sections 16, 17, 18 and 64, respectively, of the said Act, between the word "Muhammadan" and the words "or Buddhist," wherever they occur, the word "Pársí" shall be inserted.

New section inserted after section 23 of same.

3. After section twenty-three of the same Act, the following section shall be inserted:—

Effect of probate or letters granted to Administrator General.

"23A. Probate or letters of administration granted by the High Court at Calcutta, Madras or Bombay to the Administrator General of the Presidency of Bengal, Madras or Bombay, as the case may be, shall have effect over all the property and estate, moveable or immoveable, of the deceased throughout such Presidency, and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors paying their debts and all persons delivering up such property to such Administrator General: Provided that the High Court may direct, by its grant, that such probate or letters of administration shall have like effect throughout either or both of the other Presidencies.

"Whenever a grant of probate or letters of administration is made by a High Court to the Administrator General, with such effect as last aforesaid, the Registrar of such Court shall send to each of the other two High Courts a certificate that such grant has been made, and such certificate shall be filed by the Court receiving the same."

New section substituted for section 28 of same.

4. For section twenty-eight of the same Act, the following section shall be substituted:—

Distribution of assets.

"28. When the Administrator General has given such notices as would have been given by the High Court in an administration-suit, for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets or any part thereof in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he had not notice at the time of such distribution; and no notice of any claim shall affect him unless proceedings to enforce such claim are commenced within one month after the giving of such notice and prosecuted without unreasonable delay.

"Nothing herein contained shall prejudice the right of any creditor or other claimant to follow the assets or any part thereof in the hands of the persons who may have received the same respectively."

Amendment of sections 36 and 37 of same.

5. In section thirty-six of the same Act, the words "not being a Hindú, Muhammadan or Buddhist, or exempted under the Indian Succession Act, 1865, section three hundred and thirty-two, from the operation of that Act" shall be repealed; and in section thirty-seven of the same Act, after the words "effects of the deceased," the following shall be inserted, namely:—"and such deceased was not a Hindú, Muhammadan, Pársí or Buddhist, or exempted under the Indian Succession Act, 1865, section three hundred and thirty-two, from the operation of that Act."

Amendment of section 38 of same.

6. In section thirty-eight of the same Act, for the words "such certificate" the words "certificate under section thirty-six or thirty-

seven" shall be substituted; and the words "which oath or affirmation the Administrator General is hereby authorized to administer or take" shall be repealed.

New section inserted after section 55 of same.

7. After section fifty-five of the same Act, the following section shall be inserted:—

Commission on assets collected beyond Presidency.

"55A. Notwithstanding anything hereinbefore contained, an Administrator General of a Presidency obtaining probate or letters of administration operating in another Presidency shall be entitled to the same rate of commission in respect of the collection and distribution of assets collected in such Presidency as the Administrator General of such Presidency would have been entitled to if such assets had been collected and distributed by him, and to no higher rate."

New section inserted before section 61 of same.

8. Before section sixty-one of the same Act, the following section shall be inserted:—

Power to examine on oath.

"60A. The Administrator General may, whenever he desires, for the purposes of this Act, to satisfy himself regarding any question of fact, examine upon oath or affirmation (which he is hereby authorized to administer or take) any person who is willing to be so examined by him regarding such question."

Saving of letters and certificates already granted.

9. Nothing herein contained shall affect any probate, letters of administration or certificate granted or vested under the said Act before the passing of this Act.

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

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 25th February, 1881, and is hereby promulgated for general information:—

ACT No. X OF 1881.

An Act to amend the Coroners' Act, 1871, and for other purposes.

Preamble.

WHEREAS under the Coroners' Act, 1871, the local limits of the jurisdiction of the Coroner of Madras are made co-extensive with the local limits of the ordinary original civil jurisdiction of the High Court;

and whereas it is expedient to empower the Local Government to alter the local limits of the said Coroner's jurisdiction;

and whereas it is also expedient to amend the said Act in other particulars hereinafter appearing;

and whereas it is also expedient to correct an error in section nine of Madras Act No. VIII of 1867 (*an Act to incorporate the Police of the Town of Madras with the general Police of the Madras Presidency, and for other purposes*) as amended by the Code of Criminal Procedure; It is hereby enacted as follows:—

Short title.
Commencement.

1. This Act may be called "The Coroners' Act, 1881," and shall come into force on the passing thereof.

Partial repeal of Act IV of 1871, section 1.

2. The second clause of the first section of the Coroners' Act, 1871, is hereby repealed.

Power to alter local limits of jurisdiction of Coroner of Madras.

3. The Governor of Fort St. George in Council may, from time to time, with the previous sanction of the Governor General in Council, by notification in the *Fort St. George Gazette*, alter the local limits of the jurisdiction of the Coroner of Madras:

Provided that such limits shall not extend beyond the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Madras.

Sections 133 to 135 of Act X of 1872 to extend to area excluded from Coroner's jurisdiction.

4. When, in exercise of the power conferred by section three, any area within the local limits of the said ordinary original civil jurisdiction is excluded from the local limits of the Coroner's jurisdiction, sections one hundred and thirty-three to one hundred and thirty-five (both inclusive) of the Code of Criminal Procedure shall extend to such area while so excluded, and all functions assigned to a Magistrate by those sections shall be discharged by the Commissioner of Police.

Act IV of 1871, section 8, amended.

5. In section eight of the Coroners' Act, 1871, for the words "is informed," the words "has reason to believe" shall be substituted.

Section 17 of same Act amended.

6. For the first two clauses of section seventeen of the Coroners' Act, 1871, the following shall be substituted, that is to say:—

"It shall be the duty of all persons acquainted with the circumstances attending the death to appear before the inquest as witnesses: the Coroner shall enquire of such circumstances and the cause of death, and, if before or during the enquiry he is informed that any person, whether within or without the local limits of his jurisdiction, can give evidence or produce any document material thereto, may issue a summons requiring him to attend and give evidence or produce such document on the inquest.

"Any person disobeying such summons shall be deemed to have committed an offence under section one hundred and seventy-four, section one hundred and seventy-five or section one hundred and seventy-six of the Indian Penal Code, as the case may be."

Addition to section 20 of same Act.

7. To section twenty of the Coroners' Act, 1871, the following clause shall be added, that is to say:—

"For the purposes of section twenty-six of the Indian Evidence Act, 1872, a Coroner shall be deemed to be a Magistrate."

New section substituted for section 9 of Madras Act VIII of 1867.

8. For section nine of the said Madras Act No. VIII of 1867, the following section shall be substituted:—

Law to govern Town Police.

"9. The Town Police shall be governed by all the provisions of the Criminal Procedure Code contained in sections 89, 91 to 103 (both inclusive), 108, 109, 110, 111, 112, 114, 116, 117

(first part), 118, 119, 120, 123, 124, 125, 127, 128, 129, 131, 136, 139, 140, 141, 142, 144, 147, chapter XII, sections 159, 161, 163 to 170 (both inclusive), 174 to 185 (both inclusive), chapter XXVII (except section 385), sections 415 to 420 (both inclusive) and 480, so far as they are applicable:

"Provided always, that the officer in charge of a Police-station shall not be required to bind over the prosecutor and witnesses as directed in section 123 of the said Code, if their immediate attendance can be procured without recognizances."

Act X of 1872, schedule V, in part repealed.

9. The portion of schedule V of the Code of Criminal Procedure, under the heading "Acts of the Governor of Madras in Council," shall be read as if the letter and figure "s. 9" in the first column, and all the words and figures in the second and third columns, opposite the said letter and figure, were omitted.

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

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 25th February, 1881, and is hereby promulgated for general information:—

ACT No. XI OF 1881.

An Act to give power to prohibit the levy of municipal taxes in certain cases.

Preamble.

WHEREAS it is expedient to empower the Governor General in Council to prohibit, in certain cases, the levy of municipal taxes payable by persons in the military service or by the Secretary of State for India in Council; It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Municipal Taxation Act, 1881."

Local extent.

It extends to the whole of British India:

Commencement.

and shall come into force at once.

"Municipal Committee" defined.

2. In this Act "Municipal Committee" includes a Municipal Corporation or a body of Municipal Commissioners constituted by or under the provisions of any enactment for the time being in force.

Power to prohibit levy of tax.

3. Notwithstanding anything contained in any enactment for the time being in force, the Governor General in Council may, by an order in writing, prohibit the levy by a Municipal Committee of any specified tax—

(*a*) payable by any person subject to the Army Discipline and Regulation Act, 1879, or the Indian Articles of War, who is compelled by the exigencies of military duty to reside within the limits of a municipality; or

(*b*) payable by the Secretary of State for India in Council.

The Governor General in Council may, by a like order, rescind any such prohibition.

Secretary of State in Council to pay taxes referred to in section 3, clause (*a*).

4. So long as any order made under section three, prohibiting the levy of a tax on any person mentioned in clause (*a*) of that section, remains in force, the Secretary of State for India in Council shall be liable to pay to the Municipal Committee mentioned in the order the amount which otherwise would have been payable to such Committee by such person:

Provided that the said Secretary of State in Council shall not be liable to pay any sum in respect of any horse which such person is bound by the regulations of the service to which he belongs, to keep.

Payments to be made in lieu of taxes referred to in section 3, clause (*b*).

5. So long as any order made under section three, prohibiting the levy of any tax payable by the Secretary of State for India in Council, remains in force, the said Secretary of State in Council shall be liable to pay to the Municipal Committee, in lieu of such tax, such sums (if any) as an officer from time to time appointed in this behalf by the Local Government may, having regard to all the circumstances of the case, from time to time determine to be fair and reasonable.

Decision of questions arising under this Act.

6. If any question arises whether any duty is military duty within the meaning of this Act, the decision of the Governor General in Council thereon shall be conclusive.

If any question arises whether any person is compelled as aforesaid to reside within the limits of a municipality, or is bound as aforesaid to keep any horse, the decision thereon of such authority as the Governor General in Council may, from time to time, appoint in this behalf shall be conclusive.

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

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, MARCH 12, 1881.

☞ 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 25th February, 1881, and is hereby promulgated for general information:—

ACT No. IX OF 1881.

An Act to amend the Administrator General's Act, 1874.

Preamble.

WHEREAS Hindús, Muhammadans and Buddhists are exempted from the operation of certain provisions of the Administrator General's Act, 1874, but are subject to the operation of certain other provisions of the said Act, and it is expedient that Pársís should be exempted from, and be subject to, the operation of the said Act to the same extent as Hindús, Muhammadans and Buddhists; and whereas it is expedient to amend the said Act in other particulars hereinafter appearing; It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Administrator General's Act, 1881":

Commencement.

and shall come into force at once.

Amendment of sections 16, 17, 18 and 64 of Administrator General's Act, 1874.

2. In sections 16, 17, 18 and 64, respectively, of the said Act, between the word "Muhammadan" and the words "or Buddhist," wherever they occur, the word "Pársí" shall be inserted.

New section inserted after section 23 of same.

3. After section twenty-three of the same Act, the following section shall be inserted:—

Effect of probate or letters granted to Administrator General.

"23A. Probate or letters of administration granted by the High Court at Calcutta, Madras or Bombay to the Administrator General of the Presidency of Bengal, Madras or Bombay, as the case may be, shall have effect over all the property and estate, moveable or immoveable, of the deceased throughout such Presidency, and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors paying their debts and all persons delivering up such property to such Administrator General: Provided that the High Court may direct, by its grant, that such probate or letters of administration shall have like effect throughout either or both of the other Presidencies.

"Whenever a grant of probate or letters of administration is made by a High Court to the Administrator General, with such effect as last aforesaid, the Registrar of such Court shall send to each of the other two High Courts a certificate that such grant has been made, and such certificate shall be filed by the Court receiving the same."

New section substituted for section 28 of same.

4. For section twenty-eight of the same Act, the following section shall be substituted:—

Distribution of assets.

"28. When the Administrator General has given such notices as would have been given by the High Court in an administration-suit, for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets or any part thereof in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he had not notice at the time of such distribution; and no notice of any claim shall affect him unless proceedings to enforce such claim are commenced within one month after the giving of such notice and prosecuted without unreasonable delay.

"Nothing herein contained shall prejudice the right of any creditor or other claimant to follow the assets or any part thereof in the hands of the persons who may have received the same respectively."

Amendment of sections 36 and 37 of same.

5. In section thirty-six of the same Act, the words "not being a Hindú, Muhammadan or Buddhist, or exempted under the Indian Succession Act, 1865, section three hundred and thirty-two, from the operation of that Act" shall be repealed; and in section thirty-seven of the same Act, after the words "effects of the deceased," the following shall be inserted, namely:—"and such deceased was not a Hindú, Muhammadan, Pársí or Buddhist, or exempted under the Indian Succession Act, 1865, section three hundred and thirty-two, from the operation of that Act."

Amendment of section 38 of same.

6. In section thirty-eight of the same Act, for the words "such certificate" the words "certificate under section thirty-six or thirty-

seven" shall be substituted; and the words "which oath or affirmation the Administrator General is hereby authorized to administer or take" shall be repealed.

New section inserted after section 55 of same.

7. After section fifty-five of the same Act, the following section shall be inserted:—

Commission on assets collected beyond Presidency.

"55A. Notwithstanding anything hereinbefore contained, an Administrator General of a Presidency obtaining probate or letters of administration operating in another Presidency shall be entitled to the same rate of commission in respect of the collection and distribution of assets collected in such Presidency as the Administrator General of such Presidency would have been entitled to if such assets had been collected and distributed by him, and to no higher rate."

New section inserted before section 61 of same.

8. Before section sixty-one of the same Act, the following section shall be inserted:—

Power to examine on oath.

"60A. The Administrator General may, whenever he desires, for the purposes of this Act, to satisfy himself regarding any question of fact, examine upon oath or affirmation (which he is hereby authorized to administer or take) any person who is willing to be so examined by him regarding such question."

Saving of letters and certificates already granted.

9. Nothing herein contained shall affect any probate, letters of administration or certificate granted or vested under the said Act before the passing of this Act.

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

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 25th February, 1881, and is hereby promulgated for general information:—

ACT No. X OF 1881.

An Act to amend the Coroners' Act, 1871, and for other purposes.

Preamble.

WHEREAS under the Coroners' Act, 1871, the local limits of the jurisdiction of the Coroner of Madras are made co-extensive with the local limits of the ordinary original civil jurisdiction of the High Court;

and whereas it is expedient to empower the Local Government to alter the local limits of the said Coroner's jurisdiction;

and whereas it is also expedient to amend the said Act in other particulars hereinafter appearing;

and whereas it is also expedient to correct an error in section nine of Madras Act No. VIII of 1867 (*an Act to incorporate the Police of the Town of Madras with the general Police of the Madras Presidency, and for other purposes*) as amended by the Code of Criminal Procedure; It is hereby enacted as follows:—

Short title.
Commencement.

1. This Act may be called "The Coroners' Act, 1881," and shall come into force on the passing thereof.

Partial repeal of Act IV of 1871, section 1.

2. The second clause of the first section of the Coroners' Act, 1871, is hereby repealed.

Power to alter local limits of jurisdiction of Coroner of Madras.

3. The Governor of Fort St. George in Council may, from time to time, with the previous sanction of the Governor General in Council, by notification in the *Fort St. George Gazette*, alter the local limits of the jurisdiction of the Coroner of Madras:

Provided that such limits shall not extend beyond the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Madras.

Sections 133 to 135 of Act X of 1872 to extend to area excluded from Coroner's jurisdiction.

4. When, in exercise of the power conferred by section three, any area within the local limits of the said ordinary original civil jurisdiction is excluded from the local limits of the Coroner's jurisdiction, sections one hundred and thirty-three to one hundred and thirty-five (both inclusive) of the Code of Criminal Procedure shall extend to such area while so excluded, and all functions assigned to a Magistrate by those sections shall be discharged by the Commissioner of Police.

Act IV of 1871, section 8, amended.

5. In section eight of the Coroners' Act, 1871, for the words "is informed," the words "has reason to believe" shall be substituted.

Section 17 of same Act amended.

6. For the first two clauses of section seventeen of the Coroners' Act, 1871, the following shall be substituted, that is to say:—

"It shall be the duty of all persons acquainted with the circumstances attending the death to appear before the inquest as witnesses: the Coroner shall enquire of such circumstances and the cause of death, and, if before or during the enquiry he is informed that any person, whether within or without the local limits of his jurisdiction, can give evidence or produce any document material thereto, may issue a summons requiring him to attend and give evidence or produce such document on the inquest.

"Any person disobeying such summons shall be deemed to have committed an offence under section one hundred and seventy-four, section one hundred and seventy-five or section one hundred and seventy-six of the Indian Penal Code, as the case may be."

Addition to section 20 of same Act.

7. To section twenty of the Coroners' Act, 1871, the following clause shall be added, that is to say:—

"For the purposes of section twenty-six of the Indian Evidence Act, 1872, a Coroner shall be deemed to be a Magistrate."

New section substituted for section 9 of Madras Act VIII of 1867.

8. For section nine of the said Madras Act No. VIII of 1867, the following section shall be substituted:—

Law to govern Town Police.

"9. The Town Police shall be governed by all the provisions of the Criminal Procedure Code contained in sections 89, 91 to 103 (both inclusive), 108, 109, 110, 111, 112, 114, 116, 117

(first part), 118, 119, 120, 123, 124, 125, 127, 128, 129, 131, 136, 139, 140, 141, 142, 144, 147, chapter XII, sections 159, 161, 163 to 170 (both inclusive), 174 to 185 (both inclusive), chapter XXVII (except section 385), sections 415 to 420 (both inclusive) and 480, so far as they are applicable :

"Provided always, that the officer in charge of a Police-station shall not be required to bind over the prosecutor and witnesses as directed in section 123 of the said Code, if their immediate attendance can be procured without recognizances."

Act X of 1872, schedule V, in part repealed.

9. The portion of schedule V of the Code of Criminal Procedure, under the heading "Acts of the Governor of Madras in Council," shall be read as if the letter and figure "s. 9" in the first column, and all the words and figures in the second and third columns, opposite the said letter and figure, were omitted.

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

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 25th February, 1881, and is hereby promulgated for general information :—

ACT No. XI OF 1881.

An Act to give power to prohibit the levy of municipal taxes in certain cases.

Preamble.

WHEREAS it is expedient to empower the Governor General in Council to prohibit, in certain cases, the levy of municipal taxes payable by persons in the military service or by the Secretary of State for India in Council; It is hereby enacted as follows :—

Short title.

1. This Act may be called "The Municipal Taxation Act, 1881."

Local extent.

It extends to the whole of British India :

Commencement.

and shall come into force at once.

"Municipal Committee" defined.

2. In this Act "Municipal Committee" includes a Municipal Corporation or a body of Municipal Commissioners constituted by or under the provisions of any enactment for the time being in force.

Power to prohibit levy of tax.

3. Notwithstanding anything contained in any enactment for the time being in force, the Governor General in Council may, by an order in writing, prohibit the levy by a Municipal Committee of any specified tax—

(*a*) payable by any person subject to the Army Discipline and Regulation Act, 1879, or the Indian Articles of War, who is compelled by the exigencies of military duty to reside within the limits of a municipality; or

(*b*) payable by the Secretary of State for India in Council.

The Governor General in Council may, by a like order, rescind any such prohibition.

Secretary of State in Council to pay taxes referred to in section 3, clause (*a*).

4. So long as any order made under section three, prohibiting the levy of a tax on any person mentioned in clause (*a*) of that section, remains in force, the Secretary of State for India in Council shall be liable to pay to the Municipal Committee mentioned in the order the amount which otherwise would have been payable to such Committee by such person :

Provided that the said Secretary of State in Council shall not be liable to pay any sum in respect of any horse which such person is bound by the regulations of the service to which he belongs, to keep.

Payments to be made in lieu of taxes referred to in section 3, clause (*b*).

5. So long as any order made under section three, prohibiting the levy of any tax payable by the Secretary of State for India in Council, remains in force, the said Secretary of State in Council shall be liable to pay to the Municipal Committee, in lieu of such tax, such sums (if any) as an officer from time to time appointed in this behalf by the Local Government may, having regard to all the circumstances of the case, from time to time determine to be fair and reasonable.

Decision of questions arising under this Act.

6. If any question arises whether any duty is military duty within the meaning of this Act, the decision of the Governor General in Council thereon shall be conclusive.

If any question arises whether any person is compelled as aforesaid to reside within the limits of a municipality, or is bound as aforesaid to keep any horse, the decision thereon of such authority as the Governor General in Council may, from time to time, appoint in this behalf shall be conclusive.

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

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 11th March 1881, and is hereby promulgated for general information :—

ACT No. XII OF 1881.

THE NORTH-WESTERN PROVINCES RENT ACT, 1881.

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127. If defendant appear on adjourned hearing, Court may allow him to be heard in answer.
128. No appeal from judgment *ex parte* or by default;
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129. Examination.
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136. Party to attend in person when his agent is unable to answer.
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FIRST SCHEDULE.—FORMS.

SECOND SCHEDULE.—TERRITORIES EXEMPTED, IN THE FIRST INSTANCE, FROM THE OPERATION OF THE ACT.

A Bill to amend the Law relating to the recovery of Rent in the North-Western Provinces.

WHEREAS it is expedient to amend the law relating to the recovery of Rent in the North-Western Provinces of the Presidency of Fort William in Bengal; It is hereby enacted as follows:— Preamble.

CHAPTER I.

PRELIMINARY.

Short title. 1. This Act may be called "The North-Western Provinces Rent Act, 1881:"

It extends in the first instance to the territories for the time being under the government of the Lieutenant-Governor of the North-Western Provinces, except those specified in the second schedule hereto annexed. But the Local Government may, by notification in the official Gazette, extend the whole or any part of this Act to all or any of the territories so excepted, and when any part of the North-Western Provinces Rent Act, 1873, has been extended to any such territory, such part shall be repealed therein and the corresponding part of this Act shall extend thereto. **Local extent.**

Save as provided by sections 171 and 172, nothing herein contained applies to land for the the time being occupied by dwelling-houses or manufactories, or appurtenant thereto, so long as such land is not let to agricultural tenants.

This Act shall come into force on the first day of April, 1881. **Commencement.**

2. The North-Western Provinces Rent Act, 1873, is hereby repealed. But such repeal shall not legalize any practice which, immediately before the passing of that Act, was unlawful. **Act No. XVIII of 1873 repealed.**

All rules and appointments made, notifications and proclamations issued, authorities and powers conferred, leases granted, rents fixed, rights acquired, liabilities incurred and places appointed under that Act shall, so far as may be, be deemed to have been made, issued, conferred, granted, fixed, acquired, incurred and appointed hereunder. **Rules, &c., under repealed Act.**

Illustration (*a*) to the Indian Penal Code, section 19, and Act No. XI of 1865, section 52, shall be read as if, for "Act X of 1859," the words and figures, "the North-Western Provinces Rent Act, 1881," were substituted. And in all Acts passed after the said North-Western Provinces Rent Act, 1873, all references to that Act shall be read as if made to this Act. **Acts amended.**

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

'Mahál:' (1.) 'Mahál' means—

(*a*) any local area held under a separate engagement for the payment of land-revenue, and for which a separate record-of-rights has been framed;

(*b*) any local area of which the revenue has been assigned or redeemed, and for which a separate record-of-rights has been framed:

'Tenant:' (1A.) 'Tenant' includes a thékadár and a katkanadár:

'Rent:' (2.) 'Rent' means whatever is to be paid, delivered or rendered by a tenant on account of his holding, use or occupation of land:

'Landholder:' (3.) 'Landholder' means the person to whom a tenant is liable to pay rent:

'Sír-land:' (4.) 'Sír-land' means—

(*a*) land recorded as sír at the last settlement or revision of settlement of the district in which it is situate, and continuously so recorded since;

(*b*) land continuously cultivated for twelve years by the proprietor himself with his own stock or by his servants, or by hired labour;

(*c*) land recognized by village-custom as the special holding of a co-sharer, or treated as such in the distribution of profits or charges among the co-sharers:

'Collector of a District:' (5.) 'Collector of a District' means the chief officer in charge of the Revenue Administration of a District:

'Commissioner of a Division:' (6.) 'Commissioner of a Division' means the chief officer in charge of the Revenue Administration of a Division:

'Board:' (7.) 'Board' means the Board of Revenue for the North-Western Provinces:

'Civil Jail:' (8.) 'Civil Jail' means the civil jail of the District, and includes any place appointed by the Local Government for the confinement of prisoners under sentence of any Court constituted under this Act.

CHAPTER II.

RIGHTS AND LIABILITIES OF LANDHOLDERS AND TENANTS.

Intermediate holders of land at rates unchanged since permanent-settlement.

4. When any permanent and transferable interest in land in a district or a portion of a district which has been permanently settled has been held otherwise than under a terminable lease by any person intermediate between the proprietor of the mahál and the occupants, and by the predecessors in interest of such person, from the time of the permanent-settlement, at the same rate of rent, such person shall have a right to hold such interest at that rate.

Tenants at fixed rates.

5. When any land in a district or portion of a district which is permanently settled has been held by a tenant and his predecessors in interest, from the time of the permanent settlement, at the same rate of rent, such tenant shall have a right of occupancy at that rate.

A tenant having such right is hereinafter called a "tenant at a fixed rate."

Presumption when 20 years' holding at fixed rate is proved.

6. When, in any suit to which the provisions of section 4 or section 5 apply, it is proved that the land has for a period of twenty years next before the institution of the suit been held by the present holder and his predecessors in interest at the same rate of rent, it shall be presumed, until the contrary is proved, that it has been held at such rate from the time of the permanent settlement.

Ex-proprietary tenants.

7. Every person who may hereafter lose or part with his proprietary rights in any mahál shall have a right of occupancy in the land held by him as sír in such mahál at the date of such loss or parting, at a rent which shall be four annas in the rupee less than the prevailing rate payable by tenants-at-will for land of similar quality and with similar advantages.

Persons having such rights of occupancy shall be called "ex-proprietary tenants," and shall have all the rights of occupancy-tenants.

If there are two or more sharers in any sír-land and one of them becomes an ex-proprietary tenant, the share which previously belonged to such ex-proprietary tenant shall, on his application or on the application of the person entitled to receive the rent, be divided off by the Collector, and the rights of the ex-proprietary tenant shall be limited to the land comprised in such share.

Occupancy-tenants.

8. Every tenant who has actually occupied or cultivated land continuously for twelve years has a right of occupancy in the land so occupied or cultivated by him.

Such tenants shall be called "occupancy-tenants."

The occupation or cultivating of the father or other person from whom the tenant inherits, shall be deemed to be the occupation or cultivating of the tenant within the meaning of this section:

Tenants barred from right of occupancy.

Provided that no tenant shall acquire, under this section, a right of occupancy—

(*a*) in land which he holds from an occupancy-tenant, or from an ex-proprietary tenant, or from a tenant at fixed rates;

(*b*) in sír-land;

(*c*) in land held by him in lieu of wages.

Time excluded from reckoning period necessary for acquiring right of occupancy.

Provided also that, when a tenant actually occupies or cultivates land under a written lease, without having a right of occupancy in such land, the period of twelve years necessary for acquiring a right of occupancy therein by him or any one claiming under him shall begin on the expiration of the term of such lease. If during the currency of such lease he ceases to occupy the land comprised therein, and sublets it to another, no right of occupancy in such land shall be acquired by the sub-lessee during the currency of the lease.

Rights under sections 7 and 8 when transferable.

9. The right of tenants at fixed rates may devolve by succession or be transferred.

No other right of occupancy shall be transferable in execution of a decree or otherwise than by voluntary transfer between persons in favour of whom as co-sharers such right originally arose or who have become by succession co-sharers therein.

When any person entitled to such last-mentioned right dies, the right shall devolve as if it were land: Provided that no collateral relative of the deceased who did not then share in the cultivation of his holding shall be entitled to inherit under this clause.

Determination of class of tenure of tenant.

10. On the application of any tenant to have his class of tenure determined, the Collector of the District or Assistant Collector shall determine the class to which he belongs, namely—

whether he is a tenant at fixed rates,

or an ex-proprietary tenant,

or an occupancy-tenant,

or whether he is a tenant without a right of occupancy.

Bar to enhancement of rent of tenants at fixed rates.

11. The rent paid by tenants at fixed rates shall not be liable to enhancement, except as provided by section 18.

Enhancement in case of ex-proprietary and occupancy-tenants.

12. The rent paid by ex-proprietary or occupancy-tenants shall not be liable to enhancement except—

(*a*) by a written agreement registered under the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or recorded before the kánúngo: or

(*b*) by order of a Settlement-officer passed under the law for the time being in force: or

(*c*) by order under this Act.

Grounds of enhancing rent of occupancy-tenants which has not been fixed by order.

13. (*a*) Where the rent of any occupancy-tenant has not been fixed by order of a Settlement-officer under the North-Western Provinces Land Revenue Act, 1873, or by an order under this Act,

(*b*) or where the rent has been fixed by any such order, but the term for which it has been fixed has expired,

(*c*) or where ten years from the date on which an order fixing the rent has taken effect have expired,

(*d*) or where by order of the Local Government the assessment of the district has been revised before confirmation,

(*e*) or where the period of settlement of the district has come to an end,

the landholder may apply to enhance the rent of such tenant on one of the following grounds and on no others:—

(*f*) that the rate of the rent paid by such tenant is below the prevailing rate payable by the same class of tenants for land of similar quality with similar advantages;

(*g*) that the value of the produce has, or the productive powers of the land have, been increased otherwise than by the agency or at the expense of the tenant;

(*h*) that the quantity of land held by the tenant has been proved by measurement to be greater than the quantity for which rent has been previously paid by him.

Enhancement of rent of ex-proprietary tenants which has not been fixed by order.

14. (*a.*) Where the rent of any ex-proprietary tenant has not been fixed by order of a Settlement-officer under the North-Western Provinces Land Revenue Act, 1873, or by an order under this Act,

or where the rent has been fixed by such order, but the term for which it has been fixed has expired,

or where any of the events mentioned in section 13, clauses (*c*), (*d*) and (*e*) has occurred,

the landholder may apply to enhance or determine the rent of such tenant as if he were an occupancy-tenant: Provided that his rent shall be four annas in the rupee below the prevailing rate for land of a similar quality with similar advantages held by tenants-at-will.

Selection of land for comparison.

(*b.*) Whenever the district or tahsíl, or other local area in which such land is situated, has been divided by the Settlement-officer into circles of like capacity and soil, the land of similar quality, with similar advantages, shall, for the purposes of this section and section 13, be selected from the same circle.

(*c.*) When the Settlement-officer has not so divided the district or other local area as aforesaid, the land regarding which the application has been made shall be compared with land of similar quality and with similar advantages, in the same tahsíl or in a tahsíl immediately adjacent.

Abatement in like cases.

15. Where the rent of any ex-proprietary tenant or occupancy-tenant has not been fixed by order of a Settlement-officer under the North-Western Provinces Land Revenue Act, 1873, or by an order under this Act,

or where the rent has been fixed by such order, but the term for which it has been fixed has expired,

or where any of the events mentioned in section 13, clauses (*c*), (*d*) and (*e*) has occurred,

the tenant may apply for an abatement of his rent on one of the following grounds, and on no others:—

(*a*) that the area of the land held by him has been diminished by diluvion or otherwise:

(*b*) that the value of the produce has, or the productive powers of such land have, been decreased by any cause beyond his power.

Time of enhancement or abatement where rent of ex-proprietary or occupancy-tenant has been fixed by order under this Act.

16. Where the rent of any ex-proprietary or occupancy-tenant has been fixed by an order under this Act, such rent shall not be liable to be enhanced or abated until the occurrence of any of the events mentioned in section 13, clauses (*c*), (*d*) and (*e*), whichever first occurs.

Grounds of enhancement and abatement where his rent has been fixed by order of a Settlement-officer or under this Act.

17. Notwithstanding anything contained in section 16 where the rent of any ex-proprietary or occupancy-tenant has been fixed by order of a Settlement-officer under the North-Western Provinces Land Revenue Act, 1873, or by an order under this Act, the landholder may apply to enhance the rent of such tenant during the currency of the term for which the rent has been so fixed, on one of the following grounds, and on no others:—

(*a*) that the area of the tenants holding has been increased by alluvion or otherwise:

(*b*) that the productive powers of the land held by the tenant have, since the date of the order, been increased otherwise than by the agency or at the expense of the tenant;

And the tenant may apply for abatement of his rent on one of the following grounds, and on no others:—

(*c*) that the area of the land held by him has been diminished by diluvion or otherwise;

(*d*) that the productive powers of such land have been decreased by any cause beyond his control.

Grounds of enhancement or abatement of rent of tenant at fixed rates.

18. In the case of a tenant at fixed rates, the landholder may apply to enhance his rent on the ground that the area of the land in his holding has been increased by alluvion or otherwise,

and the tenant may apply for abatement of his rent on the ground that the area of the land in his holding has been diminished by diluvion or otherwise.

Day before which applications for enhancement or abatement must be made.

19. Applications for enhancement or abatement of rent must be made on or before the thirty-first day of August next before the year commencing on the first day of July from which the rent is to be enhanced or abated,

and every order for enhancement or abatement shall take effect from the first day of July next following the date of such order, unless for some reason, to be stated in writing, the Court thinks fit to order otherwise.

Orders when to take effect.

Consideration of caste and class of tenant in determining rate of his rent.

20. In determining, under this Chapter, the rate of rent payable by any tenant, his caste shall not be taken into consideration, unless it is proved that, by local custom, caste is taken into account in determining such rate;

and whenever it is found that, by local custom or practice, any class of persons, by reason of their having formerly been proprietors of the soil or otherwise, hold land at favourable rates of rent, the rate shall be determined in accordance with such custom or practice.

Tenants-at-will.

21. No tenant-at-will of land shall be liable to pay rent in excess of the rent (if any) payable by him in the previous year ending on the thirtieth day of June, unless the landholder and tenant have agreed as to the rent to be paid to the former by the latter, and such agreement has been recorded by the kánúngo of the pargana in which such land is situate.

Rent of ex-proprietary or occupancy-tenant fixed by agreement.

22. Notwithstanding anything hereinbefore contained, when the rent of any ex-proprietary or occupancy-tenant has been fixed by agreement between the parties, such rent shall not be liable to enhancement or abatement for such term as may be agreed on.

Applications to survey land.

22A. When any land is held of a landholder by a tenant, such landholder or tenant may, in the absence of a written contract to the contrary, apply to the Collector of the District to have such land surveyed. The Collector, on receiving such application, may estimate the cost of such survey, and, by order in writing, require the applicant to deposit the amount of such estimate.

If the applicant deposits such amount within fifteen days from the date of the order, the Collector of the District shall issue a notice to the other party or parties to the tenancy to show cause, at a time and place specified in such notice, why the survey should not be made; and, if no such cause is so shewn, may, by an order in writing, direct the survey to be made by such person and at such time as he thinks fit.

A copy of such order shall be served on all the parties to the tenancy; and, if any party fails to attend at the appointed time, it shall not thereafter be open to him to question the correctness of the survey made in his absence.

If any party, on being called upon to show cause as aforesaid, makes any objection to the survey and such objection is overruled, he shall be liable to pay the costs (if any) occasioned by such objection.

Nothing in this section shall affect any power conferred by law to compel the attendance of any person at a survey.

Power to remit or suspend payment of rent when payment of revenue remitted or suspended.

23. Whenever for any cause the Local Government remits or suspends for any period the payment of the whole or any part of the revenue payable in respect of any land, any officer empowered by the Local Government in this behalf may, subject to such rules as to appeal, confirmation or otherwise as may, from time to time, be prescribed by the Board, order that the rent of such land shall be remitted, or suspended for the period of such suspension of payment of revenue, as the case may be, to an amount which shall be equal to double the amount of the revenue of which the payment has been so remitted or suspended, or shall bear the same proportion to the whole of the rent payable in respect of the land as the revenue of which the payment has been so remitted or suspended bears to the whole of the revenue payable in respect of such land;

and, subject to the same rules, the landholder shall be bound by such order.

(*A*).—*Leases.*

Contents of lease to which every tenant is entitled.

24. Every tenant is entitled to receive from the landholder, and may at any time during the continuance of his holding, apply for a lease containing the following particulars:—

(*a*) the quantity of land held by him, and, where the fields have been numbered in a Government survey, the number of each field:

(*b*) the amount of annual rent payable for such land:

(*c*) the instalments in which, and the dates on which, such rent is to be paid:

(*d*) any special conditions of the lease:

(*e*) if the rent is payable in kind, or is calculated on a valuation of the produce, the proportion of produce to be delivered, the mode of valuation, and the time, manner and place of delivery.

Leases to which tenants at fixed rates are entitled.

25. Tenants at fixed rates are entitled to receive leases at such rates.

Leases to which ex-proprietary and occupancy-tenants are entitled.

26. Ex-proprietary and occupancy-tenants are entitled to receive leases at the rates determined in accordance with the law for the time being in force, or, where no rates have been so determined, at the rates actually paid by them when they demand such leases.

Leases to which other tenants are entitled.

27. All other tenants are entitled to leases only on such terms as may be agreed upon between them and the landholders.

Landholder granting lease entitled to reciprocal engagement.

28. Every landholder who grants a lease is entitled to receive a reciprocal engagement from the tenant, executed by the tenant, and conformable with the terms of the lease.

The tender to any tenant of a lease, such as he is entitled to receive, shall entitle the landholder to receive a reciprocal engagement from such tenant.

Lease for period exceeding term of landholder's engagement.

29. Notwithstanding anything contained in section 22, when any lease is granted, or any agreement is entered into, by any landholder under engagement with Government for his land, fixing the rent of land for any period exceeding the term of such engagement, and such term expires, such lease or agreement shall,

(*a*) when, on the expiration of such term, the revenue payable in respect of such land is enhanced—be voidable at the option of the landlord, unless the tenant agrees to pay such rent as a Settlement-officer or other person duly empowered in this behalf may, on the application of the landlord, determine to be fair and reasonable; and

(*b*) when such land-revenue is on the expiration of such term reduced—be voidable at the option of the tenant, unless the landlord agrees to accept such rent as a Settlement-officer or other person duly empowered in this behalf may, on the application of the tenant, determine to be fair and reasonable.

Resumption of rent-free grants.

30. (*a*) And whereas all grants (whether in writing or otherwise) for holding land exempt from the payment of rent which have been made since the first day of December, 1790, by any authority other than that of the Governor General in Council, were declared by Bengal Regulation XIX of 1793, section 10, to be null and void, and like provisions have been by divers Regulations applied to the several parts of the territories to which this Act extends, and the said Regulation XIX of 1793 also provided that no length of possession should be considered to give validity to any such grant, either with regard to the property in the soil or the rents of it, it is hereby further enacted as follows:—

Applications to resume.

(*b*) Applications by the proprietor to resume such grants or to assess rent on the land, shall be made to the Collector of the District or Assistant Collector, and, subject to rules to be made by the Local Government, shall be dealt with as other applications under this Act.

Validity of grants which grantor has expressly agreed not to resume.

(*c*) Grants of land held under a written instrument, by which the grantor expressly agrees that the grant shall not be resumed, shall be held valid as against him (but not as against his representatives after his death) during the continuance of the settlement of the district in which the land is situate, which is current at the date of the grant.

When rent-free tenure confers proprietary right.

(*d*) Where any land, having been for the fifty years next before the twenty-second day of December, 1873, held rent-free and by at least two successors to the original grantee, was so held on that day, such holding shall be deemed to have conferred on the holder a proprietary right.

(*e*) Nothing in the Indian Limitation Act, 1877, shall bar the right to make an application under this Act to assess to rent land held rent-free.

(*f*) Nothing in this section shall apply to either of the following cases:—

(1) Where land was, previously to the passing of the North-Western Provinces Rent Act, 1873, held rent-free under a judicial decision:

(2) Where, previously to the passing of that Act, land held rent-free had been purchased for a valuable consideration and resumption thereof had been barred under Act No. X of 1859, section 28, or under the Indian Limitation Act, 1871, schedule II, No. 130.

(*B*).—*Relinquishment and Ejectment.*

Relinquishment of land by tenant not holding under a lease.

31. Every tenant not holding under a lease shall continue liable for the rent of the land in his holding for the ensuing year, unless on or before the first day of May in any year he gives notice in writing to the landholder, or his recognized agent, of his desire to relinquish such land on the thirtieth day of June next ensuing, and relinquishes it accordingly; or unless it is let to any other person by such landholder or agent:

Proviso.

Provided that, whenever an order for the enhancement of the rent of any land held by any such tenant is passed and the tenant within fifteen days of the date of such order gives to the landholder or his recognized agent notice in writing of his desire to relinquish such land at the commencement of the period in respect of which such enhancement takes effect, and relinquishes such land accordingly, he shall not be liable for the rent payable for such land in respect of any period subsequent to such relinquishment.

Explanation.—No notice can be given under this section in respect of a portion only of any land held under the same lease or engagement.

Service through tahsíldár of notice of relinquishment.

32. If the landholder or his agent refuses to receive any notice under section 31, or if he receives it, but refuses to sign and deliver a receipt for the same, the tenant may, before the expiration of the period limited for giving such notice, make an application to the tahsíldár, who shall thereupon cause the notice to be served on such landholder or agent, the tenant paying the costs of service.

Mode of serving notice.

33. The notice shall, if practicable, be served personally on the landholder or his agent; but if the landholder or his agent cannot be found, or if he evades service of the notice, service may be made by affixing the notice at his usual place of residence, or, if he does not reside in the district wherein the

land is situate, at the *chaupál*, or other conspicuous place in the village where the land is situate.

Where the delay in serving the notice is owing to the fault of the landholder or his agent, the notice shall be deemed to have been served at the first attempt to serve it.

33A. When any such notice has been received by or served on a landholder or his agent he may, within fifteen days from such receipt or service, apply to the Collector or Assistant Collector to have such notice declared invalid, and the Collector shall thereupon determine the question between the parties.

Application by landholder to set aside notice.

If the landholder or his agent does not so apply within such period of fifteen days, he shall be deemed to have accepted the notice.

34. (*a*). When an arrear of rent remains due from any tenant, he shall be liable to pay interest on such arrear at one per cent. per mensem; and if the arrear remains due on the thirtieth day of June, to be ejected from the land in respect of which the arrear is due.

Liability of tenant to pay interest on arrear and to be ejected.

(*b*). No tenant shall be ejected otherwise than in execution of a decree or order under the provisions of this Act.

Bar to ejectment without decree.

(*c*). No ejectment of a tenant or forfeiture of a lease shall be decreed on account of any act or omission of the tenant—

Ejectment not to be decreed for certain acts or omissions.

(1) which is not detrimental to the land in his occupation, or inconsistent with the purpose for which the land was let, or

(2) which by law, custom, or special agreement does not involve the forfeiture of the lease.

Explanation.—In clauses (*a*) and (*b*) the word 'tenant' does not include a thékadár and a katkanadár.

35. If the landholder desires to eject a tenant at fixed rates, an ex-proprietary tenant, an occupancy-tenant or a tenant holding under an unexpired lease, against whom a decree for arrears has been passed and remains unsatisfied, he may, after the expiration of the year, ending on the thirtieth day of June, in which such arrears accrued, apply to the Collector of the District or Assistant Collector to eject the tenant.

Ejectment of tenant at fixed rates, ex-proprietary, with right of occupancy, or holding under unexpired lease.

Such officer shall, on receiving such application cause a notice to be served on the tenant, stating the amount due under the decree, and informing him that if he does not pay such amount into Court within fifteen days from receipt of the notice, he will be ejected from his land.

If such amount be not so paid, the Collector of the District or Assistant Collector may eject the tenant.

36. If the landholder desires to eject a tenant not having a right of occupancy, or any other tenant holding only for a limited period, after the determination of his tenancy, he shall cause a written notice of ejectment to be served on such tenant under the provisions of this Act.

Service of notice on tenant for limited period.

37. The notice of ejectment shall be written in the vernacular language and character of the district:

Language and contents of notice.

it shall specify the land from which the tenant is to be ejected;

and it shall inform him that he must vacate such land; or that, if he means to contest the right to eject him, he must apply to the Collector of the District or Assistant Collector for that purpose.

38. The notice shall be issued and served through the office of the tahsíldár on application made to him between the first day of January and the first day of April in each year, and the landholder shall pay the cost of service: it shall be served personally on the tenant, if practicable; but if he cannot be found, service may be made by affixing the notice to his usual place of residence.

Mode of serving notice.

39. (*a*). The tenant, on whom such notice has been served, may, within thirty days next after the service, make an application to the Collector of the District or Assistant Collector, contesting his liability to be ejected.

Effect of failure of tenant to institute suit to contest liability to ejectment.

(*b*). When such an application is made, the Collector of the District or Assistant Collector shall proceed to determine the question between the parties.

(*c*). On the determination of such question adversely to the tenant, or, where no application under this section has been made within the said period of thirty days, on the expiration of such period, the tenancy of the land in respect of which the notice has been served shall cease:

Provided that when such question has been determined or such period has expired, as the case may be, before the first day of May next following the making of the application under section 38, the tenancy shall continue until and cease upon that day:

Provided also that the tenancy shall not cease under this section when after the service of the notice, the landholder authorises the tenant to continue in the occupation of the land.

40. If the landholder require assistance to eject the person whose tenancy is alleged to have ceased under the provisions of section 39, he may within fifteen days from the date of such cessation, apply to the Collector of the District or Assistant Collector for such assistance, and the Collector of the District or Assistant Collector shall order the ejectment of such tenant if he is satisfied—

Procedure to enforce ejectment.

(*a*) that the notice was duly served on such tenant under section 38;

(*b*) that he has not been authorized by the landholder to continue in occupation;

(*c*) that the tenant has not made the application mentioned in section 39, clause (*a*); or

(*d*) that if such application has been made, the question has been determined adversely to the tenant:

Provided that no such application for the ejectment of a farmer on the determination of a lease shall be received if the lease be of the kind in which an advance has been made by the lease-

holder, and the proprietor's right of re-entry at the end of the term is contingent on the re-payment of such advance either in money or by the usufruct of the land. In all such cases the landholder must proceed by suit in the Civil Court.

41. If the landholder expressly authorise the tenant, on whom the notice of ejectment has been served, or against whom any proceedings in ejectment under section 40 have been taken, to remain in occupation of the land, and to prepare it for the harvest, the proceedings shall become void.

Notice of ejectment when void.

42. (*a*). Any tenant ejected in accordance with the provisions of this Act, shall be entitled to any growing crops or other ungathered products of the earth belonging to the tenant, and growing on the land at the time of his ejectment, and to use the land for the purpose of tending and gathering in such crops or other products, paying adequate rent therefor:

Rights of ejected tenant.

(*b*). Provided that, if the landholder desire to purchase such crops or other products, he may tender their price to the tenant; and thereupon the right of the tenant to such crops and other products, and to use the land for the purpose aforesaid, shall cease.

Effect of tender by landholder of payment for crops.

(*c*). In the case of a dispute under this section, the Collector of the District or Assistant Collector may, on the application of the landholder or tenant, award the rent and price so payable; and the amount of such award, or of any tender accepted under this section, shall be recoverable as an arrear of rent by suit under this Act.

Power to determine rent and price.

(*d*). The rent, if any, payable to the landholder by the tenant at the time of his ejectment may be set-off against the price of the said crops or other products.

Set-off of rent.

43. (*a*). Wherever rent is taken by division of the produce in kind, or by estimate or appraisement of the standing crop, or other procedure of a like nature, requiring the presence both of the cultivator and landholder, either personally or by agent,

Application for officer to divide produce or appraise crop.

if either landholder or tenant, personally or by agent, neglect to attend at the proper time, or if there is a dispute as to the amount or value of the crop,

an application may be presented by either party to the Collector of the District or Assistant Collector, requesting that a proper officer be deputed to make the division, estimate or appraisement.

(*b*). On receiving such application, the Collector of the District or Assistant Collector shall issue a written notice to the opposite party or his agent, to attend on the date and at the time specified in the notice, and shall depute an officer before whom such division, estimate or appraisement shall be made.

Procedure on such application.

(*c*). If on or before the date appointed, the dispute has not been amicably adjusted, three residents of the village or neighbourhood shall be appointed assessors; one by each of the parties and one by the officer deputed to divide the grain or estimate or appraise the crops, and the officer deputed shall decide the amount of rent payable by their award, and shall give to the party applying a written authority to divide the grain or cut the crops:

(*d*). Provided that, if either party fail to attend, the officer deputed shall nominate an assessor on his behalf.

(*e*). The officer deputed shall report his proceedings to the Collector of the District or Assistant Collector, who shall determine the amount of costs properly incurred under this section, and the share of the costs to be paid by either party.

(*C*).—*Compensation for Improvements made by Tenants.*

44. If any tenant, or any person from whom he has inherited or purchased, make any such improvements on the land in his possession as are hereinafter mentioned, neither he nor his representative shall be ejected from the same land without payment of compensation for such improvements.

Tenants' right to compensation for improvements.

Explanation.—In this section the word "tenant" does not include a thékadár or a katkanadár and the word "improvements" means works by which the annual letting value of the land has been, and at the time of demanding compensation continues to be, increased, and comprises—

(*a*) tanks, wells and other works for the storage, supply or distribution of water for agricultural purposes,

(*b*) works for the drainage of land, or for the protection of land from floods or from erosion or other damage by water,

(*c*) the reclaiming, clearing, or enclosing of lands for agricultural purposes,

(*d*) the renewal or re-construction of any of the foregoing works, or alterations therein, or additions thereto.

Notwithstanding anything hereinbefore contained, no tenant, other than a tenant at fixed rates or an occupancy-tenant, shall be entitled to compensation in respect of any improvement made without the consent of the landholder after this Act comes into force.

45. Such compensation may, at the option of the landholder or his representative, be made—

Mode of making compensation.

1*st*,—by payment in money;

2*nd*,—by a rent to be charged on the land;

3*rd*,—by the grant of a beneficial lease of the land, by the landholder or his representative, to the tenant or his representative;

4*th*,—partly by one or by any two of the said ways, and partly by the others or other of the same ways.

46. In case of difference as to the amount or value of the compensation tendered, either party may apply to the Collector of the District or Assistant Collector stating the matter in dispute, and requesting a determination thereof.

Settlement of difference as to amount or value of compensation.

On receiving such application, the Collector of the District or Assistant Collector shall—

(*a*) cause notice thereof to be served on the other party,

(*b*) take such evidence as the parties or either of them may adduce,

(*c*) make such further inquiry as the Collector of the District or Assistant Collector may deem necessary, and

(*d*) determine the amount of the payment in money, and the amount and incidence of the rent-charge, and the terms of the lease, or any of such matters.

Considerations in determining compensation.

47. In determining the amount or value mentioned in section 46, or the terms of such lease, the Collector of the District or Assistant Collector shall take into account any assistance given to the tenant by the landholder either directly in money, material or labour, for the purpose of making such improvements, or indirectly by allowing the tenant to hold at a favourable rate of rent.

(*D*).—*Compensation for wrongful acts and omissions.*

Right of tenant to compensation for exactions in excess of rent or for withholding receipt.

48. Every tenant from whom any sum is exacted in excess of the rent specified in his lease or payable under the provisions of this Act,

and every tenant from whom a receipt is withheld for any sum of money paid by him as rent, shall be entitled to recover from the landholder compensation not exceeding double the amount so exacted or paid

Contents of receipt.

Receipts for rent shall specify the period or crop on account of which the rent is acknowledged to have been paid;

and any refusal to make such specification shall be held to be a withholding of a receipt.

Explanation.—In this section the word "tenant" does not include a thékadár or a katkanadár.

Damages for extorting payment of rent by duress.

49. If payment of rent, whether the same be legally due or not, is extorted from any tenant by illegal confinement or other duress, he shall be entitled to recover from the person guilty of such extortion such further compensation, not exceeding the sum of two hundred rupees, as the Collector of the District or Assistant Collector thinks reasonable.

Liability to punishment for extortion not affected.

An award of compensation under this section shall not bar or affect any penalty or punishment to which the person guilty of such extortion may be subject under the Indian Penal Code.

(*E*).—*Deposit of Rent in Court.*

Deposit of amount tendered by tenant and refused.

50. If any tenant tenders to the landholder full payment of the rent due from him, and if the amount so tendered be not accepted, and a receipt for the amount forthwith granted, the tenant may thereupon apply to the Collector of the District or Assistant Collector for leave to deposit such amount in his Court to the credit of the landholder.

Form and verification of application.

51. The application to the Collector of the District or Assistant Collector shall be as nearly as may be in the form (A) in the first schedule hereto annexed, and shall be verified in the manner hereinafter prescribed for the verification of plaints.

And the person making the verification shall be punishable, if the application contain any averment which he knows or believes to be false, or does not know or believe to be true.

Penalty for false statement.

Notice to issue on deposit being made.

52. The Collector of the District or Assistant Collector shall receive the amount which the tenant desires to deposit, and shall thereupon issue to the person to whose credit it has so been deposited, a notice in English or the vernacular language of the district in the form (B) in the first schedule hereto annexed, or to the like effect.

And such deposit shall, in all questions between the landholder and the tenant, be deemed to be a payment made by the tenant to the landholder on account of the rent.

Mode of serving notice.

53. Such notice shall be served through the tahsíldár upon the person to whom it is addressed, or upon his recognized agent.

In their absence, the notice shall be affixed at the *chaupál*, or other conspicuous place in the village in which the land for which the rent is due is situate.

Payment to person served with notice on his application.

54. If at any time before the expiration of three years from the date of the deposit the person on whom such notice is served, or his recognized agent, appears, and applies that the money in deposit be paid to him, it shall be paid accordingly, unless it has been repaid or paid in accordance with the provisions next hereinafter contained.

Refund to depositor.

55. If no application be made by such person or his recognized agent, the sum shall be repaid to the depositor on the expiration of three years from the date of the deposit.

And at any time before the expiration of such period, on the joint application of the depositor and the person to whose credit the said sum was deposited, such sum shall be paid in such manner as the joint applicants desire.

Deposit in Court of rent claimed by two or more persons.

55A. When, owing to the death of the landlord or other cause, two or more persons severally claim the right to collect the rent from a tenant, the tenant may apply to the Collector of the District or the Assistant Collector for leave to deposit in Court the full amount of rent due from him, and such deposit, if made with the leave of the Collector or Assistant Collector, shall, in all questions between the landholder and the tenant, be deemed to be a payment made by the tenant to the landholder on account of the rent.

The Collector of the District or Assistant Collector may, after such enquiry as he thinks necessary, direct payment of the amount deposited to such one of the persons claiming such rent as appears to him entitled to receive the same, or may order the same to remain in deposit pending decision by a competent Court.

No suit shall lie against the Secretary of State for India in Council or against any officer of Government in respect of any payment made under this section, but nothing herein contained shall affect the right of any person entitled to such payment to recover the amount thereof from any other person to whom it has been paid.

CHAPTER III.

DISTRESS.

Produce of land hypothecated for rent.

56. The produce of all land in the occupation of a cultivator shall be deemed to be hypothecated for the rent payable in respect of such land; and until such rent has been satisfied, no other claim on such produce shall be enforced by sale in execution of decree or otherwise;

Recovery of arrears by distress.

and when an arrear of rent is due from any cultivator, the person entitled to receive rent immediately from him may, instead of suing for the arrear as hereinafter provided, recover the same by distress and sale of the produce of the land in respect of which the arrear is due, under the rules contained in this chapter.

57. Provided—

Distress of produce barred by security given for rent.

(*a*) that when a cultivator has given security for the payment of his rent, the produce of the land for the rent of which security has been given shall not be liable to be distrained:

Sharer when entitled to distrain.

(*b*) that no sharer in any mahál shall have power to distrain upon any cultivator unless he is entitled to collect the whole rent from such cultivator:

Distress by manager.

(*c*) that no sharer in a joint undivided mahál shall exercise such power otherwise than through a manager authorized to collect the rents of the whole mahál on behalf of all the sharers therein:

Distress for pattídárí mahál.

(*d*) that in pattídárí mahálsdistress shall be made only through a lambardár, or, where the rent of a pattí is not collected by a lambardár, through the pattídár who is entitled to collect the rent.

No distress for overdue arrear, nor, without agreement, for excess over past year's rent.

58. A distress shall not be made for any arrear which has been due in respect of any land for a longer period than one year:

nor for the recovery of any sum in excess of the rent payable for the same land in the preceding year, unless the rent has been enhanced under the provisions hereinbefore contained, or by order of a Settlement-officer, or unless the cultivator has agreed to pay such excess and such agreement has been attested before the Kánúngo.

Distress by managers under Court of Wards, &c.

59. The power to distrain conferred by sections 56 and 57 may be exercised by managers under the Court of Wards and other persons lawfully entrusted with the charge of immoveable property;

and also by the agents employed by such persons as aforesaid, in the collection of rent, if expressly authorized by power-of-attorney in that behalf.

Liability for illegal act.

If any wrongful act is committed by any such agent, under colour of the exercise of the said power, such agent and his principal shall be jointly and severally liable to make compensation for such act.

Written authority to servants employed to distrain.

60. When any person, empowered to distrain property under section 56, section 57 or section 59, employs a servant or other person to make the distress, he shall give him a written authority for the same, and the distress shall be made in the name of the person giving such authority.

Standing crops and crops gathered liable to distress.

61. Standing crops and other ungathered products of the earth, and crops or other products when reaped or gathered, and deposited in any threshing-floor or place for treading out grain or the like, whether in the field or within a homestead, may be distrained by persons invested with power to distrain under the provisions of this Act.

Exception.

But no such crops or products, other than the produce of the land in respect of which an arrear of rent is due, or of land held under the same engagement, and no grain or other produce after it has been stored by the cultivator, and no other property whatsoever, shall be liable to be distrained under this Act.

Defaulter to be served with written demand and account.

62. Before or at the time when a distress is made under this Act, the distrainer shall cause the defaulter to be served with a written demand for the amount of the arrear, together with an account exhibiting the grounds on which the demand is made.

Mode of service.

The demand and account shall, if practicable, be served personally on the defaulter; or, if he abscond or conceal himself, so that they cannot be so served, shall be affixed at his usual place of residence.

Distress to be proportionate to arrear.

List of property to be prepared and copy served on owner.

63. Unless the amount of the demand is immediately paid or tendered, the distrainer may distrain property as aforesaid equal in value, as nearly as may be, to the amount of the arrear and the costs of the distress; and shall prepare a list or description of the said property, and deliver a copy of the same to the owner, or, if he be absent, affix it at his usual place of residence.

Standing crops, &c., when distrained, may be reaped and stored.

64(*a*). Standing crops and other ungathered products may, notwithstanding the distress, be reaped and gathered by the cultivator, and he may store the same in such granaries or other places as are commonly used by him for the purpose.

(*b*). If the cultivator neglect to do so, the distrainer shall cause the said crops or products to be reaped or gathered, and in such case shall store the same either in such granaries or other places as aforesaid, or in some other convenient place in the neighbourhood.

(*c*). In either case the distrained property shall be placed in the charge of some person appointed by the distrainer for the purpose.

Sale of products which cannot be stored.

(*d*). Crops or products which, from their nature, do not admit of being stored, may be sold before they are reaped or gathered, under the rules hereinafter provided; but in such case, the distress shall be made at least twenty days before the time when the crops, or products, or any part of the same are fit for reaping or gathering.

65. If a distrainer is opposed, or apprehends resistance, and desires to obtain the assistance of a public officer, he may apply to the Collector of the District or Assistant Collector, who may, if he thinks necessary, depute an officer to assist the distrainer in making the distress.

Assistance to distrainer opposed or apprehending resistance.

66. If at any time after property has been distrained and before the day fixed for putting it up to sale as hereinafter provided, the owner of the property tenders payment of the arrear demanded of him, and of the expenses of the distress, the distrainer shall receive the same, and shall forthwith withdraw the distress.

Distress to be withdrawn on tender of arrear and expenses before sale.

67. Within five days from the time of the storing of any distrained crops or products,

Application for sale.

or, if the crops or products do not, from their nature admit of being stored, within five days from the time of making the distress,

the distrainer shall apply for sale of the same to the officer for the time being authorized by the Local Government to sell distrained property within the tahsíl in which they are situate.

68. The application shall be in writing, and shall contain—

Contents of application.

(*a*) an inventory or description of the property distrained,

(*b*) the name of the defaulter and his place of residence,

(*c*) the amount due, and the date of the distress, and

(*d*) the place in which the distrained property is.

Together with the application, the distrainer shall deliver to the said officer the fee for the service of a notice upon the defaulter as hereinafter provided.

Fee for service of notice.

69. Immediately on receipt of the application, the said officer shall send a copy of it to the Collector of the District or Assistant Collector,

Procedure on receipt of application.

and shall serve a notice in the form (C) contained in the first schedule hereto annexed, or to the like effect, on the person whose property has been distrained, requiring him either to pay the amount demanded, or to institute a suit to contest the demand before the Collector of the District or Assistant Collector, within the period of fifteen days from the receipt of the notice.

He shall at the same time send to the Collector of the District or Assistant Collector, for the purpose of being put up in his office and in the office of the tahsíldár, a proclamation fixing a day for the sale of the distrained property, which shall not be less than twenty days from the date of the application; and shall deliver a copy of the proclamation to the peon charged with the service of the notice, to be put up by him in the place where the distrained property is deposited.

The proclamation shall contain—

(*a*) a description of the property,

and shall specify—

(*b*) the demand for which it is to be sold, and

(*c*) the place where the sale is to be held.

70. If a suit is instituted before the Collector of the District or Assistant Collector in pursuance of the aforesaid notice, the Collector of the District or Assistant Collector shall send to the officer referred to in section 67, or, if so requested, shall deliver to the owner of the distrained property, a certificate of the institution of such suit;

Suspension of sale on receipt of Collector's certificate of institution of suit.

and on such certificate being received by, or presented to, the said officer, he shall suspend the sale.

71. A person whose property has been distrained in manner hereinbefore provided may, immediately after the distress, and before the issue of notice of sale, institute a suit to contest the demand of the distrainer.

Suit to contest distrainer's demand before issue of notice of sale.

When such suit is instituted, the Collector of the District or Assistant Collector shall proceed in the manner prescribed in the last preceding section.

If, thereafter, application for the sale of the property is made to the said officer, he shall send a copy of the application to the Collector of the District or Assistant Collector, and suspend further proceedings, pending the decision of the case.

72. The person whose property has been distrained may, at the time of instituting any such suit as aforesaid, or at any subsequent period, execute a bond with a surety, binding himself to pay whatever sum may be adjudged to be due from him, with interest and costs of suit;

Distress when to be withdrawn.

and when such bond is executed, the Collector of the District or Assistant Collector shall give to the owner of the property a certificate to that effect, and, if so requested, shall serve the distrainer with notice of the same;

and upon such certificate being presented to the distrainer by the owner of the property, or served on him by order of the Collector of the District or Assistant Collector, the property shall be released from distress.

73. If the institution of a suit to contest the demand of the distrainer has not been certified, in manner hereinbefore provided, to the said officer, on or before the day fixed in the proclamation of sale, he shall, unless the said demand, with such costs of the distress as are allowed by him, be discharged in full, proceed, in manner hereinafter mentioned, to sell the property or such part of it as may be necessary to satisfy the demand with the costs of distress and sale.

When sale may be proceeded with.

74. The sale shall be held at the place where the distrained property is, or, at the nearest place of public resort, if the said officer is of opinion that it is likely to sell there to better advantage.

Place of sale.

The property shall be sold by public auction, in one or more lots, as the officer holding the sale may think advisable;

Manner of sale.

and if the demand, with the costs of distress and sale, be satisfied by the sale of a portion of the property, the distress shall be immediately withdrawn with respect to the remainder.

Withdrawal of distress when demand and costs satisfied.

75. If, on the property being put up for sale, a fair price (in the estimation of the officer holding the sale) be not offered for it, and if the owner of the property, or some person authorized to act on his behalf, apply to have the sale postponed until the next day, or, if a market be held at the place of sale, the next market-day, the sale shall be postponed until such day and shall be then completed whatever price may be offered for the property.

If fair price be not offered, sale may be postponed and shall be then completed.

76. The price of every lot shall be paid for in ready money at the time of sale, or as soon thereafter as the officer holding the sale thinks necessary;

Payment of purchase-money.

and, in default of such payment, the property shall be put up again and sold, and the deficiency in price (if any) which may happen on such second sale and all expenses attending such second sale shall, at the instance either of the distrainer or the owner of the property, be recoverable from the defaulter under the rules hereinafter contained for the execution of a decree for rent.

Re-sale on default.

When the purchase-money has been paid in full, the officer holding the sale shall give the purchaser a certificate describing the property purchased by him and the price paid.

Certificate to purchaser.

77. From the proceeds of every sale of distrained property under this Act, the officer holding the sale shall make a deduction at the rate of one anna in the rupee on account of the costs of the sale, and shall send the amount so deducted to the Collector of the District or Assistant Collector.

Deduction, from proceeds, of costs of sale.

He shall then pay to the distrainer the expenses incurred by the distrainer on account of the distress, and of the issue of the notice and proclamation of sale prescribed in section 69, to such amount as, after examining the statement of expenses furnished by the distrainer, he thinks proper to allow.

Payment of distrainer's expenses.

The remainder shall be applied to the discharge of the arrear for which the distress was made, with interest thereon up to the day of sale;

Discharge of arrear with interest.

and the surplus (if any) shall be delivered to the person whose property has been sold.

Surplus.

78. Officers holding sales of property under this Act, and all persons employed by or subordinate to such officers, are prohibited from purchasing, either directly or indirectly, any property sold by such officers.

Sale-officers and employés prohibited from purchasing.

79. Officers holding sales under this Chapter are required to bring to the notice of the Collector of the District or Assistant Collector any material irregularities committed by distrainers under colour of this Act;

Report of irregularities by distrainer.

and if, in any case, on proceeding to hold any such sale, the officer holding it find that the owner of the property has not received due notice of the distress and intended sale, he shall postpone the sale and report the case to the Collector of the District or Assistant Collector, who shall thereupon direct the issue of another notice and proclamation of sale under section 69, or pass such other order as he thinks fit.

Postponement of sale, and report to Collector when owner has not received due notice.

Order of Collector.

80. When an officer goes to any place for the purpose of holding a sale under this Act, and no sale takes place, either for the reason stated in section 79, or because the demand of the distrainer has been previously satisfied without any intimation of such satisfaction having been given by the distrainer to such officer, the charge of one anna in the rupee on account of expenses shall be leviable, and shall be calculated on the estimated value of the distrained property.

Levy of charge when sale-officer attends, and no sale takes place.

If the distrainer's demand be not satisfied until the day fixed for the sale, the charge for expenses shall be paid by the owner of the property, and may be recovered by the sale of such portion thereof as may be necessary.

Recovery from owner.

In every other case it shall be paid by the distrainer, and may be recovered by attachment and sale of his property under the warrant of the Collector of the District or Assistant Collector:

Recovery from distrainer.

Provided that in no case shall a larger amount than ten rupees be recoverable under this section.

Limit to charge.

81. When a suit has been instituted to contest the demand of a distrainer, and the distrained property has not been released on security, if the demand or any portion of it is adjudged to be due, the Collector of the District or Assistant Collector shall issue an order to the officer authorizing the sale of such property;

Order of sale when amount adjudged due.

and, on the application of the distrainer within five days from the receipt of such order by the officer, such officer shall publish a second proclamation in the manner prescribed in section 69, fixing another day for the sale of the distrained property, which shall not be less than five nor more than ten days from the date of the proclamation;

Second proclamation of sale.

and, unless the amount adjudged to be due with the costs of distress be paid, shall proceed to sell the property in the manner hereinbefore provided.

Sale on failure to pay debt and costs.

82. (*a*) In all suits instituted to contest the distrainer's demand, he shall be required to prove the arrear in the same manner as if he had himself brought a suit for the amount under the provisions hereinafter contained.

In suit to contest his demand, distrainer to prove arrear.

(*b*) If the demand or any part thereof is found to be due, the Collector of the District or Assistant Collector shall make a decree for the amount in favour of the distrainer, and such amount may be recovered by sale of the property, as provided in the last preceding section, if the distress has not been withdrawn;

Recovery of amount decreed in favour of distrainer.

and, if any balance remain due after such sale, by execution of the decree against the person and any other property of the defaulter,

or if the property have been released on security, by execution of the decree against the person and property of the defaulter and of his surety.

Compensation in case of vexatious distress.

(*c*) If the distress is adjudged to be vexatious or groundless, the Collector of the District or Assistant Collector, besides directing the release of the distrained property, may award such compensation to the plaintiff as the circumstances of the case require.

Suit by person claiming property distrained for arrears alleged to be due from another.

83. (*a*) If any person claim as his own, property which has been distrained for arrears of rent alleged to be due from any other person, the claimant may institute a suit against the distrainer and such other person, to try the right to the property, in the same manner and under the same conditions as to the time of instituting the suit and to the consequent postponement of sale, as a person whose property has been distrained for an arrear of rent alleged to be due from him may institute a suit to contest the demand.

Release of property on security being given.

(*b*) When any such suit is instituted, the property may be released upon security being given for the value of the same.

Order of Collector when claim dismissed.

(*c*) If the claim is dismissed, the Collector of the District or Assistant Collector shall make an order for the sale of the property, or for the recovery of the value thereof, as the case may be, for the benefit of the distrainer.

Decree for release and compensation when claim upheld.

(*d*) If the claim is upheld, the Collector of the District or Assistant Collector shall decree the release of the distrained property with costs, and such compensation (if any) as the circumstances of the case require:

Saving of prior claim of person entitled to rent of land.

(*e*) Provided that no claim to any produce of land liable to distress under this Act, which at the time of the distress may have been found in the possession of a defaulting cultivator, shall bar the prior claim of the person entitled to the rent of the land, nor shall any attachment in execution of a judgment of any civil Court prevail against such prior claim.

Procedure where right to distrain is claimed by person other than distrainer.

84. If, in any case in which property has been distrained for an arrear of rent, and a suit has been instituted to contest the demand, the right to distrain for such arrears is claimed by or on behalf of any person other than the distrainer, on the ground of such other person being actually and in good faith in the receipt and enjoyment of the rent of the land, such other person shall be made a party to the suit, and the question of the actual receipt and enjoyment of the rent by him before and up to the time of the commencement of the suit shall be enquired into, and in deciding the suit the result of such inquiry shall be taken into consideration:

Saving of right to sue in civil Court.

Provided that the decision of the Collector of the District or Assistant Collector shall not affect the right of any person who may have a legal title to the rent of the land to establish his title by suit in the civil Court if instituted within one year from the date of the decision.

Persons prevented from suing in time to save property from sale may sue for damages.

85. If any person whose property has been distrained for the recovery of a demand not justly due, or of a demand due or alleged to be due from some other person, is prevented by any sufficient cause from bringing a suit to contest the demand or to try the right to the property, as the case may be, within the period allowed by section 69 or 83, and his property is in consequence sold, he may, nevertheless, institute a suit under this Act to recover compensation for such distress and sale.

Wrongful acts of distrainer.

86. If any person empowered to distrain property, or employed for the purpose under a written authority by a person so empowered, distrain or sell, or cause to be sold, any property for the recovery of an arrear of rent alleged to be due, otherwise than according to the provisions of this Act,

or if any distrained property is lost, damaged, or destroyed by reason of the distrainer not having taken proper precautions for the due keeping and preservation thereof,

or if the distress is not immediately withdrawn when it is required to be withdrawn by any provision of this Act,

the owner of the property may institute a suit under this Act to recover compensation for any injury which he has thereby sustained through any act or omission mentioned in the former part of this section.

Suit by owner against person distraining or selling without authority.

87. If any person not empowered to distrain property under section 56, 57 or 59, nor employed for the purpose under a written authority by a person so empowered, fraudulently distrains or sells, or causes to be sold, any property under colour of this Act, the owner of the property so distrained or sold may institute a suit under this Act to recover compensation from such person for any injury which the plaintiff has sustained from the distress or sale,

Penalty in addition to damages.

and the defendant shall be held to have committed criminal trespass, and shall be subject to the penalties provided for that offence by the Indian Penal Code, in addition to any damages which may be awarded against him in such suit.

Limitation of suits under sections 85, 86, 87.

88. Provided that every suit instituted under any of the three last preceding sections shall be commenced within the period allowed by section 94.

Procedure in case of resistance of distress.

89. (*a*) If any person resists a distress of property duly made under this Act, or forcibly or clandestinely removes any distrained property, the Collector of the District or Assistant Collector in charge of the Sub-division, upon complaint being made within fifteen days from the date of such resistance or removal, may cause the person accused to be arrested and brought with all convenient speed before the Collector or Assistant Collector, who shall, if possible, proceed forthwith to try the case.

(*b*) If the case cannot be at once heard, the Collector of the District or Assistant Collector may, if he think fit, require the party arrested to give

security for his person, and, in default of such security, may commit him to the civil jail until the case is tried,

and if the offence be proved and the offender be the owner of the property concerned, the Collector of the District or Assistant Collector may order him to be imprisoned in the civil jail for a term not exceeding six months, unless the whole arrear due to the distrainer, with all reasonable expenses and costs, is previously to the expiration of such term paid or levied under warrant of the Collector of the District or Assistant Collector by distress and sale of the property of the offender.

(*c*) If the offender be not the owner of the property concerned, he shall make good to the distrainer the value of the same, and shall further be liable to a fine not exceeding one hundred rupees, or, in default of payment thereof, to imprisonment in the civil jail for a term which may extend to two months.

Proceedings of officers subject to revision and orders of Collector.

90. All proceedings of officers distraining, or assisting distrainers, or holding sales, under this chapter, shall be subject to the revision and orders of the Collector of the District or Assistant Collector in charge of a Subdivision of the District.

CHAPTER IV.

PROCESS.

Mode of serving process.

91. (*a*) Every process issued by a Collector of a District or Assistant Collector under this Act shall be under his seal and signature, and shall be served or executed by the Názir, or by such other officer as the Collector of the District or the Assistant Collector may direct, at the cost of the party at whose instance it is issued.

Deposit before issue.

(*b*) The amount of such cost, and, in the case of summons to a witness, the sum required for his travelling expenses, shall be deposited in Court before the process is issued:

Power to direct service gratis.

(*c*) Provided that, if in any case the Collector of the District or the Assistant Collector is satisfied that a party is unable to pay the cost of any necessary process, he may direct such process to be served free of charge.

Punishment for resisting process.

92. Any resistance or opposition to the lawful process of a Collector of the District or Assistant Collector under this Act may be punished by him according to the provisions of the law for the time being in force for the punishment of resistance or opposition to the processes of the Courts of civil justice.

Power to issue summons and warrant.

When, in any such case, the offender is not present, the Collector of the District or Assistant Collector may summon him to answer to the charge: and, if after due service of the summons he fails to attend, may issue a warrant for his arrest.

CHAPTER V.

JURISDICTION OF COURTS.

Suits cognizable by revenue Courts only.

93. Except in the way of appeal as hereinafter provided, no Courts other than Courts of Revenue shall take cognizance of any dispute or matter in which any suit of the nature mentioned in this section might be brought, and such suits shall be heard and determined in the said Courts of Revenue in the manner provided in this Act, and not otherwise:

(*a*) suits for arrears of rent, or, where rent is payable in kind, for the money-equivalent of rent, on account of land or on account of any rights of pasturage, forest-rights, fisheries or the like;

(*b*) suits to eject a tenant for any act or omission detrimental to the land in his occupation or inconsistent with the purpose for which the land was let;

(*c*) suits to cancel a lease for the breach of any condition binding on the tenant, and which, by law, custom or special agreement, involves the forfeiture of the lease;

(*cc*) suits for compensation for or to prohibit, any act, omission or breach mentioned in clause (*b*) or clause (*c*);

(*d*) suits for the recovery of any over-payment of rent, or for compensation under section 48 or 49;

(*e*) suits for compensation for withholding receipt for rent paid;

(*f*) suits for contesting the exercise of the powers of distress conferred on landholders and others by this Act, or anything purporting to be done in the exercise of the said power, or for compensation for wrongful acts or omissions of a distrainer;

(*g*) suits by lambardárs for arrears of Government-revenue, payable through them by the co-sharers whom they represent, and for village-expenses and other dues for which the co-sharers may be responsible to the lambardár;

(*h*) suits by recorded co-sharers for their recorded share of the profits of a mahál, or any part thereof, after payment of the Government-revenue and village-expenses, or for a settlement of accounts;

(*i*) suits by muáfidárs, or assignees of the Government-revenue, for arrears of revenue due to them as such;

(*j*) suits by taluqdárs and other superior proprietors for arrears of revenue due to them as such;

(*k*) suits by recorded co-sharers to recover from a recorded co-sharer who defaults arrears of revenue paid by them on his account.

Limitation of suits under this Act.

94. Suits for arrears of rent or revenue, or for a share of the profits of a mahál, or of village-expenses or other dues, shall not be brought after three years from the day on which the arrears or share became due.

Suits relating to distress, not being suits to contest the demand or to try the right to the property, shall not be brought after three months from the day on which the right to sue accrued:

All other suits must be brought within one year from the day on which the right to sue accrues, unless otherwise specially provided for in this Act.

The day on which the arrears become due or the day on which the right to sue accrues (as the case may be) shall be excluded in computing the periods of limitation prescribed by this section.

In the absence of any express agreement among the co-sharers and of any order by the Settlement-officer under the North-Western Provinces Land-revenue Act, 1873, section 65, clause (*g*), the

Board may from time to time, with the previous sanction of the Local Government, make rules for fixing the dates on which profits shall be divisible by the lambardárs.

95. No Courts other than Courts of revenue shall take cognizance of any dispute or matter on which any application of the nature mentioned in this section might be made: and such applications shall be heard and determined in the said Courts in manner provided under this Act, and not otherwise:—

Applications cognizable by revenue Courts only.

(*a*) Application to determine the nature and class of a tenant's tenure, under section 10.

(*b*) Application by a landholder, or his agent, to compel a patwárí to produce his accounts relating to land.

(*c*) Application to resume rent-free grants under section 30, or to assess to rent land previously held rent-free.

(*d*) Application from a landholder to eject a tenant under section 35, or to have a notice of ejectment issued and served under section 38.

(*e*) Applications made by a tenant under section 39.

(*f*) Application from a landholder, under section 40, for assistance to eject a tenant.

(*g*) Application from a tenant or landholder to determine the value of any standing crop, or ungathered products of the earth, belonging to the tenant and being on the land at the time of his ejectment, under section 42.

(*h*) Application by a landholder to determine rent payable for land used by a tenant for the purpose of tending or gathering in the crop, under section 42.

(*i*) Application by a landholder or tenant for assistance in the division or appraisement of a standing crop, under section 43.

(*j*) Application by a landholder or tenant to determine compensation for improvements of land.

(*k*) Application by a tenant for leave to deposit rent.

(*l*) Application for enhancement or determination of rent.

(*m*) Application for compensation for wrongful dispossession.

(*n*) Application for the recovery of the occupancy of any land of which a tenant has been wrongfully dispossessed.

(*o*) Application for abatement of rent.

(*p*) Application for leases or counterparts, and for the determination of the rates of rent at which such leases or counterparts are to be delivered.

(*q*) Application under section 7 to have the holding of an ex-proprietary tenant divided off.

(*r*) Application under section 22 A to survey land.

(*s*) Application under section 33 A to have a notice of relinquishment declared invalid.

(*t*) Application to take out of deposit any amount deposited under section 55 A.

For the purposes of the Court-fees Act, 1870, applications under clauses (*c*), (*l*), (*m*), (*n*), (*o*) and (*p*) of this section shall be deemed to be plaints in suits.

95A. When any order has been made on an application under this Act, no process for the execution of such order shall be issued on an application made after the lapse of one year from the date of such order, except when special provision is otherwise made in this Act.

Limitation of process of execution on applications.

96. (*a*) All applications under section 95 shall be made in the district in which the land, crops or products referred to is or are situate.

Points of procedure relating to applications under section 95.

(*b*) All orders passed on applications under section 95 shall be proved in the same manner, and when proved shall have the same effect, as if they were judgments of the civil Courts.

(*c*) In cases wherein a specific sum of money is adjudged to be due, or any costs or damages are awarded, all such orders may be executed by any process in use for the recovery of an arrear of revenue or rent.

(*d*) In cases wherein possession of immoveable property is adjudged, the officer making the award may deliver over possession in the same manner, and with the same power, in regard to contempts, resistance and the like, as may be lawfully exercised by the civil Courts in execution of their own decrees.

(*e*) Applications under clauses (*m*) and (*n*) of section 95 shall not be brought after six months from the date of the wrongful dispossession.

96A. All suits and applications under this Act may, with the consent of the parties, be referred to arbitration under section 220 to section 231 (both inclusive) of the North-Western Provinces Land-revenue Act, 1873.

Reference to arbitration.

97. The Local Government may invest any officer with the powers of an Assistant Collector of the first or second class under this Act, and may at any time withdraw such powers.

Power to invest officers with Assistant Collector's powers, and withdraw them.

98. Assistant Collectors of either class shall have, as such, power to try suits and applications of the following descriptions:—

Suits and applications cognizable by Assistant Collectors.

(*a*) suits for arrears of rent or the money equivalent of rent on account of land, or on account of any rights of pasturage, forest rights, fisheries or the like;

(*b*) suits for compensation for withholding receipts for rent paid, under section 48;

(*c*) suits to contest the exercise of the powers of distress conferred on landholders and others by this Act, or anything purporting to be done in exercise of the said powers, or for compensation for wrongful acts or omissions of a distrainer;

(*d*) suits by lambardárs for arrears of Government-revenue, payable through them by the co-sharers whom they represent, and for village-expenses and other dues, for which the co-sharers may be responsible to the lambardár;

(*e*) suits by muáfídárs or assignees of the Government-revenue for arrears of revenue due to them as such;

(*f*) suits by taluqdárs or other superior proprietors for arrears of revenue due to them as such;

(*g*) applications by a landholder, or by an agent employed by a landholder, to compel the production of accounts by patwárís;

(*h*) applications by a tenant or landholder to determine the value of any standing crops or ungathered products of the earth, and being on the land at the time of his ejectment, under section 42;

(*i*) applications by a landholder to determine the amount of rent payable by a tenant using land for the purpose of tending or gathering in crops, under section 42;

(*j*) applications by a landholder or a tenant for assistance in the division or appraisement of standing crops, under section 43;

(*k*) applications by tenants for leave to deposit rent;

(*l*) suits under section 93, clause (*k*), to recover arrears of revenue.

(*m*) applications under section 22 A to survey land.

99. Assistant Collectors of the first class, in addition to the suits and applications specified in section 98, shall have power to try suits and applications of the following descriptions:—

Additional suits and applications triable by Assistant Collectors, first class.

(*a*) suits to eject a tenant for any act or omission detrimental to the land in his occupation, or inconsistent with the purpose for which the land was let;

(*b*) suits to cancel a lease for any breach of any condition binding on the tenant;

(*bb*) suits for compensation for, or to prohibit, any act, omission or breach mentioned in clause (*a*) or clause (*b*);

(*c*) suits for the recovery of any over-payment of rent or for compensation, under section 48 or section 49;

(*d*) suits by co-sharers for their shares of the profits of a mahál or any part thereof, after payment of the Government-revenue and village-expenses, or for a settlement of accounts;

(*e*) applications by a landholder to eject a tenant, under section 35;

(*f*) applications under section 39 by a tenant contesting notice of ejectment;

(*g*) applications by a landholder under section 40, for assistance to eject a tenant, on whom notice of ejectment has been served;

(*h*) applications for compensation for wrongful dispossession;

(*i*) applications by a landholder or tenant to determine the amount to be paid as compensation for improvements;

(*j*) applications to recover the occupancy of any land from which a tenant has been wrongfully dispossessed by the landholder;

(*k*) applications under section 30 for the resumption of rent-free grants or for the assessment to rent of land hitherto held rent-free;

(*l*) applications under section 7 to have the holding of an ex-proprietary tenant divided off;

(*m*) applications under section 33 A to have a notice of relinquishment declared invalid;

(*n*) applications to take out of deposit amounts deposited under section 55 A.

100. In addition to the powers specified in sections 98 and 99, an Assistant Collector of the first class, specially empowered by Government in this behalf, shall have power to try the following applications:

Additional applications triable by Assistant Collector, first class, with special powers.

(*a*) applications for enhancement or determination of rent;

(*b*) applications for abatement of rent;

(*c*) applications for leases or counterparts, and the determination of the rates of rent at which such leases or counterparts are to be delivered;

(*d*) applications to determine the nature or class of a tenant's tenure.

101. The Collector of the District, or any Assistant Collector in charge of a sub-division of a district, may make over any case, or class of cases, for inquiry and decision, from his own file, to any of his subordinates competent to deal with such case or class of cases under the provisions of this Act.

Power to make over cases.

102. Collectors of Districts, and Assistant Collectors in charge of sub-divisions of districts, may, respectively, withdraw any case or class of cases from any officers subordinate to them, and may deal with such case or class of cases themselves, or refer it for disposal to any other such Revenue-officer competent to deal with the same under the provisions of this Act.

Power to withdraw cases.

103. The Collector of the District may exercise—

Powers exercisable by Collector of District.

(*a*) all powers given by this Act to Collectors of Districts,

(*b*) all powers which by this Act are conferred, or can be conferred, on Assistant Collectors.

The Local Government may invest any officer in charge of a sub-division of a district with all or any of the powers conferred by this Act on a Collector of a District.

Investment of officer in charge of sub-division with powers of Collector of District.

In conferring powers under this Act, the Local Government may empower persons specially by name, or classes of officials generally by their official titles.

Mode of conferring powers.

CHAPTER VI.

PROCEDURE IN SUITS UP TO JUDGMENT.

104. Suits under this Act shall be instituted in the district in which the subject of the suit, or some part thereof, is situate,

Place of instituting suits.

and all such suits shall be commenced by presenting to the Court a plaint, which shall contain—

Plaint.

(*a*) the name, description and place of abode of the plaintiff;

(*b*) the name, description and place of abode of the defendant, so far as they can be ascertained;

(*c*) the subject-matter of the claim, and its amount or value computed according to the Court-fees Act, 1870; and

(*d*) the date on which the right to sue accrued.

105. For the purpose of suing or being sued under this Act, the managers of mahals, whether held under the Court of Wards or under direct management, shall be deemed to be landholders.

Managers of mahals to be, for purpose of litigation, deemed landholders.

106. No co-sharer in an undivided property shall, in that character, be entitled separately to sue a tenant under this Act, unless he is authorized to receive from such tenant the whole of the rent payable by such tenant; but nothing in this section shall affect any local custom or any special contract.

Suits by co-sharers in undivided property.

107. The plaint shall be presented by the plaintiff, or by an agent duly authorized on his behalf, who has personal knowledge of the facts of the case, or by an agent accompanied by a person who has such knowledge.

Plaint by whom presented.

The plaint shall be subscribed and verified at the foot by the plaintiff or his agent in the manner following, or to the like effect:—

Verification of plaint.

"I, *A. B.*, the plaintiff named in the above plaint, do declare that what is stated therein is true to the best of my knowledge and belief."

If the plaint contains any averment which the person making the verification knows or believes to be false, or does not know or believe to be true, he shall be punishable according to the law for the punishment of giving or fabricating false evidence.

False averment.

108. If the plaintiff rely in support of his claim on any document in his possession, he shall deliver the same to the Court at the time of presenting his plaint.

Document relied on by plaintiff to be presented with plaint.

Unless such document be so delivered, or its non-production be sufficiently excused, or unless the Court see fit to extend the time for producing the same, it shall not afterwards be admitted.

Admission afterwards.

109. If the plaintiff require the production of any document in the possession or power of the defendant, he may, at the time of presenting his plaint, deliver to the Court a description of the document, in order that the defendant may be required to produce the same.

Procuring production of document in possession of defendant.

110. If the suit be for the recovery of an arrear of rent or revenue, or of a share of profits or village-expenses, or other dues under section 93, the plaint shall specify the name of the village and estate, and of the pargana or other local division in which the land is situate:

Plaint in suits for arrears of rent.

and, if the suit be for an arrear of rent alleged to be due from any tenant, the plaint shall also specify the quantity of land, and (where fields have been numbered in a Government-survey) the number of each field, and yearly rent of the land; the amount (if any) received on account of the year for which the claim is made; and in all cases coming under this section the plaint shall specify the amount in arrear, and the time in respect of which it is alleged to be due.

111. If the suit be for the ejectment of a tenant from any land, the plaint shall describe (as circumstances may require) the extent, situation and designation of the land; and, if necessary for its identification, shall set forth its boundaries.

Plaint in suits for ejectment.

112. If the plaint do not contain the several particulars hereinbefore required to be specified therein, or be not subscribed and verified as hereinbefore required, the Court may, at its discretion, return it to the plaintiff, or allow it to be amended.

Return or amendment of plaint.

112A. The Court may, on or before the first hearing upon the application of either party, and on such terms as the Court thinks just, order that the name of any party, whether as plaintiff or as defendant, improperly joined, be struck out;

Court may dismiss or add parties.

and the Court may at any time, either upon or without such application, and on such terms as the Court thinks just, order that any plaintiff be made a defendant, or that any defendant be made a plaintiff, and that the name of any person who ought to have been joined whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

No person shall be added as a plaintiff without his own consent thereto.

Consent of person added as plaintiff.

All parties whose names are so added as defendants shall be served with a summons in manner hereinafter mentioned, and the proceedings as against them shall be deemed to have begun only on the service of such summons:

Defendants added to be served.

Provided that, when a defendant dies and the suit is continued against his legal representative, it shall, as regards him, be deemed to have been instituted when it was instituted against the deceased defendant.

112B. Where a defendant is added, the plaint, if previously filed, shall, unless the Court directs otherwise, be amended in such manner as may be necessary, and an amended copy of the summons shall be served on the new defendant and the original defendants.

When defendant added, plaintiff to amend.

112C. All objections for want of parties, or for joinder of parties who have no interest in the suit, or for mis-joinder as co-plaintiffs or co-defendants, shall be taken at the earliest possible opportunity, and in all cases before the first hearing, and any such objection not so taken shall be deemed to have been waived by the defendant.

Time for taking objections as to non-joinder or mis-joinder of parties.

112D. If the plaint be admitted, the plaintiff shall present as many copies on plain paper of the plaint as there are defendants, unless the Court, by reason of the length of the plaint, or the number of the defendants, or for any other sufficient reason, permits him to present a like number of concise statements of the nature of the claim made, or of the relief or remedy required in the suit, in which case he shall present such statements.

Procedure on admitting plaint.

Concise statements.

113. If the plaint be in proper form, the Court, except as otherwise hereinafter specially provided, shall direct the issue of a summons to the defendant,

Issue of summons.

and if the plaintiff require the personal attendance of the defendant, and satisfy the Court that such attendance is necessary, or the Court of its own accord require such attendance, the summons shall contain an order for the defendant to appear personally on a day to be specified in the summons.

Order for personal attendance or appearance by agent.

If the plaintiff or the Court does not require the personal attendance of the defendant, the summons shall order the defendant to appear either personally or by an agent duly authorized on his behalf, who has personal knowledge of the subject, or is accompanied by a person who has such personal knowledge.

114. The day to be specified in the summons shall be fixed with reference to the state of the file and the distance that the defendant may be or be supposed to be at the time from the place where the Court is held,

Fixing of day to be specified in the summons.

and the summons shall order the defendant to produce any document in his possession or power of which the plaintiff demands inspection, or upon which the defendant relies in support of his defence.

Order to produce documents.

It shall also direct him to bring with him his witnesses, if they are willing to attend without issue of process,

Order to bring witnesses.

and it shall be in the form (D) contained in the first schedule hereto annexed, or to the like effect.

Form of summons.

It shall be accompanied with one of the copies or concise statements mentioned in section 112 D.

Copy or statement annexed to summons.

115. The summons shall be served by delivering a copy thereof to the defendant personally when practicable;

Mode of serving summons.

or, if the copy cannot be delivered to the defendant personally, by affixing copy of the summons to some conspicuous part of his usual residence, and also affixing a copy of the same in the Court.

116. If the summons be served by delivering a copy to the defendant personally, the Názir shall endorse on the summons the fact of such service.

Endorsement on summons.

If personal service be not effected, the Názir shall endorse on the summons the reason of not serving it personally, and how it has been served.

117. If the usual residence of the defendant be in another district, the summons shall be sent by the public post to the Collector of such district, who shall issue the summons, and return the same, after service, with the prescribed endorsement, to the officer by whom it was transmitted to him.

Service of summons in another district.

117A. If the defendant resides out of British India, and has no agent in British India empowered to accept the service, the summons shall be addressed to the defendant at the place where he is residing, and forwarded to him by post, if there be postal communication between such place and the place where the Court is situate.

Service when defendant resides out of British India and has no agent to accept service.

117B. If there be a British Resident or Agent of Government in or for the territory in which the defendant resides, the summons may be sent to such Resident or Agent by post or otherwise for the purpose of being served upon the defendant; and if the Resident or Agent return the summons with an endorsement under his hand that the summons has been served on the defendant in manner hereinbefore directed, such endorsement shall be conclusive evidence of such service.

Service through British Resident or Agent of Government.

Deposit of cost of serving summons or warrant.

118. The amount of the cost of serving the summons, or, if a warrant be issued as provided in the next following section, of serving the warrant,

shall in all cases be deposited in Court by the plaintiff within such time before the issue of such summons or warrant as is fixed by the Court issuing the process.

If the said amount be not so deposited (except where the Court in exercise of the discretion reserved to it in section 91 allows the summons to be served gratis), the case shall be struck out of the list of pending suits;

Effect of failure to deposit.

but in such case the plaintiff may present another plaint at any time within the period allowed by the rules herein contained for the limitation of suits.

119. (*a*) If in any suit against a tenant for the recovery of an arrear of rent, or in any suit for the recovery of an arrear of revenue, or a share of profits or village-expenses or other dues, the plaintiff desires a warrant of arrest to be issued against the defendant, such defendant being resident within the district in which the suit is instituted, the plaintiff shall present, with his plaint, an application for the issue of such warrant.

Procedure when plaintiff desires issue of warrant of arrest.

(*b*) When such application is presented, the Court shall examine the plaintiff or his agent, and inspect the documents adduced by him in support of his claim; and if *primâ facie* it appear to the Court that the claim is well founded, and that, if a summons be issued, the defendant will abscond instead of appearing to answer the claim, the Court may issue a warrant for his arrest.

(*c*) The Court shall fix a reasonable time for the return of the warrant, and the officer entrusted with the service thereof shall, at the time of arresting the defendant, deliver to him one of the copies or concise statements mentioned in section 112D and a notice requiring him, if he contest the claim, to bring with him any document upon which he relies in support of his defence.

(*d*) Every warrant issued and notice delivered under this section shall be respectively in the forms (E) and (F) in the first schedule hereto annexed, or to the like effect.

120. If a defendant be arrested under the warrant of arrest, he shall be brought with all convenient speed before the Court.

Procedure after arrest of defendant.

121. When a defendant is brought before the Court under warrant, the Court shall, with all convenient speed, proceed to try the case in the manner hereinafter provided,

Procedure when defendant is brought before Court under warrant.

and if the suit cannot be at once adjudicated, the Court may, if it think fit, require the defendant to give security for his appearance whenever the same may be required at any time whilst the suit is pending, or until execution of the final decree which may be passed thereon,

and may commit him to the civil jail to be there detained until he furnishes such security or deposits such sum as the Court orders.

The security-bond shall be in the form (G) contained in the first schedule hereto annexed, or to the like effect.

Form of security-bond.

122. If the defendant cannot be arrested under the warrant, the Court, on the application of the plaintiff, shall either postpone the case for such period as to it seems proper, in order that the plaintiff may apply within the said period for another warrant to be issued for the arrest of the defendant, or shall forthwith issue a proclamation, to be affixed in its own office and at the residence of the defendant, appointing a day for the hearing of the case, which shall not be less than ten days from the date of the publication of the notice, at the residence of the defendant.

Procedure when defendant cannot be arrested under warrant.

If the defendant appear in pursuance of the proclamation, he shall be dealt with as provided in the last preceding section.

123. If it appear to the Court that the arrest of the defendant was applied for without reasonable cause, the Court may, in its decree, award to him such sum not exceeding one hundred rupees as it may deem a reasonable compensation for any injury or loss which he has sustained by reason of such arrest, or of his detention in jail during the pendency of the suit.

Compensation for arrest applied for without reasonable cause.

124. If on the day fixed by the summons or proclamation for the appearance of the defendant, or on any subsequent day to which the hearing of the case may be adjourned prior to the recording of an issue for trial as hereinafter provided, neither of the parties appear in person or by an agent, the case may be struck off, with liberty to the plaintiff to bring a fresh suit, unless precluded by the rules herein contained for the limitation of suits.

Consequence of neither party appearing on day fixed.

125. If on any such day only the defendant appears, the Court shall pass judgment against the plaintiff by default, unless the defendant admits the plaintiff's right to the relief which he claims, in which case the Court shall proceed to give judgment for the plaintiff upon such admission without costs:

Judgment by default.

Judgment upon admission of claim.

Provided that such judgment, if there be more than one defendant, shall be only against the defendant who makes the admission.

Proviso.

126. If on any such day the plaintiff only appear, the Court, upon proof that the summons or proclamation has been duly served according to the provisions of this Act, shall proceed to examine the plaintiff or his agent, and after considering the allegations of the plaintiff, and any documentary or other evidence adduced by him, may either dismiss the case or postpone the hearing of it to a future day for the attendance of any witness the plaintiff may wish to call, or may pass judgment *ex parte* against the defendant.

If plaintiff only appear, Court may proceed *ex parte*.

127. If the defendant appear on any subsequent day to which the hearing of the suit is postponed under the last preceding section, the Court may, upon such conditions, if any, as to costs or otherwise as it thinks proper, allow the defendant to be heard in answer to the suit as if he had appeared on the day fixed for his attendance.

If defendant appear on adjourned hearing, Court may allow him to be heard in answer.

128. (*a*) No appeal shall lie from a judgment passed *ex parte* against a defendant who has not appeared, or from a judgment against a plaintiff by default for non-appearance.

No appeal from judgment *ex parte* or by default;

(*b*) But in all such cases, if the party against whom judgment has been given appears, either in person or by agent, if a plaintiff, within fifteen days from the date of the Court's decree, and, if a defendant, within fifteen days after any process for enforcing the judgment has been executed, or at any earlier period, and shows sufficient cause for his previous non-appearance, and satisfies the Court that there has been a failure of justice, the Court may, upon such terms as to costs or otherwise as it thinks proper, revive the suit and alter or rescind the judgment according to the justice of the case.

but Court may revive suit and alter or rescind judgment.

(*c*) But no judgment shall be reversed or altered without previously summoning the adverse party to appear and be heard in support of it.

Adverse party to be summoned.

129. When both parties appear in person or by agent on the day named in the summons, or upon any subsequent day to which the hearing of the case may be adjourned, for sufficient reason to be recorded by the Court, the Court shall proceed to examine such of the parties as may be present, and either party or his agent may cross-examine the other party or his agent.

Examination.

130. If either of the parties be not bound to attend personally, any agent by whom he appears, or any person accompanying such agent, may be examined and cross-examined in like manner as the party himself would have been if he had attended personally.

Examination and cross-examination of agents.

131. At the time of the examination, the defendant may, if he think fit, file a written statement in his defence.

Defendant may file written statement.

Such written statement shall be subscribed and verified in the manner hereinbefore provided for subscribing and verifying plaints, and if it contains any averment which the person making the verification knows or believes to be false, or does not know or believe to be true, he shall be punishable according to the law for the punishment of giving or fabricating false evidence.

Verification of written statement.

False averment.

132. The examination of the parties or their agents, or such other persons as aforesaid, shall be according to the law for the time being in force relative to the examination of witnesses in the civil Courts.

Mode of examination.

The substance of the examination shall be reduced to writing in the mother-tongue of the presiding officer, and shall be filed with the record.

133. If either of the parties produce a witness on such day, the presiding officer may take the evidence of such witness.

Witness produced may be examined.

134. If the defendant rely on any document in support of his defence, he shall deliver the same into Court at the first hearing of the suit:

Document relied on by defendant to be produced at first hearing.

and unless such document be so delivered, or its non-production be sufficiently excused, or unless the presiding officer see fit to extend the time for delivering the same, it shall not afterwards be admitted.

135. If after the examination required by section 129, and also the examination of any witness who may attend to give evidence on behalf of either of the parties, and after a consideration of the documentary evidence adduced, a decree can be properly made without further evidence, the Court shall make its decree accordingly.

Decree after examination, if no further evidence is required.

136. If on such examination as aforesaid either party is absent and his agent is unable to answer any material question relating to the case which the Court is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Court may postpone the hearing of the case to a future day, and direct that the party whose agent was unable to answer as aforesaid shall attend in person on such day;

Party to attend in person when his agent is unable to answer.

and if such party fails to appear in person on the day appointed, the Court may pass judgment as in case of default, or make such other order as it deems proper in the circumstances of the case.

Judgment or order if he fail to appear.

137. If on such examination as aforesaid it appear that the parties are at issue on any question upon which it is necessary to hear further evidence, the Court shall declare and record such issue, and shall fix a convenient day for the examination of witnesses and the trial of the suit; and the trial shall take place on that day, unless there be sufficient reason for adjourning it, which reason shall be recorded by the Court.

Procedure when parties at issue on question requiring evidence.

138. The parties shall produce their witnesses on the day of trial, and if either party require assistance to procure the attendance of a witness on such day, either to give evidence or to produce a document, he shall apply to the Court in sufficient time before the day fixed for the trial, to enable the witness to be summoned to attend on that day; and the Court shall thereupon issue a summons requiring such witness to attend.

Parties to produce witnesses or procure attendance by summons.

139. The law and rules for the time being in force relating to the evidence of witnesses, for procuring the attendance of witnesses and the production of documents, and for the examination, remuneration and punishment of witnesses, whether parties to the case or not, in cases before the civil Courts, shall, except so far as may be inconsistent with the provisions herein contained, apply to suits under this Act.

Provisions regarding attendance, examination, &c., of witnesses.

140. If on the day fixed for the trial of any issue neither of the parties appear, the case may be struck off, with liberty to the plaintiff to bring a fresh suit.

Case to be struck off if neither party appears.

If on any such day one only of the parties appear, the issue may be tried and determined in the absence of the other party, upon such evidence as may be then before the Court.

Trial of issue *ex parte*.

141. When suits under this Act are instituted or defended by agents employed in the collection of rent or management of land, in the name and on the behalf of the landholders by whom they are so employed, all the provisions of this Act, by which the personal appearance or attendance of parties to a suit is or may be required, shall be applicable to such agents;

Provisions to apply when suits are instituted or defended on behalf of landholders by agents.

and anything which by this Act is required or permitted to be done by a party in person may be done by any such agent as aforesaid.

Processes served on any such agent shall be as effectual for all purposes in relation to the suit as if the same had been served on the landholder in person:

Processes served on such agents.

and all the provisions of this Act relative to the service of processes on a party to the suit shall be applicable to the service of processes on such agent.

142. A female plaintiff or defendant shall not be required to attend in person, if she is of a rank or class which, according to the custom and manners of the country, would render it improper for her to appear in public.

Personal attendance of female plaintiff or defendant when not required.

143. Any party to a suit may employ an authorized agent to conduct the case on his behalf:

Parties may employ agents.

but the employment of such agent shall not excuse the personal attendance of the plaintiff or defendant, in cases where his personal attendance is required by the summons, or any order of the Court;

Personal attendance when not excused.

and no fee for any agent shall be charged as part of the costs of suit in any case under this Act, unless the Court certifies that, under the circumstances of the case, such fee is proper to be allowed.

Fee for agents not chargeable as costs.

144. The Court may in any case grant time to the plaintiff or defendant to proceed in the prosecution or defence of a suit,

Court may grant time or adjourn hearing.

and may also, from time to time, in order to the production of further evidence, or for other sufficient reason to be recorded by the Court, adjourn the hearing of any case to such day as to it may seem fit.

145. The presiding officer may, at any stage of a case, cause a local enquiry and report respecting the matter in dispute to be made by any officer subordinate to him, or by any other officer of Government, with the consent of the authority to whom such officer is subordinate, or may himself proceed to the spot and make such local enquiry in person.

Court may cause local enquiry and report, or may itself enquire.

The provisions of the law for the time being in force relative to local inquiries by Amíns or Commissioners, under orders of the civil Courts, shall apply to any local inquiry made by any officer under this section,

Provisions applied to such inquiry.

and, so far as they are applicable, to inquiries made by the presiding officer of the Court in person.

In the latter case the presiding officer, after completing the inquiry, shall record such observations as appear to him appropriate, and the observations so recorded shall form part of the proceedings in the suit.

Record in case of inquiry by Court.

146. The defendant in any suit under this Act may pay into Court such sum of money as he thinks a full satisfaction for the demand of the plaintiff, together with the costs incurred by the plaintiff up to the time of such payment, and such sums shall be paid to the plaintiff.

Defendant may pay admitted debt and costs into Court.

If the defendant deposit less than the sum claimed and the plaintiff elect to proceed in the case, and ultimately recover no further sum than has been paid into Court, the plaintiff shall be charged with any costs incurred by the defendant in the suit after such payment.

Plaintiff chargeable with subsequent costs if he proceed and recover no further sum.

147. No interest shall be allowed to a plaintiff on any sum paid by the defendant into the Court from the date of such payment, whether such sum be in full of the plaintiff's claim, or fall short thereof.

No interest to plaintiff after date of deposit by defendant.

148. When, in any suit between a landholder and a tenant under this Act, the right to receive the rent of the land or tenure cultivated or held by the tenant is disputed on the ground that some third person has actually and in good faith received and enjoyed such rent before and up to the time when the right to sue accrued, such third person may be made a party to the suit, and the question of such receipt and enjoyment of the rent by such third person may be enquired into, and the suit shall be decided according to the result of such enquiry:

In suits where right to receive rent is disputed, third person who has received it may be made a party.

Provided that the decision of the Court shall not affect the right of either party entitled to the rent of such land to establish his title by suit in the civil Court, if instituted within one year from the date of the decision.

Saving of right to sue in civil Court to prove title to rent.

149. Whenever a decree is given for the ejectment of a tenant, or the cancelment of his lease, on account of any act or omission by which the land in his occupation has been damaged, or which is inconsistent with the purpose for which the land has been let, the Court may, if it think fit, allow him to repair such damage within one month from the date of the decree, or order him to pay such compensation, within such time, or make such other order in the case, as the Court thinks fit,

Court may allow tenant to repair damage caused by certain acts or omissions.

and if such damage be so repaired, or compensation so paid, or order obeyed, the decree shall not be executed.

150. Every judgment under this Chapter shall be pronounced in open Court.

Delivery of judgment.

151. The judgment shall be written in the mother-tongue of the presiding officer, and shall contain the reasons for the same, and shall be dated and signed by the presiding officer at the time it is pronounced:

Its language and contents.

Provided that, where his mother-tongue is not English, the judgment may be written in English, if he is able to write a clear and intelligible decision in that language.

When it may be in English.

151A. The judgment shall direct by whom the costs of each party are to be paid, whether by himself or by any other party to the suit, and whether in whole or in what part or proportion.

To direct payment of costs.

151B. Except as hereinbefore provided, the Court shall have full power to give and apportion costs of every suit in any manner it thinks fit; and the fact that the Court has no jurisdiction to try the case is no bar to the exercise of such power; but if the Court directs that the costs of any suit shall not follow the event, the Court shall state its reasons in writing.

Power of Court as to costs.

151C. The Court may direct that the costs payable to one party by another shall be set off against sums admitted or found in the suit to be due from the former to the latter.

Costs may be set off.

151D. Except as hereinbefore provided, the Court may give interest at any rate not exceeding six per cent. per annum, on any sum decreed or found to be due, or on costs.

Power to give interest.

152. Every officer invested with powers under this Act may hold a Court for hearing and determining suits under this Act in any place within the limits of the district to which he is appointed.

Power to hold Court in any place within district.

Every hearing shall be in open Court, and the parties to the suit or their authorized agents shall have due notice to attend in such place.

CHAPTER VII.

PROCEDURE IN EXECUTION OF DECREES IN SUITS.

153. If the decree be for the ejectment of any tenant from land occupied by him, the decree shall be executed by giving the possession or occupancy of the land to the person entitled by the decree thereto.

Mode of executing decree for ejectment of tenant.

If any opposition is made to the execution of the order for giving such possession or occupancy, by the party against whom the order is made, the Magistrate, on the application of the Collector of the District or Assistant Collector, shall give effect to the same.

Magistrate to give it effect in case of opposition.

154. If the decree be for the payment of arrears of rent or revenue, or of money, and the defendant has been committed to jail, or appear in Court pursuant to the conditions of any security-bond given under

Power to order detention in, or commitment to, civil jail in certain cases.

section 121, the Collector of the District or Assistant Collector may order that he be detained in, or committed to, the civil jail, unless he immediately pays into Court the amount of the decree with costs, or otherwise complies with the terms of the decree.

155. If the judgment-debtor has given security for his appearance, and is not present when judgment is pronounced, and the surety fails to deliver him into custody when required so to do, process of execution may be taken out against the surety in the same manner as if a decree for the amount due by the debtor had been passed against the surety.

Process against surety on failure to deliver judgment-debtor into custody.

156. (*a*). A writ of execution may be issued against either the person or the property of a judgment-debtor;

Process of execution against person or property, but not both.

but process shall not be issued simultaneously against both person and property.

(*b*). Such writ may be issued on the oral application of the judgment-creditor or his agent, made at the time the decree is passed, or, thereafter, upon the written application of the judgment-creditor or his agent.

Applications on which it may issue.

(*c*). Writ of execution against the person or moveable property of a debtor shall be in the form (H) or (I) contained in the first schedule hereto annexed, or to the like effect.

Form of writ of execution.

157. Any moveable property required to be seized under an execution shall, if practicable, be described in a list to be furnished by the judgment-creditor;

Execution against moveable property.

but if the creditor is unable to furnish such list, he may apply for a general attachment of the debtor's effects, to the amount of the judgment and costs.

In either case, the property to be seized shall be pointed out to the officer entrusted with execution of the process, by the creditor or his agent:

Provided that no implements of husbandry, or cattle actually employed in agriculture, or tools of artisans, or necessary wearing apparel of the judgment-debtor, his wife or children, shall be attached under this section.

Articles exempted from attachment.

158. Every writ of execution shall bear date on the day on which it is signed by the Collector of the District or Assistant Collector, and shall continue in force for such period as he may direct (not being more than sixty days) calculated from such date.

Date and duration of writs.

159. Second and successive writs of execution may be issued by order of the Collector of the District or Assistant Collector on the application of the judgment-creditor, after the expiration of the period fixed for the continuance in force of a previous warrant.

Second and successive writs.

160. Process of execution shall not be issued upon any judgment, without previous notice to the party against whom execution is applied for, if, when application for the issue of the process is made, a period of more than one year has elapsed from the date of the judgment, or from the date of the last previous application for execution.

After one year execution not to issue without notice to party concerned.

161. Execution on a judgment shall not issue against the heir or other representative of a deceased party, unless notice to appear and be heard has been previously served on such heir or other representative.

Execution not to issue against heir or representative of deceased party without notice.

162. No process of execution shall be issued on a judgment under this Act, when the application for the issue of such process is made after the lapse of three years from the date of such judgment, unless the judgment be for a sum exceeding five hundred rupees;

No process of execution after three years, unless judgment be for sum exceeding 500 rupees.

in which case the period within which execution may be had shall be regulated by the general rules in force in respect to the period allowed for the execution of decrees of the civil Court.

Regulation of period in such case.

163. If a writ issues for taking any person in execution, the officer charged with the execution of the writ shall bring him with all convenient speed before the Collector of the District or Assistant Collector.

Procedure in execution of writ against person.

If such person demands to deposit in Court the full amount specified in the writ,

or make such arrangement for the payment of the same as is satisfactory to the judgment-creditor,

or satisfy the Collector of the District or Assistant Collector that he has no present means of paying the same amount,

the Collector of the District or Assistant Collector shall send him to the civil jail, there to remain for such time as may be directed by a warrant addressed to the keeper of the jail, unless in the meanwhile he pays the full amount for the payment of which he is liable under the decree:

Provided that the time for which a debtor may be confined in execution of a decree under this Act shall not exceed three months when the amount decreed (exclusive of costs) does not exceed fifty rupees,

Limit of imprisonment.

or six months when such amount does not exceed five hundred rupees,

or two years in any other case.

164. (*a*.) Any person once discharged from jail shall not be imprisoned a second time under the same judgment.

No person to be imprisoned a second time under same judgment.

(*b*.) If the amount due under the decree does not exceed one hundred rupees, the Collector of the District or Assistant Collector may declare him absolved from further liability under that decree, and such liability shall thereupon be extinguished.

When further liability extinguished.

(*c*.) In other cases the discharge shall not extinguish the liability of the discharged person under the decree, or exempt any property belonging to him from attachment in execution of the same.

When not extinguished.

165. Every person applying for the issue of a warrant of arrest under section 119, or suing out process of execution against the person of any judgment-debtor, shall deposit in Court, when the warrant issues, diet-money for thirty days at such rate not exceeding two annas per diem, as the Collector of the District or Assistant Collector may direct, unless for any special reason he directs that deposit be made at a higher rate, which shall not exceed four annas per diem.

Diet-money to be deposited at time of issue of warrant.

166. Payment of diet-money at the same rate shall be made previously to the commencement of each succeeding month of the imprisonment, on failure of which the party confined shall be discharged.

Effect of non-payment of diet-money in advance during imprisonment.

167. All diet-money spent in providing subsistence for any prisoner shall be added to the costs in the suit,

Diet-money spent to be costs in suit.

and any diet-money not so spent shall be returned to the person who deposited the same.

Refund of remainder.

168. In executing a writ of execution against the moveable property of a debtor liable under this Act, the officer charged with the execution of the writ shall prepare a list of the property pointed out by the judgment-creditor, and shall publish a proclamation, specifying the day upon which the sale is intended to be held, together with a copy of the said list, at the intended place of sale and at the residence of the debtor.

Procedure in executing writ against moveable property.

A copy of the said proclamation and list shall be sent to the Collector of the District or Assistant Collector, and shall be affixed in his office.

169. No moveable property taken in execution under this Act shall be sold before the expiration of ten days next after the day on which such property is so taken.

Time to elapse before sale of moveable property.

Until such sale the property shall be deposited in some fit place, or it may remain in custody of some fit person approved by the officer executing the writ.

Custody meanwhile.

The provisions of sections 74 to 78 (both inclusive), so far as the same are applicable, shall apply to sales under this section.

Provisions applied to sale.

170. No irregularity in publishing or conducting a sale of any moveable property under an execution shall vitiate such sale.

Sale not vitiated by irregularity.

But any person injured by such irregularity may recover compensation for such injury by suit in the civil Court:

Right to sue for compensation.

Provided that such suit be brought within one year from the date of sale.

Limitation.

171. In the execution of any decree for the payment of arrears of rent or revenue, or of money, under this Act, if satisfaction of the judgment cannot be obtained by execution against the person or moveable property of the debtor, the judgment-creditor may apply for execution against any immoveable property belonging to such debtor, except the materials of buildings actually occupied by a debtor who is an agriculturist.

In executing decrees for money when execution may be applied for against immoveable property.

172. If the immoveable property against which execution is applied for be other than a mahál, or share of a mahál, process shall be issued in the same manner as for the attachment and sale of moveable property: and the provisions of sections 168, 169 and 170 shall be applicable.

Process when the immoveable property is not a mahál.

In the event of the sale of such property being completed, possession thereof shall be given to the auction-purchaser by the Collector of the district in which such property is situate.

Possession to be given to auction-purchaser.

173. When such property is a mahál, or a share of a mahál, the decree shall be sent for execution to the Collector of the District in which such property is situate,

Procedure when it is a mahál.

and if the judgment-debtor satisfies the Collector of the District that there is reasonable ground to believe that the amount of the judgment-debt may be raised by mortgage of the property, or by letting it on lease, or by disposing by private sale of a portion of the property or any other property belonging to the judgment-debtor, the Collector of the District may, on the application of the judgment-debtor, postpone the sale for such period as the Collector of the District thinks proper to enable the judgment-debtor to raise the amount,

and if the judgment-debtor satisfies his creditor, the execution shall be stayed, and the Collector of the District shall report the fact to the Court by which the decree was made.

174. If the judgment-debtor obtaining a postponement of the sale fails to satisfy his creditor within the period so fixed, or, if the judgment-debtor does not apply for, or applies for but does not obtain, a postponement of the sale, and the Collector of the District considers that the sale of the mahál or share is inexpedient, and that satisfaction of the decree may be made by means of a temporary alienation of the property,

Procedure where judgment-debtor fails to satisfy creditor within further time, or Collector thinks sale inexpedient.

the Collector of the District shall cause an accurate rent-roll of the property to be prepared, and ascertain the annual income derivable therefrom.

If, in the opinion of the Collector of the District, such income is sufficient to pay off the judgment-debt with interest at six per cent. per annum, within any period not exceeding fifteen years from the date of the decree, he may transfer the property to the judgment-creditor, or if the judgment-creditor refuse to take it, to some other person, or he may hold it under his own management, for such period not exceeding fifteen years, as may be sufficient for the recovery of the debt with interest as aforesaid, and on such conditions as to the payment of such debt and interest as he deems expedient.

Power to transfer property to judgment-creditor.

Power to hold property under management.

Orders passed under this section and section 173 shall be subject to revision by the Commissioner of the Division and the Board, but shall not be open to appeal to the civil Court.

174A. When the property of a judgment-debtor which is transferred or held under management under section 174 includes any sír-land of such debtor, he shall, until such property is restored to him, be treated as an ex-proprietary tenant of such sír-land under section 7.

Proprietor to be treated as ex-proprietary tenant of sír-land.

175. If in the opinion of the Collector of the District the recovery of the debt under section 174 is impossible, or if the sale of the property appear to him advisable on other grounds, he shall report, through the Commissioner of the Division, the case for orders to the Board.

Report of case to Board.

176. On the receipt of such report, the Board may make, or cause to be made, such further endeavours for the recovery of the debt under the provisions of section 174, as to it may seem practicable.

Procedure on receipt of report.

177. If it appear to the Board that the debt cannot be recovered under section 174, or if the sale of the property appear to it advisable on other grounds, it shall order the property to be sold, in which case the sale shall be made under the rules in force for the sale of land for arrears of land-revenue, but without prejudice to the incumbrances (if any) to which such property may be subject.

Power to order sale of property.

178. If, before the day fixed for any sale of any property under this Act, a third party appear before the Collector of the District or Assistant Collector, and claim a right or interest to or in any of the property, he shall examine such party or his agent, according to the law for the time being in force relative to the examination of witnesses,

Examination of third party claiming interest in property.

and, if he see sufficient reason for so doing, may stay the sale of such property.

Stay of sale.

179. The Collector of the District or Assistant Collector may adjudicate upon such claim, and make such order as he thinks fit between the claimant and the plaintiff and defendant in the original suit.

Adjudication of such claims.

In trying such claim, the Collector of the District or Assistant Collector shall be guided by the rules contained in this Act, so far as they may be applicable.

Rules applied.

180. If the claimant fail to establish his right to the property taken in execution, the Collector of the District or Assistant Collector may, at the time of disposing of the case, order him to pay to the judgment-creditor the costs of the proceedings on the claim, and also such sum as the Collector or Assistant Collector thinks sufficient to cover any loss of interest or damage which the judgment-creditor may have sustained by reason of the postponement of the sale of the property.

Compensation awardable against claimant failing to establish right.

181. (*a.*) No appeal shall lie from any order passed under section 179 or section 180 by the Collector of the District.

No appeal from order under section 179 or 180.

(*b.*) But the party against whom the same is passed may institute a suit in the civil Court to establish his right at any time within one year from the date of the order:

Right to sue in civil Court.

(*c.*) Provided that, if the order be for the sale of the property taken in execution, and the property is moveable the suit shall not be for the recovery of such property, but shall be for compensation from the judgment-creditor by whom it was brought to sale.

Proviso.

CHAPTER VIII.

APPEAL, REHEARING AND REVIEW.

(A).—From Decrees in Suits.

182. In suits under this Act, tried and decided by a Collector of a District or an Assistant Collector of the first class, his judgment shall be final.

Judgment of Collector of District or Assistant Collector of first class when final.

183. All decisions of the Assistant Collector of the second class in suits mentioned in section 93 shall be appealable to the Collector of the District, whose order thereon shall be final.

Appeal from decision of Assistant Collector of second class.

184. The petition of appeal shall be presented to the Collector of the District within thirty days from the date of the decree.

Time for presentation.

185. The Collector of the District may either dismiss the petition or may fix a day for hearing the appeal, and in that case he shall cause notice of the same to be served on the respondent in the manner hereinbefore prescribed for the service of summons.

Procedure on appeal.

If, on the day fixed for hearing the appeal, or any other day to which the hearing may be adjourned, the appellant does not appear in person or by an agent, the appeal may be dismissed for default.

If the appellant appears and the respondent does not appear in person or by an agent, the appeal may be heard *ex parte*.

186. If an appeal be dismissed for default of prosecution, the appellant may, within fifteen days from the date of the dismissal, apply to the Collector of the District to re-admit the appeal,

Re-admission of appeal.

and if it be proved to the satisfaction of the Collector of the District that the appellant was prevented by any sufficient cause from appearing when the appeal was called on for hearing, the Collector of the District may re-admit the appeal.

187. After hearing the appeal, the Collector of the District shall give judgment in the manner hereinbefore prescribed for giving judgment in original suits.

Judgment in appeal.

188. In suits in which the judgment of the Collector of the District or Assistant Collector is final, as provided in section 182, he may, upon the application of either party, if preferred within thirty days from the date of the decision, order the rehearing of a suit, upon the ground of the discovery of new evidence or matter material to the issue of the case, which the applicant had no knowledge of, or could not produce, at the time of trial.

Rehearing of suits not open to appeal.

189. Notwithstanding anything contained, in sections 182 and 183 an appeal shall lie to the District Judge from the decision of the Collector of the District or Assistant Collector of the first class, in all suits mentioned in section 93,

Appeal to District Judge.

in which the amount or value of the subject-matter exceeds one hundred rupees, or

in which the proprietary title to land has been determined between parties making conflicting claims thereto:

Provided that, where the amount or value of the subject-matter of the suits exceeds five thousand rupees, the appeal shall lie to the High Court.

Appeal to High Court.

190. The rules for the time being in force in regard to the time within which appeals from the decisions of civil Courts may be received, and to the manner in which such appeals are heard and determined, and to all proceedings which may be had in respect of such appeals, shall be applicable to appeals to the District Judge or High Court under this Act.

Rules as to time of presentation, &c., to apply.

191. The decisions of District Judges passed in regular appeal under this Act shall be open to special appeal to the High Court, in the same manner, and subject to the same rules, as the decisions of District Judges passed in regular appeal are open to special appeal under the Code of Civil Procedure and the Indian Limitation Act, 1877.

Special appeal to High Court from District Judge.

(B).—From Orders on Applications or relating to the Execution of Decrees.

(1) *Assistant Collectors of the Second Class.*

192. An appeal to the Collector of the District shall lie from all orders passed under this Act by an Assistant Collector of the second class.

Appeal from Assistant Collector of second class.

(2) *Assistant Collectors of the First Class.*

193. An appeal to the Commissioner of the Division shall lie from all orders passed by an Assistant Collector of the first class,

Appeal from orders of Assistant Collectors of first class on certain applications.

(*a*) on applications under section 99, where the amount or value of the subject-matter exceeds one hundred rupees,

(*b*) on applications under section 100.

194. An appeal to the Collector of the District shall lie from all other orders passed under this Act by an Assistant Collector of the first class, except—

Appeal from other orders of Assistant Collector of first class.

(*a*) orders on applications mentioned in section 98;

(*b*) orders on applications mentioned in section 99;

(*c*) orders passed in the course of a suit and relating to the trial thereof.

195. The orders of an Assistant Collector of the first class on the following applications shall be final, subject to revision by the Commissioner of the Division or the Board—

Final orders of Assistant Collector of first class.

(*a*) applications mentioned in section 98;

(*b*) applications mentioned in section 99 where the amount or value of the subject-matter does not exceed one hundred rupees.

(3) *Collector of the District.*

196. An appeal to the Commissioner of the Division shall lie from orders passed by the Collector of the District,

Appeal from certain orders of Collector of District.

(*a*) under section 99, when the amount or value of the subject-matter exceeds one hundred rupees,

(*b*) under section 100.

In all other cases orders under this Act passed by the Collector of the District shall be final, subject to revision by the Commissioner of the Division or the Board.

(4) *Commissioner of the Division.*

197. Save as provided by section 198, the orders of the Commissioner of the Division on appeals shall be final, subject to revision by the Board.

Finality of orders of Commissioner of Division.

198. An appeal from the decisions of the Commissioner of Division on appeals against orders passed by the Collector of the District or Assistant Collector on the applications mentioned in section 100 shall lie to the Board, except where the Commissioner of the Division dismisses the appeal.

Appeal to Board from his decisions on appeals against orders on applications mentioned in section 100.

In such case the provisions of section 199 shall apply.

199. The Board may at any time call for any case (other than a suit mentioned in section 189) which has come before any Commissioner of a Division, or any Court subordinate to him, and pass such orders thereon, consistent with this Act, as the Board thinks fit.

Power of Board to call for cases and pass orders thereon.

200. No appeal shall be brought to the Collector of the District after the expiration of thirty days, or to the Commissioner of the Division after the expiration of sixty days, or to the Board of Revenue after ninety days, from the date of the order complained of.

Time for appealing.

201. Any appeal under this Act may be admitted after the period of limitation prescribed therefor when the appellant satisfies the officer to whom he appeals that he had sufficient cause for not presenting the appeal within such period.

Admission of appeals after prescribed period.

No appeal shall lie against an order under this section admitting an appeal.

(5) *Review.*

201A. The Board may review and may rescind, alter or confirm any order made by itself, or by a single member, on the application of one of the parties to the case, if preferred within ninety days from the passing of the order.

Power of Board to review its orders.

201B. In the case of any application in which the order of the Commissioner, Collector of the District or Assistant Collector is final, as provided in sections 195, 196 and 197, such Commissioner, Collector or Assistant Collector, as the case may be, may, upon the petition of either party, if presented within thirty days from the date of the decision, review his order upon the ground of the discovery of new evidence or matter material to the issue of the case which the applicant had no knowledge of or could not produce at the time of trial.

Reviewing of applications not open to appeal.

CHAPTER IX.

MISCELLANEOUS.

202. In computing the period of limitation prescribed for any suit under this Act, the day on which the right to sue accrued shall be excluded.

Time to be excluded in computing limitation period.

In computing the period of limitation prescribed for any appeal under this Act, the day on which the judgment or order complained of was pronounced, and the time requisite for obtaining a copy of the decree or order appealed against, shall be excluded.

203. Whenever a Court is closed on the last day of any period provided in this Act for the presentation of any memorandum of appeal, or for the deposit or payment of any money in or into court, the day on which the Court re-opens shall be deemed to be such last day.

Rule as to last day for presentation or deposit, when Court is closed on such day.

204. (*a.*) If in any suit instituted, or on any application made, under this Act, it appears to the presiding officer that any question in issue involving a point of law is more proper for the decision of a civil Court, such officer, if a Collector of a District, or the Collector of the District on the representation of such officer, may cause a case to be stated for the opinion of the District Judge, who shall hear the case in such manner as nearly as may be as is prescribed for the hearing of cases by the High Court by section 619 of the Code of Civil Procedure.

Power to state case involving point of law for opinion of District Judge.

(*b.*) If the District Judge finds that the case is insufficiently stated, he may return it to the Collector of the District for amendment.

(*c.*) Subject to any limits of value or time provided by law for cases falling under the Code of Civil Procedure, an appeal shall lie from the judgment of the District Judge to the High Court.

(*d.*) The District Judge shall return the case with the opinion of the civil Court to the Collector of the District, and the revenue Courts shall decide the suit or application in accordance with such opinion.

(*e.*) The costs attending such case shall be dealt with as costs in the suit or on the application in the revenue Court.

205. (*a.*) If in any suit instituted, or on any appeal presented, in a civil or revenue Court, the Judge or presiding officer doubts whether he is precluded by this Act from taking cognizance of the suit or appeal, he may refer the matter to the High Court.

Power to refer to High Court questions as to jurisdiction.

(*b.*) On any such reference being made, the High Court may order the Judge or presiding officer, either to proceed with the case, or to return the plaint or appeal for presentation in such other Court as it may in its order declare to be competent to take cognizance of the suit or appeal.

(*c.*) The order of the High Court on any such reference shall be final, and shall not be questioned by the same parties in the same suit.

206. In all suits instituted in any civil or revenue Court, in which an appeal lies to the District Judge or High Court, an objection that the suit was instituted in the wrong Court shall not be entertained by the appellate Court, unless such objection was taken in the Court of first instance; but the appellate Court shall dispose of the appeal as if the suit had been instituted in the right Court.

Procedure where objection that suit was instituted in wrong Court was not taken in Court of first instance.

207. If in any such suit such objection was taken in the Court of first instance, but the appellate Court has before it all the materials necessary for the determination of the suit, it shall dispose of the appeal as if the suit had been instituted in the right Court.

Procedure where such objection was taken in Court of first instance.

208. If in any such suit the appellate Court has not before it the materials necessary for the determination of the suit, it shall proceed under the provisions of the Code of Civil Procedure relating to appeals; but if it remands the suit, or frames and refers issues for trial, or requires additional evidence to be taken by the Court of first instance, it may direct its order either to the Court in which the suit was instituted, or to any other Court competent to entertain the suit,

Procedure where, in such cases, the appellate Court has not materials for determining the suit.

and the objection that the order of a subordinate appellate Court has been directed to a Court which was not competent to entertain the suit shall not be taken on special appeal.

208A. If, in any suit or application pending before a Revenue Court exercising original appellate or revisional jurisdiction under this Act, it appears to such Court that any question in issue is more proper for decision by a civil Court, such Revenue Court may, by order in writing, require any party to such suit or application to institute, within such time as it may appoint in this behalf, a suit in the civil Court with a view to obtaining a decision of such question; and, if he fails to comply with such requisition, shall decide such question against him.

Power to refer party to civil Court.

If he institutes such suit, the Revenue Court shall dispose of the suit or application pending before it in accordance with the final decision of the civil Court of first instance or appeal (as the case may be) upon such question.

Suits by co-sharer against lambardár for share of profits.

209. In any suit brought by a co-sharer against a lambardár for a share of the profits, the Court may award to the plaintiff not only a share of the profits actually collected, but also a sum equal to the plaintiff's share in the profits which, through gross negligence or misconduct, the lambardár has omitted to collect.

Tenant's power to implead persons claiming through landholder.

210. In any application made by a tenant against a landholder to recover possession of a holding, the plaintiff may join as a defendant any other person in possession of the holding, who may claim title through the landholder.

Landholder's power to implead persons claiming through tenant.

In any suit instituted, or application made, by a landholder to eject a tenant the plaintiff may join as a defendant any other person in possession of the holding, who may claim title through the tenant.

Power of Local Government to make rules.

211. The Local Government may from time to time make rules consistent with this Act—

(*a*) for the guidance of officers in determining, under sections 13, 14, 15, 17, 18 and 20, the rent payable by tenants,

(*b*) for the guidance of officers assessing rent under section 30,

(*c*) as to the dates on which instalments of rent shall fall due,

(*d*) as to the procedure to be followed on all applications under section 95.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

Power of Board to make rules.

The Board, with the previous sanction of the Local Government, may from time to time make rules, consistent with the provisions herein contained, for the guidance of all persons in matters connected with the enforcement of this Act.

Instalments when to be deemed in arrear.

212. When the Local Government has made a rule fixing the date on which any instalment of rent shall fall due, no such instalment shall, for the purposes of this Act, be deemed to be in arrear unless it remains unpaid after the date fixed by such rule.

THE FIRST SCHEDULE.

FORM A. (*See Section 51.*)

I, *A. B.*, of , solemnly declare that I did personally [*or* by my agent *C. D.*], on the day of , tender payment to *E. F.* of the sum of Rs. as and for the whole amount due from me on account of rent from the month of to the month of both inclusive. I further declare that the said *E. F.* refused to accept the sum so tendered, and to give a receipt in full for the same, and I declare that, to the best of my belief, the sum of rupees so tendered, and which I now desire to pay into Court, is the full amount I owe the said *E. F.*, and I hereby apply for leave to pay the same accordingly.

FORM B. (*See Section 52.*)

Court of the Collector of , dated the day of

To *E. F.* &c.

WITH reference to the written declaration of *A. B.*, you are hereby informed that the sum of rupees therein mentioned is now in deposit in this Court, and that the above sum will be paid to you, or to your duly authorized agent, on application.

[This is to be written on a copy of the declaration in Form A made by the person paying the money into Court.]

FORM C. (*See Section 69.*)

FORM OF NOTICE TO OWNER OF DISTRAINED PROPERTY.

Office of Commissioner for sale of distrained property.

A. B., Distrainer.

[*Name, description and address of the owner of the property.*]

WHEREAS the said *A. B.* has applied to have the distrained property specified below sold for the recovery of alleged to be due to him as arrears of rent, you are hereby required, either to pay the said sum to the said *A. B.*, or to institute a suit before the Collector to contest the demand within fifteen days from the receipt of this notice, failing which the property will be sold.

Dated this day of 188 .

FORM D. (*See Section 114.*)

FORM OF SUMMONS TO DEFENDANT.

No. (*of suit*) dated

In the Court of

A. B., Plaintiff.

[*Name, description and address of plaintiff.*]

C. D., Defendant.

[*Name, description and address of Defendant.*]

WHEREAS the said *A. B.* has brought a claim against you in this Court for you are hereby required to appear in person in this Court on the day of [*if not specially required to appear in person, state*, "in person, or by an agent who has personal knowledge of the subject or who shall be accompanied by a person who has such knowledge"] to answer the above-named plaintiff, and you will bring with you (or send by your agent) [*here mention any document the production of which may be required by the plaintiff*] which the plaintiff desires to inspect, and all documents on which you may intend to rely in support of your defence. You will also bring with you your witnesses, if they are willing to attend without issue of process.

FORM E. (*See section 119.*)

FORM OF WARRANT OF ARREST.

No. (*of suit*) dated

In the Court of

A. B., Plaintiff.

C. D., Defendant.

To the Názir of the Court of the Collector of

WHEREAS the plaintiff in this suit has obtained an order from the Court for the arrest of the defendant, you are hereby commanded to bring the defendant before the Court on or before the day of to be dealt with according to law.

Dated this day of 188 .

FORM F. (*See section 119.*)

FORM OF NOTICE TO ACCOMPANY SUCH WARRANT.

In the Court of

A. B., Plaintiff.

[*Name, description and address of plaintiff.*]

C. D., Defendant.

[*Name, description and address of defendant.*]

WHEREAS the said *A. B.* has brought a claim against you in this Court for (*here specify particulars of claim as given in the plaint*) and has obtained a warrant for your arrest, you are hereby required, unless you admit the claim, to bring with you to the Court all documents on which you may intend to rely in support of your defence.

FORM G. (*See section 121.*)

FORM OF SECURITY-BOND FOR APPEARANCE OF DEFENDANT.

WHEREAS *A. B.*, plaintiff, has instituted a suit in the Court of the Collector of against *C. D.*, defendant, and the said *C. D.* has been required to give security for his appearance at any time when called on while the suit is pending and until execution of the decree, I, *E. F.*, hereby declare myself surety for the said *C. D.'s* appearance as aforesaid, and in case of his making default in such appearance, I engage to pay any sum for the payment of which the said *C. D.* may be liable under the decree. *If the suit be for the delivery of papers or accounts, specify some sum to be fixed by the Collector.*

FORM H. (*See section 156.*)

WRIT OF EXECUTION AGAINST THE PERSON.

A. B., Plaintiff.

C. D., Defendant.

To the Názir of the Court of the Collector of

WHEREAS the said *C. D.* was directed by a decree of this Court, under date the day of 188 , to pay to *A. B.* the sum of and for costs of suit, amounting to , and whereas the said *C. D.* has omitted to pay the same, you are hereby commanded to apprehend the said *C. D.*, and to bring him with all convenient speed before this Court to be dealt with according to law.

FORM I. (*See section 156.*)

WRIT OF EXECUTION AGAINST THE EFFECTS.

A. B., Plaintiff.

C. D., Defendant.

To the Názir of the Court of the Collector of

WHEREAS *C. D.* was directed by a decree of this Court, under date the day of 188 , to pay to *A. B.* the sum of and for costs of suit, amounting to , and whereas the said *C. D.* has omitted to pay the same, you are hereby commanded to levy the said sum of , and the sum of for costs of executing this process, by seizure and sale of such moveable property of the said *C. D.* as (is described in the list annexed and) [*if no list is furnished, these words to be omitted*] shall be pointed out to you by the judgment-creditor or his agent; and you are hereby ordered to sell such property of the said *C. D.*, on some convenient day, not being less than ten nor more than fifteen days from the day of seizure, unless the amount leviable as aforesaid shall be sooner paid; and you are hereby commanded to certify to me what you shall do by virtue of this warrant.

THE SECOND SCHEDULE.

(*See section 1.*)

TERRITORIES EXEMPTED, IN THE FIRST INSTANCE, FROM THE OPERATION OF THE ACT.

I. The province of Kumaon and Garhwál.

II. The Tarai Parganas, comprising—Bázpúr, Káshípúr, Jaspúr, Rudarpúr, Gadarpúr, Kilpúrí, Nának-Mattha, and Bilheri.

III. The portion of the Mirzápúr District lying to the South of the Kaimor Range.

IV. The Family Domains of the Maháráját of Benares comprising the following parganas :—
Bhadohi and Kera Maugror in the Mirzapur District,
Kaswár Rájá in the Benares District.

V. The tract of country known as Jaunsar Báwar in the Dehra Dún District.

D. FITZPATRICK,
Secretary to the Government of India.

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 11th March, 1881, and is hereby promulgated for general information :—

ACT No. XIII OF 1881.

An Act to provide for the better government of Fort William.

WHEREAS it is expedient to give power to make rules for the better government of Fort William in Bengal and to provide for the establishment of a Court within the said Fort for the trial of persons charged with breaches of such rules; It is hereby enacted as follows :—

Preamble.

Short title.

1. This Act may be called "The Fort William Act, 1881;"

Commencement.

and it shall come into force on the first day of April, 1881.

But nothing herein contained shall be deemed to confer jurisdiction over any persons (other than artificers, labourers, sutlers and followers) to whom the Army Discipline and Regulation Act, 1879, or the Indian Articles of War, 1869, is or are applicable.

"The Fort."

2. The Governor General in Council may, from time to time, by notification in the *Gazette of India*, define, for the purposes of this Act, the limits of Fort William in Bengal; and in this Act the expression "the Fort" means the area so defined.

Commander-in-Chief may make rules.

3. The Commander-in-Chief in India may, from time to time, with the sanction of the Governor General in Council, make rules, to be in force within the Fort, in regard to the matters specified in the schedule hereto annexed, and other matters of a like nature, and may by such rules prescribe, as penalties for the infringement thereof, fine which may extend to fifty rupees, or imprisonment for a term which may extend to four days, or both.

When a sentence of fine is passed under any such rule, the term for which the Court directs the offender to be imprisoned in default of payment of such fine may extend to, and shall not exceed, four days.

When any rule is made under this section, a copy thereof, in English and such other languages as the Governor General in Council may from time to time direct, shall be exhibited in such conspicuous places within the Fort as the officer commanding the Fort may from time to time direct.

Governor General in Council may invest officer with power to try breaches of rules.

4. The Governor General in Council may invest any commissioned officer in Her Majesty's Army with power to try persons charged with any infringement of the rules made under section three.

The officer so invested is hereinafter called the Fort Magistrate.

Procedure to be followed.

5. In all cases under this Act, the Fort Magistrate shall, except as herein otherwise provided, exercise within the Fort the powers, and, as nearly as may be, follow the procedure, conferred on, and prescribed for, a Presidency Magistrate by the Presidency Magistrates Act, 1877; and, subject to the power conferred by the High Courts Criminal Procedure Act, 1875, section 147, every finding, sentence or order of such Magistrate under this Act shall be final.

Power to arrest without warrant.

6. Any Police-officer, or any other person empowered in this behalf by the Governor General in Council, by name or as a member of a specified class, may arrest without warrant any person who in his sight commits an offence punishable under this Act.

Power to Police-officer to release on bail.

Every person so arrested shall be taken to the police-station within the Fort, and shall be detained there until he gives to the Police-officer in charge of such station a bond, with or without sureties, as such officer may require, for a sum not exceeding one hundred rupees, to appear before the Fort Magistrate at a time to be specified in such bond, or until he can be brought before such Magistrate.

Jurisdiction of Presidency Magistrates and prosecutions under other laws saved.

7. Nothing in this Act or in any rule made hereunder shall affect the jurisdiction of the Magistrates appointed under the Presidency Magistrates Act, 1877, or shall prevent any person from being prosecuted under any other law for any offence punishable under this Act, or from being liable to any other punishment than is provided for such offence by this Act: Provided that no person shall be punished twice for the same offence.

Limitation of time for prosecutions under Act.

8. No prosecution for any offence under this Act shall be commenced after the expiration of three months next after such offence has been committed.

9. All penalties heretofore imposed by the Garrison Quarter Master of the Fort for offences against garrison rules and regulations shall be deemed to have been imposed in accordance with law.

Validation of penalties heretofore imposed by Garrison Quarter Master.

THE SCHEDULE.

(See section 3.)

(1). Throwing dirt or rubbish of any description into the drains or roads or anywhere but in the appointed places.

(2). Removing night-soil without a covering or at unauthorized hours.

(3). Camp-followers, servants and others not keeping the godowns they live in clean.

(4). Performing offices of nature in other than the appointed places.

(5). Bathing, or washing clothes or animals, in the *cunette* or other unauthorized places.

(6). Selling unwholesome articles of food, grain or drinks.

(7). Adulterating food or drinks.

(8). Making evacuations in unauthorized places.

(9). Rash or negligent driving.

(10). Picketting, training or breaking in animals.

(11). Causing obstruction by vehicles on the road.

(12). Exposing or hawking articles for sale about the roads and barracks, or within the Fort, without a Fort pass.

(13). Beating drums or tom-toms.

(14). Damaging lamps, posts, masonry or other Government-property in any part of the Fort.

(15). Disorderly behaviour in the public thoroughfares.

(16). Gambling.

(17). Spitting pán on any of the public staircases, gateways, walls and verandahs, or defacing in any way the walls of barracks, buildings or gateways.

(18). Throwing slops into the drains.

(19). Washing cooking-pots at the water-taps and wasting water.

(20). Cooking in unauthorized places.

(21). Hanging clothes to dry on the guns or masonry-work.

(22). Laying out clothes, accoutrements or stable-bedding after the authorized hours.

(23). Destroying the trees, bushes or plants, or climbing trees.

(24). Servants smoking hookahs in their masters' quarters or cook-houses, or keeping such quarters or cook-houses in an insanitary state.

(25). Trespassing on parade-grounds, or making footpaths across the grass-plots.

(26). Being drunk and incapable.

(27). Fighting, quarrelling and creating a disturbance, or making unnecessary noise of any kind.

(28). Affixing bills and papers on any walls in the Fort.

(29). Cutting grass or interfering with the grass-contractor.

(30). Declining to show a tin pass when called upon to do so.

(31). Being found in the garrison without a tin pass, or being in possession of a ticket belonging to another.

(32). Driving vehicles without lights or with insufficiently greased wheels.

(33). Swinging or sitting on the chain-fences.

(34). Interfering in any way with the guns, carriages or piles of shot and shell on the works, or with the packed ordnance.

(35). Mounting the ramparts or parapets or entering the embrasures without authority.

(36). Smuggling liquor into the Fort.

(37). Burning stable-litter or lighting fires except in authorized places and at authorized hours.

(38). Carrying lights except in closed lanterns, or letting off fireworks.

(39). Removing property of any kind or description from the Fort without written authority.

(40). Allowing animals of any sort to stray into the Fort, or to graze within the same.

(41). Slaughtering animals or exposing carcasses or offal within the Fort.

(42). Keeping dogs or poultry in unauthorized places.

(43). Buying, selling or receiving any portion of a soldier's kit.

(44). Disobedience of lawful authority in failing to attend to authorized instructions of the police or of the several sentries posted throughout the Fort.

(45). Occupying buildings of any kind without proper allotment.

D. FITZPATRICK,
Secretary to the Government of India.

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 11th March, 1881, and is hereby promulgated for general information:—

ACT No. XIV OF 1881.

An Act to amend Bengal Regulation VII of 1828.

Preamble.

WHEREAS it is expedient to amend Bengal Regulation VII of 1828 (*for amending the Provisions of Regulation XV of 1795, and for defining the Authority of the Rajah of Benares in the Mahâls therein referred to*) in manner hereinafter appearing; It is hereby enacted as follows:—

Short title. Commencement of Act.

1. This Act may be called "The Benares Family Domains Act, 1881": And it shall come into force on such day as the Lieutenant-Governor of the North-Western Provinces may, by notification in the official Gazette, appoint in this behalf.

Repeal of certain portions of Bengal Regulation VII of 1828.

2. The following portions of Bengal Regulation VII of 1828 shall be repealed, namely:—

(*a*) in section 5, the words and figures "under the rules contained in Regulation XLI, 1795";

(*b*) in section 14, the words "under the Regulations," in both places in which they occur;

(*c*) in section 19, the words "before the Court of circuit";

(*d*) in section 20, the proviso.

New section substituted for section 3 of same Regulation. Superintendence of mahâls vested in Commissioner.

3. In the same Regulation, for section 3, the following shall be substituted, namely:—

"3. The superintendence of the said mahâls shall be vested in the Commissioner of the Benares Division, hereinafter called 'the Superintendent.'

"The Lieutenant-Governor of the North-Western Provinces may, from time to time, appoint a Deputy Superintendent of the said mahâls, and confer upon him all or any of the powers of the Superintendent, to be exercised by him subject to the general control of the Superintendent."

Amendment of same Regulation, section 7.

4. In the same Regulation, section 7, for the last twenty-two words, the following shall be substituted, namely:—

"The orders thus passed by the Superintendent shall be subject to appeal to, and revision by, the Board of Revenue, whose order thereon shall be final, unless altered or set aside by the said Lieutenant-Governor."

Amendment of same Regulation, section 9.

5. In the same Regulation, section 9, for the words "the Regulations at present in force within the Province of Benares" the words "the enactments for the time being in force in the North-Western Provinces" shall be substituted, and after the word "applicable" the words "and the Local Government with the concurrence of the Mahárájá may direct" shall be inserted.

Clause added to section 10 of same Regulation.

6. To section 10 of the same Regulation the following clause shall be added, namely:—

"The Mahárájá may delegate to one or more of his officers the exercise of all or any of the powers vested in him under this section in the whole or any part of the said mahâls."

Amendment of same Regulation, section 11.

7. In the same Regulation, section 11, for the words and figures "Regulation XI, 1822," the words "the enactments for the time being in force in the North-Western Provinces" shall be substituted.

Amendment of same Regulation, section 12.

8. In the same Regulation, section 12, for the words "Boards of Revenue" the words "Commissioners of Divisions and the Board of Revenue" shall be substituted;

and, for the words "towards the Board" the words "towards the Commissioner" shall be substituted.

Amendment of same Regulation, section 13.

9. In the same Regulation, section 13, for the words "Governor General in Council" the words "Board of Revenue" shall be substituted.

Amendment of, and addition to, same Regulation, section 16.

10. In the same Regulation, section 16, for the words "a Native Commissioner shall be maintained by the Rajah in each of the pergunnahs referred to in Regulation XV, 1795," the following shall be substituted, namely:—"A Native Commissioner, or two or three Native Commissioners, as the said Lieutenant-Governor may, from time to time, direct, shall be maintained by the Mahárájá."

And to the same section the following shall be added, namely :—

"The local limits of the jurisdiction of the Native Commissioners shall be determined by the Mahárájá, and may be altered by him from time to time."

11. In the same Regulation, section 21, for the words and figures "contained in Regulation XXIII of 1814" to the end of the section, the following shall be substituted, namely :—"prescribed by the said Lieutenant-Governor under section 22 of this Regulation."

Amendment of same Regulation, section 21.

12. For sections 22 to 26, both inclusive, of the same Regulation, the following sections shall be substituted, that is to say :—

Sections substituted for sections 22 to 26 of same Regulation.

"22. The said Lieutenant-Governor may, from time to time, make rules consistent with this Regulation—

Power to make rules.

"(*a*) to regulate the procedure and powers of the Native Commissioners, and to determine the cases in which, the mode in which, and the authority to or by which, the orders and decisions of such Commissioners shall be subject to appeal or revision, and

"(*b*) to regulate, in matters not hereinbefore provided for, the administration of the Family Domains in so far as it is entrusted to the Mahárájá;

"such rules shall, when published in the local Gazette, have the force of law:

"Provided that no such rule shall be so published until the opinion of the Mahárájá thereon has been taken and considered by the Lieutenant-Governor.

"In matters not otherwise provided for by the rules made under clause (*a*), the Code of Civil Procedure shall apply.

"23. If, in any suit instituted or appeal presented under this Regulation in any Court, the Judge or presiding officer doubts whether he has jurisdiction, he may refer the matter to the Board of Revenue; and, on any such reference being made, the said Board may order the Judge or presiding officer either to proceed with the case, or to return the plaint or appeal for presentation in such other Court as it may in its order declare to be competent to take cognizance of the suit or appeal.

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"24. Except as provided by or under this Regulation, or any other enactment for the time being in force,

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"(*a*) the administration of the Family Domains, in so far as it is entrusted to the Mahárájá, shall be regulated by the principles and spirit of the enactments for the time being in force in the North-Western Provinces, and

"(*b*) the administration of the said Domains, in so far as it has not been so entrusted, shall be regulated by those enactments.

"25. In this Regulation, unless there is something repugnant in the subject or context,—

Interpretation-clause.

"'Board of Revenue' means the Board of Revenue of the North-Western Provinces, or such officer or officers as may hereafter be lawfully appointed to exercise, within the Province of Benares, the powers of such Board.

'Board of Revenue.'

"'Regulations' includes Acts for the time being in force in the North-Western Provinces."

'Regulations.'

13. All orders heretofore passed by the Governor General in Council, or the Lieutenant-Governor of the North-Western Provinces, or any other authority, regarding revisions of settlement or other matters connected with the revenue-administration of the tracts of territory mentioned in the preamble to Bengal Regulation VII of 1828, shall be deemed to have been passed in accordance with law; and no order or decision purporting to have been passed by any civil or revenue authority under the provisions of that Regulation shall be called in question in any Court.

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14. In the Scheduled Districts Act, 1874, first schedule, Part IV, and in the Laws Local Extent Act, 1874, sixth schedule, Part IV, the following shall be repealed, that is to say :—

Parts of Acts XIV and XV of 1874 repealed.

"V. The Family Domains of the Mahárájá of Benares comprising the following parganas :—

"Bhadohi and Kheyra Múngror in the Mirzapur District.

"Kaswá Rájá in the Benares District."

15. In the Laws Local Extent Act, 1874, section 8, after clause (*j*), the following shall be inserted, namely :—

Clause added to Act XV of 1874, s. 8.

"(*jj*) extend to Pargana Bhadohi or Pargana Kera Maugror in the Mirzapur District, or to Pargana Kaswár Rájá in the Benares District, any law not now in force therein."

D. FITZPATRICK,
Secretary to the Government of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, MARCH 19, 1881.

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 11th March 1881, and is hereby promulgated for general information :—

ACT No. XII OF 1881.

THE NORTH-WESTERN PROVINCES RENT ACT, 1881.

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An Act to amend the Law relating to the recovery of Rent in the North-Western Provinces.

WHEREAS it is expedient to amend the law relating to the recovery of Rent in the North-Western Provinces of the Presidency of Fort William in Bengal; It is hereby enacted as follows:—

Preamble.

CHAPTER I.

PRELIMINARY.

Short title. 1. This Act may be called "The North-Western Provinces Rent Act, 1881:"

It extends in the first instance to the territories for the time being under the government of the Lieutenant-Governor of the North-Western Provinces, except those specified in the second schedule hereto annexed. But the Local Government may, by notification in the official Gazette, extend the whole or any part of this Act to all or any of the territories so excepted, and when any part of the North-Western Provinces Rent Act, 1873, has been extended to any such territory, such part shall be repealed therein and the corresponding part of this Act shall extend thereto.

Local extent.

Save as provided by sections 171 and 172, nothing herein contained applies to land for the the time being occupied by dwelling-houses or manufactories, or appurtenant thereto, so long as such land is not let to agricultural tenants.

Commencement. This Act shall come into force on the first day of April, 1881.

Act No. XVIII of 1873 repealed. 2. The North-Western Provinces Rent Act, 1873, is hereby repealed. But such repeal shall not legalize any practice which, immediately before the passing of that Act, was unlawful.

Rules, &c., under repealed Act. All rules and appointments made, notifications and proclamations issued, authorities and powers conferred, leases granted, rents fixed, rights acquired, liabilities incurred and places appointed under that Act shall, so far as may be, be deemed to have been made, issued, conferred, granted, fixed, acquired, incurred and appointed hereunder.

Acts amended. Illustration (*a*) to the Indian Penal Code, section 19, and Act No. XI of 1865, section 52, shall be read as if, for "Act X of 1859," the words and figures, "the North-Western Provinces Rent Act, 1881," were substituted. And in all Acts passed after the said North-Western Provinces Rent Act, 1873, all references to that Act shall be read as if made to this Act.

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

'Mahál:' (1.) 'Mahál' means—

(*a*) any local area held under a separate engagement for the payment of land-revenue, and for which a separate record-of-rights has been framed;

(*b*) any local area of which the revenue has been assigned or redeemed, and for which a separate record-of-rights has been framed:

'Tenant:' (1A.) 'Tenant' includes a thékadár and a katkanadár:

'Rent:' (2.) 'Rent' means whatever is to be paid, delivered or rendered by a tenant on account of his holding, use or occupation of land:

'Landholder:' (3.) 'Landholder' means the person to whom a tenant is liable to pay rent:

'Sír-land:' (4.) 'Sír-land' means—

(*a*) land recorded as sír at the last settlement or revision of settlement of the district in which it is situate, and continuously so recorded since;

(*b*) land continuously cultivated for twelve years by the proprietor himself with his own stock or by his servants, or by hired labour;

(*c*) land recognized by village-custom as the special holding of a co-sharer, or treated as such in the distribution of profits or charges among the co-sharers:

'Collector of a District:' (5.) 'Collector of a District' means the chief officer in charge of the Revenue Administration of a District:

'Commissioner of a Division:' (6.) 'Commissioner of a Division' means the chief officer in charge of the Revenue Administration of a Division:

'Board:' (7.) 'Board' means the Board of Revenue for the North-Western Provinces:

'Civil Jail:' (8.) 'Civil Jail' means the civil jail of the District, and includes any place appointed by the Local Government for the confinement of prisoners under sentence of any Court constituted under this Act.

CHAPTER II.

RIGHTS AND LIABILITIES OF LANDHOLDERS AND TENANTS.

Intermediate holders of land at rates unchanged since permanent-settlement. **4.** When any permanent and transferable interest in land in a district or a portion of a district which has been permanently settled has been held otherwise than under a terminable lease by any person intermediate between the proprietor of the mahál and the occupants, and by the predecessors in interest of such person, from the time of the permanent-settlement, at the same rate of rent, such person shall have a right to hold such interest at that rate.

Tenants at fixed rates. **5.** When any land in a district or portion of a district which is permanently settled has been held by a tenant and his predecessors in interest, from the time of the permanent settlement, at the same rate of rent, such tenant shall have a right of occupancy at that rate.

A tenant having such right is hereinafter called a "tenant at a fixed rate."

Presumption when 20 years' holding at fixed rate is proved. **6.** When, in any suit to which the provisions of section 4 or section 5 apply, it is proved that the land has for a period of twenty years next before the institution of the suit been held by the present holder and his predecessors in interest at the same rate of rent, it shall be presumed, until the contrary is proved, that it has been held at such rate from the time of the permanent settlement.

Ex-proprietary tenants. **7.** Every person who may hereafter lose or part with his proprietary rights in any mahál shall have a right of occupancy in the land held by him as sír in such mahál at the date of such loss or parting, at a rent which shall be four annas in the rupee less than the prevailing rate payable by tenants-at-will for land of similar quality and with similar advantages.

Persons having such rights of occupancy shall be called "ex-proprietary tenants," and shall have all the rights of occupancy-tenants.

If there are two or more sharers in any sír-land and one of them becomes an ex-proprietary tenant, the share which previously belonged to such ex-proprietary tenant shall, on his application or on the application of the person entitled to receive the rent, be divided off by the Collector, and the rights of the ex-proprietary tenant shall be limited to the land comprised in such share.

Occupancy-tenants. **8.** Every tenant who has actually occupied or cultivated land continuously for twelve years has a right of occupancy in the land so occupied or cultivated by him.

Such tenants shall be called "occupancy-tenants."

The occupation or cultivating of the father or other person from whom the tenant inherits, shall be deemed to be the occupation or cultivating of the tenant within the meaning of this section:

Tenants barred from right of occupancy. Provided that no tenant shall acquire, under this section, a right of occupancy—

(*a*) in land which he holds from an occupancy-tenant, or from an ex-proprietary tenant, or from a tenant at fixed rates;

(*b*) in sír-land;

(*c*) in land held by him in lieu of wages.

Time excluded from reckoning period necessary for acquiring right of occupancy. Provided also that, when a tenant actually occupies or cultivates land under a written lease, without having a right of occupancy in such land, the period of twelve years necessary for acquiring a right of occupancy therein by him or any one claiming under him shall begin on the expiration of the term of such lease. If during the currency of such lease he ceases to occupy the land comprised therein, and sublets it to another, no right of occupancy in such land shall be acquired by the sub-lessee during the currency of the lease.

Rights under sections 7 and 8 when transferable. **9.** The right of tenants at fixed rates may devolve by succession or be transferred.

No other right of occupancy shall be transferable in execution of a decree or otherwise than by voluntary transfer between persons in favour of whom as co-sharers such right originally arose or who have become by succession co-sharers therein.

When any person entitled to such last-mentioned right dies, the right shall devolve as if it were land: Provided that no collateral relative of the deceased who did not then share in the cultivation of his holding shall be entitled to inherit under this clause.

Determination of class of tenure of tenant. **10.** On the application of any tenant to have his class of tenure determined, the Collector of the District or Assistant Collector shall determine the class to which he belongs, namely—

whether he is a tenant at fixed rates,

or an ex-proprietary tenant,

or an occupancy-tenant,

or whether he is a tenant without a right of occupancy.

Bar to enhancement of rent of tenants at fixed rates. **11.** The rent paid by tenants at fixed rates shall not be liable to enhancement, except as provided by section 18.

Enhancement in case of ex-proprietary and occupancy-tenants. **12.** The rent paid by ex-proprietary or occupancy-tenants shall not be liable to enhancement except—

(*a*) by a written agreement registered under the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or recorded before the kánúngo: or

(*b*) by order of a Settlement-officer passed under the law for the time being in force: or

(*c*) by order under this Act.

Grounds of enhancing rent of occupancy-tenants which has not been fixed by order. **13** (*a*). Where the rent of any occupancy-tenant has not been fixed by order of a Settlement-officer under the North-Western Provinces Land Revenue Act, 1873, or by an order under this Act,

(*b*) or where the rent has been fixed by any such order, but the term for which it has been fixed has expired,

(*c*) or where ten years from the date on which an order fixing the rent has taken effect have expired,

(*d*) or where by order of the Local Government the assessment of the district has been revised before confirmation,

(*e*) or where the period of settlement of the district has come to an end,

the landholder may apply to enhance the rent of such tenant on one of the following grounds and on no others:—

(*f*) that the rate of the rent paid by such tenant is below the prevailing rate payable by the same class of tenants for land of similar quality with similar advantages;

(*g*) that the value of the produce has, or the productive powers of the land have, been increased otherwise than by the agency or at the expense of the tenant;

(*h*) that the quantity of land held by the tenant has been proved by measurement to be greater than the quantity for which rent has been previously paid by him.

Enhancement of rent of ex-proprietary tenants which has not been fixed by order. **14** (*a*). Where the rent of any ex-proprietary tenant has not been fixed by order of a Settlement-officer under the North-Western Provinces Land Revenue Act, 1873, or by an order under this Act,

or where the rent has been fixed by such order, but the term for which it has been fixed has expired,

or where any of the events mentioned in section 13, clauses (*c*), (*d*) and (*e*) has occurred,

the landholder may apply to enhance or determine the rent of such tenant as if he were an occupancy-tenant: Provided that his rent shall be four annas in the rupee below the prevailing rate for land of a similar quality with similar advantages held by tenants-at-will.

Selection of land for comparison. (*b*). Whenever the district or tahsíl, or other local area in which such land is situated, has been divided by the Settlement-officer into circles of like capacity and soil, the land of similar quality, with similar advantages, shall, for the purposes of this section and section 13, be selected from the same circle.

(*c*). When the Settlement-officer has not so divided the district or other local area as aforesaid, the land regarding which the application has been made shall be compared with land of similar quality and with similar advantages, in the same tahsíl or in a tahsíl immediately adjacent.

Abatement in like cases. **15.** Where the rent of any ex-proprietary tenant or occupancy-tenant has not been fixed by order of a Settlement-officer under the North-Western Provinces Land Revenue Act, 1873, or by an order under this Act,

or where the rent has been fixed by such order, but the term for which it has been fixed has expired,

or where any of the events mentioned in section 13, clauses (*c*), (*d*) and (*e*) has occurred,

the tenant may apply for an abatement of his rent on one of the following grounds, and on no others:—

(*a*) that the area of the land held by him has been diminished by diluvion or otherwise:

(*b*) that the value of the produce has, or the productive powers of such land have, been decreased by any cause beyond his power.

Time of enhancement or abatement where rent of ex-proprietary or occupancy-tenant has been fixed by order under this Act. **16.** Where the rent of any ex-proprietary or occupancy-tenant has been fixed by an order under this Act, such rent shall not be liable to be enhanced or abated until the occurrence of any of the events mentioned in section 13, clauses (*c*), (*d*) and (*e*), whichever first occurs.

Grounds of enhancement and abatement where his rent has been fixed by order of a Settlement-officer or under this Act. **17.** Notwithstanding anything contained in section 16 where the rent of any ex-proprietary or occupancy-tenant has been fixed by order of a Settlement-officer under the North-Western Provinces Land Revenue Act, 1873, or by an order under this Act, the landholder may apply to enhance the rent of such tenant during the currency of the term for which the rent has been so fixed, on one of the following grounds, and on no others:—

(*a*) that the area of the tenants holding has been increased by alluvion or otherwise:

(*b*) that the productive powers of the land held by the tenant have, since the date of the order, been increased otherwise than by the agency or at the expense of the tenant:

And the tenant may apply for abatement of his rent on one of the following grounds, and on no others :—

(*c*) that the area of the land held by him has been diminished by diluvion or otherwise;

(*d*) that the productive powers of such land have been decreased by any cause beyond his control.

18. In the case of a tenant at fixed rates, the landholder may apply to enhance his rent on the ground that the area of the land in his holding has been increased by alluvion or otherwise,

Grounds of enhancement or abatement of rent of tenant at fixed rates.

and the tenant may apply for abatement of his rent on the ground that the area of the land in his holding has been diminished by diluvion or otherwise.

19. Applications for enhancement or abatement of rent must be made on or before the thirty-first day of August next before the year commencing on the first day of July from which the rent is to be enhanced or abated,

Day before which applications for enhancement or abatement must be made.

and every order for enhancement or abatement shall take effect from the first day of July next following the date of such order, unless for some reason, to be stated in writing, the Court thinks fit to order otherwise.

Orders when to take effect.

20. In determining, under this Chapter, the rate of rent payable by any tenant, his caste shall not be taken into consideration, unless it is proved that, by local custom, caste is taken into account in determining such rate;

Consideration of caste and class of tenant in determining rate of his rent.

and whenever it is found that, by local custom or practice, any class of persons, by reason of their having formerly been proprietors of the soil or otherwise, hold land at favourable rates of rent, the rate shall be determined in accordance with such custom or practice.

21. No tenant-at-will of land shall be liable to pay rent in excess of the rent (if any) payable by him in the previous year ending on the thirtieth day of June, unless the landholder and tenant have agreed as to the rent to be paid to the former by the latter, and such agreement has been recorded by the kánúngo of the pargana in which such land is situate.

Tenants-at-will.

22. Notwithstanding anything hereinbefore contained, when the rent of any ex-proprietary or occupancy-tenant has been fixed by agreement between the parties, such rent shall not be liable to enhancement or abatement for such term as may be agreed on.

Rent of ex-proprietary or occupancy-tenant fixed by agreement.

22A. When any land is held of a landholder by a tenant, such landholder or tenant may, in the absence of a written contract to the contrary, apply to the Collector of the District to have such land surveyed. The Collector, on receiving such application, may estimate the cost of such survey, and, by order in writing, require the applicant to deposit the amount of such estimate.

Applications to survey land.

If the applicant deposits such amount within fifteen days from the date of the order, the Collector of the District shall issue a notice to the other party or parties to the tenancy to show cause, at a time and place specified in such notice, why the survey should not be made; and, if no such cause is so shewn, may, by an order in writing, direct the survey to be made by such person and at such time as he thinks fit.

A copy of such order shall be served on all the parties to the tenancy; and, if any party fails to attend at the appointed time, it shall not thereafter be open to him to question the correctness of the survey made in his absence.

If any party, on being called upon to show cause as aforesaid, makes any objection to the survey and such objection is overruled, he shall be liable to pay the costs (if any) occasioned by such objection.

Nothing in this section shall affect any power conferred by law to compel the attendance of any person at a survey.

23. Whenever for any cause the Local Government remits or suspends for any period the payment of the whole or any part of the revenue payable in respect of any land, any officer empowered by the Local Government in this behalf may, subject to such rules as to appeal, confirmation or otherwise as may, from time to time, be prescribed by the Board, order that the rent of such land shall be remitted, or suspended for the period of such suspension of payment of revenue, as the case may be, to an amount which shall be equal to double the amount of the revenue of which the payment has been so remitted or suspended, or shall bear the same proportion to the whole of the rent payable in respect of the land as the revenue of which the payment has been so remitted or suspended bears to the whole of the revenue payable in respect of such land;

Power to remit or suspend payment of rent when payment of revenue remitted or suspended.

and, subject to the same rules, the landholder shall be bound by such order.

(*A*).—*Leases.*

24. Every tenant is entitled to receive from the landholder, and may at any time during the continuance of his holding, apply for a lease containing the following particulars :—

Contents of lease to which every tenant is entitled.

(*a*) the quantity of land held by him, and, where the fields have been numbered in a Government survey, the number of each field :

(*b*) the amount of annual rent payable for such land :

(*c*) the instalments in which, and the dates on which, such rent is to be paid :

(*d*) any special conditions of the lease :

(*e*) if the rent is payable in kind, or is calculated on a valuation of the produce, the proportion of produce to be delivered, the mode of valuation, and the time, manner and place of delivery.

25. Tenants at fixed rates are entitled to receive leases at such rates.

Leases to which tenants at fixed rates are entitled.

26. Ex-proprietary and occupancy-tenants are entitled to receive leases at the rates determined in accordance with the law for the time being in force, or, where no rates have been so determined, at the rates actually paid by them when they demand such leases.

Leases to which ex-proprietary and occupancy-tenants are entitled.

27. All other tenants are entitled to leases only on such terms as may be agreed upon between them and the landholders.

Leases to which other tenants are entitled.

28. Every landholder who grants a lease is entitled to receive a reciprocal engagement from the tenant, executed by the tenant, and conformable with the terms of the lease.

Landholder granting lease entitled to reciprocal engagement.

The tender to any tenant of a lease, such as he is entitled to receive, shall entitle the landholder to receive a reciprocal engagement from such tenant.

29. Notwithstanding anything contained in section 22, when any lease is granted, or any agreement is entered into, by any landholder under engagement with Government for his land, fixing the rent of land for any period exceeding the term of such engagement, and such term expires, such lease or agreement shall,

Lease for period exceeding term of landholder's engagement.

(*a*) when, on the expiration of such term, the revenue payable in respect of such land is enhanced—be voidable at the option of the landlord, unless the tenant agrees to pay such rent as a Settlement-officer or other person duly empowered in this behalf may, on the application of the landlord, determine to be fair and reasonable; and

(*b*) when such land-revenue is on the expiration of such term reduced—be voidable at the option of the tenant, unless the landlord agrees to accept such rent as a Settlement-officer or other person duly empowered in this behalf may, on the application of the tenant, determine to be fair and reasonable.

30. (*a*) And whereas all grants (whether in writing or otherwise) for holding land exempt from the payment of rent which have been made since the first day of December, 1790, by any authority other than that of the Governor General in Council, were declared by Bengal Regulation XIX of 1793, section 10, to be null and void, and like provisions have been by divers Regulations applied to the several parts of the territories to which this Act extends, and the said Regulation XIX of 1793 also provided that no length of possession should be considered to give validity to any such grant, either with regard to the property in the soil or the rents of it, it is hereby further enacted as follows :—

Resumption of rent-free grants.

(*b*) Applications by the proprietor to resume such grants or to assess rent on the land, shall be made to the Collector of the District or Assistant Collector, and, subject to rules to be made by the Local Government, shall be dealt with as other applications under this Act.

Applications to resume.

(*c*) Grants of land held under a written instrument, by which the grantor expressly agrees that the grant shall not be resumed, shall be held valid as against him (but not as against his representatives after his death) during the continuance of the settlement of the district in which the land is situate, which is current at the date of the grant.

Validity of grants which grantor has expressly agreed not to resume.

(*d*) Where any land, having been for the fifty years next before the twenty-second day of December, 1873, held rent-free and by at least two successors to the original grantee, was so held on that day, such holding shall be deemed to have conferred on the holder a proprietary right.

When rent-free tenure confers proprietary right.

(*e*) Nothing in the Indian Limitation Act, 1877, shall bar the right to make an application under this Act to assess to rent land held rent-free.

(*f*) Nothing in this section shall apply to either of the following cases :—

(1) Where land was, previously to the passing of the North-Western Provinces Rent Act, 1873, held rent-free under a judicial decision :

(2) Where, previously to the passing of that Act, land held rent-free had been purchased for a valuable consideration and resumption thereof had been barred under Act No. X of 1859, section 28, or under the Indian Limitation Act, 1871, schedule II, No. 130.

(*B*).—*Relinquishment and Ejectment.*

31. Every tenant not holding under a lease shall continue liable for the rent of the land in his holding for the ensuing year, unless on or before the first day of May in any year he gives notice in writing to the landholder, or his recognized agent, of his desire to relinquish such land on the thirtieth day of June next ensuing, and relinquishes it accordingly; or unless it is let to any other person by such landholder or agent :

Relinquishment of land by tenant not holding under a lease.

Provided that, whenever an order for the enhancement of the rent of any land held by any such tenant is passed and the tenant within fifteen days of the date of such order gives to the landholder or his recognized agent notice in writing of his desire to relinquish such land at the commencement of the period in respect of which such enhancement takes effect, and relinquishes such land accordingly, he shall not be liable for the rent payable for such land in respect of any period subsequent to such relinquishment.

Proviso.

Explanation.—No notice can be given under this section in respect of a portion only of any land held under the same lease or engagement.

32. If the landholder or his agent refuses to receive any notice under section 31, or if he receives it, but refuses to sign and deliver a receipt for the same, the tenant may, before the expiration of the period limited for giving such notice, make an application to the tahsíldár, who shall thereupon cause the notice to be served on such landholder or agent, the tenant paying the costs of service.

Service through tahsíldár of notice of relinquishment.

33. The notice shall, if practicable, be served personally on the landholder or his agent; but if the landholder or his agent cannot be found, or if he evades service of the notice, service may be made by affixing the notice at his usual place of residence, or, if he does not reside in the district wherein the

Mode of serving notice.

land is situate, at the *chaupál*, or other conspicuous place in the village where the land is situate.

Where the delay in serving the notice is owing to the fault of the landholder or his agent, the notice shall be deemed to have been served at the first attempt to serve it.

Application by landholder to set aside notice.

33A. When any such notice has been received by or served on a landholder or his agent he may, within fifteen days from such receipt or service, apply to the Collector or Assistant Collector to have such notice declared invalid, and the Collector shall thereupon determine the question between the parties.

If the landholder or his agent does not so apply within such period of fifteen days, he shall be deemed to have accepted the notice.

Liability of tenant to pay interest on arrear and to be ejected.

34. (*a*). When an arrear of rent remains due from any tenant, he shall be liable to pay interest on such arrear at one per cent. per mensem; and if the arrear remains due on the thirtieth day of June, to be ejected from the land in respect of which the arrear is due.

Bar to ejectment without decree.

(*b*). No tenant shall be ejected otherwise than in execution of a decree or order under the provisions of this Act.

Ejectment not to be decreed for certain acts or omissions.

(*c*). No ejectment of a tenant or forfeiture of a lease shall be decreed on account of any act or omission of the tenant—

(1) which is not detrimental to the land in his occupation, or inconsistent with the purpose for which the land was let, or

(2) which by law, custom, or special agreement does not involve the forfeiture of the lease.

Explanation.—In clauses (*a*) and (*b*) the word 'tenant' does not include a thékadár and a katkanadár.

Ejectment of tenant at fixed rates, ex-proprietary, with right of occupancy, or holding under unexpired lease.

35. If the landholder desires to eject a tenant at fixed rates, an ex-proprietary tenant, an occupancy-tenant or a tenant holding under an unexpired lease, against whom a decree for arrears has been passed and remains unsatisfied, he may, after the expiration of the year, ending on the thirtieth day of June, in which such arrears accrued, apply to the Collector of the District or Assistant Collector to eject the tenant.

Such officer shall, on receiving such application, cause a notice to be served on the tenant, stating the amount due under the decree, and informing him that if he does not pay such amount into Court within fifteen days from receipt of the notice, he will be ejected from his land.

If such amount be not so paid, the Collector of the District or Assistant Collector may eject the tenant.

Service of notice on tenant for limited period.

36. If the landholder desires to eject a tenant not having a right of occupancy, or any other tenant holding only for a limited period, after the determination of his tenancy, he shall cause a written notice of ejectment to be served on such tenant under the provisions of this Act.

Language and contents of notice.

37. The notice of ejectment shall be written in the vernacular language and character of the district:

it shall specify the land from which the tenant is to be ejected;

and it shall inform him that he must vacate such land; or that, if he means to contest the right to eject him, he must apply to the Collector of the District or Assistant Collector for that purpose.

Mode of serving notice.

38. The notice shall be issued and served through the office of the tahsíldár on application made to him between the first day of January and the first day of April in each year, and the landholder shall pay the cost of service: it shall be served personally on the tenant, if practicable; but if he cannot be found, service may be made by affixing the notice to his usual place of residence.

Effect of failure of tenant to institute suit to contest liability to ejectment.

39. (*a*). The tenant, on whom such notice has been served, may, within thirty days next after the service, make an application to the Collector of the District or Assistant Collector, contesting his liability to be ejected.

(*b*). When such an application is made, the Collector of the District or Assistant Collector shall proceed to determine the question between the parties.

(*c*). On the determination of such question adversely to the tenant, or, where no application under this section has been made within the said period of thirty days, on the expiration of such period, the tenancy of the land in respect of which the notice has been served shall cease:

Provided that when such question has been determined or such period has expired, as the case may be, before the first day of May next following the making of the application under section 38, the tenancy shall continue until and cease upon that day:

Provided also that the tenancy shall not cease under this section when after the service of the notice, the landholder authorises the tenant to continue in the occupation of the land.

Procedure to enforce ejectment.

40. If the landholder require assistance to eject the person whose tenancy is alleged to have ceased under the provisions of section 39, he may, within fifteen days from the date of such cessation, apply to the Collector of the District or Assistant Collector for such assistance, and the Collector of the District or Assistant Collector shall order the ejectment of such tenant if he is satisfied—

(*a*) that the notice was duly served on such tenant under section 38;

(*b*) that he has not been authorized by the landholder to continue in occupation;

(*c*) that the tenant has not made the application mentioned in section 39, clause (*a*); or

(*d*) that if such application has been made, the question has been determined adversely to the tenant:

Provided that no such application for the ejectment of a farmer on the determination of a lease shall be received if the lease be of the kind in which an advance has been made by the lease-

holder, and the proprietor's right of re-entry at the end of the term is contingent on the re-payment of such advance either in money or by the usufruct of the land. In all such cases the landholder must proceed by suit in the Civil Court.

Notice of ejectment when void.

41. If the landholder expressly authorise the tenant, on whom the notice of ejectment has been served, or against whom any proceedings in ejectment under section 40 have been taken, to remain in occupation of the land, and to prepare it for the harvest, the proceedings shall become void.

Rights of ejected tenant.

42. (*a*). Any tenant ejected in accordance with the provisions of this Act, shall be entitled to any growing crops or other ungathered products of the earth belonging to the tenant, and growing on the land at the time of his ejectment, and to use the land for the purpose of tending and gathering in such crops or other products, paying adequate rent therefor:

Effect of tender by landholder of payment for crops.

(*b*). Provided that, if the landholder desire to purchase such crops or other products, he may tender their price to the tenant; and thereupon the right of the tenant to such crops and other products, and to use the land for the purpose aforesaid, shall cease.

Power to determine rent and price.

(*c*). In the case of a dispute under this section, the Collector of the District or Assistant Collector may, on the application of the landholder or tenant, award the rent and price so payable; and the amount of such award, or of any tender accepted under this section, shall be recoverable as an arrear of rent by suit under this Act.

Set-off of rent.

(*d*). The rent, if any, payable to the landholder by the tenant at the time of his ejectment may be set-off against the price of the said crops or other products.

Application for officer to divide produce or appraise crop.

43. (*a*). Wherever rent is taken by division of the produce in kind, or by estimate or appraisement of the standing crop, or other procedure of a like nature, requiring the presence both of the cultivator and landholder, either personally or by agent,

if either landholder or tenant, personally or by agent, neglect to attend at the proper time, or if there is a dispute as to the amount or value of the crop,

an application may be presented by either party to the Collector of the District or Assistant Collector, requesting that a proper officer be deputed to make the division, estimate or appraisement.

Procedure on such application.

(*b*). On receiving such application, the Collector of the District or Assistant Collector shall issue a written notice to the opposite party or his agent, to attend on the date and at the time specified in the notice, and shall depute an officer before whom such division, estimate or appraisement shall be made.

(*c*). If on or before the date appointed, the dispute has not been amicably adjusted, three residents of the village or neighbourhood shall be appointed assessors; one by each of the parties, and one by the officer deputed to divide the grain or estimate or appraise the crops, and the officer deputed shall decide the amount of rent payable by their award, and shall give to the party applying a written authority to divide the grain or cut the crops:

(*d*). Provided that, if either party fail to attend, the officer deputed shall nominate an assessor on his behalf.

(*e*). The officer deputed shall report his proceedings to the Collector of the District or Assistant Collector, who shall determine the amount of costs properly incurred under this section, and the share of the costs to be paid by either party.

(*C*).—*Compensation for Improvements made by Tenants.*

Tenants' right to compensation for improvements.

44. If any tenant, or any person from whom he has inherited or purchased, make any such improvements on the land in his possession as are hereinafter mentioned, neither he nor his representative shall be ejected from the same land without payment of compensation for such improvements.

Explanation.—In this section the word "tenant" does not include a thékadár or a katkanadár and the word "improvements" means works by which the annual letting value of the land has been, and at the time of demanding compensation continues to be, increased, and comprises—

(*a*) tanks, wells and other works for the storage, supply or distribution of water for agricultural purposes,

(*b*) works for the drainage of land, or for the protection of land from floods or from erosion or other damage by water,

(*c*) the reclaiming, clearing, or enclosing of lands for agricultural purposes,

(*d*) the renewal or re-construction of any of the foregoing works, or alterations therein, or additions thereto.

Notwithstanding anything hereinbefore contained, no tenant, other than a tenant at fixed rates or an occupancy-tenant, shall be entitled to compensation in respect of any improvement made without the consent of the landholder after this Act comes into force.

Mode of making compensation.

45. Such compensation may, at the option of the landholder or his representative, be made—

1*st*,—by payment in money;

2*nd*,—by a rent to be charged on the land;

3*rd*,—by the grant of a beneficial lease of the land, by the landholder or his representative, to the tenant or his representative;

4*th*,—partly by one or by any two of the said ways, and partly by the others or other of the same ways.

Settlement of difference as to amount or value of compensation.

46. In case of difference as to the amount or value of the compensation tendered, either party may apply to the Collector of the District or Assistant Collector stating the matter in dispute, and requesting a determination thereof.

On receiving such application, the Collector of the District or Assistant Collector shall—

(*a*) cause notice thereof to be served on the other party,

(*b*) take such evidence as the parties or either of them may adduce,

(*c*) make such further inquiry as the Collector of the District or Assistant Collector may deem necessary, and

(*d*) determine the amount of the payment in money, and the amount and incidence of the rent-charge, and the terms of the lease, or any of such matters.

Considerations in determining compensation.

47. In determining the amount or value mentioned in section 46, or the terms of such lease, the Collector of the District or Assistant Collector shall take into account any assistance given to the tenant by the landholder either directly in money, material or labour, for the purpose of making such improvements, or indirectly by allowing the tenant to hold at a favourable rate of rent.

(*D*).—*Compensation for wrongful acts and omissions.*

Right of tenant to compensation for exactions in excess of rent or for withholding receipt.

48. Every tenant from whom any sum is exacted in excess of the rent specified in his lease or payable under the provisions of this Act,

and every tenant from whom a receipt is withheld for any sum of money paid by him as rent, shall be entitled to recover from the landholder compensation not exceeding double the amount so exacted or paid

Contents of receipt.

Receipts for rent shall specify the period or crop on account of which the rent is acknowledged to have been paid;

and any refusal to make such specification shall be held to be a withholding of a receipt.

Explanation.—In this section the word "tenant" does not include a thékadár or a katkanadár.

Damages for extorting payment of rent by duress.

49. If payment of rent, whether the same be legally due or not, is extorted from any tenant by illegal confinement or other duress, he shall be entitled to recover from the person guilty of such extortion such further compensation, not exceeding the sum of two hundred rupees, as the Collector of the District or Assistant Collector thinks reasonable.

Liability to punishment for extortion not affected.

An award of compensation under this section shall not bar or affect any penalty or punishment to which the person guilty of such extortion may be subject under the Indian Penal Code.

(*E*).—*Deposit of Rent in Court.*

Deposit of amount tendered by tenant and refused.

50. If any tenant tenders to the landholder full payment of the rent due from him, and if the amount so tendered be not accepted, and a receipt for the amount forthwith granted, the tenant may thereupon apply to the Collector of the District or Assistant Collector for leave to deposit such amount in his Court to the credit of the landholder.

Form and verification of application.

51. The application to the Collector of the District or Assistant Collector shall be as nearly as may be in the form (A) in the first schedule hereto annexed, and shall be verified in the manner hereinafter prescribed for the verification of plaints.

Penalty for false statement.

And the person making the verification shall be punishable, if the application contain any averment which he knows or believes to be false, or does not know or believe to be true.

Notice to issue on deposit being made.

52. The Collector of the District or Assistant Collector shall receive the amount which the tenant desires to deposit, and shall thereupon issue to the person to whose credit it has so been deposited, a notice in English or the vernacular language of the district in the form (B) in the first schedule hereto annexed, or to the like effect.

And such deposit shall, in all questions between the landholder and the tenant, be deemed to be a payment made by the tenant to the landholder on account of the rent.

Mode of serving notice.

53. Such notice shall be served through the tahsíldár upon the person to whom it is addressed, or upon his recognized agent.

In their absence, the notice shall be affixed at the *chaupál*, or other conspicuous place in the village in which the land for which the rent is due is situate.

Payment to person served with notice on his application.

54. If at any time before the expiration of three years from the date of the deposit the person on whom such notice is served, or his recognized agent, appears and applies that the money in deposit be paid to him, it shall be paid accordingly, unless it has been repaid or paid in accordance with the provisions next hereinafter contained.

Refund to depositor.

55. If no application be made by such person or his recognized agent, the sum shall be repaid to the depositor on the expiration of three years from the date of the deposit.

And at any time before the expiration of such period, on the joint application of the depositor and the person to whose credit the said sum was deposited, such sum shall be paid in such manner as the joint applicants desire.

Deposit in Court of rent claimed by two or more persons.

55A. When, owing to the death of the landlord or other cause, two or more persons severally claim the right to collect the rent from a tenant, the tenant may apply to the Collector of the District or the Assistant Collector for leave to deposit in Court the full amount of rent due from him, and such deposit, if made with the leave of the Collector or Assistant Collector, shall, in all questions between the landholder and the tenant, be deemed to be a payment made by the tenant to the landholder on account of the rent.

The Collector of the District or Assistant Collector may, after such enquiry as he thinks necessary, direct payment of the amount deposited to such one of the persons claiming such rent as appears to him entitled to receive the same, or may order the same to remain in deposit pending decision by a competent Court.

No suit shall lie against the Secretary of State for India in Council or against any officer of Government in respect of any payment made under this section, but nothing herein contained shall affect the right of any person entitled to such

payment to recover the amount thereof from any other person to whom it has been paid.

CHAPTER III.

DISTRESS.

Produce of land hypothecated for rent.

56. The produce of all land in the occupation of a cultivator shall be deemed to be hypothecated for the rent payable in respect of such land; and until such rent has been satisfied, no other claim on such produce shall be enforced by sale in execution of decree or otherwise;

Recovery of arrears by distress.

and when an arrear of rent is due from any cultivator, the person entitled to receive rent immediately from him may, instead of suing for the arrear as hereinafter provided, recover the same by distress and sale of the produce of the land in respect of which the arrear is due, under the rules contained in this chapter.

57. Provided—

Distress of produce barred by security given for rent.

(*a*) that when a cultivator has given security for the payment of his rent, the produce of the land for the rent of which security has been given shall not be liable to be distrained:

Sharer when entitled to distrain.

(*b*) that no sharer in any mahál shall have power to distrain upon any cultivator unless he is entitled to collect the whole rent from such cultivator:

Distress by manager.

(*c*) that no sharer in a joint undivided mahál shall exercise such power otherwise than through a manager authorized to collect the rents of the whole mahál on behalf of all the sharers therein:

Distress in pattídári mahál.

(*d*) that in pattídári mahál distress shall be made only through a lambardár, or, where the rent of a pattí is not collected by a lambardár, through the pattídár who is entitled to collect the rent.

No distress for overdue arrear, nor, without agreement, for excess over past year's rent.

58. A distress shall not be made for any arrear which has been due in respect of any land for a longer period than one year:

nor for the recovery of any sum in excess of the rent payable for the same land in the preceding year, unless the rent has been enhanced under the provisions hereinbefore contained, or by order of a Settlement-officer, or unless the cultivator has agreed to pay such excess and such agreement has been attested before the kánúngo.

Distress by managers under Court of Wards, &c.

59. The power to distrain conferred by sections 56 and 57 may be exercised by managers under the Court of Wards and other persons lawfully entrusted with the charge of immoveable property;

and also by the agents employed by such persons as aforesaid, in the collection of rent, if expressly authorized by power-of-attorney in that behalf.

Liability for illegal act.

If any wrongful act is committed by any such agent, under colour of the exercise of the said power, such agent and his principal shall be jointly and severally liable to make compensation for such act.

Written authority to servants employed to distrain.

60. When any person, empowered to distrain property under section 56, section 57 or section 59, employs a servant or other person to make the distress, he shall give him a written authority for the same, and the distress shall be made in the name of the person giving such authority.

Standing crops and crops gathered liable to distress.

61. Standing crops and other ungathered products of the earth, and crops or other products when reaped or gathered, and deposited in any threshing-floor or place for treading out grain or the like, whether in the field or within a homestead, may be distrained by persons invested with power to distrain under the provisions of this Act.

Exception.

But no such crops or products, other than the produce of the land in respect of which an arrear of rent is due, or of land held under the same engagement, and no grain or other produce after it has been stored by the cultivator, and no other property whatsoever, shall be liable to be distrained under this Act.

Defaulter to be served with written demand and account.

62. Before or at the time when a distress is made under this Act, the distrainer shall cause the defaulter to be served with a written demand for the amount of the arrear, together with an account exhibiting the grounds on which the demand is made.

Mode of service.

The demand and account shall, if practicable, be served personally on the defaulter; or, if he abscond or conceal himself, so that they cannot be so served, shall be affixed at his usual place of residence.

Distress to be proportioned to arrear.

List of property to be prepared and copy served on owner.

63. Unless the amount of the demand is immediately paid or tendered, the distrainer may distrain property as aforesaid equal in value, as nearly as may be, to the amount of the arrear and the costs of the distress; and shall prepare a list or description of the said property, and deliver a copy of the same to the owner, or, if he be absent, affix it at his usual place of residence.

Standing crops, &c., when distrained, may be reaped and stored.

64 (*a*). Standing crops and other ungathered products may, notwithstanding the distress, be reaped and gathered by the cultivator, and he may store the same in such granaries or other places as are commonly used by him for the purpose.

(*b*). If the cultivator neglect to do so, the distrainer shall cause the said crops or products to be reaped or gathered, and in such case shall store the same either in such granaries or other places as aforesaid, or in some other convenient place in the neighbourhood.

(*c*). In either case the distrained property shall be placed in the charge of some person appointed by the distrainer for the purpose.

Sale of products which cannot be stored.

(*d*). Crops or products which, from their nature, do not admit of being stored, may be sold before they are reaped or gathered, under the rules hereinafter provided; but in such case, the distress shall be made at least twenty days before the time when the crops, or products, or any part of the same are fit for reaping or gathering.

65. If a distrainer is opposed, or apprehends resistance, and desires to obtain the assistance of a public officer, he may apply to the Collector of the District or Assistant Collector, who may, if he thinks necessary, depute an officer to assist the distrainer in making the distress.

Assistance to distrainer opposed or apprehending resistance.

66. If at any time after property has been distrained and before the day fixed for putting it up to sale as hereinafter provided, the owner of the property tenders payment of the arrear demanded of him, and of the expenses of the distress, the distrainer shall receive the same, and shall forthwith withdraw the distress.

Distress to be withdrawn on tender of arrear and expenses before sale.

67. Within five days from the time of the storing of any distrained crops or products,

Application for sale.

or, if the crops or products do not, from their nature, admit of being stored within five days from the time of making the distress,

the distrainer shall apply for sale of the same to the officer for the time being authorized by the Local Government to sell distrained property within the tahsíl in which they are situate.

68. The application shall be in writing, and shall contain—

Contents of application.

(*a*) an inventory or description of the property distrained,

(*b*) the name of the defaulter and his place of residence,

(*c*) the amount due, and the date of the distress, and

(*d*) the place in which the distrained property is.

Together with the application, the distrainer shall deliver to the said officer the fee for the service of a notice upon the defaulter as hereinafter provided.

Fee for service of notice.

69. Immediately on receipt of the application, the said officer shall send a copy of it to the Collector of the District or Assistant Collector,

Procedure on receipt of application.

and shall serve a notice in the form (C) contained in the first schedule hereto annexed, or to the like effect, on the person whose property has been distrained, requiring him either to pay the amount demanded, or to institute a suit to contest the demand before the Collector of the District or Assistant Collector, within the period of fifteen days from the receipt of the notice.

He shall at the same time send to the Collector of the District or Assistant Collector, for the purpose of being put up in his office and in the office of the tahsildár, a proclamation fixing a day for the sale of the distrained property, which shall not be less than twenty days from the date of the application; and shall deliver a copy of the proclamation to the peon charged with the service of the notice, to be put up by him in the place where the distrained property is deposited.

The proclamation shall contain—

(*a*) a description of the property,

and shall specify—

(*b*) the demand for which it is to be sold, and

(*c*) the place where the sale is to be held.

70. If a suit is instituted before the Collector of the District or Assistant Collector in pursuance of the aforesaid notice, the Collector of the District or Assistant Collector shall send to the officer referred to in section 67, or, if so requested, shall deliver to the owner of the distrained property, a certificate of the institution of such suit;

Suspension of sale on receipt of Collector's certificate of institution of suit.

and on such certificate being received by, or presented to, the said officer, he shall suspend the sale.

71. A person whose property has been distrained in manner hereinbefore provided may, immediately after the distress, and before the issue of notice of sale, institute a suit to contest the demand of the distrainer.

Suit to contest distrainer's demand before issue of notice of sale.

When such suit is instituted, the Collector of the District or Assistant Collector shall proceed in the manner prescribed in the last preceding section.

If, thereafter, application for the sale of the property is made to the said officer, he shall send a copy of the application to the Collector of the District or Assistant Collector, and suspend further proceedings, pending the decision of the case.

72. The person whose property has been distrained may, at the time of instituting any such suit as aforesaid, or at any subsequent period, execute a bond with a surety, binding himself to pay whatever sum may be adjudged to be due from him, with interest and costs of suit;

Distress when to be withdrawn.

and when such bond is executed, the Collector of the District or Assistant Collector shall give to the owner of the property a certificate to that effect, and, if so requested, shall serve the distrainer with notice of the same;

and upon such certificate being presented to the distrainer by the owner of the property, or served on him by order of the Collector of the District or Assistant Collector, the property shall be released from distress.

73. If the institution of a suit to contest the demand of the distrainer has not been certified, in manner hereinbefore provided, to the said officer, on or before the day fixed in the proclamation of sale, he shall, unless the said demand, with such costs of the distress as are allowed by him, be discharged in full, proceed, in manner hereinafter mentioned, to sell the property or such part of it as may be necessary to satisfy the demand with the costs of distress and sale.

When sale may be proceeded with.

74. The sale shall be held at the place where the distrained property is, or at the nearest place of public resort, if the said officer is of opinion that it is likely to sell there to better advantage.

Place of sale.

The property shall be sold by public auction, in one or more lots, as the officer holding the sale may think advisable;

Manner of sale.

and if the demand, with the costs of distress and sale, be satisfied by the sale of a portion of the property, the distress shall be immediately withdrawn with respect to the remainder.

Withdrawal of distress when demand and costs satisfied.

75. If, on the property being put up for sale, a fair price (in the estimation of the officer holding the sale) be not offered for it, and if the owner of the property, or some person authorized to act on his behalf, apply to have the sale postponed until the next day, or, if a market be held at the place of sale, the next market-day, the sale shall be postponed until such day and shall be then completed whatever price may be offered for the property.

If fair price be not offered, sale may be postponed and shall be then completed.

76. The price of every lot shall be paid for in ready money at the time of sale, or as soon thereafter as the officer holding the sale thinks necessary;

Payment of purchase-money.

and, in default of such payment, the property shall be put up again and sold, and the deficiency in price (if any) which may happen on such second sale and all expenses attending such second sale shall, at the instance either of the distrainer or the owner of the property, be recoverable from the defaulter under the rules hereinafter contained for the execution of a decree for rent.

Re-sale on default.

When the purchase-money has been paid in full, the officer holding the sale shall give the purchaser a certificate describing the property purchased by him and the price paid.

Certificate to purchaser.

77. From the proceeds of every sale of distrained property under this Act, the officer holding the sale shall make a deduction at the rate of one anna in the rupee on account of the costs of the sale, and shall send the amount so deducted to the Collector of the District or Assistant Collector.

Deduction, from proceeds, of costs of sale.

He shall then pay to the distrainer the expenses incurred by the distrainer on account of the distress, and of the issue of the notice and proclamation of sale prescribed in section 69, to such amount as, after examining the statement of expenses furnished by the distrainer, he thinks proper to allow.

Payment of distrainer's expenses.

The remainder shall be applied to the discharge of the arrear for which the distress was made, with interest thereon up to the day of sale;

Discharge of arrear with interest.

and the surplus (if any) shall be delivered to the person whose property has been sold.

Surplus.

78. Officers holding sales of property under this Act, and all persons employed by or subordinate to such officers, are prohibited from purchasing, either directly or indirectly, any property sold by such officers.

Sale-officers and employés prohibited from purchasing.

79. Officers holding sales under this Chapter are required to bring to the notice of the Collector of the District or Assistant Collector any material irregularities committed by distrainers under colour of this Act;

Report of irregularities by distrainer.

and if, in any case, on proceeding to hold any such sale, the officer holding it find that the owner of the property has not received due notice of the distress and intended sale, he shall postpone the sale and report the case to the Collector of the District or Assistant Collector, who shall thereupon direct the issue of another notice and proclamation of sale under section 69, or pass such other order as he thinks fit.

Postponement of sale, and report to Collector when owner has not received due notice.

Order of Collector.

80. When an officer goes to any place for the purpose of holding a sale under this Act, and no sale takes place, either for the reason stated in section 79, or because the demand of the distrainer has been previously satisfied without any intimation of such satisfaction having been given by the distrainer to such officer, the charge of one anna in the rupee on account of expenses shall be leviable, and shall be calculated on the estimated value of the distrained property.

Levy of charge when sale-officer attends, and no sale takes place.

If the distrainer's demand be not satisfied until the day fixed for the sale, the charge for expenses shall be paid by the owner of the property, and may be recovered by the sale of such portion thereof as may be necessary.

Recovery from owner.

In every other case it shall be paid by the distrainer, and may be recovered by attachment and sale of his property under the warrant of the Collector of the District or Assistant Collector:

Recovery from distrainer.

Provided that in no case shall a larger amount than ten rupees be recoverable under this section.

Limit to charge.

81. When a suit has been instituted to contest the demand of a distrainer, and the distrained property has not been released on security, if the demand or any portion of it is adjudged to be due, the Collector of the District or Assistant Collector shall issue an order to the officer authorizing the sale of such property;

Order of sale when amount adjudged due.

and, on the application of the distrainer within five days from the receipt of such order by the officer, such officer shall publish a second proclamation in the manner prescribed in section 69, fixing another day for the sale of the distrained property, which shall not be less than five nor more than ten days from the date of the proclamation;

Second proclamation of sale.

and, unless the amount adjudged to be due with the costs of distress be paid, shall proceed to sell the property in the manner hereinbefore provided.

Sale on failure to pay debt and costs.

82. (*a*) In all suits instituted to contest the distrainer's demand, he shall be required to prove the arrear in the same manner as if he had himself brought a suit for the amount under the provisions hereinafter contained.

In suit to contest his demand, distrainer to prove arrear.

(*b*) If the demand or any part thereof is found to be due, the Collector of the District or Assistant Collector shall make a decree for the amount in favour of the distrainer, and such amount may be recovered by sale of the property, as provided in the last preceding section, if the distress has not been withdrawn;

Recovery of amount decreed in favour of distrainer.

and, if any balance remain due after such sale, by execution of the decree against the person and any other property of the defaulter.

or if the property have been released on security, by execution of the decree against the person and property of the defaulter and of his surety.

(*c*) If the distress is adjudged to be vexatious or groundless, the Collector of the District or Assistant Collector, besides directing the release of the distrained property, may award such compensation to the plaintiff as the circumstances of the case require.

Compensation in case of vexatious distress.

83. (*a*) If any person claim as his own, property which has been distrained for arrears of rent alleged to be due from any other person, the claimant may institute a suit against the distrainer and such other person, to try the right to the property, in the same manner and under the same conditions as to the time of instituting the suit and to the consequent postponement of sale, as a person whose property has been distrained for an arrear of rent alleged to be due from him may institute a suit to contest the demand.

Suit by person claiming property distrained for arrears alleged to be due from another.

(*b*) When any such suit is instituted, the property may be released upon security being given for the value of the same.

Release of property on security being given.

(*c*) If the claim is dismissed, the Collector of the District or Assistant Collector shall make an order for the sale of the property, or for the recovery of the value thereof, as the case may be, for the benefit of the distrainer.

Order of Collector when claim dismissed.

(*d*) If the claim is upheld, the Collector of the District or Assistant Collector shall decree the release of the distrained property with costs, and such compensation (if any) as the circumstances of the case require:

Decree for release and compensation when claim upheld.

(*e*) Provided that no claim to any produce of land liable to distress under this Act, which at the time of the distress may have been found in the possession of a defaulting cultivator, shall bar the prior claim of the person entitled to the rent of the land, nor shall any attachment in execution of a judgment of any civil Court prevail against such prior claim.

Saving of prior claim of person entitled to rent of land.

84. If, in any case in which property has been distrained for an arrear of rent, and a suit has been instituted to contest the demand, the right to distrain for such arrears is claimed by or on behalf of any person other than the distrainer, on the ground of such other person being actually and in good faith in the receipt and enjoyment of the rent of the land, such other person shall be made a party to the suit, and the question of the actual receipt and enjoyment of the rent by him before and up to the time of the commencement of the suit shall be enquired into, and in deciding the suit the result of such inquiry shall be taken into consideration:

Procedure where right to distrain is claimed by person other than distrainer.

Provided that the decision of the Collector of the District or Assistant Collector shall not affect the right of any person who may have a legal title to the rent of the land to establish his title by suit in the civil Court if instituted within one year from the date of the decision.

Saving of right to sue in civil Court.

85. If any person whose property has been distrained for the recovery of a demand not justly due, or of a demand due or alleged to be due from some other person, is prevented by any sufficient cause from bringing a suit to contest the demand or to try the right to the property, as the case may be, within the period allowed by section 69 or 83, and his property is in consequence sold, he may, nevertheless, institute a suit under this Act to recover compensation for such distress and sale.

Persons prevented from suing in time to save property from sale may sue for damages.

86. If any person empowered to distrain property, or employed for the purpose under a written authority by a person so empowered, distrain or sell, or cause to be sold, any property for the recovery of an arrear of rent alleged to be due, otherwise than according to the provisions of this Act,

Wrongful acts of distrainer.

or if any distrained property is lost, damaged, or destroyed by reason of the distrainer not having taken proper precautions for the due keeping and preservation thereof,

or if the distress is not immediately withdrawn when it is required to be withdrawn by any provision of this Act,

the owner of the property may institute a suit under this Act to recover compensation for any injury which he has thereby sustained through any act or omission mentioned in the former part of this section.

87. If any person not empowered to distrain property under section 58, 57 or 59, nor employed for the purpose under a written authority by a person so empowered, fraudulently distrains or sells, or causes to be sold, any property under colour of this Act, the owner of the property so distrained or sold may institute a suit under this Act to recover compensation from such person for any injury which the plaintiff has sustained from the distress or sale,

Suit by owner against person distraining or selling without authority.

and the defendant shall be held to have committed criminal trespass, and shall be subject to the penalties provided for that offence by the Indian Penal Code, in addition to any damages which may be awarded against him in such suit.

Penalty in addition to damages.

88. Provided that every suit instituted under any of the three last preceding sections shall be commenced within the period allowed by section 94.

Limitation of suits under sections 85, 86, 87.

89. (*a*) If any person resists a distress of property duly made under this Act, or forcibly or clandestinely removes any distrained property, the Collector of the District or Assistant Collector in charge of the Sub-division, upon complaint being made within fifteen days from the date of such resistance or removal, may cause the person accused to be arrested and brought with all convenient speed before the Collector or Assistant Collector, who shall, if possible, proceed forthwith to try the case.

Procedure in case of resistance of distress.

(*b*) If the case cannot be at once heard, the Collector of the District or Assistant Collector may, if he think fit, require the party arrested to give

security for his person, and, in default of such security, may commit him to the civil jail until the case is tried,

and if the offence be proved and the offender be the owner of the property concerned, the Collector of the District or Assistant Collector may order him to be imprisoned in the civil jail for a term not exceeding six months, unless the whole arrear due to the distrainer, with all reasonable expenses and costs, is previously to the expiration of such term paid or levied under warrant of the Collector of the District or Assistant Collector by distress and sale of the property of the offender.

(*c*) If the offender be not the owner of the property concerned, he shall make good to the distrainer the value of the same, and shall further be liable to a fine not exceeding one hundred rupees, or, in default of payment thereof, to imprisonment in the civil jail for a term which may extend to two months.

90. All proceedings of officers distraining, or assisting distrainers, or holding sales, under this chapter, shall be subject to the revision and orders of the Collector of the District or Assistant Collector in charge of a Sub-division of the District.

Proceedings of officers subject to revision and orders of Collector.

CHAPTER IV.

PROCESS.

91. (*a*) Every process issued by a Collector of a District or Assistant Collector under this Act shall be under his seal and signature, and shall be served or executed by the Názir, or by such other officer as the Collector of the District or the Assistant Collector may direct, at the cost of the party at whose instance it is issued.

Mode of serving process.

(*b*) The amount of such cost, and, in the case of summons to a witness, the sum required for his travelling expenses, shall be deposited in Court before the process is issued:

Deposit before issue.

(*c*) Provided that, if in any case the Collector of the District or the Assistant Collector is satisfied that a party is unable to pay the cost of any necessary process, he may direct such process to be served free of charge.

Power to direct service gratis.

92. Any resistance or opposition to the lawful process of a Collector of the District or Assistant Collector under this Act may be punished by him according to the provisions of the law for the time being in force for the punishment of resistance or opposition to the processes of the Courts of civil justice.

Punishment for resisting process.

When, in any such case, the offender is not present, the Collector of the District or Assistant Collector may summon him to answer to the charge: and, if after due service of the summons he fails to attend, may issue a warrant for his arrest.

Power to issue summons and warrant.

CHAPTER V.

JURISDICTION OF COURTS.

93. Except in the way of appeal as hereinafter provided, no Courts other than Courts of Revenue shall take cognizance of any dispute or matter in which any suit of the nature mentioned in this section might be brought, and such suits shall be heard and determined in the said Courts of Revenue in the manner provided in this Act, and not otherwise:

Suits cognizable by revenue Courts only.

(*a*) suits for arrears of rent, or, where rent is payable in kind, for the money-equivalent of rent, on account of land or on account of any rights of pasturage, forest-rights, fisheries or the like;

(*b*) suits to eject a tenant for any act or omission detrimental to the land in his occupation or inconsistent with the purpose for which the land was let;

(*c*) suits to cancel a lease for the breach of any condition binding on the tenant, and which, by law, custom or special agreement, involves the forfeiture of the lease;

(*cc*) suits for compensation for, or to prohibit, any act, omission or breach mentioned in clause (*b*) or clause (*c*);

(*d*) suits for the recovery of any over-payment of rent, or for compensation under section 48 or 49;

(*e*) suits for compensation for withholding receipt for rent paid;

(*f*) suits for contesting the exercise of the powers of distress conferred on landholders and others by this Act, or anything purporting to be done in the exercise of the said power, or for compensation for wrongful acts or omissions of a distrainer;

(*g*) suits by lambardárs for arrears of Government-revenue, payable through them by the co-sharers whom they represent, and for village-expenses and other dues for which the co-sharers may be responsible to the lambardár;

(*h*) suits by recorded co-sharers for their recorded share of the profits of a mahál, or any part thereof, after payment of the Government-revenue and village-expenses, or for a settlement of accounts;

(*i*) suits by muáfidárs, or assignees of the Government-revenue, for arrears of revenue due to them as such;

(*j*) suits by taluqdárs and other superior proprietors for arrears of revenue due to them as such;

(*k*) suits by recorded co-sharers to recover from a recorded co-sharer who defaults arrears of revenue paid by them on his account.

94. Suits for arrears of rent or revenue, or for a share of the profits of a mahál, or of village-expenses or other dues, shall not be brought after three years from the day on which the arrears or share became due.

Limitation of suits under this Act.

Suits relating to distress, not being suits to contest the demand or to try the right to the property, shall not be brought after three months from the day on which the right to sue accrued:

All other suits must be brought within one year from the day on which the right to sue accrues, unless otherwise specially provided for in this Act.

The day on which the arrears become due or the day on which the right to sue accrues (as the case may be) shall be excluded in computing the periods of limitation prescribed by this section.

In the absence of any express agreement among the co-sharers and of any order by the Settlement-officer under the North-Western Provinces Land-revenue Act, 1873, section 65, clause (*g*), the

Board may from time to time, with the previous sanction of the Local Government, make rules for fixing the dates on which profits shall be divisible by the lambardárs.

95. No Courts other than Courts of revenue shall take cognizance of any dispute or matter on which any application of the nature mentioned in this section might be made: and such applications shall be heard and determined in the said Courts in manner provided under this Act, and not otherwise:—

Applications cognizable by revenue Courts only.

(*a*) Application to determine the nature and class of a tenant's tenure, under section 10.

(*b*) Application by a landholder, or his agent, to compel a patwárí to produce his accounts relating to land.

(*c*) Application to resume rent-free grants under section 30, or to assess to rent land previously held rent-free.

(*d*) Application from a landholder to eject a tenant under section 35, or to have a notice of ejectment issued and served under section 38.

(*e*) Applications made by a tenant under section 39.

(*f*) Application from a landholder, under section 40, for assistance to eject a tenant.

(*g*) Application from a tenant or landholder to determine the value of any standing crop, or ungathered products of the earth, belonging to the tenant and being on the land at the time of his ejectment, under section 42.

(*h*) Application by a landholder to determine rent payable for land used by a tenant for the purpose of tending or gathering in the crop, under section 42.

(*i*) Application by a landholder or tenant for assistance in the division or appraisement of a standing crop, under section 43.

(*j*) Application by a landholder or tenant to determine compensation for improvements of land.

(*k*) Application by a tenant for leave to deposit rent.

(*l*) Application for enhancement or determination of rent.

(*m*) Application for compensation for wrongful dispossession.

(*n*) Application for the recovery of the occupancy of any land of which a tenant has been wrongfully dispossessed.

(*o*) Application for abatement of rent.

(*p*) Application for leases or counterparts, and for the determination of the rates of rent at which such leases or counterparts are to be delivered.

(*q*) Application under section 7 to have the holding of an ex-proprietary tenant divided off.

(*r*) Application under section 22A to survey land.

(*s*) Application under section 33A to have a notice of relinquishment declared invalid.

(*t*) Application to take out of deposit any amount deposited under section 55A.

For the purposes of the Court-fees Act, 1870, applications under clauses (*c*), (*l*), (*m*), (*n*), (*o*) and (*p*) of this section shall be deemed to be plaints in suits.

95A. When any order has been made on an application under this Act, no process for the execution of such order shall be issued on an application made after the lapse of one year from the date of such order, except when special provision is otherwise made in this Act.

Limitation of process of execution on applications.

96. (*a*) All applications under section 95 shall be made in the district in which the land, crops or products referred to is or are situate.

Points of procedure relating to applications under section 95.

(*b*) All orders passed on applications under section 95 shall be proved in the same manner, and when proved shall have the same effect, as if they were judgments of the civil Courts.

(*c*) In cases wherein a specific sum of money is adjudged to be due, or any costs or damages are awarded, all such orders may be executed by any process in use for the recovery of an arrear of revenue or rent.

(*d*) In cases wherein possession of immoveable property is adjudged, the officer making the award may deliver over possession in the same manner, and with the same power, in regard to contempts, resistance and the like, as may be lawfully exercised by the civil Courts in execution of their own decrees.

(*e*) Applications under clauses (*m*) and (*n*) of section 95 shall not be brought after six months from the date of the wrongful dispossession.

96A. All suits and applications under this Act may, with the consent of the parties, be referred to arbitration under section 220 to section 231 (both inclusive) of the North-Western Provinces Land-revenue Act, 1873.

Reference to arbitration.

97. The Local Government may invest any officer with the powers of an Assistant Collector of the first or second class under this Act, and may at any time withdraw such powers.

Power to invest officers with Assistant Collector's powers, and withdraw them.

98. Assistant Collectors of either class shall have, as such, power to try suits and applications of the following descriptions:—

Suits and applications cognizable by Assistant Collectors.

(*a*) suits for arrears of rent or the money equivalent of rent on account of land, or on account of any rights of pasturage, forest rights, fisheries or the like;

(*b*) suits for compensation for withholding receipts for rent paid, under section 48;

(*c*) suits to contest the exercise of the powers of distress conferred on landholders and others by this Act, or anything purporting to be done in exercise of the said powers, or for compensation for wrongful acts or omissions of a distrainer;

(*d*) suits by lambardárs for arrears of Government-revenue, payable through them by the co-sharers whom they represent, and for village-expenses and other dues, for which the co-sharers may be responsible to the lambardár;

(*e*) suits by muáfídárs or assignees of the Government-revenue for arrears of revenue due to them as such;

(*f*) suits by taluqdárs or other superior proprietors for arrears of revenue due to them as such;

(*g*) applications by a landholder, or by an agent employed by a landholder, to compel the production of accounts by patwárís;

(*h*) applications by a tenant or landholder to determine the value of any standing crops or ungathered products of the earth, and being on the land at the time of his ejectment, under section 42;

(*i*) applications by a landholder to determine the amount of rent payable by a tenant using land for the purpose of tending or gathering in crops, under section 42;

(*j*) applications by a landholder or a tenant for assistance in the division or appraisement of standing crops, under section 43;

(*k*) applications by tenants for leave to deposit rent;

(*l*) suits under section 93, clause (*k*), to recover arrears of revenue.

(*m*) applications under section 22A to survey land.

99. Assistant Collectors of the first class, in addition to the suits and applications specified in section 98, shall have power to try suits and applications of the following descriptions:—

Additional suits and applications triable by Assistant Collectors, first class.

(*a*) suits to eject a tenant for any act or omission detrimental to the land in his occupation, or inconsistent with the purpose for which the land was let;

(*b*) suits to cancel a lease for any breach of any condition binding on the tenant;

(*bb*) suits for compensation for, or to prohibit, any act, omission or breach mentioned in clause (*a*) or clause (*b*);

(*c*) suits for the recovery of any over-payment of rent or for compensation, under section 48 or section 49;

(*d*) suits by co-sharers for their shares of the profits of a mahál or any part thereof, after payment of the Government-revenue and village-expenses, or for a settlement of accounts;

(*e*) applications by a landholder to eject a tenant, under section 35;

(*f*) applications under section 39 by a tenant contesting notice of ejectment;

(*g*) applications by a landholder under section 40, for assistance to eject a tenant on whom notice of ejectment has been served;

(*h*) applications for compensation for wrongful dispossession;

(*i*) applications by a landholder or tenant to determine the amount to be paid as compensation for improvements;

(*j*) applications to recover the occupancy of any land from which a tenant has been wrongfully dispossessed by the landholder;

(*k*) applications under section 30 for the resumption of rent-free grants or for the assessment to rent of land hitherto held rent-free;

(*l*) applications under section 7 to have the holding of an ex-proprietary tenant divided off;

(*m*) applications under section 33 A to have a notice of relinquishment declared invalid;

(*n*) applications to take out of deposit amounts deposited under section 55A.

100. In addition to the powers specified in sections 98 and 99, an Assistant Collector of the first class, specially empowered by Government in this behalf, shall have power to try the following applications:

Additional applications triable by Assistant Collector, first class, with special powers.

(*a*) applications for enhancement or determination of rent;

(*b*) applications for abatement of rent;

(*c*) applications for leases or counterparts, and the determination of the rates of rent at which such leases or counterparts are to be delivered;

(*d*) applications to determine the nature or class of a tenant's tenure.

101. The Collector of the District, or any Assistant Collector in charge of a sub-division of a district, may make over any case, or class of cases, for inquiry and decision, from his own file, to any of his subordinates competent to deal with such case or class of cases under the provisions of this Act.

Power to make over cases.

102. Collectors of Districts, and Assistant Collectors in charge of sub-divisions of districts, may, respectively, withdraw any case or class of cases from any officers subordinate to them, and may deal with such case or class of cases themselves, or refer it for disposal to any other such Revenue-officer competent to deal with the same under the provisions of this Act.

Power to withdraw cases.

103. The Collector of the District may exercise—

Powers exerciseable by Collector of District.

(*a*) all powers given by this Act to Collectors of Districts,

(*b*) all powers which by this Act are conferred, or can be conferred, on Assistant Collectors.

The Local Government may invest any officer in charge of a sub-division of a district with all or any of the powers conferred by this Act on a Collector of a District.

Investment of officer in charge of sub-division with powers of Collector of District.

In conferring powers under this Act, the Local Government may empower persons specially by name, or classes of officials generally by their official titles.

Mode of conferring powers.

CHAPTER VI.

PROCEDURE IN SUITS UP TO JUDGMENT.

104. Suits under this Act shall be instituted in the district in which the subject of the suit, or some part thereof, is situate.

Place of instituting suits.

and all such suits shall be commenced by presenting to the Court a plaint, which shall contain—

Plaint.

(*a*) the name, description and place of abode of the plaintiff;

(*b*) the name, description and place of abode of the defendant, so far as they can be ascertained;

(*c*) the subject-matter of the claim, and its amount or value computed according to the Court-fees Act, 1870; and

(*d*) the date on which the right to sue accrued.

105. For the purpose of suing or being sued under this Act, the managers of mahals, whether held under the Court of Wards or under direct management, shall be deemed to be landholders.

Managers of mahals to be, for purpose of litigation, deemed landholders.

106. No co-sharer in an undivided property shall, in that character, be entitled separately to sue a tenant under this Act, unless he is authorized to receive from such tenant the whole of the rent payable by such tenant; but nothing in this section shall affect any local custom or any special contract.

Suits by co-sharers in undivided property.

107. The plaint shall be presented by the plaintiff, or by an agent duly authorized on his behalf, who has personal knowledge of the facts of the case, or by an agent accompanied by a person who has such knowledge.

Plaint by whom presented.

The plaint shall be subscribed and verified at the foot by the plaintiff or his agent in the manner following, or to the like effect :—

Verification of plaint.

"I, *A. B.*, the plaintiff named in the above plaint, do declare that what is stated therein is true to the best of my knowledge and belief."

If the plaint contains any averment which the person making the verification knows or believes to be false, or does not know or believe to be true, he shall be punishable according to the law for the punishment of giving or fabricating false evidence.

False averment.

108. If the plaintiff rely in support of his claim on any document in his possession, he shall deliver the same to the Court at the time of presenting his plaint.

Document relied on by plaintiff to be presented with plaint.

Unless such document be so delivered, or its non-production be sufficiently excused, or unless the Court see fit to extend the time for producing the same, it shall not afterwards be admitted.

Admission afterwards.

109. If the plaintiff require the production of any document in the possession or power of the defendant, he may, at the time of presenting his plaint, deliver to the Court a description of the document, in order that the defendant may be required to produce the same.

Procuring production of document in possession of defendant.

110. If the suit be for the recovery of an arrear of rent or revenue, or of a share of profits or village-expenses, or other dues under section 93, the plaint shall specify the name of the village and estate, and of the pargana or other local division in which the land is situate:

Plaint in suits for arrears of rent.

and, if the suit be for an arrear of rent alleged to be due from any tenant, the plaint shall also specify the quantity of land, and (where fields have been numbered in a Government-survey) the number of each field, and yearly rent of the land; the amount (if any) received on account of the year for which the claim is made; and in all cases coming under this section the plaint shall specify the amount in arrear, and the time in respect of which it is alleged to be due.

111. If the suit be for the ejectment of a tenant from any land, the plaint shall describe (as circumstances may require) the extent, situation and designation of the land; and, if necessary for its identification, shall set forth its boundaries.

Plaint in suits for ejectment.

112. If the plaint do not contain the several particulars hereinbefore required to be specified therein, or be not subscribed and verified as hereinbefore required, the Court may, at its discretion, return it to the plaintiff, or allow it to be amended.

Return or amendment of plaint.

112A. The Court may, on or before the first hearing upon the application of either party, and on such terms as the Court thinks just, order that the name of any party, whether as plaintiff or as defendant, improperly joined, be struck out;

Court may dismiss or add parties.

and the Court may at any time, either upon or without such application, and on such terms as the Court thinks just, order that any plaintiff be made a defendant, or that any defendant be made a plaintiff, and that the name of any person who ought to have been joined whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

No person shall be added as a plaintiff without his own consent thereto.

Consent of person added as plaintiff.

All parties whose names are so added as defendants shall be served with a summons in manner hereinafter mentioned, and the proceedings as against them shall be deemed to have begun only on the service of such summons:

Defendants added to be served.

Provided that, when a defendant dies and the suit is continued against his legal representative, it shall, as regards him, be deemed to have been instituted when it was instituted against the deceased defendant.

112B. Where a defendant is added, the plaint, if previously filed, shall, unless the Court directs otherwise, be amended in such manner as may be necessary, and an amended copy of the summons shall be served on the new defendant and the original defendants.

When defendant added, plaintiff to amend.

112C. All objections for want of parties, or for joinder of parties who have no interest in the suit, or for mis-joinder as co-plaintiffs or co-defendants, shall be taken at the earliest possible opportunity, and in all cases before the first hearing, and any such objection not so taken shall be deemed to have been waived by the defendant.

Time for taking objections as to non-joinder or mis-joinder of parties.

112D. If the plaint be admitted, the plaintiff shall present as many copies on plain paper of the plaint as there are defendants, unless the Court, by reason of the length of the plaint, or the number of the defendants, or for any other sufficient reason, permits him to present a like number of concise statements of the nature of the claim made, or of the relief or remedy required in the suit, in which case he shall present such statements.

Procedure on admitting plaint.

Concise statements.

113. If the plaint be in proper form, the Court, except as otherwise hereinafter specially provided, shall direct the issue of a summons to the defendant,

Issue of summons.

and if the plaintiff require the personal attendance of the defendant, and satisfy the Court that such attendance is necessary, or the Court of its own accord require such attendance, the summons shall contain an order for the defendant to appear personally on a day to be specified in the summons.

Order for personal attendance or appearance by agent.

If the plaintiff or the Court does not require the personal attendance of the defendant, the summons shall order the defendant to appear either personally or by an agent duly authorized on his behalf, who has personal knowledge of the subject, or is accompanied by a person who has such personal knowledge.

114. The day to be specified in the summons shall be fixed with reference to the state of the file and the distance that the defendant may be or be supposed to be at the time from the place where the Court is held,

Fixing of day to be specified in the summons.

and the summons shall order the defendant to produce any document in his possession or power of which the plaintiff demands inspection, or upon which the defendant relies in support of his defence.

Order to produce documents.

It shall also direct him to bring with him his witnesses, if they are willing to attend without issue of process,

Order to bring witnesses.

and it shall be in the form (D) contained in the first schedule hereto annexed, or to the like effect.

Form of summons.

It shall be accompanied with one of the copies or concise statements mentioned in section 112 D.

Copy or statement annexed to summons.

115. The summons shall be served by delivering a copy thereof to the defendant personally when practicable;

Mode of serving summons.

or, if the copy cannot be delivered to the defendant personally, by affixing copy of the summons to some conspicuous part of his usual residence, and also affixing a copy of the same in the Court.

116. If the summons be served by delivering a copy to the defendant personally, the Názir shall endorse on the summons the fact of such service.

Endorsement on summons.

If personal service be not effected, the Názir shall endorse on the summons the reason of not serving it personally, and how it has been served.

117. If the usual residence of the defendant be in another district, the summons shall be sent by the public post to the Collector of such district, who shall issue the summons, and return the same, after service, with the prescribed endorsement, to the officer by whom it was transmitted to him.

Service of summons in another district.

117A. If the defendant resides out of British India, and has no agent in British India empowered to accept the service, the summons shall be addressed to the defendant at the place where he is residing, and forwarded to him by post, if there be postal communication between such place and the place where the Court is situate.

Service when defendant resides out of British India and has no agent to accept service.

117B. If there be a British Resident or Agent of Government in or for the territory in which the defendant resides, the summons may be sent to such Resident or Agent by post or otherwise for the purpose of being served upon the defendant; and if the Resident or Agent return the summons with an endorsement under his hand that the summons has been served on the defendant in manner hereinbefore directed, such endorsement shall be conclusive evidence of such service.

Service through British Resident or Agent of Government.

118. The amount of the cost of serving the summons, or, if a warrant be issued as provided in the next following section, of serving the warrant,

Deposit of cost of serving summons or warrant.

shall in all cases be deposited in Court by the plaintiff within such time before the issue of such summons or warrant as is fixed by the Court issuing the process.

If the said amount be not so deposited (except where the Court in exercise of the discretion reserved to it in section 91 allows the summons to be served gratis), the case shall be struck out of the list of pending suits;

Effect of failure to deposit.

but in such case the plaintiff may present another plaint at any time within the period allowed by the rules herein contained for the limitation of suits.

119. (*a*) If in any suit against a tenant for the recovery of an arrear of rent, or in any suit for the recovery of an arrear of revenue, or a share of profits or village-expenses or other dues, the plaintiff desires a warrant of arrest to be issued against the defendant, such defendant being resident within the district in which the suit is instituted, the plaintiff shall present, with his plaint, an application for the issue of such warrant.

Procedure when plaintiff desires issue of warrant of arrest.

(*b*) When such application is presented, the Court shall examine the plaintiff or his agent, and inspect the documents adduced by him in support of his claim; and if *primâ facie* it appear to the Court that the claim is well founded, and that, if a summons be issued, the defendant will abscond instead of appearing to answer the claim, the Court may issue a warrant for his arrest.

(*c*) The Court shall fix a reasonable time for the return of the warrant, and the officer entrusted with the service thereof shall, at the time of arresting the defendant, deliver to him one of the copies or concise statements mentioned in section 112D and a notice requiring him, if he contest the claim, to bring with him any document upon which he relies in support of his defence.

(*d*) Every warrant issued and notice delivered under this section shall be respectively in the forms (E) and (F) in the first schedule hereto annexed, or to the like effect.

120. If a defendant be arrested under the warrant of arrest, he shall be brought with all convenient speed before the Court.

Procedure after arrest of defendant.

121. When a defendant is brought before the Court under warrant, the Court shall, with all convenient speed, proceed to try the case in the manner hereinafter provided,

Procedure when defendant is brought before Court under warrant.

and if the suit cannot be at once adjudicated, the Court may, if it think fit, require the defendant to give security for his appearance whenever the same may be required at any time whilst the suit is pending, or until execution of the final decree which may be passed thereon,

and may commit him to the civil jail to be there detained until he furnishes such security or deposits such sum as the Court orders.

The security-bond shall be in the form (G) contained in the first schedule hereto annexed, or to the like effect.

Form of security-bond.

122. If the defendant cannot be arrested under the warrant, the Court, on the application of the plaintiff, shall either postpone the case for such period as to it seems proper, in order that the plaintiff may apply within the said period for another warrant to be issued for the arrest of the defendant, or shall forthwith issue a proclamation, to be affixed in its own office and at the residence of the defendant, appointing a day for the hearing of the case, which shall not be less than ten days from the date of the publication of the notice, at the residence of the defendant.

Procedure when defendant cannot be arrested under warrant.

If the defendant appear in pursuance of the proclamation, he shall be dealt with as provided in the last preceding section.

123. If it appear to the Court that the arrest of the defendant was applied for without reasonable cause, the Court may, in its decree, award to him such sum not exceeding one hundred rupees as it may deem a reasonable compensation for any injury or loss which he has sustained by reason of such arrest, or of his detention in jail during the pendency of the suit.

Compensation for arrest applied for without reasonable cause.

124. If on the day fixed by the summons or proclamation for the appearance of the defendant, or on any subsequent day to which the hearing of the case may be adjourned prior to the recording of an issue for trial as hereinafter provided, neither of the parties appear in person or by an agent, the case may be struck off, with liberty to the plaintiff to bring a fresh suit, unless precluded by the rules herein contained for the limitation of suits.

Consequence of neither party appearing on day fixed.

125. If on any such day only the defendant appears, the Court shall pass judgment against the plaintiff by default, unless the defendant admits the plaintiff's right to the relief which he claims, in which case the Court shall proceed to give judgment for the plaintiff upon such admission without costs:

Judgment by default.

Judgment upon admission of claim.

Provided that such judgment, if there be more than one defendant, shall be only against the defendant who makes the admission.

Proviso.

126. If on any such day the plaintiff only appear, the Court, upon proof that the summons or proclamation has been duly served according to the provisions of this Act, shall proceed to examine the plaintiff or his agent, and after considering the allegations of the plaintiff, and any documentary or other evidence adduced by him, may either dismiss the case or postpone the hearing of it to a future day for the attendance of any witness the plaintiff may wish to call, or may pass judgment *ex parte* against the defendant.

If plaintiff only appear, Court may proceed *ex parte*.

127. If the defendant appear on any subsequent day to which the hearing of the suit is postponed under the last preceding section, the Court may, upon such conditions, if any, as to costs or otherwise as it thinks proper, allow the defendant to be heard in answer to the suit as if he had appeared on the day fixed for his attendance.

If defendant appear on adjourned hearing, Court may allow him to be heard in answer.

128. (*a*) No appeal shall lie from a judgment passed *ex parte* against a defendant who has not appeared, or from a judgment against a plaintiff by default, for non-appearance.

No appeal from judgment *ex parte* or by default;

(*b*) But in all such cases, if the party against whom judgment has been given appears, either in person or by agent, if a plaintiff, within fifteen days from the date of the Court's decree, and, if a defendant, within fifteen days after any process for enforcing the judgment has been executed, or at any earlier period, and shows sufficient cause for his previous non-appearance, and satisfies the Court that there has been a failure of justice, the Court may, upon such terms as to costs or otherwise as it thinks proper, revive the suit and alter or rescind the judgment according to the justice of the case.

but Court may revive suit and alter or rescind judgment.

(*c*) But no judgment shall be reversed or altered without previously summoning the adverse party to appear and be heard in support of it.

Adverse party to be summoned.

129. When both parties appear in person or by agent on the day named in the summons, or upon any subsequent day to which the hearing of the case may be adjourned, for sufficient reason to be recorded by the Court, the Court shall proceed to examine such of the parties as may be present, and either party or his agent may cross-examine the other party or his agent.

Examination.

130. If either of the parties be not bound to attend personally, any agent by whom he appears, or any person accompanying such agent, may be examined and cross-examined in like manner as the party himself would have been if he had attended personally.

Examination and cross-examination of agents.

131. At the time of the examination, the defendant may, if he think fit, file a written statement in his defence.

Defendant may file written statement.

Such written statement shall be subscribed and verified in the manner herein-before provided for subscribing and verifying plaints, and if it contains any averment which the person making the verification knows or believes to be false, or does not know or believe to be true, he shall be punishable according to the law for the punishment of giving or fabricating false evidence.

Verification of written statement.

False averment.

132. The examination of the parties or their agents, or such other persons as aforesaid, shall be according to the law for the time being in force relative to the examination of witnesses in the civil Courts.

Mode of examination.

The substance of the examination shall be reduced to writing in the mother-tongue of the presiding officer, and shall be filed with the record.

133. If either of the parties produce a witness on such day, the presiding officer may take the evidence of such witness.

Witness produced may be examined.

134. If the defendant rely on any document in support of his defence, he shall deliver the same into Court at the first hearing of the suit:

Document relied on by defendant to be produced at first hearing.

and unless such document be so delivered, or its non-production be sufficiently excused, or unless the presiding officer see fit to extend the time for delivering the same, it shall not afterwards be admitted.

135. If after the examination required by section 129, and also the examination of any witness who may attend to give evidence on behalf of either of the parties, and after a consideration of the documentary evidence adduced, a decree can be properly made without further evidence, the Court shall make its decree accordingly.

Decree after examination, if no further evidence is required.

136. If on such examination as aforesaid either party is absent and his agent is unable to answer any material question relating to the case which the Court is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Court may postpone the hearing of the case to a future day, and direct that the party whose agent was unable to answer as aforesaid shall attend in person on such day;

Party to attend in person when his agent is unable to answer.

and if such party fails to appear in person on the day appointed, the Court may pass judgment as in case of default, or make such other order as it deems proper in the circumstances of the case.

Judgment or order if he fail to appear.

137. If on such examination as aforesaid it appear that the parties are at issue on any question upon which it is necessary to hear further evidence, the Court shall declare and record such issue, and shall fix a convenient day for the examination of witnesses and the trial of the suit; and the trial shall take place on that day, unless there be sufficient reason for adjourning it, which reason shall be recorded by the Court.

Procedure when parties at issue on question requiring evidence.

138. The parties shall produce their witnesses on the day of trial, and if either party require assistance to procure the attendance of a witness on such day, either to give evidence or to produce a document, he shall apply to the Court in sufficient time before the day fixed for the trial, to enable the witness to be summoned to attend on that day; and the Court shall thereupon issue a summons requiring such witness to attend.

Parties to produce witnesses or procure attendance by summons.

139. The law and rules for the time being in force relating to the evidence of witnesses, for procuring the attendance of witnesses and the production of documents, and for the examination, remuneration and punishment of witnesses, whether parties to the case or not, in cases before the civil Courts, shall, except so far as may be inconsistent with the provisions herein contained, apply to suits under this Act.

Provisions regarding attendance, examination, &c., of witnesses.

140. If on the day fixed for the trial of any issue neither of the parties appear, the case may be struck off, with liberty to the plaintiff to bring a fresh suit.

Case to be struck off if neither party appears.

If on any such day one only of the parties appear, the issue may be tried and determined in the absence of the other party, upon such evidence as may be then before the Court.

Trial of issue *ex parte*.

141. When suits under this Act are instituted or defended by agents employed in the collection of rent or management of land, in the name and on the behalf of the landholders by whom they are so employed, all the provisions of this Act, by which the personal appearance or attendance of parties to a suit is or may be required, shall be applicable to such agents;

Provisions to apply when suits are instituted or defended on behalf of landholders by agents.

and anything which by this Act is required or permitted to be done by a party in person may be done by any such agent as aforesaid.

Processes served on any such agent shall be as effectual for all purposes in relation to the suit as if the same had been served on the landholder in person:

Processes served on such agents.

and all the provisions of this Act relative to the service of processes on a party to the suit shall be applicable to the service of processes on such agent.

142. A female plaintiff or defendant shall not be required to attend in person, if she is of a rank or class which, according to the custom and manners of the country, would render it improper for her to appear in public.

Personal attendance of female plaintiff or defendant when not required.

143. Any party to a suit may employ an authorized agent to conduct the case on his behalf:

Parties may employ agents.

but the employment of such agent shall not excuse the personal attendance of the plaintiff or defendant, in cases where his personal attendance is required by the summons, or any order of the Court;

Personal attendance when not excused.

and no fee for any agent shall be charged as part of the costs of suit in any case under this Act, unless the Court certifies that, under the circumstances of the case, such fee is proper to be allowed.

Fee for agents not chargeable as costs.

144. The Court may in any case grant time to the plaintiff or defendant to proceed in the prosecution or defence of a suit,

Court may grant time or adjourn hearing.

and may also, from time to time, in order to the production of further evidence, or for other sufficient reason to be recorded by the Court, adjourn the hearing of any case to such day as to it may seem fit.

145. The presiding officer may, at any stage of a case, cause a local enquiry and report respecting the matter in dispute to be made by any officer subordinate to him, or by any other officer of Government, with the consent of the authority to whom such officer is subordinate, or may himself proceed to the spot and make such local enquiry in person.

Court may cause local enquiry and report, or may itself enquire.

The provisions of the law for the time being in force relative to local inquiries by Amíns or Commissioners, under orders of the civil Courts, shall apply to any local inquiry made by any officer under this section,

Provisions applied to such inquiry.

and, so far as they are applicable, to inquiries made by the presiding officer of the Court in person.

In the latter case the presiding officer, after completing the inquiry, shall record such observations as appear to him appropriate, and the observations so recorded shall form part of the proceedings in the suit.

Record in case of inquiry by Court.

146. The defendant in any suit under this Act may pay into Court such sum of money as he thinks a full satisfaction for the demand of the plaintiff, together with the costs incurred by the plaintiff up to the time of such payment, and such sums shall be paid to the plaintiff.

Defendant may pay admitted debt and costs into Court.

If the defendant deposit less than the sum claimed and the plaintiff elect to proceed in the case, and ultimately recover no further sum than has been paid into Court, the plaintiff shall be charged with any costs incurred by the defendant in the suit after such payment.

Plaintiff chargeable with subsequent costs if he proceed and recover no further sum.

147. No interest shall be allowed to a plaintiff on any sum paid by the defendant into the Court from the date of such payment, whether such sum be in full of the plaintiff's claim, or fall short thereof.

No interest to plaintiff after date of deposit by defendant.

148. When, in any suit between a landholder and a tenant under this Act, the right to receive the rent of the land or tenure cultivated or held by the tenant is disputed on the ground that some third person has actually and in good faith received and enjoyed such rent before and up to the time when the right to sue accrued, such third person may be made a party to the suit, and the question of such receipt and enjoyment of the rent by such third person may be enquired into, and the suit shall be decided according to the result of such enquiry:

In suits where right to receive rent is disputed, third person who has received it may be made a party.

Provided that the decision of the Court shall not affect the right of either party entitled to the rent of such land to establish his title by suit in the civil Court, if instituted within one year from the date of the decision.

Saving of right to sue in civil Court to prove title to rent.

149. Whenever a decree is given for the ejectment of a tenant, or the cancelment of his lease, on account of any act or omission by which the land in his occupation has been damaged, or which is inconsistent with the purpose for which the land has been let, the Court may, if it think fit, allow him to repair such damage within one month from the date of the decree, or order him to pay such compensation, within such time, or make such other order in the case, as the Court thinks fit,

Court may allow tenant to repair damage caused by certain acts or omissions.

and if such damage be so repaired, or compensation so paid, or order obeyed, the decree shall not be executed.

150. Every judgment under this Chapter shall be pronounced in open Court.

Delivery of judgment.

151. The judgment shall be written in the mother-tongue of the presiding officer, and shall contain the reasons for the same, and shall be dated and signed by the presiding officer at the time it is pronounced:

Its language and contents.

Provided that, where his mother-tongue is not English, the judgment may be written in English, if he is able to write a clear and intelligible decision in that language.

When it may be in English.

151A. The judgment shall direct by whom the costs of each party are to be paid, whether by himself or by any other party to the suit, and whether in whole or in what part or proportion.

To direct payment of costs.

151B. Except as hereinbefore provided, the Court shall have full power to give and apportion costs of every suit in any manner it thinks fit; and the fact that the Court has no jurisdiction to try the case is no bar to the exercise of such power; but if the Court directs that the costs of any suit shall not follow the event, the Court shall state its reasons in writing.

Power of Court as to costs.

151C. The Court may direct that the costs payable to one party by another shall be set off against sums admitted or found in the suit to be due from the former to the latter.

Costs may be set off.

151D. Except as hereinbefore provided, the Court may give interest at any rate not exceeding six per cent. per annum, on any sum decreed or found to be due, or on costs.

Power to give interest.

152. Every officer invested with powers under this Act may hold a Court for hearing and determining suits under this Act in any place within the limits of the district to which he is appointed.

Power to hold Court in any place within district.

Every hearing shall be in open Court, and the parties to the suit or their authorized agents shall have due notice to attend in such place.

CHAPTER VII.

PROCEDURE IN EXECUTION OF DECREES IN SUITS.

153. If the decree be for the ejectment of any tenant from land occupied by him, the decree shall be executed by giving the possession or occupancy of the land to the person entitled by the decree thereto.

Mode of executing decree for ejectment of tenant.

If any opposition is made to the execution of the order for giving such possession or occupancy, by the party against whom the order is made, the Magistrate, on the application of the Collector of the District or Assistant Collector, shall give effect to the same.

Magistrate to give it effect in case of opposition.

154. If the decree be for the payment of arrears of rent or revenue, or of money, and the defendant has been committed to jail or appear in Court pursuant to the conditions of any security-bond given

Power to order detention in, or commitment to, civil jail in certain cases.

section 121, the Collector of the District or Assistant Collector may order that he be detained in, or committed to, the civil jail, unless he immediately pays into Court the amount of the decree with costs, or otherwise complies with the terms of the decree.

155. If the judgment-debtor has given security for his appearance, and is not present when judgment is pronounced, and the surety fails to deliver him into custody when required so to do, process of execution may be taken out against the surety in the same manner as if a decree for the amount due by the debtor had been passed against the surety.

Process against surety on failure to deliver judgment-debtor into custody.

156. (*a*). A writ of execution may be issued against either the person or the property of a judgment-debtor;

Process of execution against person or property, but not both.

but process shall not be issued simultaneously against both person and property.

(*b*). Such writ may be issued on the oral application of the judgment-creditor or his agent, made at the time the decree is passed, or, thereafter, upon the written application of the judgment-creditor or his agent.

Applications on which it may issue.

(*c*). Writ of execution against the person or moveable property of a debtor shall be in the form (H) or (I) contained in the first schedule hereto annexed, or to the like effect.

Form of writ of execution.

157. Any moveable property required to be seized under an execution shall, if practicable, be described in a list to be furnished by the judgment-creditor;

Execution against moveable property.

but, if the creditor is unable to furnish such list, he may apply for a general attachment of the debtor's effects, to the amount of the judgment and costs.

In either case, the property to be seized shall be pointed out to the officer entrusted with execution of the process, by the creditor or his agent:

Provided that no implements of husbandry, or cattle actually employed in agriculture, or tools of artisans, or necessary wearing apparel of the judgment-debtor, his wife or children, shall be attached under this section.

Articles exempted from attachment.

158. Every writ of execution shall bear date on the day on which it is signed by the Collector of the District or Assistant Collector, and shall continue in force for such period as he may direct (not being more than sixty days) calculated from such date.

Date and duration of writs.

159. Second and successive writs of execution may be issued by order of the Collector of the District or Assistant Collector on the application of the judgment-creditor, after the expiration of the period fixed for the continuance in force of a previous warrant.

Second and successive writs.

160. Process of execution shall not be issued upon any judgment, without previous notice to the party against whom execution is applied for, if, when application for the issue of the process is made, a period of more than one year has elapsed from the date of the judgment, or from the date of the last previous application for execution.

After one year execution not to issue without notice to party concerned.

161. Execution on a judgment shall not issue against the heir or other representative of a deceased party, unless notice to appear and be heard has been previously served on such heir or other representative.

Execution not to issue against heir or representative of deceased party without notice.

162. No process of execution shall be issued on a judgment under this Act, when the application for the issue of such process is made after the lapse of three years from the date of such judgment, unless the judgment be for a sum exceeding five hundred rupees;

No process of execution after three years, unless judgment be for sum exceeding 500 rupees.

in which case the period within which execution may be had shall be regulated by the general rules in force in respect to the period allowed for the execution of decrees of the civil Court.

Regulation of period in such case.

163. If a writ issues for taking any person in execution, the officer charged with the execution of the writ shall bring him with all convenient speed before the Collector of the District or Assistant Collector.

Procedure in execution of writ against person.

If such person does not then deposit in Court the full amount specified in the writ,

or make such arrangement for the payment of the same as is satisfactory to the judgment-creditor,

or satisfy the Collector of the District or Assistant Collector that he has no present means of paying the same amount,

the Collector of the District or Assistant Collector shall send him to the civil jail, there to remain for such time as may be directed by a warrant addressed to the keeper of the jail, unless in the meanwhile he pays the full amount for the payment of which he is liable under the decree:

Provided that the time for which a debtor may be confined in execution of a decree under this Act shall not exceed three months when the amount decreed (exclusive of costs) does not exceed fifty rupees,

Limit of imprisonment.

or six months when such amount does not exceed five hundred rupees,

or two years in any other case.

164. (*a*.) Any person once discharged from jail shall not be imprisoned a second time under the same judgment.

No person to be imprisoned a second time under same judgment.

(*b*.) If the amount due under the decree does not exceed one hundred rupees, the Collector of the District or Assistant Collector may declare him absolved from further liability under that decree, and such liability shall thereupon be extinguished.

When further liability extinguished.

(*c*.) In other cases the discharge shall not extinguish the liability of the discharged person under the decree, or exempt any property belonging to him from attachment in execution of the same.

When not extinguished.

165. Every person applying for the issue of a warrant of arrest under section 119, or suing out process of execution against the person of any judgment-debtor, shall deposit in Court, when the warrant issues, diet-money for thirty days at such rate not exceeding two annas per diem, as the Collector of the District or Assistant Collector may direct, unless for any special reason he directs that deposit be made at a higher rate, which shall not exceed four annas per diem.

Diet-money to be deposited at time of issue of warrant.

166. Payment of diet-money at the same rate shall be made previously to the commencement of each succeeding month of the imprisonment, on failure of which the party confined shall be discharged.

Effect of non-payment of diet-money in advance during imprisonment.

167. All diet-money spent in providing subsistence for any prisoner shall be added to the costs in the suit,

Diet-money spent to be costs in suit.

and any diet-money not so spent shall be returned to the person who deposited the same.

Refund of remainder.

168. In executing a writ of execution against the moveable property of a debtor liable under this Act, the officer charged with the execution of the writ shall prepare a list of the property pointed out by the judgment-creditor, and shall publish a proclamation, specifying the day upon which the sale is intended to be held, together with a copy of the said list, at the intended place of sale and at the residence of the debtor.

Procedure in executing writ against moveable property.

A copy of the said proclamation and list shall be sent to the Collector of the District or Assistant Collector, and shall be affixed in his office.

169. No moveable property taken in execution under this Act shall be sold before the expiration of ten days next after the day on which such property is so taken.

Time to elapse before sale of moveable property.

Until such sale the property shall be deposited in some fit place, or it may remain in custody of some fit person approved by the officer executing the writ.

Custody meanwhile.

The provisions of sections 74 to 78 (both inclusive), so far as the same are applicable, shall apply to sales under this section.

Provisions applied to sale.

170. No irregularity in publishing or conducting a sale of any moveable property under an execution shall vitiate such sale.

Sale not vitiated by irregularity.

But any person injured by such irregularity may recover compensation for such injury by suit in the civil Court:

Right to sue for compensation.

Provided that such suit be brought within one year from the date of sale.

Limitation.

171. In the execution of any decree for the payment of arrears of rent or revenue, or of money, under this Act, if satisfaction of the judgment cannot be obtained by execution against the person or moveable property of the debtor, the judgment-creditor may apply for execution against any immoveable property belonging to such debtor, except the materials of buildings actually occupied by a debtor who is an agriculturist.

In executing decrees for money when execution may be applied for against immoveable property.

172. If the immoveable property against which execution is applied for be other than a mahál, or share of a mahál, process shall be issued in the same manner as for the attachment and sale of moveable property: and the provisions of sections 168, 169 and 170 shall be applicable.

Process when the immoveable property is not a mahál.

In the event of the sale of such property being completed, possession thereof shall be given to the auction-purchaser by the Collector of the district in which such property is situate.

Possession to be given to auction-purchaser.

173. When such property is a mahál, or a share of a mahál, the decree shall be sent for execution to the Collector of the District in which such property is situate,

Procedure when it is a mahál.

and if the judgment-debtor satisfies the Collector of the District that there is reasonable ground to believe that the amount of the judgment-debt may be raised by mortgage of the property, or by letting it on lease, or by disposing by private sale of a portion of the property or any other property belonging to the judgment-debtor, the Collector of the District may, on the application of the judgment-debtor, postpone the sale for such period as the Collector of the District thinks proper to enable the judgment-debtor to raise the amount,

and if the judgment-debtor satisfies his creditor, the execution shall be stayed, and the Collector of the District shall report the fact to the Court by which the decree was made.

174. If the judgment-debtor obtaining a postponement of the sale fails to satisfy his creditor within the period so fixed, or, if the judgment-debtor does not apply for, or applies for but does not obtain, a postponement of the sale, and the Collector of the District considers that the sale of the mahál or share is inexpedient, and that satisfaction of the decree may be made by means of a temporary alienation of the property,

Procedure where judgment-debtor fails to satisfy creditor within further time, or Collector thinks sale inexpedient.

the Collector of the District shall cause an accurate rent-roll of the property to be prepared, and ascertain the annual income derivable therefrom.

If, in the opinion of the Collector of the District, such income is sufficient to pay off the judgment-debt with interest at six per cent. per annum, within any period not exceeding fifteen years from the date of the decree, he may transfer the property to the judgment-creditor, or if the judgment-creditor refuse to take it, to some other person, or he may hold it under his own management, for such period not exceeding fifteen years, as may be sufficient for the recovery of the debt with interest as aforesaid, and on such conditions as to the payment of such debt and interest as he deems expedient.

Power to transfer property to judgment-creditor.

Power to hold property under management.

Orders passed under this section and section 173 shall be subject to revision by the Commissioner of the Division and the Board, but shall not be open to appeal to the civil Court.

174A. When the property of a judgment-debtor which is transferred or held under management under section 174 includes any sír-land of such debtor, he shall, until such property is restored to him, be treated as an ex-proprietary tenant of such sír-land under section 7.

Proprietor to be treated as ex-proprietary tenant of sír-land.

175. If in the opinion of the Collector of the District the recovery of the debt under section 174 is impossible, or if the sale of the property appear to him advisable on other grounds, he shall report, through the Commissioner of the Division, the case for orders to the Board.

Report of case to Board.

176. On the receipt of such report, the Board may make, or cause to be made, such further endeavours for the recovery of the debt under the provisions of section 174, as to it may seem practicable.

Procedure on receipt of report.

177. If it appear to the Board that the debt cannot be recovered under section 174, or if the sale of the property appear to it advisable on other grounds, it shall order the property to be sold, in which case the sale shall be made under the rules in force for the sale of land for arrears of land-revenue, but without prejudice to the incumbrances (if any) to which such property may be subject.

Power to order sale of property.

178. If, before the day fixed for any sale of any property under this Act, a third party appear before the Collector of the District or Assistant Collector, and claim a right or interest to or in any of the property, he shall examine such party or his agent, according to the law for the time being in force relative to the examination of witnesses,

Examination of third party claiming interest in property.

and, if he see sufficient reason for so doing, may stay the sale of such property.

Stay of sale.

179. The Collector of the District or Assistant Collector may adjudicate upon such claim, and make such order as he thinks fit between the claimant and the plaintiff and defendant in the original suit.

Adjudication of such claims.

In trying such claim, the Collector of the District or Assistant Collector shall be guided by the rules contained in this Act, so far as they may be applicable.

Rules applied.

180. If the claimant fail to establish his right to the property taken in execution, the Collector of the District or Assistant Collector may, at the time of disposing of the case, order him to pay to the judgment-creditor the costs of the proceedings on the claim, and also such sum as the Collector or Assistant Collector thinks sufficient to cover any loss of interest or damage which the judgment-creditor may have sustained by reason of the postponement of the sale of the property.

Compensation awardable against claimant failing to establish right.

181. (*a.*) No appeal shall lie from any order passed under section 179 or section 180 by the Collector of the District.

No appeal from order under section 179 or 180.

(*b.*) But the party against whom the same is passed may institute a suit in the Civil Court to establish his right at any time within one year from the date of the order:

Right to sue in civil Court.

(*c.*) Provided that, if the order be for the sale of the property taken in execution, and the property is moveable the suit shall not be for the recovery of such property, but shall be for compensation from the judgment-creditor by whom it was brought to sale.

Proviso.

CHAPTER VIII.

APPEAL, REHEARING AND REVIEW.

(A).—From Decrees in Suits.

182. In suits under this Act, tried and decided by a Collector of a District or an Assistant Collector of the first class, his judgment shall be final.

Judgment of Collector of District or Assistant Collector of first class when final.

183. All decisions of the Assistant Collector of the second class in suits mentioned in section 93 shall be appealable to the Collector of the District, whose order thereon shall be final.

Appeal from decision of Assistant Collector of second class.

184. The petition of appeal shall be presented to the Collector of the District within thirty days from the date of the decree.

Time for presentation.

185. The Collector of the District may either dismiss the petition or may fix a day for hearing the appeal, and in that case he shall cause notice of the same to be served on the respondent in the manner hereinbefore prescribed for the service of summons.

Procedure on appeal.

If, on the day fixed for hearing the appeal, or any other day to which the hearing may be adjourned, the appellant does not appear in person or by an agent, the appeal may be dismissed for default.

If the appellant appears and the respondent does not appear in person or by an agent, the appeal may be heard *ex parte*.

186. If an appeal be dismissed for default of prosecution, the appellant may, within fifteen days from the date of the dismissal, apply to the Collector of the District to re-admit the appeal,

Re-admission of appeal.

and if it be proved to the satisfaction of the Collector of the District that the appellant was prevented by any sufficient cause from appearing when the appeal was called on for hearing, the Collector of the District may re-admit the appeal.

187. After hearing the appeal, the Collector of the District shall give judgment in the manner hereinbefore prescribed for giving judgment in original suits.

Judgment in appeal.

188. In suits in which the judgment of the Collector of the District or Assistant Collector is final, as provided in section 182, he may, upon the application of either party, if preferred within thirty days from the date of the decision, order the rehearing of a suit, upon the ground of the discovery of new evidence or matter material to the issue of the case, which the applicant had no knowledge of, or could not produce, at the time of trial.

Rehearing of suits not open to appeal.

189. Notwithstanding anything contained, in sections 182 and 183 an appeal shall lie to the District Judge from the decision of the Collector of the District or Assistant Collector of the first class, in all suits mentioned in section 93,

Appeal to District Judge.

in which the amount or value of the subject-matter exceeds one hundred rupees, or

in which the proprietary title to land has been determined between parties making conflicting claims thereto:

Provided that, where the amount or value of the subject-matter of the suits exceeds five thousand rupees, the appeal shall lie to the High Court.

Appeal to High Court.

190. The rules for the time being in force in regard to the time within which appeals from the decisions of civil Courts may be received, and to the manner in which such appeals are heard and determined, and to all proceedings which may be had in respect of such appeals, shall be applicable to appeals to the District Judge or High Court under this Act.

Rules as to time of presentation, &c., to apply.

191. The decisions of District Judges passed in regular appeal under this Act shall be open to special appeal to the High Court, in the same manner, and subject to the same rules, as the decisions of District Judges passed in regular appeal are open to special appeal under the Code of Civil Procedure and the Indian Limitation Act, 1877.

Special appeal to High Court from District Judge.

(B).—From Orders on Applications or relating to the Execution of Decrees.

(1) Assistant Collectors of the Second Class.

192. An appeal to the Collector of the District shall lie from all orders passed under this Act by an Assistant Collector of the second class.

Appeal from Assistant Collector of second class.

(2) Assistant Collectors of the First Class.

193. An appeal to the Commissioner of the Division shall lie from all orders passed by an Assistant Collector of the first class,

Appeal from orders of Assistant Collectors of first class on certain applications.

(a) on applications under section 99, where the amount or value of the subject-matter exceeds one hundred rupees,

(b) on applications under section 100.

194. An appeal to the Collector of the District shall lie from all other orders passed under this Act by an Assistant Collector of the first class, except—

Appeal from other orders of Assistant Collector of first class.

(a) orders on applications mentioned in section 98;

(b) orders on applications mentioned in section 99;

(c) orders passed in the course of a suit and relating to the trial thereof.

195. The orders of an Assistant Collector of the first class on the following applications shall be final, subject to revision by the Commissioner of the Division or the Board—

Final orders of Assistant Collector of first class.

(a) applications mentioned in section 98;

(b) applications mentioned in section 99 where the amount or value of the subject-matter does not exceed one hundred rupees.

(3) Collector of the District.

196. An appeal to the Commissioner of the Division shall lie from orders passed by the Collector of the District,

Appeal from certain orders of Collector of District.

(a) under section 99, when the amount or value of the subject-matter exceeds one hundred rupees,

(b) under section 100.

In all other cases orders under this Act passed by the Collector of the District shall be final, subject to revision by the Commissioner of the Division or the Board.

(4) Commissioner of the Division.

197. Save as provided by section 198, the orders of the Commissioner of the Division on appeals shall be final, subject to revision by the Board.

Finality of orders of Commissioner of Division.

198. An appeal from the decisions of the Commissioner of Division on appeals against orders passed by the Collector of the District or Assistant Collector on the applications mentioned in section 100 shall lie to the Board, except where the Commissioner of the Division dismisses the appeal.

Appeal to Board from his decisions on appeals against orders on applications mentioned in section 100.

In such case the provisions of section 199 shall apply.

199. The Board may at any time call for any case (other than a suit mentioned in section 189) which has come before any Commissioner of a Division, or any Court subordinate to him, and pass such orders thereon, consistent with this Act, as the Board thinks fit.

Power of Board to call for cases and pass orders thereon.

200. No appeal shall be brought to the Collector of the District after the expiration of thirty days, or to the Commissioner of the Division after the expiration of sixty days, or to the Board of Revenue after ninety days, from the date of the order complained of.

Time for appealing.

201. Any appeal under this Act may be admitted after the period of limitation prescribed therefor when the appellant satisfies the officer to whom he appeals that he had sufficient cause for not presenting the appeal within such period.

Admission of appeals after prescribed period.

No appeal shall lie against an order under this section admitting an appeal.

(5) Review.

201A. The Board may review and may rescind, alter or confirm any order made by itself, or by a single member, on the application of one of the parties to the case, if preferred within ninety days from the passing of the order.

Power of Board to review its orders.

201B. In the case of any application in which the order of the Commissioner, Collector of the District or Assistant Collector is final, as provided in sections 195, 196 and 197, such Commissioner, Collector or Assistant Collector, as the case may be, may, upon the petition of either party, if presented within thirty days from the date of the decision, review his order upon the ground of the discovery of new evidence or matter material to the issue of the case which the applicant had no knowledge of or could not produce at the time of trial.

Reviewing of applications not open to appeal.

CHAPTER IX.

MISCELLANEOUS.

202. In computing the period of limitation prescribed for any suit under this Act, the day on which the right to sue accrued shall be excluded.

Time to be excluded in computing limitation period.

In computing the period of limitation prescribed for any appeal under this Act, the day on which the judgment or order complained of was pronounced, and the time requisite for obtaining a copy of the decree or order appealed against, shall be excluded.

203. Whenever a Court is closed on the last day of any period provided in this Act for the presentation of any memorandum of appeal, or for the deposit or payment of any money in or into court, the day on which the Court re-opens shall be deemed to be such last day.

Rule as to last day for presentation or deposit, when Court is closed on such day.

204. *(a.)* If in any suit instituted, or on any application made, under this Act, it appears to the presiding officer that any question in issue involving a point of law is more proper for the decision of a civil Court, such officer, if a Collector of a District, or the Collector of the District on the representation of such officer, may cause a case to be stated for the opinion of the District Judge, who shall hear the case in such manner as nearly as may be as is prescribed for the hearing of cases by the High Court by section 619 of the Code of Civil Procedure.

Power to state case involving point of law for opinion of District Judge.

(b.) If the District Judge finds that the case is insufficiently stated, he may return it to the Collector of the District for amendment.

(c.) Subject to any limits of value or time provided by law for cases falling under the Code of Civil Procedure, an appeal shall lie from the judgment of the District Judge to the High Court.

(d.) The District Judge shall return the case with the opinion of the civil Court to the Collector of the District, and the revenue Courts shall decide the suit or application in accordance with such opinion.

(e.) The costs attending such case shall be dealt with as costs in the suit or on the application in the revenue Court.

205. *(a.)* If in any suit instituted, or on any appeal presented, in a civil or revenue Court, the Judge or presiding officer doubts whether he is precluded by this Act from taking cognizance of the suit or appeal, he may refer the matter to the High Court.

Power to refer to High Court questions as to jurisdiction.

(b.) On any such reference being made, the High Court may order the Judge or presiding officer, either to proceed with the case, or to return the plaint or appeal for presentation in such other Court as it may in its order declare to be competent to take cognizance of the suit or appeal.

(c.) The order of the High Court on any such reference shall be final, and shall not be questioned by the same parties in the same suit.

206. In all suits instituted in any civil or revenue Court, in which an appeal lies to the District Judge or High Court, an objection that the suit was instituted in the wrong Court shall not be entertained by the appellate Court, unless such objection was taken in the Court of first instance; but the appellate Court shall dispose of the appeal as if the suit had been instituted in the right Court.

Procedure where objection that suit was instituted in wrong Court was not taken in Court of first instance.

207. If in any such suit such objection was taken in the Court of first instance, but the appellate Court has before it all the materials necessary for the determination of the suit, it shall dispose of the appeal as if the suit had been instituted in the right Court.

Procedure where such objection was taken in Court of first instance.

208. If in any such suit the appellate Court has not before it the materials necessary for the determination of the suit, it shall proceed under the provisions of the Code of Civil Procedure relating to appeals; but if it remands the suit, or frames and refers issues for trial, or requires additional evidence to be taken by the Court of first instance, it may direct its order either to the Court in which the suit was instituted, or to any other Court competent to entertain the suit,

Procedure where, in such cases, the appellate Court has not materials for determining the suit.

and the objection that the order of a subordinate appellate Court has been directed to a Court which was not competent to entertain the suit shall not be taken on special appeal.

208A. If, in any suit or application pending before a Revenue Court exercising original, appellate or revisional jurisdiction under this Act, it appears to such Court that any question in issue is more proper for decision by a civil Court, such Revenue Court may, by order in writing, require any party to such suit or application to institute, within such time as it may appoint in this behalf, a suit in the civil Court with a view to obtaining a decision of such question; and, if he fails to comply with such requisition, shall decide such question against him.

Power to refer party to civil Court.

If he institutes such suit, the Revenue Court shall dispose of the suit or application pending before it in accordance with the final decision of the civil Court of first instance or appeal (as the case may be) upon such question.

Suits by co-sharer against lambardár for share of profits.

209. In any suit brought by a co-sharer against a lambardár for a share of the profits, the Court may award to the plaintiff not only a share of the profits actually collected, but also a sum equal to the plaintiff's share in the profits which, through gross negligence or misconduct, the lambardár has omitted to collect.

Tenant's power to implead persons claiming through landholder.

210. In any application made by a tenant against a landholder to recover possession of a holding, the plaintiff may join as a defendant any other person in possession of the holding, who may claim title through the landholder.

Landholder's power to implead persons claiming through tenant.

In any suit instituted, or application made, by a landholder to eject a tenant, the plaintiff may join as a defendant any other person in possession of the holding, who may claim title through the tenant.

Power of Local Government to make rules.

211. The Local Government may from time to time make rules consistent with this Act—

(*a*) for the guidance of officers in determining, under sections 13, 14, 15, 17, 18 and 20, the rent payable by tenants,

(*b*) for the guidance of officers assessing rent under section 30,

(*c*) as to the dates on which instalments of rent shall fall due,

(*d*) as to the procedure to be followed on all applications under section 95.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

Power of Board to make rules.

The Board, with the previous sanction of the Local Government, may from time to time make rules, consistent with the provisions herein contained, for the guidance of all persons in matters connected with the enforcement of this Act.

Instalments when to be deemed in arrear.

212. When the Local Government has made a rule fixing the date on which any instalment of rent shall fall due, no such instalment shall, for the purposes of this Act, be deemed to be in arrear unless it remains unpaid after the date fixed by such rule.

THE FIRST SCHEDULE.

FORM A. (*See Section 51.*)

I, *A. B.*, of , solemnly declare that I did personally [*or* by my agent *C. D.*], on the day of , tender payment to *E. F.* of the sum of Rs. as and for the whole amount due from me on account of rent from the month of to the month of both inclusive. I further declare that the said *E. F.* refused to accept the sum so tendered, and to give a receipt in full for the same, and I declare that, to the best of my belief, the sum of rupees so tendered, and which I now desire to pay into Court, is the full amount I owe the said *E. F.*, and I hereby apply for leave to pay the same accordingly.

FORM B. (*See Section 52.*)

Court of the Collector of , *dated the day of*

To *E. F.* &c.

WITH reference to the written declaration of *A. B.*, you are hereby informed that the sum of rupees therein mentioned is now in deposit in this Court, and that the above sum will be paid to you, or to your duly authorized agent, on application.

[This is to be written on a copy of the declaration in Form A made by the person paying the money into Court.]

FORM C. (*See Section 69.*)

FORM OF NOTICE TO OWNER OF DISTRAINED PROPERTY.

Office of Commissioner for sale of distrained property.

A. B., Distrainer.

[*Name, description and address of the owner of the property.*]

WHEREAS the said *A. B.* has applied to have the distrained property specified below sold for the recovery of alleged to be due to him as arrears of rent, you are hereby required, either to pay the said sum to the said *A. B.*, or to institute a suit before the Collector to contest the demand within fifteen days from the receipt of this notice, failing which the property will be sold.

Dated this day of 188 .

FORM D. (*See Section 114.*)

FORM OF SUMMONS TO DEFENDANT.

No. (*of suit*) dated

In the Court of

A. B., Plaintiff.

[*Name, description and address of plaintiff.*]

C. D., Defendant.

[*Name, description and address of Defendant.*]

WHEREAS the said *A. B.* has brought a claim against you in this Court for , you are hereby required to appear in person in this Court on the day of [*if not specially required to appear in person, state,* "in person, or by an agent who has personal knowledge of the subject or who shall be accompanied by a person who has such knowledge"] to answer the above-named plaintiff, and you will bring with you (or send by your agent) [*here mention any document the production of which may be required by the plaintiff*] which the plaintiff desires to inspect, and all documents on which you may intend to rely in support of your defence. You will also bring with you your witnesses, if they are willing to attend without issue of process.

FORM E. (*See section 119.*)

FORM OF WARRANT OF ARREST.

No. (*of suit*) dated

In the Court of

A. B., Plaintiff.

C. D., Defendant.

To the Názir of the Court of the Collector of

WHEREAS the plaintiff in this suit has obtained an order from the Court for the arrest of the defendant, you are hereby commanded to bring the defendant before the Court on or before the day of to be dealt with according to law.

Dated this day of 188 .

FORM F. (*See section 119.*)

FORM OF NOTICE TO ACCOMPANY SUCH WARRANT.

In the Court of

A. B., Plaintiff.

[*Name, description and address of plaintiff.*]

C. D., Defendant.

[*Name, description and address of defendant.*]

WHEREAS the said *A. B.* has brought a claim against you in this Court for (*here specify particulars of claim as given in the plaint*) and has obtained a warrant for your arrest, you are hereby required, unless you admit the claim, to bring with you to the Court all documents on which you may intend to rely in support of your defence.

FORM G. (*See section 121.*)

FORM OF SECURITY-BOND FOR APPEARANCE OF DEFENDANT.

WHEREAS *A. B.*, plaintiff, has instituted a suit in the Court of the Collector of against *C. D.*, defendant, and the said *C. D.* has been required to give security for his appearance at any time when called on while the suit is pending and until execution of the decree, I, *E. F.*, hereby declare myself surety for the said *C. D.'s* appearance as aforesaid, and in case of his making default in such appearance, I engage to pay any sum for the payment of which the said *C. D.* may be liable under the decree. *If the suit be for the delivery of papers or accounts, specify some sum to be fixed by the Collector.*

FORM H. (*See section 156.*)

WRIT OF EXECUTION AGAINST THE PERSON.

A. B., Plaintiff.

C. D., Defendant.

To the Názir of the Court of the Collector of

WHEREAS the said *C. D.* was directed by a decree of this Court, under date the day of 188 , to pay to *A. B.* the sum of and for costs of suit, amounting to , and whereas the said *C. D.* has omitted to pay the same, you are hereby commanded to apprehend the said *C. D.*, and to bring him with all convenient speed before this Court to be dealt with according to law.

FORM I. (*See section 156.*)

WRIT OF EXECUTION AGAINST THE EFFECTS.

A. B., Plaintiff.

C. D., Defendant.

To the Názir of the Court of the Collector of

WHEREAS *C. D.* was directed by a decree of this Court, under date the day of 188 , to pay to *A. B.* the sum of and for costs of suit, amounting to , and whereas the said *C. D.* has omitted to pay the same, you are hereby commanded to levy the said sum of , and the sum of for costs of executing this process, by seizure and sale of such moveable property of the said *C. D.* as (is described in the list annexed and) [*if no list is furnished, these words to be omitted*] shall be pointed out to you by the judgment-creditor or his agent; and you are hereby ordered to sell such property of the said *C. D.*, on some convenient day, not being less than ten nor more than fifteen days from the day of seizure, unless the amount leviable as aforesaid shall be sooner paid; and you are hereby commanded to certify to me what you shall do by virtue of this warrant.

THE SECOND SCHEDULE.

(*See section 1.*)

TERRITORIES EXEMPTED, IN THE FIRST INSTANCE, FROM THE OPERATION OF THE ACT.

I. The province of Kumaon and Garhwál.

II. The Tarai Parganas, *comprising*—Bázpúr, Káshípúr, Jaspúr, Rudarpúr, Gadarpúr, Kilpúrí, Nának-Mattha, and Bilheri.

III. The portion of the Mirzápúr District lying to the South of the Kaimor Range.

IV. The Family Domains of the Maháráját of Benares comprising the following parganas:—
Bhadohi and Kera Mangror in the Mirzapur District,
Kaswár Rájá in the Benares District.

V. The tract of country known as Jaunsar Báwar in the Dehra Dún District.

D. FITZPATRICK,
Secretary to the Government of India.

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 11th March, 1881, and is hereby promulgated for general information :—

ACT No. XIII OF 1881.

An Act to provide for the better government of Fort William.

Preamble.

WHEREAS it is expedient to give power to make rules for the better government of Fort William in Bengal and to provide for the establishment of a Court within the said Fort for the trial of persons charged with breaches of such rules; It is hereby enacted as follows :—

Short title. Commencement.

1. This Act may be called "The Fort William Act, 1881;"

and it shall come into force on the first day of April, 1881.

But nothing herein contained shall be deemed to confer jurisdiction over any persons (other than artificers, labourers, sutlers and followers) to whom the Army Discipline and Regulation Act, 1879, or the Indian Articles of War, 1869, is or are applicable.

"The Fort."

2. The Governor General in Council may, from time to time, by notification in the *Gazette of India*, define, for the purposes of this Act, the limits of Fort William in Bengal; and in this Act the expression "the Fort" means the area so defined.

Commander-in-Chief may make rules.

3. The Commander-in-Chief in India may, from time to time, with the sanction of the Governor General in Council, make rules, to be in force within the Fort, in regard to the matters specified in the schedule hereto annexed, and other matters of a like nature, and may by such rules prescribe, as penalties for the infringement thereof, fine which may extend to fifty rupees, or imprisonment for a term which may extend to four days, or both.

When a sentence of fine is passed under any such rule, the term for which the Court directs the offender to be imprisoned in default of payment of such fine may extend to, and shall not exceed, four days.

When any rule is made under this section, a copy thereof, in English and such other languages as the Governor General in Council may from time to time direct, shall be exhibited in such conspicuous places within the Fort as the officer commanding the Fort may from time to time direct.

Governor General in Council may invest officer with power to try breaches of rules.

4. The Governor General in Council may invest any commissioned officer in Her Majesty's Army with power to try persons charged with any infringement of the rules made under section three.

The officer so invested is hereinafter called the Fort Magistrate.

Procedure to be followed.

5. In all cases under this Act, the Fort Magistrate shall, except as herein otherwise provided, exercise within the Fort the powers, and, as nearly as may be, follow the procedure, conferred on, and prescribed for, a Presidency Magistrate by the Presidency Magistrates Act, 1877; and, subject to the power conferred by the High Courts Criminal Procedure Act, 1875, section 147, every finding, sentence or order of such Magistrate under this Act shall be final.

Power to arrest without warrant.

6. Any Police-officer, or any other person empowered in this behalf by the Governor General in Council, by name or as a member of a specified class, may arrest without warrant any person who in his sight commits an offence punishable under this Act.

Power to Police-officer to release on bail.

Every person so arrested shall be taken to the police-station within the Fort, and shall be detained there until he gives to the Police-officer in charge of such station a bond, with or without sureties, as such officer may require, for a sum not exceeding one hundred rupees, to appear before the Fort Magistrate at a time to be specified in such bond, or until he can be brought before such Magistrate.

Jurisdiction of Presidency Magistrates and prosecutions under other laws saved.

7. Nothing in this Act or in any rule made hereunder shall affect the jurisdiction of the Magistrates appointed under the Presidency Magistrates Act, 1877, or shall prevent any person from being prosecuted under any other law for any offence punishable under this Act, or from being liable to any other punishment than is provided for such offence by this Act: Provided that no person shall be punished twice for the same offence.

Limitation of time for prosecutions under Act.

8. No prosecution for any offence under this Act shall be commenced after the expiration of three months next after such offence has been committed.

9. All penalties heretofore imposed by the Garrison Quarter Master of the Fort for offences against garrison rules and regulations shall be deemed to have been imposed in accordance with law.

Validation of penalties heretofore imposed by Garrison Quarter Master.

THE SCHEDULE.

(*See section 3.*)

(1). Throwing dirt or rubbish of any description into the drains or roads or anywhere but in the appointed places.

(2). Removing night-soil without a covering or at unauthorized hours.

(3). Camp-followers, servants and others not keeping the godowns they live in clean.

(4). Performing offices of nature in other than the appointed places.

(5). Bathing, or washing clothes or animals, in the *cunette* or other unauthorized places.

(6). Selling unwholesome articles of food, grain or drinks.

(7). Adulterating food or drinks.

(8). Making evacuations in unauthorized places.

(9). Rash or negligent driving.

(10). Picketting, training or breaking in animals.

(11). Causing obstruction by vehicles on the road.

(12). Exposing or hawking articles for sale about the roads and barracks, or within the Fort, without a Fort pass.

(13). Beating drums or tom-toms.

(14). Damaging lamps, posts, masonry or other Government-property in any part of the Fort.

(15). Disorderly behaviour in the public thoroughfares.

(16). Gambling.

(17). Spitting pán on any of the public staircases, gateways, walls and verandahs, or defacing in any way the walls of barracks, buildings or gateways.

(18). Throwing slops into the drains.

(19). Washing cooking-pots at the water-taps and wasting water.

(20). Cooking in unauthorized places.

(21). Hanging clothes to dry on the guns or masonry-work.

(22). Laying out clothes, accoutrements or stable-bedding after the authorized hours.

(23). Destroying the trees, bushes or plants, or climbing trees.

(24). Servants smoking hookahs in their masters' quarters or cook-houses, or keeping such quarters or cook-houses in an insanitary state.

(25). Trespassing on parade-grounds, or making footpaths across the grass-plots.

(26). Being drunk and incapable.

(27). Fighting, quarrelling and creating a disturbance, or making unnecessary noise of any kind.

(28). Affixing bills and papers on any walls in the Fort.

(29). Cutting grass or interfering with the grass-contractor.

(30). Declining to show a tin pass when called upon to do so.

(31). Being found in the garrison without a tin pass, or being in possession of a ticket belonging to another.

(32). Driving vehicles without lights or with insufficiently greased wheels.

(33). Swinging or sitting on the chain-fences.

(34). Interfering in any way with the guns, carriages or piles of shot and shell on the works, or with the packed ordnance.

(35). Mounting the ramparts or parapets or entering the embrasures without authority.

(36). Smuggling liquor into the Fort.

(37). Burning stable-litter or lighting fires except in authorized places and at authorized hours.

(38). Carrying lights except in closed lanterns, or letting off fireworks.

(39). Removing property of any kind or description from the Fort without written authority.

(40). Allowing animals of any sort to stray into the Fort, or to graze within the same.

(41). Slaughtering animals or exposing carcasses or offal within the Fort.

(42). Keeping dogs or poultry in unauthorized places.

(43). Buying, selling or receiving any portion of a soldier's kit.

(44). Disobedience of lawful authority in failing to attend to authorized instructions of the police or of the several sentries posted throughout the Fort.

(45). Occupying buildings of any kind without proper allotment.

D. FITZPATRICK,
Secretary to the Government of India.

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 11th March, 1881, and is hereby promulgated for general information:—

ACT No. XIV OF 1881.

An Act to amend Bengal Regulation VII of 1828.

Preamble.

WHEREAS it is expedient to amend Bengal Regulation VII of 1828 (*for amending the Provisions of Regulation XV of 1795, and for defining the Authority of the Rajah of Benares in the Mahâls therein referred to*) in manner hereinafter appearing; It is hereby enacted as follows:—

Short title. Commencement of Act.

1. This Act may be called "The Benares Family Domains Act, 1881": And it shall come into force on such day as the Lieutenant-Governor of the North-Western Provinces may, by notification in the official Gazette, appoint in this behalf.

Repeal of certain portions of Bengal Regulation VII of 1828.

2. The following portions of Bengal Regulation VII of 1828 shall be repealed, namely:—

(*a*) in section 5, the words and figures "under the rules contained in Regulation XLI, 1795";

(*b*) in section 14, the words "under the Regulations," in both places in which they occur;

(*c*) in section 19, the words "before the Court of circuit";

(*d*) in section 20, the proviso.

New section substituted for section 3 of same Regulation.

3. In the same Regulation, for section 3, the following shall be substituted, namely:—

Superintendence of mahâls vested in Commissioner.

"3. The superintendence of the said mahâls shall be vested in the Commissioner of the Benares Division, hereinafter called 'the Superintendent.'

"The Lieutenant-Governor of the North-Western Provinces may, from time to time, appoint a Deputy Superintendent of the said mahâls, and confer upon him all or any of the powers of the Superintendent, to be exercised by him subject to the general control of the Superintendent."

Amendment of same Regulation, section 7.

4. In the same Regulation, section 7, for the last twenty-two words, the following shall be substituted, namely:—

"The orders thus passed by the Superintendent shall be subject to appeal to, and revision by, the Board of Revenue, whose order thereon shall be final, unless altered or set aside by the said Lieutenant-Governor."

Amendment of same Regulation, section 9.

5. In the same Regulation, section 9, for the words "the Regulations at present in force within the Province of Benares" the words "the enactments for the time being in force in the North-Western Provinces" shall be substituted, and after the word "applicable" the words "and the Local Government with the concurrence of the Mahárájá may direct" shall be inserted.

Clause added to section 10 of same Regulation.

6. To section 10 of the same Regulation the following clause shall be added, namely:—

"The Mahárájá may delegate to one or more of his officers the exercise of all or any of the powers vested in him under this section in the whole or any part of the said mahâls."

Amendment of same Regulation, section 11.

7. In the same Regulation, section 11, for the words and figures "Regulation XI, 1822," the words "the enactments for the time being in force in the North-Western Provinces" shall be substituted.

Amendment of same Regulation, section 12.

8. In the same Regulation, section 12, for the words "Boards of Revenue" the words "Commissioners of Divisions and the Board of Revenue" shall be substituted;

and, for the words "towards the Board" the words "towards the Commissioner" shall be substituted.

Amendment of same Regulation, section 13.

9. In the same Regulation, section 13, for the words "Governor General in Council" the words "Board of Revenue" shall be substituted.

Amendment of, and addition to, same Regulation, section 16.

10. In the same Regulation, section 16, for the words "a Native Commissioner shall be maintained by the Rajah in each of the pergunnahs referred to in Regulation XV, 1795," the following shall be substituted, namely:—"A Native Commissioner, or two or three Native Commissioners, as the said Lieutenant-Governor may, from time to time, direct, shall be maintained by the Mahárájá."

And to the same section the following shall be added, namely :—

"The local limits of the jurisdiction of the Native Commissioners shall be determined by the Mahárájá, and may be altered by him from time to time."

Amendment of same Regulation, section 21.

11. In the same Regulation, section 21, for the words and figures "contained in Regulation XXIII of 1814" to the end of the section, the following shall be substituted, namely :—"prescribed by the said Lieutenant-Governor under section 22 of this Regulation."

Sections substituted for sections 22 to 26 of same Regulation.

12. For sections 22 to 26, both inclusive, of the same Regulation, the following sections shall be substituted, that is to say :—

Power to make rules.

"22. The said Lieutenant-Governor may, from time to time, make rules consistent with this Regulation—

"(*a*) to regulate the procedure and powers of the Native Commissioners, and to determine the cases in which, the mode in which, and the authority to or by which, the orders and decisions of such Commissioners shall be subject to appeal or revision, and

"(*b*) to regulate, in matters not hereinbefore provided for, the administration of the Family Domains in so far as it is entrusted to the Mahárájá;

"such rules shall, when published in the local Gazette, have the force of law:

"Provided that no such rule shall be so published until the opinion of the Mahárájá thereon has been taken and considered by the Lieutenant-Governor.

"In matters not otherwise provided for by the rules made under clause (*a*), the Code of Civil Procedure shall apply.

Procedure in case of doubt as to Judge's jurisdiction.

"23. If, in any suit instituted or appeal presented under this Regulation in any Court, the Judge or presiding officer doubts whether he has jurisdiction, he may refer the matter to the Board of Revenue; and, on any such reference being made, the said Board may order the Judge or presiding officer either to proceed with the case, or to return the plaint or appeal for presentation in such other Court as it may in its order declare to be competent to take cognizance of the suit or appeal.

"The order of the said Board on any such reference shall be final.

Operation of general Acts.

"24. Except as provided by or under this Regulation, or any other enactment for the time being in force,

"(*a*) the administration of the Family Domains, in so far as it is entrusted to the Mahárájá, shall be regulated by the principles and spirit of the enactments for the time being in force in the North-Western Provinces, and

"(*b*) the administration of the said Domains, in so far as it has not been so entrusted, shall be regulated by those enactments.

Interpretation-clause.

"25. In this Regulation, unless there is something repugnant in the subject or context,—

'Board of Revenue.'

"'Board of Revenue' means the Board of Revenue of the North-Western Provinces, or such officer or officers as may hereafter be lawfully appointed to exercise, within the Province of Benares, the powers of such Board.

'Regulations.'

"'Regulations' includes Acts for the time being in force in the North-Western Provinces."

Validation of past orders, &c.

13. All orders heretofore passed by the Governor General in Council, or the Lieutenant-Governor of the North-Western Provinces, or any other authority, regarding revisions of settlement or other matters connected with the revenue-administration of the tracts of territory mentioned in the preamble to Bengal Regulation VII of 1828, shall be deemed to have been passed in accordance with law; and no order or decision purporting to have been passed by any civil or revenue authority under the provisions of that Regulation shall be called in question in any Court.

Parts of Acts XIV and XV of 1874 repealed.

14. In the Scheduled Districts Act, 1874, first schedule, Part IV, and in the Laws Local Extent Act, 1874, sixth schedule, Part IV, the following shall be repealed, that is to say :—

"V. The Family Domains of the Mahárájá of Benares comprising the following parganas :—

"Bhadohi and Kheyra Máugror in the Mirzapur District.

"Kaswá Rájá in the Benares District."

Clause added to Act XV of 1874, s. 8.

15. In the Laws Local Extent Act, 1874, section 8, after clause (*j*), the following shall be inserted, namely :—

"(*jj*) extend to Pargana Bhadohi or Pargana Kera Mangror in the Mirzapur District, or to Pargana Kaswár Rájá in the Benares District, any law not now in force therein."

D. FITZPATRICK,
Secretary to the Government of India.

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 15th March, 1881, and is hereby promulgated for general information :—

ACT No. XV OF 1881.

THE FACTORIES ACT, 1881.

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19. Crown factories.

An Act to regulate labour in Factories.

Preamble.

WHEREAS it is expedient to regulate labour in factories; It is hereby enacted as follows :—

Preliminary.

Short title.

1. This Act may be called "The Indian Factories Act, 1881."

Local extent. Commencement.

It applies to the whole of British India, and shall come into force on the first day of July, 1881.

Interpretation-clause.

2. In this Act, unless there is something repugnant in the subject or context,—

"factory."

"factory" means any premises (other than indigo-factories or premises situated on, and used solely for the purposes of, a tea or coffee plantation) wherein is carried on, for not less than four months in the whole in any one year, any process for, or incidental to, making, altering, repairing, ornamenting, finishing or otherwise adapting for use, transport or sale, any article or part of an article; and

(*a*) wherein steam, water or other mechanical power is used in aid of any such process; and

(*b*) wherein not less than one hundred persons are on any day simultaneously employed in any manual labour in, or incidental to, any such process; and

every part of a factory shall be deemed to be a factory, except any part used exclusively as a dwelling :

"child."

"child" means a person under the age of twelve years;

"mill-gearing."

"mill-gearing" includes every shaft, whether upright, oblique or horizontal, and every wheel, drum, pulley, rope, driving strap or band, by which the motion of the first moving power is communicated to any machine :

"employed."

a child who works in a factory, whether for wages or not, either in a manufacturing process or handicraft, or in cleaning any part of the factory used for any manufacturing process or handicraft, or in cleaning or oiling any part of the machinery, or in any other kind of work whatsoever incidental to, or connected with, the manufacturing process or handicraft, or connected with the article made or otherwise the subject of the manufacturing process or handicraft therein, shall be deemed to be employed therein within the meaning of this Act.

Inspectors and certifying Surgeons.

Inspectors.

3. The Local Government may in its discretion, by notification in the official Gazette, appoint such persons as it thinks fit to be Inspectors of factories within such local limits as it may assign to such Inspectors, and may suspend or dismiss any person so appointed.

In default of such appointment, the Magistrate of the district shall, in virtue of his office, be Inspector of all factories (if any) in the District.

Such Inspectors shall be deemed public servants within the meaning of the Indian Penal Code; and shall be officially subordinate to such authority as the Local Government may, from time to time, indicate in this behalf.

Powers of Inspector.

4. An Inspector of factories may, within the local limits for which he is appointed,

(*a*) enter, with such assistants (if any) as he thinks fit, any factory whenever he has reason to believe that any person is employed therein;

(*b*) make such examination of the premises and machinery, and of the registers hereinafter prescribed, and take on the spot or otherwise such evidence of any person as such Inspector may deem necessary for carrying out the provisions of this Act;

(*c*) order that any person shall not be employed in a factory when he has reason to believe that such employment would be in contravention of this Act—

until the age of such person has been certified, in the manner hereinafter provided, to be above seven years; or,

for more than the time allowed by this Act for the employment of children, until his age has been so certified to be above twelve years.

Certifying surgeons.

5. The Civil Surgeon or such other person practising medicine or surgery as the Local Government may, from time to time, appoint in this behalf for any local area (hereinafter called the certifying surgeon) shall, at the request of any person employed or desirous of being employed in a factory situate in such local area, or of the parent or guardian of such person, examine such person and grant him a certificate, stating whether his age, as nearly as it can be ascertained from such examination, is above or below seven years, or twelve years, as the case may be.

Children.

Age of employment.

6. No child shall be employed in any factory, if he is under the age of seven years.

Hours of employment for children.

7. No child shall be actually employed in any factory more than nine hours in any one day.

And no child shall be employed in any factory on any day without an interval, or intervals, amounting in the whole to at least an hour, being allowed to him for food and rest.

The times at which such intervals shall be allowed, and the length of each interval, shall be fixed by the Local Government for each factory, after ascertaining, as far as possible, the existing practice in such factory and the wishes of the occupier thereof.

The occupier shall set up and maintain, in some conspicuous place in the factory, a printed or written notice, in English and the languages of the District in which the factory is situate, showing the times at which such intervals shall be allowed and the length of each interval.

A child shall not be deemed to be employed within the meaning of the first clause of this section during any interval allowed for food or rest.

Child to be allowed holidays.

8. Every occupier of a factory in which children are employed shall, before the beginning of each month, fix not less than four days in such month on which no child shall be employed in such factory, and shall forthwith give notice of the days so fixed to such officer as the Local Government may, from time to time, appoint in this behalf.

An occupier of a factory may, with the previous sanction of the Inspector, substitute, for any day fixed under this section, another day in the same month.

No child shall be employed in such factory on a day fixed under this section, unless when another day has been substituted for such day as hereinbefore provided, in which event no child shall be employed in such factory on the day so substituted.

Not to be employed in two factories on same day.

9. No occupier of a factory shall employ therein on any day any child who has to his knowledge already been employed on the same day in any other factory.

Not to be engaged in certain dangerous work.

10. No occupier of a factory shall allow any child to clean any part of the mill-gearing or machinery of such factory while the same is in motion, or to work between the fixed and traversing parts of any self-acting machine while such machine is in motion by the action of the steam-engine, water-wheel or other mechanical power, as the case may be.

Register of children in a factory.

11. The Local Government may direct any occupier of a factory to keep, in such form and with such particulars as such Government may, from time to time, prescribe, registers of the children (if any) employed in such factory, and of their respective employments.

Fencing.

Fencing.

12 (*a*). Every fly-wheel directly connected with a steam-engine, or water-wheel or other mechanical power in any part of a factory, and every part of a steam-engine or water-wheel,

(*b*) every hoist or teagle near which any person is liable to pass or be employed, and

(*c*) every other part of the machinery or mill-gearing of a factory which may, in the opinion of the local Inspector, be dangerous if left unfenced, and which he may have ordered to be fenced,

shall, while the same is in motion, be kept by the occupier of such factory securely fenced.

Any order under clause (*c*) may be set aside, on appeal or otherwise, by the Local Government or such authority as it may appoint in this behalf.

Notices.

Notice to be given of accidents.

13. When any accident occurs in a factory causing death or bodily injury whereby the person injured is prevented from returning to his work in the factory during forty-eight hours after the occurrence of the accident, the occupier of such factory, or, in his absence, his principal agent in the management of such factory, shall send such notice of such accident to such authorities in such form and within such time as the Local Government may, from time to time, by rule, direct.

Person beginning to occupy factory to give notice.

14. Every person shall, within one month after he begins to occupy a factory, send to the local Inspector a written notice containing the name of the factory, the place where it is situate, the address to which he desires his letters to be addressed, the nature of the work performed in such factory, the nature and amount of the moving power therein, and the name of the person (if any) under whom the business of the factory is to be carried on.

Penalties.

Penalties.

15. Any person who, in breach of this Act, or of any order or rule made hereunder—

(*a*) employs any child in any factory;

(*b*) neglects to set up or maintain the notice required by section seven or to fix the days referred to in section eight;

(*c*) allows any child to perform the work forbidden by, or to work in contravention of, section ten;

(*d*) neglects to keep a register in manner prescribed under section eleven;

(*e*) neglects to fence any machinery or mill-gearing in any factory; or

(*f*) neglects to give any notice,

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

Provided that—

1st, no prosecution under this section shall be instituted except by, or with the previous sanction of, the local Inspector; and

Only one penalty for same kind of offence on one day.

2nd, no person shall be liable under this section to more than one penalty for any one description of offence committed on the same day, except where two or more children are employed contrary to the provisions of this Act, in which case one penalty may be imposed in respect of each child so employed.

Burden of proof as to age.

16. Where an act or omission would, if a person were under seven or twelve years of age, be an offence punishable under this Act, and such person is, in the opinion of the Court, apparently under such age, it shall lie on the accused to prove that such person is not under such age.

Certifying Surgeon's declaration in writing.

A declaration in writing by a certifying Surgeon that he has personally examined a person employed in a factory, and believes him to be under or over the age set forth in such declaration, shall, for the purposes of this Act, be admissible as evidence of the age of that person.

Occupier primarily liable for breaches of Act.

17. Every occupier of a factory shall be deemed primarily liable for any breach therein of the provisions of this Act; but he may discharge himself from such liability by proof to the satisfaction of the local Inspector, before prosecution therefor, that such breach was committed by some other person without his knowledge or consent; and the person committing such breach shall be liable therefor.

Miscellaneous.

Power to make rules.

18. The Local Government may, from time to time, make rules consistent with this Act to provide for—

(*a*) the fencing of machinery and mill-gearing in factories;

(*b*) the inspection of factories;

(*c*) the manner in which appeals under this Act shall be presented and heard; and

(*d*) otherwise carrying out the provisions of this Act.

Such rules shall be published in the official Gazette, and shall thereupon have the force of law.

Crown factories.

19. This Act shall apply to factories belonging to the Crown; provided that, in case of any public emergency, the Governor General in Council or the Local Government may, by an order in writing, exempt any such factory from this Act to such extent and during such period as the Governor General in Council or the Local Government, as the case may be, thinks fit.

D. FITZPATRICK,
Secretary to the Government of India.

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 15th March, 1881, and is hereby promulgated for general information:—

ACT No. XVI OF 1881.

An Act to empower the Government to remove or destroy obstructions in fairways, and to prevent the creation of such obstructions.

Preamble.

WHEREAS it is expedient to empower the Government to remove or destroy obstructions to navigation in fairways leading to ports in British India, and to prevent the creation of such obstructions; It is hereby enacted as follows:—

Short title. Commencement.

1. This Act may be called "The Obstructions in Fairways Act, 1881;" and it shall come into force at once.

But nothing herein contained shall apply to vessels belonging to Her Majesty or hired by Her Majesty or by the Secretary of State for India in Council.

Local Government empowered to remove or destroy obstruction in fairway.

2. Whenever, in any fairway leading to any port in British India, any vessel is sunk, stranded or abandoned or any fishing-stake, timber or other thing is placed or left, the Local Government of the part of British India in which such port is situate may, if in its opinion such thing is, or is likely to become, an obstruction or danger to navigation,

(*a*) cause such thing or any part thereof to be removed; or,

(*b*) if such thing is of such a description or so situate that, in the opinion of the Local Government, it is not worth removing, cause the same or any part thereof to be destroyed.

Government entitled to expenses incurred in removing obstruction.

3. Whenever anything is removed under section two, the Government shall be entitled to receive a reasonable sum, having regard to all the circumstances of the case, for the expenses incurred in respect of such removal.

Dispute concerning such expenses.

Any dispute arising concerning the amount due under this section, in respect of anything so removed, shall be decided by the Magistrate of the District or Presidency Magistrate having jurisdiction at the place where such thing is, upon application to him for that purpose by either of the disputing parties; and such decision shall be final.

Notice of removal to be given by Local Government.

4. The Local Government shall, whenever anything is removed under section two, publish in the local official Gazette a notification containing a description of such thing, and the time at which and the place from which the same was so removed.

Things removed may, in certain cases, be sold.

5. If after publishing such notification, such thing is unclaimed, or

if the person claiming the same fails to pay the amount due for the said expenses and any customs duties or other charges properly incurred by the Local Government in respect thereof,

the Local Government may sell such thing by public auction, if it is of a perishable nature, forthwith, and if it is not of a perishable nature, at any time not less than six months after publishing such notification as aforesaid.

Proceeds how applied.

6. On realizing the proceeds of such sale, the amount due for expenses and charges as aforesaid, together with the expenses of the sale, shall be deducted therefrom, and the surplus (if any) shall be paid to the owner of the thing sold, or, if no such person appear and claim such surplus, shall be held in deposit for payment, without interest, to any person thereafter establishing his right to the same:

Provided that he makes the claim within one year from the date of the sale.

"Vessel" to include tackle, cargo, &c.

7. For the purposes of this Act, the term "vessel" shall be deemed to include also every article or thing or collection of things being or forming part of the tackle, equipment, cargo, stores or ballast of a vessel, and any proceeds arising from the sale of a vessel, and of the cargo thereof, or of any other property recovered therefrom, shall be regarded as a common fund.

Power to make rules to regulate and prohibit the placing of obstructions in fairways.

8. The Governor General in Council may from time to time, by notification in the *Gazette of India*, make rules to regulate or prohibit in any fairway leading to a port in British India, the placing of fishing-stakes, the casting or

throwing of ballast, rubbish, or any other thing likely to give rise to a bank or shoal, or the doing of any other act which will, in his opinion, cause, or be likely to cause, obstruction or danger to navigation.

Penalty for breach of such rules.

9. Whoever is guilty of any act or omission in contravention of the rules made under section eight, may be tried for such offence in any district or Presidency-town in which he is found, and 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.

Compensation payable in certain cases for damage caused under this Act.

10. Whenever the maintenance or creation of an obstruction in any fairway has become lawful by long usage or otherwise, and such obstruction is removed or destroyed under section two, or its creation is regulated or prohibited under section eight, any person having a right to maintain or create such obstruction shall be entitled to receive from the Secretary of State for India in Council reasonable compensation for any damage caused to him by such removal, destruction, regulation or prohibition.

Every dispute arising concerning the right to such compensation, or the amount thereof, shall be determined according to the law for the time being in force relating to like disputes in the case of land needed for public purposes and not otherwise; and for the purposes of such law the fairway from or in which such obstruction was removed or destroyed, or in which its creation was regulated or prohibited, shall be deemed to be a part of the Presidency-town or district in which the port to which such fairway leads is situate.

Certain action of the Government previous to passing of this Act to be deemed to have been taken hereunder.

11. Whenever any obstruction in a fairway leading to a port in British India has been removed or destroyed, or whenever the creation of any such obstruction has been regulated or prohibited, by an order of the Governor General in Council or a Local Government, previous to the passing of this Act, such removal, destruction, regulation or prohibition shall be deemed to have been effected under this Act.

Saving of other powers possessed by Government.

12. Nothing herein contained shall be deemed to prevent the exercise by the Government of any other powers possessed by it in this behalf.

D. FITZPATRICK,
Secretary to the Government of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, MARCH 26, 1881.

☞ 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 11th March 1881, and is hereby promulgated for general information:—

ACT NO. XII OF 1881.

THE NORTH-WESTERN PROVINCES RENT ACT, 1881.

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An Act to amend the Law relating to the recovery of Rent in the North-Western Provinces.

Preamble. WHEREAS it is expedient to amend the law relating to the recovery of Rent in the North-Western Provinces of the Presidency of Fort William in Bengal; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title. 1. This Act may be called "The North-Western Provinces Rent Act, 1881:"

Local extent. It extends in the first instance to the territories for the time being under the government of the Lieutenant-Governor of the North-Western Provinces, except those specified in the second schedule hereto annexed. But the Local Government may, by notification in the official Gazette, extend the whole or any part of this Act to all or any of the territories so excepted, and when any part of the North-Western Provinces Rent Act, 1873, has been extended to any such territory, such part shall be repealed therein and the corresponding part of this Act shall extend thereto.

Save as provided by sections 171 and 172, nothing herein contained applies to land for the the time being occupied by dwelling-houses or manufactories, or appurtenant thereto, so long as such land is not let to agricultural tenants.

Commencement. This Act shall come into force on the first day of April, 1881.

Act No. XVIII of 1873 repealed. 2. The North-Western Provinces Rent Act, 1873, is hereby repealed. But such repeal shall not legalize any practice which, immediately before the passing of that Act, was unlawful.

Rules, &c., under repealed Act. All rules and appointments made, notifications and proclamations issued, authorities and powers conferred, leases granted, rents fixed, rights acquired, liabilities incurred and places appointed under that Act shall, so far as may be, be deemed to have been made, issued, conferred, granted, fixed, acquired, incurred and appointed hereunder.

Acts amended. Illustration (*a*) to the Indian Penal Code, section 19, and Act No. XI of 1865, section 52, shall be read as if, for "Act X of 1859," the words and figures, "the North-Western Provinces Rent Act, 1881," were substituted. And in all Acts passed after the said North-Western Provinces Rent Act, 1873, all references to that Act shall be read as if made to this Act.

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

'Mahál:' (1.) 'Mahál' means—

(*a*) any local area held under a separate engagement for the payment of land-revenue, and for which a separate record-of-rights has been framed;

(*b*) any local area of which the revenue has been assigned or redeemed, and for which a separate record-of-rights has been framed:

'Tenant:' (1A.) 'Tenant' includes a thékadár and a katkanadár:

'Rent:' (2.) 'Rent' means whatever is to be paid, delivered or rendered by a tenant on account of his holding, use or occupation of land:

'Landholder:' (3.) 'Landholder' means the person to whom a tenant is liable to pay rent:

'Sír-land:' (4.) 'Sír-land' means—

(*a*) land recorded as sír at the last settlement or revision of settlement of the district in which it is situate, and continuously so recorded since;

(*b*) land continuously cultivated for twelve years by the proprietor himself with his own stock or by his servants, or by hired labour;

(*c*) land recognized by village-custom as the special holding of a co-sharer, or treated as such in the distribution of profits or charges among the co-sharers:

'Collector of a District:' (5.) 'Collector of a District' means the chief officer in charge of the Revenue Administration of a District;

'Commissioner of a Division:' (6.) 'Commissioner of a Division' means the chief officer in charge of the Revenue Administration of a Division:

'Board:' (7.) 'Board' means the Board of Revenue for the North-Western Provinces:

'Civil Jail:' (8.) 'Civil Jail' means the civil jail of the District, and includes any place appointed by the Local Government for the confinement of prisoners under sentence of any Court constituted under this Act.

CHAPTER II.

RIGHTS AND LIABILITIES OF LANDHOLDERS AND TENANTS.

Intermediate holders of land at rates unchanged since permanent-settlement. **4.** When any permanent and transferable interest in land in a district or a portion of a district which has been permanently settled has been held otherwise than under a terminable lease by any person intermediate between the proprietor of the mahál and the occupants, and by the predecessors in interest of such person, from the time of the permanent-settlement, at the same rate of rent, such person shall have a right to hold such interest at that rate.

Tenants at fixed rates. **5.** When any land in a district or portion of a district which is permanently settled has been held by a tenant and his predecessors in interest, from the time of the permanent settlement, at the same rate of rent, such tenant shall have a right of occupancy at that rate.

A tenant having such right is hereinafter called a "tenant at a fixed rate."

Presumption when 20 years' holding at fixed rate is proved. **6.** When, in any suit to which the provisions of section 4 or section 5 apply, it is proved that the land has for a period of twenty years next before the institution of the suit been held by the present holder and his predecessors in interest at the same rate of rent, it shall be presumed, until the contrary is proved, that it has been held at such rate from the time of the permanent settlement.

Ex-proprietary tenants. **7.** Every person who may hereafter lose or part with his proprietary rights in any mahál shall have a right of occupancy in the land held by him as sír in such mahál at the date of such loss or parting, at a rent which shall be four annas in the rupee less than the prevailing rate payable by tenants-at-will for land of similar quality and with similar advantages.

Persons having such rights of occupancy shall be called "ex-proprietary tenants," and shall have all the rights of occupancy-tenants.

If there are two or more sharers in any sír-land and one of them becomes an ex-proprietary tenant, the share which previously belonged to such ex-proprietary tenant shall, on his application or on the application of the person entitled to receive the rent, be divided off by the Collector, and the rights of the ex-proprietary tenant shall be limited to the land comprised in such share.

Occupancy-tenants. **8.** Every tenant who has actually occupied or cultivated land continuously for twelve years has a right of occupancy in the land so occupied or cultivated by him.

Such tenants shall be called "occupancy-tenants."

The occupation or cultivating of the father or other person from whom the tenant inherits, shall be deemed to be the occupation or cultivating of the tenant within the meaning of this section:

Tenants barred from right of occupancy. Provided that no tenant shall acquire, under this section, a right of occupancy—

(*a*) in land which he holds from an occupancy-tenant, or from an ex-proprietary tenant, or from a tenant at fixed rates;

(*b*) in sír-land;

(*c*) in land held by him in lieu of wages.

Time excluded from reckoning period necessary for acquiring right of occupancy. Provided also that, when a tenant actually occupies or cultivates land under a written lease, without having a right of occupancy in such land, the period of twelve years necessary for acquiring a right of occupancy therein by him or any one claiming under him shall begin on the expiration of the term of such lease. If during the currency of such lease he ceases to occupy the land comprised therein, and sublets it to another, no right of occupancy in such land shall be acquired by the sub-lessee during the currency of the lease.

Rights under sections 7 and 8 when transferable. **9.** The right of tenants at fixed rates may devolve by succession or be transferred.

No other right of occupancy shall be transferable in execution of a decree or otherwise than by voluntary transfer between persons in favour of whom as co-sharers such right originally arose or who have become by succession co-sharers therein.

When any person entitled to such last-mentioned right dies, the right shall devolve as if it were land: Provided that no collateral relative of the deceased who did not then share in the cultivation of his holding shall be entitled to inherit under this clause.

Determination of class of tenure of tenant. **10.** On the application of any tenant to have his class of tenure determined, the Collector of the District or Assistant Collector shall determine the class to which he belongs, namely—

whether he is a tenant at fixed rates,

or an ex-proprietary tenant,

or an occupancy-tenant,

or whether he is a tenant without a right of occupancy.

Bar to enhancement of rent of tenants at fixed rates. **11.** The rent paid by tenants at fixed rates shall not be liable to enhancement, except as provided by section 18.

Enhancement in case of ex-proprietary and occupancy-tenants. **12.** The rent paid by ex-proprietary or occupancy-tenants shall not be liable to enhancement except—

(*a*) by a written agreement registered under the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or recorded before the kánúngo: or

(*b*) by order of a Settlement-officer passed under the law for the time being in force: or

(*c*) by order under this Act.

Grounds of enhancing rent of occupancy-tenants which has not been fixed by order. **13** (*a*). Where the rent of any occupancy-tenant has not been fixed by order of a Settlement-officer under the North-Western Provinces Land Revenue Act, 1873, or by an order under this Act,

(*b*) or where the rent has been fixed by any such order, but the term for which it has been fixed has expired,

(*c*) or where ten years from the date on which an order fixing the rent has taken effect have expired,

(*d*) or where by order of the Local Government the assessment of the district has been revised before confirmation,

(*e*) or where the period of settlement of the district has come to an end,

the landholder may apply to enhance the rent of such tenant on one of the following grounds and on no others:—

(*f*) that the rate of the rent paid by such tenant is below the prevailing rate payable by the same class of tenants for land of similar quality with similar advantages;

(*g*) that the value of the produce has, or the productive powers of the land have, been increased otherwise than by the agency or at the expense of the tenant;

(*h*) that the quantity of land held by the tenant has been proved by measurement to be greater than the quantity for which rent has been previously paid by him.

Enhancement of rent of ex-proprietary tenants which has not been fixed by order. **14** (*a*). Where the rent of any ex-proprietary tenant has not been fixed by order of a Settlement-officer under the North-Western Provinces Land Revenue Act, 1873, or by an order under this Act,

or where the rent has been fixed by such order, but the term for which it has been fixed has expired,

or where any of the events mentioned in section 13, clauses (*c*), (*d*) and (*e*) has occurred,

the landholder may apply to enhance or determine the rent of such tenant as if he were an occupancy-tenant: Provided that his rent shall be four annas in the rupee below the prevailing rate for land of a similar quality with similar advantages held by tenants-at-will.

Selection of land for comparison. (*b*). Whenever the district or tahsíl, or other local area in which such land is situated, has been divided by the Settlement-officer into circles of like capacity and soil, the land of similar quality, with similar advantages, shall, for the purposes of this section and section 13, be selected from the same circle.

(*c*). When the Settlement-officer has not so divided the district or other local area as aforesaid, the land regarding which the application has been made shall be compared with land of similar quality and with similar advantages, in the same tahsíl or in a tahsíl immediately adjacent.

Abatement in like cases. **15.** Where the rent of any ex-proprietary tenant or occupancy-tenant has not been fixed by order of a Settlement-officer under the North-Western Provinces Land Revenue Act, 1873, or by an order under this Act,

or where the rent has been fixed by such order, but the term for which it has been fixed has expired,

or where any of the events mentioned in section 13, clauses (*c*), (*d*) and (*e*) has occurred,

the tenant may apply for an abatement of his rent on one of the following grounds, and on no others:—

(*a*) that the area of the land held by him has been diminished by diluvion or otherwise:

(*b*) that the value of the produce has, or the productive powers of such land have, been decreased by any cause beyond his power.

Time of enhancement or abatement where rent of ex-proprietary or occupancy-tenant has been fixed by order under this Act. **16.** Where the rent of any ex-proprietary or occupancy-tenant has been fixed by an order under this Act, such rent shall not be liable to be enhanced or abated until the occurrence of any of the events mentioned in section 13, clauses (*c*), (*d*) and (*e*), whichever first occurs.

Grounds of enhancement and abatement where his rent has been fixed by order of a Settlement-officer or under this Act. **17.** Notwithstanding anything contained in section 16 where the rent of any ex-proprietary or occupancy-tenant has been fixed by order of a Settlement-officer under the North-Western Provinces Land Revenue Act, 1873, or by an order under this Act, the landholder may apply to enhance the rent of such tenant during the currency of the term for which the rent has been so fixed, on one of the following grounds, and on no others:—

(*a*) that the area of the tenants holding has been increased by alluvion or otherwise:

(*b*) that the productive powers of the land held by the tenant have, since the date of the order, been increased otherwise than by the agency or at the expense of the tenant:

And the tenant may apply for abatement of his rent on one of the following grounds, and on no others:—

(*c*) that the area of the land held by him has been diminished by diluvion or otherwise;

(*d*) that the productive powers of such land have been decreased by any cause beyond his control.

18. In the case of a tenant at fixed rates, the landholder may apply to enhance his rent on the ground that the area of the land in his holding has been increased by alluvion or otherwise,

Grounds of enhancement or abatement of rent of tenant at fixed rates.

and the tenant may apply for abatement of his rent on the ground that the area of the land in his holding has been diminished by diluvion or otherwise.

19. Applications for enhancement or abatement of rent must be made on or before the thirty-first day of August next before the year commencing on the first day of July from which the rent is to be enhanced or abated,

Day before which applications for enhancement or abatement must be made.

and every order for enhancement or abatement shall take effect from the first day of July next following the date of such order, unless for some reason, to be stated in writing, the Court thinks fit to order otherwise.

Orders when to take effect.

20. In determining, under this Chapter, the rate of rent payable by any tenant, his caste shall not be taken into consideration, unless it is proved that, by local custom, caste is taken into account in determining such rate;

Consideration of caste and class of tenant in determining rate of his rent.

and whenever it is found that, by local custom or practice, any class of persons, by reason of their having formerly been proprietors of the soil or otherwise, hold land at favourable rates of rent, the rate shall be determined in accordance with such custom or practice.

21. No tenant-at-will of land shall be liable to pay rent in excess of the rent (if any) payable by him in the previous year ending on the thirtieth day of June, unless the landholder and tenant have agreed as to the rent to be paid to the former by the latter, and such agreement has been recorded by the kánúngo of the pargana in which such land is situate.

Tenants-at-will.

22. Notwithstanding anything hereinbefore contained, when the rent of any ex-proprietary or occupancy-tenant has been fixed by agreement between the parties, such rent shall not be liable to enhancement or abatement for such term as may be agreed on.

Rent of ex-proprietary or occupancy-tenant fixed by agreement.

22A. When any land is held of a landholder by a tenant, such landholder or tenant may, in the absence of a written contract to the contrary, apply to the Collector of the District to have such land surveyed. The Collector, on receiving such application, may estimate the cost of such survey, and, by order in writing, require the applicant to deposit the amount of such estimate.

Applications to survey land.

If the applicant deposits such amount within fifteen days from the date of the order, the Collector of the District shall issue a notice to the other party or parties to the tenancy to show cause, at a time and place specified in such notice, why the survey should not be made; and, if no such cause is so shewn, may, by an order in writing, direct the survey to be made by such person and at such time as he thinks fit.

A copy of such order shall be served on all the parties to the tenancy; and, if any party fails to attend at the appointed time, it shall not thereafter be open to him to question the correctness of the survey made in his absence.

If any party, on being called upon to show cause as aforesaid, makes any objection to the survey and such objection is overruled, he shall be liable to pay the costs (if any) occasioned by such objection.

Nothing in this section shall affect any power conferred by law to compel the attendance of any person at a survey.

23. Whenever for any cause the Local Government remits or suspends for any period the payment of the whole or any part of the revenue payable in respect of any land, any officer empowered by the Local Government in this behalf may, subject to such rules as to appeal, confirmation or otherwise as may, from time to time, be prescribed by the Board, order that the rent of such land shall be remitted, or suspended for the period of such suspension of payment of revenue, as the case may be, to an amount which shall be equal to double the amount of the revenue of which the payment has been so remitted or suspended, or shall bear the same proportion to the whole of the rent payable in respect of the land as the revenue of which the payment has been so remitted or suspended bears to the whole of the revenue payable in respect of such land;

Power to remit or suspend payment of rent when payment of revenue remitted or suspended.

and, subject to the same rules, the landholder shall be bound by such order.

(*A*).—*Leases.*

24. Every tenant is entitled to receive from the landholder, and may at any time during the continuance of his holding, apply for a lease containing the following particulars:—

Contents of lease to which every tenant is entitled.

(*a*) the quantity of land held by him, and, where the fields have been numbered in a Government survey, the number of each field:

(*b*) the amount of annual rent payable for such land:

(*c*) the instalments in which, and the dates on which, such rent is to be paid:

(*d*) any special conditions of the lease:

(*e*) if the rent is payable in kind, or is calculated on a valuation of the produce, the proportion of produce to be delivered, the mode of valuation, and the time, manner and place of delivery.

25. Tenants at fixed rates are entitled to receive leases at such rates.

Leases to which tenants at fixed rates are entitled.

26. Ex-proprietary and occupancy-tenants are entitled to receive leases at the rates determined in accordance with the law for the time being in force, or, where no rates have been so determined, at the rates actually paid by them when they demand such leases.

Leases to which ex-proprietary and occupancy-tenants are entitled.

27. All other tenants are entitled to leases only on such terms as may be agreed upon between them and the landholders.

Leases to which other tenants are entitled.

28. Every landholder who grants a lease is entitled to receive a reciprocal engagement from the tenant, executed by the tenant, and conformable with the terms of the lease.

Landholder granting lease entitled to reciprocal engagement.

The tender to any tenant of a lease, such as he is entitled to receive, shall entitle the landholder to receive a reciprocal engagement from such tenant.

29. Notwithstanding anything contained in section 22, when any lease is granted, or any agreement is entered into, by any landholder under engagement with Government for his land, fixing the rent of land for any period exceeding the term of such engagement, and such term expires, such lease or agreement shall,

Lease for period exceeding term of landholder's engagement.

(*a*) when, on the expiration of such term, the revenue payable in respect of such land is enhanced—be voidable at the option of the landlord, unless the tenant agrees to pay such rent as a Settlement-officer or other person duly empowered in this behalf may, on the application of the landlord, determine to be fair and reasonable; and

(*b*) when such land-revenue is on the expiration of such term reduced—be voidable at the option of the tenant, unless the landlord agrees to accept such rent as a Settlement-officer or other person duly empowered in this behalf may, on the application of the tenant, determine to be fair and reasonable.

30. (*a*) And whereas all grants (whether in writing or otherwise) for holding land exempt from the payment of rent which have been made since the first day of December, 1790, by any authority other than that of the Governor General in Council, were declared by Bengal Regulation XIX of 1793, section 10, to be null and void, and like provisions have been by divers Regulations applied to the several parts of the territories to which this Act extends, and the said Regulation XIX of 1793 also provided that no length of possession should be considered to give validity to any such grant, either with regard to the property in the soil or the rents of it, it is hereby further enacted as follows:—

Resumption of rent-free grants.

(*b*) Applications by the proprietor to resume such grants or to assess rent on the land, shall be made to the Collector of the District or Assistant Collector, and, subject to rules to be made by the Local Government, shall be dealt with as other applications under this Act.

Applications to resume.

(*c*) Grants of land held under a written instrument, by which the grantor expressly agrees that the grant shall not be resumed, shall be held valid as against him (but not as against his representatives after his death) during the continuance of the settlement of the district in which the land is situate, which is current at the date of the grant.

Validity of grants which grantor has expressly agreed not to resume.

(*d*) Where any land, having been for the fifty years next before the twenty-second day of December, 1873, held rent-free and by at least two successors to the original grantee, was so held on that day, such holding shall be deemed to have conferred on the holder a proprietary right.

When rent-free tenure confers proprietary right.

(*e*) Nothing in the Indian Limitation Act, 1877, shall bar the right to make an application under this Act to assess to rent land held rent-free.

(*f*) Nothing in this section shall apply to either of the following cases:—

(1) Where land was, previously to the passing of the North-Western Provinces Rent Act, 1873, held rent-free under a judicial decision:

(2) Where, previously to the passing of that Act, land held rent-free had been purchased for a valuable consideration and resumption thereof had been barred under Act No. X of 1859, section 28, or under the Indian Limitation Act, 1871, schedule II, No. 130.

(*B*).—*Relinquishment and Ejectment.*

31. Every tenant not holding under a lease shall continue liable for the rent of the land in his holding for the ensuing year, unless on or before the first day of May in any year he gives notice in writing to the landholder, or his recognized agent, of his desire to relinquish such land on the thirtieth day of June next ensuing, and relinquishes it accordingly; or unless it is let to any other person by such landholder or agent:

Relinquishment of land by tenant not holding under a lease.

Provided that, whenever an order for the enhancement of the rent of any land held by any such tenant is passed and the tenant within fifteen days of the date of such order gives to the landholder or his recognized agent notice in writing of his desire to relinquish such land at the commencement of the period in respect of which such enhancement takes effect, and relinquishes such land accordingly, he shall not be liable for the rent payable for such land in respect of any period subsequent to such relinquishment.

Proviso.

Explanation.—No notice can be given under this section in respect of a portion only of any land held under the same lease or engagement.

32. If the landholder or his agent refuses to receive any notice under section 31, or if he receives it, but refuses to sign and deliver a receipt for the same, the tenant may, before the expiration of the period limited for giving such notice, make an application to the tahsíldár, who shall thereupon cause the notice to be served on such landholder or agent, the tenant paying the costs of service.

Service through tahsíldár of notice of relinquishment.

33. The notice shall, if practicable, be served personally on the landholder or his agent; but if the landholder or his agent cannot be found, or if he evades service of the notice, service may be made by affixing the notice at his usual place of residence, or, if he does not reside in the district wherein the

Mode of serving notice.

land is situate, at the *chaupál*, or other conspicuous place in the village where the land is situate.

Where the delay in serving the notice is owing to the fault of the landholder or his agent, the notice shall be deemed to have been served at the first attempt to serve it.

Application by landholder to set aside notice.

33A. When any such notice has been received by or served on a landholder or his agent he may, within fifteen days from such receipt or service, apply to the Collector or Assistant Collector to have such notice declared invalid, and the Collector shall thereupon determine the question between the parties.

If the landholder or his agent does not so apply within such period of fifteen days, he shall be deemed to have accepted the notice.

Liability of tenant to pay interest on arrear and to be ejected.

34. (*a*). When an arrear of rent remains due from any tenant, he shall be liable to pay interest on such arrear at one per cent. per mensem; and if the arrear remains due on the thirtieth day of June, to be ejected from the land in respect of which the arrear is due.

Bar to ejectment without decree.

(*b*). No tenant shall be ejected otherwise than in execution of a decree or order under the provisions of this Act.

Ejectment not to be decreed for certain acts or omissions.

(*c*). No ejectment of a tenant or forfeiture of a lease shall be decreed on account of any act or omission of the tenant—

(1) which is not detrimental to the land in his occupation, or inconsistent with the purpose for which the land was let, or

(2) which by law, custom, or special agreement does not involve the forfeiture of the lease.

Explanation.—In clauses (*a*) and (*b*) the word 'tenant' does not include a thékadár and a katkanadár.

Ejectment of tenant at fixed rates, ex-proprietary, with right of occupancy, or holding under unexpired lease.

35. If the landholder desires to eject a tenant at fixed rates, an ex-proprietary tenant, an occupancy-tenant or a tenant holding under an unexpired lease, against whom a decree for arrears has been passed and remains unsatisfied, he may, after the expiration of the year, ending on the thirtieth day of June, in which such arrears accrued, apply to the Collector of the District or Assistant Collector to eject the tenant.

Such officer shall, on receiving such application, cause a notice to be served on the tenant, stating the amount due under the decree, and informing him that if he does not pay such amount into Court within fifteen days from receipt of the notice, he will be ejected from his land.

If such amount be not so paid, the Collector of the District or Assistant Collector may eject the tenant.

Service of notice on tenant for limited period.

36. If the landholder desires to eject a tenant not having a right of occupancy, or any other tenant holding only for a limited period, after the determination of his tenancy, he shall cause a written notice of ejectment to be served on such tenant under the provisions of this Act.

Language and contents of notice.

37. The notice of ejectment shall be written in the vernacular language and character of the district:

it shall specify the land from which the tenant is to be ejected;

and it shall inform him that he must vacate such land; or that, if he means to contest the right to eject him, he must apply to the Collector of the District or Assistant Collector for that purpose.

Mode of serving notice.

38. The notice shall be issued and served through the office of the tahsíldár on application made to him between the first day of January and the first day of April in each year, and the landholder shall pay the cost of service: it shall be served personally on the tenant, if practicable; but if he cannot be found, service may be made by affixing the notice to his usual place of residence.

Effect of failure of tenant to institute suit to contest liability to ejectment.

39. (*a*). The tenant, on whom such notice has been served, may, within thirty days next after the service, make an application to the Collector of the District or Assistant Collector, contesting his liability to be ejected.

(*b*). When such an application is made, the Collector of the District or Assistant Collector shall proceed to determine the question between the parties.

(*c*). On the determination of such question adversely to the tenant, or, where no application under this section has been made within the said period of thirty days, on the expiration of such period, the tenancy of the land in respect of which the notice has been served shall cease:

Provided that when such question has been determined or such period has expired, as the case may be, before the first day of May next following the making of the application under section 38, the tenancy shall continue until and cease upon that day:

Provided also that the tenancy shall not cease under this section when after the service of the notice, the landholder authorises the tenant to continue in the occupation of the land.

Procedure to enforce ejectment.

40. If the landholder require assistance to eject the person whose tenancy is alleged to have ceased under the provisions of section 39, he may, within fifteen days from the date of such cessation, apply to the Collector of the District or Assistant Collector for such assistance, and the Collector of the District or Assistant Collector shall order the ejectment of such tenant if he is satisfied—

(*a*) that the notice was duly served on such tenant under section 38;

(*b*) that he has not been authorized by the landholder to continue in occupation;

(*c*) that the tenant has not made the application mentioned in section 39, clause (*a*); or

(*d*) that if such application has been made, the question has been determined adversely to the tenant:

Provided that no such application for the ejectment of a farmer on the determination of a lease shall be received if the lease be of the kind in which an advance has been made by the lease-

holder, and the proprietor's right of re-entry at the end of the term is contingent on the re-payment of such advance either in money or by the usufruct of the land. In all such cases the landholder must proceed by suit in the Civil Court.

Notice of ejectment when void.

41. If the landholder expressly authorise the tenant, on whom the notice of ejectment has been served, or against whom any proceedings in ejectment under section [illegible] have been taken, to remain in occupation of the land, and to prepare it for the harvest, the proceedings shall become void.

Rights of ejected tenant.

42. (*a*). Any tenant ejected in accordance with the provisions of this Act, shall be entitled to any growing crops or other ungathered products of the earth belonging to the tenant, and growing on the land at the time of his ejectment, and to use the land for the purpose of tending and gathering in such crops or other products, paying adequate rent therefor:

Effect of tender by landholder of payment for crops.

(*b*). Provided that, if the landholder desire to purchase such crops or other products, he may tender their price to the tenant; and thereupon the right of the tenant to such crops and other products, and to use the land for the purpose aforesaid, shall cease.

Power to determine rent and price.

(*c*). In the case of a dispute under this section, the Collector of the District or Assistant Collector may, on the application of the landholder or tenant, award the rent and price so payable; and the amount of such award, or of any tender accepted under this section, shall be recoverable as an arrear of rent by suit under this Act.

Set-off of rent.

(*d*). The rent, if any, payable to the landholder by the tenant at the time of his ejectment may be set-off against the price of the said crops or other products.

Application for officer to divide produce or appraise crop.

43. (*a*). Wherever rent is taken by division of the produce in kind, or by estimate or appraisement of the standing crop, or other procedure of a like nature, requiring the presence both of the cultivator and landholder, either personally or by agent,

if either landholder or tenant, personally or by agent, neglect to attend at the proper time, or if there is a dispute as to the amount or value of the crop,

an application may be presented by either party to the Collector of the District or Assistant Collector, requesting that a proper officer be deputed to make the division, estimate or appraisement.

Procedure on such application.

(*b*). On receiving such application, the Collector of the District or Assistant Collector shall issue a written notice to the opposite party or his agent, to attend on the date and at the time specified in the notice, and shall depute an officer before whom such division, estimate or appraisement shall be made.

(*c*). If on or before the date appointed, the dispute has not been amicably adjusted, three residents of the village or neighbourhood shall be appointed assessors; one by each of the parties and one by the officer deputed to divide the grain or estimate or appraise the crops, and the officer deputed shall decide the amount of rent payable by their award, and shall give to the party applying a written authority to divide the grain or cut the crops:

(*d*). Provided that, if either party fail to attend, the officer deputed shall nominate an assessor on his behalf.

(*e*). The officer deputed shall report his proceedings to the Collector of the District or Assistant Collector, who shall determine the amount of costs properly incurred under this section, and the share of the costs to be paid by either party.

(C).—*Compensation for Improvements made by Tenants.*

Tenants' right to compensation for improvements.

44. If any tenant, or any person from whom he has inherited or purchased, make any such improvements on the land in his possession as are hereinafter mentioned, neither he nor his representative shall be ejected from the same land without payment of compensation for such improvements.

Explanation.—In this section the word "tenant" does not include a thékadár or a katkanadár and the word "improvements" means works by which the annual letting value of the land has been, and at the time of demanding compensation continues to be, increased, and comprises—

(*a*) tanks, wells and other works for the storage, supply or distribution of water for agricultural purposes,

(*b*) works for the drainage of land, or for the protection of land from floods or from erosion or other damage by water,

(*c*) the reclaiming, clearing, or enclosing of lands for agricultural purposes,

(*d*) the renewal or re-construction of any of the foregoing works, or alterations therein, or additions thereto.

Notwithstanding anything hereinbefore contained, no tenant, other than a tenant at fixed rates or an occupancy-tenant, shall be entitled to compensation in respect of any improvement made without the consent of the landholder after this Act comes into force.

Mode of making compensation.

45. Such compensation may, at the option of the landholder or his representative, be made—

1*st*,—by payment in money;

2*nd*,—by a rent to be charged on the land;

3*rd*,—by the grant of a beneficial lease of the land, by the landholder or his representative, to the tenant or his representative;

4*th*,—partly by one or by any two of the said ways, and partly by the others or other of the same ways.

Settlement of difference as to amount or value of compensation.

46. In case of difference as to the amount or value of the compensation tendered, either party may apply to the Collector of the District or Assistant Collector stating the matter in dispute, and requesting a determination thereof.

On receiving such application, the Collector of the District or Assistant Collector shall—

(*a*) cause notice thereof to be served on the other party,

(*b*) take such evidence as the parties or either of them may adduce,

(*c*) make such further inquiry as the Collector of the District or Assistant Collector may deem necessary, and

(*d*) determine the amount of the payment in money, and the amount and incidence of the rent-charge, and the terms of the lease, or any of such matters.

Considerations in determining compensation.

47. In determining the amount or value mentioned in section 46, or the terms of such lease, the Collector of the District or Assistant Collector shall take into account any assistance given to the tenant by the landholder either directly in money, material or labour, for the purpose of making such improvements, or indirectly by allowing the tenant to hold at a favourable rate of rent.

(D).—Compensation for wrongful acts and omissions.

Right of tenant to compensation for exactions in excess of rent or for withholding receipt.

48. Every tenant from whom any sum is exacted in excess of the rent specified in his lease or payable under the provisions of this Act,

and every tenant from whom a receipt is withheld for any sum of money paid by him as rent, shall be entitled to recover from the landholder compensation not exceeding double the amount so exacted or paid

Contents of receipt.

Receipts for rent shall specify the period or crop on account of which the rent is acknowledged to have been paid;

and any refusal to make such specification shall be held to be a withholding of a receipt.

Explanation.—In this section the word "tenant" does not include a thékadár or a katkanadár.

Damages for extorting payment of rent by duress.

49. If payment of rent, whether the same be legally due or not, is extorted from any tenant by illegal confinement or other duress, he shall be entitled to recover from the person guilty of such extortion such further compensation, not exceeding the sum of two hundred rupees, as the Collector of the District or Assistant Collector thinks reasonable.

Liability to punishment for extortion not affected.

An award of compensation under this section shall not bar or affect any penalty or punishment to which the person guilty of such extortion may be subject under the Indian Penal Code.

(E).—Deposit of Rent in Court.

Deposit of amount tendered by tenant and refused.

50. If any tenant tenders to the landholder full payment of the rent due from him, and if the amount so tendered be not accepted, and a receipt for the amount forthwith granted, the tenant may thereupon apply to the Collector of the District or Assistant Collector for leave to deposit such amount in his Court to the credit of the landholder.

Form and verification of application.

51. The application to the Collector of the District or Assistant Collector shall be as nearly as may be in the form (A) in the first schedule hereto annexed, and shall be verified in the manner hereinafter prescribed for the verification of plaints.

Penalty for false statement.

And the person making the verification shall be punishable, if the application contain any averment which he knows or believes to be false, or does not know or believe to be true.

Notice to issue on deposit being made.

52. The Collector of the District or Assistant Collector shall receive the amount which the tenant desires to deposit, and shall thereupon issue to the person to whose credit it has so been deposited, a notice in English or the vernacular language of the district in the form (B) in the first schedule hereto annexed, or to the like effect.

And such deposit shall, in all questions between the landholder and the tenant, be deemed to be a payment made by the tenant to the landholder on account of the rent.

Mode of serving notice.

53. Such notice shall be served through the tahsíldár upon the person to whom it is addressed, or upon his recognized agent.

In their absence, the notice shall be affixed at the *chaupál*, or other conspicuous place in the village in which the land for which the rent is due is situate.

Payment to person served with notice on his application.

54. If at any time before the expiration of three years from the date of the deposit the person on whom such notice is served, or his recognized agent, appears and applies that the money in deposit be paid to him, it shall be paid accordingly, unless it has been repaid or paid in accordance with the provisions next hereinafter contained.

Refund to depositor.

55. If no application be made by such person or his recognized agent, the sum shall be repaid to the depositor on the expiration of three years from the date of the deposit.

And at any time before the expiration of such period, on the joint application of the depositor and the person to whose credit the said sum was deposited, such sum shall be paid in such manner as the joint applicants desire.

Deposit in Court of rent claimed by two or more persons.

55A. When, owing to the death of the landlord or other cause, two or more persons severally claim the right to collect the rent from a tenant, the tenant may apply to the Collector of the District or the Assistant Collector for leave to deposit in Court the full amount of rent due from him, and such deposit, if made with the leave of the Collector or Assistant Collector, shall, in all questions between the landholder and the tenant, be deemed to be a payment made by the tenant to the landholder on account of the rent.

The Collector of the District or Assistant Collector may, after such enquiry as he thinks necessary, direct payment of the amount deposited to such one of the persons claiming such rent as appears to him entitled to receive the same, or may order the same to remain in deposit pending decision by a competent Court.

No suit shall lie against the Secretary of State for India in Council or against any officer of Government in respect of any payment made under this section, but nothing herein contained shall affect the right of any person entitled to such payment to recover the amount thereof from any other person to whom it has been paid.

CHAPTER III.

DISTRESS.

Produce of land hypothecated for rent.

56. The produce of all land in the occupation of a cultivator shall be deemed to be hypothecated for the rent payable in respect of such land; and until such rent has been satisfied, no other claim on such produce shall be enforced by sale in execution of decree or otherwise;

Recovery of arrears by distress.

and when an arrear of rent is due from any cultivator, the person entitled to receive rent immediately from him may, instead of suing for the arrear as hereinafter provided, recover the same by distress and sale of the produce of the land in respect of which the arrear is due, under the rules contained in this chapter.

Distress of produce barred by security given for rent.

57. Provided—

(*a*) that when a cultivator has given security for the payment of his rent, the produce of the land for the rent of which security has been given shall not be liable to be distrained:

Sharer when entitled to distrain.

(*b*) that no sharer in any mahál shall have power to distrain upon any cultivator unless he is entitled to collect the whole rent from such cultivator:

Distress by manager.

(*c*) that no sharer in a joint undivided mahál shall exercise such power otherwise than through a manager authorized to collect the rents of the whole mahál on behalf of all the sharers therein:

Distress in pattídárí mahálsa.

(*d*) that in pattídárí mahálsa distress shall be made only through a lambardár, or, where the rent of a patti is not collected by a lambardár, through the pattídár who is entitled to collect the rent.

No distress for over-due arrear, nor, without agreement, for excess over past year's rent.

58. A distress shall not be made for any arrear which has been due in respect of any land for a longer period than one year:

nor for the recovery of any sum in excess of the rent payable for the same land in the preceding year, unless the rent has been enhanced under the provisions hereinbefore contained, or by order of a Settlement-officer, or unless the cultivator has agreed to pay such excess and such agreement has been attested before the kánúngo.

Distress by managers under Court of Wards, &c.

59. The power to distrain conferred by sections 56 and 57 may be exercised by managers under the Court of Wards and other persons lawfully entrusted with the charge of immoveable property;

and also by the agents employed by such persons as aforesaid, in the collection of rent, if expressly authorized by power-of-attorney in that behalf:

Liability for illegal act.

If any wrongful act is committed by any such agent, under colour of the exercise of the said power, such agent and his principal shall be jointly and severally liable to make compensation for such act.

Written authority to servants employed to distrain.

60. When any person, empowered to distrain property under section 56, section 57 or section 59, employs a servant or other person to make the distress, he shall give him a written authority for the same, and the distress shall be made in the name of the person giving such authority.

Standing crops and crops gathered liable to distress.

61. Standing crops and other ungathered products of the earth, and crops or other products when reaped or gathered, and deposited in any threshing-floor or place for treading out grain or the like, whether in the field or within a homestead, may be distrained by persons invested with power to distrain under the provisions of this Act.

Exception.

But no such crops or products, other than the produce of the land in respect of which an arrear of rent is due, or of land held under the same engagement, and no grain or other produce after it has been stored by the cultivator, and no other property whatsoever, shall be liable to be distrained under this Act.

Defaulter to be served with written demand and account.

62. Before or at the time when a distress is made under this Act, the distrainer shall cause the defaulter to be served with a written demand for the amount of the arrear, together with an account exhibiting the grounds on which the demand is made.

Mode of service.

The demand and account shall, if practicable, be served personally on the defaulter; or, if he abscond or conceal himself, so that they cannot be so served, shall be affixed at his usual place of residence.

Distress to be proportionate to arrear.

List of property to be prepared and copy served on owner.

63. Unless the amount of the demand is immediately paid or tendered, the distrainer may distrain property as aforesaid equal in value, as nearly as may be, to the amount of the arrear and the costs of the distress; and shall prepare a list or description of the said property, and deliver a copy of the same to the owner, or, if he be absent, affix it at his usual place of residence.

Standing crops, &c., when distrained, may be reaped and stored.

64(*a*). Standing crops and other ungathered products may, notwithstanding the distress, be reaped and gathered by the cultivator, and he may store the same in such granaries or other places as are commonly used by him for the purpose.

(*b*). If the cultivator neglect to do so, the distrainer shall cause the said crops or products to be reaped or gathered, and in such case shall store the same either in such granaries or other places as aforesaid, or in some other convenient place in the neighbourhood.

(*c*). In either case the distrained property shall be placed in the charge of some person appointed by the distrainer for the purpose.

Sale of products which cannot be stored.

(*d*). Crops or products which, from their nature, do not admit of being stored, may be sold before they are reaped or gathered, under the rules hereinafter provided; but in such case, the distress shall be made at least twenty days before the time when the crops, or products, or any part of the same are fit for reaping or gathering.

65. If a distrainer is opposed, or apprehends resistance, and desires to obtain the assistance of a public officer, he may apply to the Collector of the District or Assistant Collector, who may, if he thinks necessary, depute an officer to assist the distrainer in making the distress.

Assistance to distrainer opposed or apprehending resistance.

66. If at any time after property has been distrained and before the day fixed for putting it up to sale as hereinafter provided, the owner of the property tenders payment of the arrear demanded of him, and of the expenses of the distress, the distrainer shall receive the same, and shall forthwith withdraw the distress.

Distress to be withdrawn on tender of arrear and expenses before sale.

67. Within five days from the time of the storing of any distrained crops or products,

Application for sale.

or, if the crops or products do not, from their nature, admit of being stored within five days from the time of making the distress,

the distrainer shall apply for sale of the same to the officer for the time being authorized by the Local Government to sell distrained property within the tahsíl in which they are situate.

68. The application shall be in writing, and shall contain—

Contents of application.

(*a*) an inventory or description of the property distrained,

(*b*) the name of the defaulter and his place of residence,

(*c*) the amount due, and the date of the distress, and

(*d*) the place in which the distrained property is.

Together with the application, the distrainer shall deliver to the said officer the fee for the service of a notice upon the defaulter as hereinafter provided.

Fee for service of notice.

69. Immediately on receipt of the application, the said officer shall send a copy of it to the Collector of the District or Assistant Collector,

Procedure on receipt of application.

and shall serve a notice in the form (C) contained in the first schedule hereto annexed, or to the like effect, on the person whose property has been distrained, requiring him either to pay the amount demanded, or to institute a suit to contest the demand before the Collector of the District or Assistant Collector, within the period of fifteen days from the receipt of the notice.

He shall at the same time send to the Collector of the District or Assistant Collector, for the purpose of being put up in his office and in the office of the tahsildár, a proclamation fixing a day for the sale of the distrained property, which shall not be less than twenty days from the date of the application; and shall deliver a copy of the proclamation to the peon charged with the service of the notice, to be put up by him in the place where the distrained property is deposited.

The proclamation shall contain—

(*a*) a description of the property,

and shall specify—

(*b*) the demand for which it is to be sold, and

(*c*) the place where the sale is to be held.

70. If a suit is instituted before the Collector of the District or Assistant Collector in pursuance of the aforesaid notice, the Collector of the District or Assistant Collector shall send to the officer referred to in section 67, or, if so requested, shall deliver to the owner of the distrained property, a certificate of the institution of such suit;

Suspension of sale on receipt of Collector's certificate of institution of suit.

and on such certificate being received by, or presented to, the said officer, he shall suspend the sale.

71. A person whose property has been distrained in manner hereinbefore provided may, immediately after the distress, and before the issue of notice of sale, institute a suit to contest the demand of the distrainer.

Suit to contest distrainer's demand before issue of notice of sale.

When such suit is instituted, the Collector of the District or Assistant Collector shall proceed in the manner prescribed in the last preceding section.

If, thereafter, application for the sale of the property is made to the said officer, he shall send a copy of the application to the Collector of the District or Assistant Collector, and suspend further proceedings, pending the decision of the case.

72. The person whose property has been distrained may, at the time of instituting any such suit as aforesaid, or at any subsequent period, execute a bond with a surety, binding himself to pay whatever sum may be adjudged to be due from him, with interest and costs of suit;

Distress when to be withdrawn.

and when such bond is executed, the Collector of the District or Assistant Collector shall give to the owner of the property a certificate to that effect, and, if so requested, shall serve the distrainer with notice of the same;

and upon such certificate being presented to the distrainer by the owner of the property, or served on him by order of the Collector of the District or Assistant Collector, the property shall be released from distress.

73. If the institution of a suit to contest the demand of the distrainer has not been certified, in manner hereinbefore provided, to the said officer, on or before the day fixed in the proclamation of sale, he shall, unless the said demand, with such costs of the distress as are allowed by him, be discharged in full, proceed, in manner hereinafter mentioned, to sell the property or such part of it as may be necessary to satisfy the demand with the costs of distress and sale:

When sale may be proceeded with.

74. The sale shall be held at the place where the distrained property is, or at the nearest place of public resort, if the said officer is of opinion that it is likely to sell there to better advantage.

Place of sale.

The property shall be sold by public auction, in one or more lots, as the officer holding the sale may think advisable;

Manner of sale.

and if the demand, with the costs of distress and sale, be satisfied by the sale of a portion of the property, the distress shall be immediately withdrawn with respect to the remainder.

Withdrawal of distress when demand and costs satisfied.

75. If, on the property being put up for sale, a fair price (in the estimation of the officer holding the sale) be not offered for it, and if the owner of the property, or some person authorized to act on his behalf, apply to have the sale postponed until the next day, or, if a market be held at the place of sale, the next market-day, the sale shall be postponed until such day and shall be then completed whatever price may be offered for the property.

If fair price be not offered, sale may be postponed and shall be then completed.

76. The price of every lot shall be paid for in ready money at the time of sale, or as soon thereafter as the officer holding the sale thinks necessary;

Payment of purchase-money.

and, in default of such payment, the property shall be put up again and sold, and the deficiency in price (if any) which may happen on such second sale and all expenses attending such second sale shall, at the instance either of the distrainer or the owner of the property, be recoverable from the defaulter under the rules hereinafter contained for the execution of a decree for rent.

Re-sale on default.

When the purchase-money has been paid in full, the officer holding the sale shall give the purchaser a certificate describing the property purchased by him and the price paid.

Certificate to purchaser.

77. From the proceeds of every sale of distrained property under this Act, the officer holding the sale shall make a deduction at the rate of one anna in the rupee on account of the costs of the sale, and shall send the amount so deducted to the Collector of the District or Assistant Collector.

Deduction, from proceeds, of costs of sale.

He shall then pay to the distrainer the expenses incurred by the distrainer on account of the distress, and of the issue of the notice and proclamation of sale prescribed in section 69, to such amount as, after examining the statement of expenses furnished by the distrainer, he thinks proper to allow.

Payment of distrainer's expenses.

The remainder shall be applied to the discharge of the arrear for which the distress was made, with interest thereon up to the day of sale;

Discharge of arrear with interest.

and the surplus (if any) shall be delivered to the person whose property has been sold.

Surplus.

78. Officers holding sales of property under this Act, and all persons employed by or subordinate to such officers, are prohibited from purchasing, either directly or indirectly, any property sold by such officers.

Sale-officers and employés prohibited from purchasing.

79. Officers holding sales under this Chapter are required to bring to the notice of the Collector of the District or Assistant Collector any material irregularities committed by distrainers under colour of this Act;

Report of irregularities by distrainer.

and if, in any case, on proceeding to hold any such sale, the officer holding it find that the owner of the property has not received due notice of the distress and intended sale, he shall postpone the sale and report the case to the Collector of the District or Assistant Collector, who shall thereupon direct the issue of another notice and proclamation of sale under section 69, or pass such other order as he thinks fit.

Postponement of sale, and report to Collector when owner has not received due notice.

Order of Collector.

80. When an officer goes to any place for the purpose of holding a sale under this Act, and no sale takes place, either for the reason stated in section 79, or because the demand of the distrainer has been previously satisfied without any intimation of such satisfaction having been given by the distrainer to such officer, the charge of one anna in the rupee on account of expenses shall be leviable, and shall be calculated on the estimated value of the distrained property.

Levy of charge when sale-officer attends, and no sale takes place.

If the distrainer's demand be not satisfied until the day fixed for the sale, the charge for expenses shall be paid by the owner of the property, and may be recovered by the sale of such portion thereof as may be necessary.

Recovery from owner.

In every other case it shall be paid by the distrainer, and may be recovered by attachment and sale of his property under the warrant of the Collector of the District or Assistant Collector:

Recovery from distrainer.

Provided that in no case shall a larger amount than ten rupees be recoverable under this section.

Limit to charge.

81. When a suit has been instituted to contest the demand of a distrainer, and the distrained property has not been released on security, if the demand or any portion of it is adjudged to be due, the Collector of the District or Assistant Collector shall issue an order to the officer authorizing the sale of such property;

Order of sale when amount adjudged due.

and, on the application of the distrainer within five days from the receipt of such order by the officer, such officer shall publish a second proclamation in the manner prescribed in section 69, fixing another day for the sale of the distrained property, which shall not be less than five nor more than ten days from the date of the proclamation;

Second proclamation of sale.

and, unless the amount adjudged to be due with the costs of distress be paid, shall proceed to sell the property in the manner hereinbefore provided.

Sale on failure to pay debt and costs.

82. (*a*) In all suits instituted to contest the distrainer's demand, he shall be required to prove the arrear in the same manner as if he had himself brought a suit for the amount under the provisions hereinafter contained.

In suit to contest his demand, distrainer to prove arrear.

(*b*) If the demand or any part thereof is found to be due, the Collector of the District or Assistant Collector shall make a decree for the amount in favour of the distrainer, and such amount may be recovered by sale of the property, as provided in the last preceding section, if the distress has not been withdrawn;

Recovery of amount decreed in favour of distrainer.

and, if any balance remain due after such sale, by execution of the decree against the person and any other property of the defaulter,

or if the property have been released on security, by execution of the decree against the person and property of the defaulter and of his surety.

(*c*) If the distress is adjudged to be vexatious or groundless, the Collector of the District or Assistant Collector, besides directing the release of the distrained property, may award such compensation to the plaintiff as the circumstances of the case require.

Compensation in case of vexatious distress.

83. (*a*) If any person claim as his own, property which has been distrained for arrears of rent alleged to be due from any other person, the claimant may institute a suit against the distrainer and such other person, to try the right to the property, in the same manner and under the same conditions as to the time of instituting the suit and to the consequent postponement of sale, as a person whose property has been distrained for an arrear of rent alleged to be due from him may institute a suit to contest the demand.

Suit by person claiming property distrained for arrears alleged to be due from another.

(*b*) When any such suit is instituted, the property may be released upon security being given for the value of the same.

Release of property on security being given.

(*c*) If the claim is dismissed, the Collector of the District or Assistant Collector shall make an order for the sale of the property, or for the recovery of the value thereof, as the case may be, for the benefit of the distrainer.

Order of Collector when claim dismissed.

(*d*) If the claim is upheld, the Collector of the District or Assistant Collector shall decree the release of the distrained property with costs, and such compensation (if any) as the circumstances of the case require:

Decree for release and compensation when claim upheld.

(*e*) Provided that no claim to any produce of land liable to distress under this Act, which at the time of the distress may have been found in the possession of a defaulting cultivator, shall bar the prior claim of the person entitled to the rent of the land, nor shall any attachment in execution of a judgment of any civil Court prevail against such prior claim.

Saving of prior claim of person entitled to rent of land.

84. If, in any case in which property has been distrained for an arrear of rent, and a suit has been instituted to contest the demand, the right to distrain for such arrears is claimed by or on behalf of any person other than the distrainer, on the ground of such other person being actually and in good faith in the receipt and enjoyment of the rent of the land, such other person shall be made a party to the suit, and the question of the actual receipt and enjoyment of the rent by him before and up to the time of the commencement of the suit shall be enquired into, and in deciding the suit the result of such inquiry shall be taken into consideration:

Procedure where right to distrain is claimed by person other than distrainer.

Provided that the decision of the Collector of the District or Assistant Collector shall not affect the right of any person who may have a legal title to the rent of the land to establish his title by suit in the civil Court if instituted within one year from the date of the decision.

Saving of right to sue in civil Court.

85. If any person whose property has been distrained for the recovery of a demand not justly due, or of a demand due or alleged to be due from some other person, is prevented by any sufficient cause from bringing a suit to contest the demand or to try the right to the property, as the case may be, within the period allowed by section 69 or 83, and his property is in consequence sold, he may, nevertheless, institute a suit under this Act to recover compensation for such distress and sale.

Persons prevented from suing in time to save property from sale may sue for damages.

86. If any person empowered to distrain property, or employed for the purpose under a written authority by a person so empowered, distrain or sell, or cause to be sold, any property for the recovery of an arrear of rent alleged to be due, otherwise than according to the provisions of this Act,

Wrongful acts of distrainer.

or if any distrained property is lost, damaged, or destroyed by reason of the distrainer not having taken proper precautions for the due keeping and preservation thereof,

or if the distress is not immediately withdrawn when it is required to be withdrawn by any provision of this Act,

the owner of the property may institute a suit under this Act to recover compensation for any injury which he has thereby sustained through any act or omission mentioned in the former part of this section.

87. If any person not empowered to distrain property under section 56, 57 or 59, nor employed for the purpose under a written authority by a person so empowered, fraudulently distrains or sells, or causes to be sold, any property under colour of this Act, the owner of the property so distrained or sold may institute a suit under this Act to recover compensation from such person for any injury which the plaintiff has sustained from the distress or sale,

Suit by owner against person distraining or selling without authority.

and the defendant shall be held to have committed criminal trespass, and shall be subject to the penalties provided for that offence by the Indian Penal Code, in addition to any damages which may be awarded against him in such suit.

Penalty in addition to damages.

88. Provided that every suit instituted under any of the three last preceding sections shall be commenced within the period allowed by section 94.

Limitation of suits under sections 85, 86, 87.

89. (*a*) If any person resists a distress of property duly made under this Act, or forcibly or clandestinely removes any distrained property, the Collector of the District or Assistant Collector in charge of the Sub-division, upon complaint being made within fifteen days from the date of such resistance or removal, may cause the person accused to be arrested and brought with all convenient speed before the Collector or Assistant Collector, who shall, if possible, proceed forthwith to try the case.

Procedure in case of resistance of distress.

(*b*) If the case cannot be at once heard, the Collector of the District or Assistant Collector may, if he think fit, require the party arrested to give

security for his person, and, in default of such security, may commit him to the civil jail until the case is tried,

and if the offence be proved and the offender be the owner of the property concerned, the Collector of the District or Assistant Collector may order him to be imprisoned in the civil jail for a term not exceeding six months, unless the whole arrear due to the distrainer, with all reasonable expenses and costs, is previously to the expiration of such term levied under warrant of the Collector or the District or Assistant Collector by distress and sale of the property of the offender.

(*c*) If the offender be not the owner of the property concerned, he shall make good to the distrainer the value of the same, and shall further be liable to a fine not exceeding one hundred rupees, or, in default of payment thereof, to imprisonment in the civil jail for a term which may extend to two months.

90. All proceedings of officers distraining, or assisting distrainers, or holding sales, under this chapter, shall be subject to the revision and orders of the Collector of the District or Assistant Collector in charge of a Sub-division of the District.

Proceedings of officers subject to revision and orders of Collector.

CHAPTER IV.

PROCESS.

91. (*a*) Every process issued by a Collector of a District or Assistant Collector under this Act shall be under his seal and signature, and shall be served or executed by the Názir, or by such other officer as the Collector of the District or the Assistant Collector may direct, at the cost of the party at whose instance it is issued.

Mode of serving process.

(*b*) The amount of such cost, and, in the case of summons to a witness, the sum required for his travelling expenses, shall be deposited in Court before the process is issued:

Deposit before issue.

(*c*) Provided that, if in any case the Collector of the District or the Assistant Collector is satisfied that a party is unable to pay the cost of any necessary process, he may direct such process to be served free of charge.

Power to direct service gratis.

92. Any resistance or opposition to the lawful process of a Collector of the District or Assistant Collector or under this Act may be punished by him according to the provisions of the law for the time being in force for the punishment of resistance or opposition to the processes of the Courts of civil justice.

Punishment for resisting process.

When, in any such case, the offender is not present, the Collector of the District or Assistant Collector may summon him to answer to the charge: and, if after due service of the summons he fails to attend, may issue a warrant for his arrest.

Power to issue summons and warrant.

CHAPTER V.

JURISDICTION OF COURTS.

93. Except in the way of appeal as hereinafter provided, no Courts other than Courts of Revenue shall take cognizance of any dispute or matter in which any suit of the nature mentioned in this section might be brought, and such suits shall be heard and determined in the said Courts of Revenue in the manner provided in this Act, and not otherwise:

Suits cognizable by revenue Courts only.

(*a*) suits for arrears of rent, or, where rent is payable in kind, for the money-equivalent of rent, on account of land or on account of any rights of pasturage, forest-rights, fisheries or the like;

(*b*) suits to eject a tenant for any act or omission detrimental to the land in his occupation or inconsistent with the purpose for which the land was let;

(*c*) suits to cancel a lease for the breach of any condition binding on the tenant, and which, by law, custom or special agreement, involves the forfeiture of the lease;

(*cc*) suits for compensation for, or to prohibit, any act, omission or breach mentioned in clause (*b*) or clause (*c*);

(*d*) suits for the recovery of any over-payment of rent, or for compensation under section 48 or 49;

(*e*) suits for compensation for withholding receipt for rent paid;

(*f*) suits for contesting the exercise of the powers of distress conferred on landholders and others by this Act, or anything purporting to be done in the exercise of the said power, or for compensation for wrongful acts or omissions of a distrainer;

(*g*) suits by lambardárs for arrears of Government-revenue, payable through them by the co-sharers whom they represent, and for village-expenses and other dues for which the co-sharers may be responsible to the lambardár;

(*h*) suits by recorded co-sharers for their recorded share of the profits of a mahál, or any part thereof, after payment of the Government-revenue and village-expenses, or for a settlement of accounts;

(*i*) suits by muáfidárs, or assignees of the Government-revenue, for arrears of revenue due to them as such;

(*j*) suits by taluqdárs and other superior proprietors for arrears of revenue due to them as such;

(*k*) suits by recorded co-sharers to recover from a recorded co-sharer who defaults arrears of revenue paid by them on his account.

94. Suits for arrears of rent or revenue, or for a share of the profits of a mahál, or of village-expenses or other dues, shall not be brought after three years from the day on which the arrears or share became due.

Limitation of suits under this Act.

Suits relating to distress, not being suits to contest the demand or to try the right to the property, shall not be brought after three months from the day on which the right to sue accrued:

All other suits must be brought within one year from the day on which the right to sue accrues, unless otherwise specially provided for in this Act.

The day on which the arrears become due or the day on which the right to sue accrues (as the case may be) shall be excluded in computing the periods of limitation prescribed by this section.

In the absence of any express agreement between the co-sharers and of any order by the Settlement-officer under the North-Western Provinces Land-revenue Act, 1873, section 53, clause (*c*), the

Board may from time to time, with the previous sanction of the Local Government, make rules for fixing the dates on which profits shall be divisible by the lambardárs.

95. No Courts other than Courts of revenue shall take cognizance of any dispute or matter on which any application of the nature mentioned in this section might be made: and such applications shall be heard and determined in the said Courts in manner provided under this Act, and not otherwise:—

Applications cognizable by revenue Courts only.

(*a*) Application to determine the nature and class of a tenant's tenure, under section 10.

(*b*) Application by a landholder, or his agent, to compel a patwári to produce his accounts relating to land

(*c*) Application to resume rent-free grants under section 30, or to assess to rent land previously held rent-free.

(*d*) Application from a landholder to eject a tenant under section 35, or to have a notice of ejectment issued and served under section 38.

(*e*) Applications made by a tenant under section 39.

(*f*) Application from a landholder, under section 40, for assistance to eject a tenant.

(*g*) Application from a tenant or landholder to determine the value of any standing crop, or ungathered products of the earth, belonging to the tenant and being on the land at the time of his ejectment, under section 42.

(*h*) Application by a landholder to determine rent payable for land used by a tenant for the purpose of tending or gathering in the crop, under section 42.

(*i*) Application by a landholder or tenant for assistance in the division or appraisement of a standing crop, under section 43.

(*j*) Application by a landholder or tenant to determine compensation for improvements of land.

(*k*) Application by a tenant for leave to deposit rent.

(*l*) Application for enhancement or determination of rent.

(*m*) Application for compensation for wrongful dispossession.

(*n*) Application for the recovery of the occupancy of any land of which a tenant has been wrongfully dispossessed.

(*o*) Application for abatement of rent.

(*p*) Application for leases or counterparts, and for the determination of the rates of rent at which such leases or counterparts are to be delivered.

(*q*) Application under section 7 to have the holding of an ex-proprietary tenant divided off.

(*r*) Application under section 22A to survey land.

(*s*) Application under section 33A to have a notice of relinquishment declared invalid.

(*t*) Application to take out of deposit any amount deposited under section 55A.

For the purposes of the Court-fees Act, 1870, applications under clauses (*c*), (*l*), (*m*), (*n*), (*o*) and (*p*) of this section shall be deemed to be plaints in suits.

95A. When any order has been made on an application under this Act, no process for the execution of such order shall be issued on an application made after the lapse of one year from the date of such order, except when special provision is otherwise made in this Act.

Limitation of process of execution on applications.

96. (*a*) All applications under section 95 shall be made in the district in which the land, crops or products referred to is or are situate.

Points of procedure relating to applications under section 95.

(*b*) All orders passed on applications under section 95 shall be proved in the same manner, and when proved shall have the same effect, as if they were judgments of the civil Courts.

(*c*) In cases wherein a specific sum of money is adjudged to be due, or any costs or damages are awarded, all such orders may be executed by any process in use for the recovery of an arrear of revenue or rent.

(*d*) In cases wherein possession of immoveable property is adjudged, the officer making the award may deliver over possession in the same manner, and with the same power, in regard to contempts, resistance and the like, as may be lawfully exercised by the civil Courts in execution of their own decrees.

(*e*) Applications under clauses (*m*) and (*n*) of section 95 shall not be brought after six months from the date of the wrongful dispossession.

96A. All suits and applications under this Act may, with the consent of the parties, be referred to arbitration under section 220 to section 231 (both inclusive) of the North-Western Provinces Land-revenue Act, 1873.

Reference to arbitration.

97. The Local Government may invest any officer with the powers of an Assistant Collector of the first or second class under this Act, and may at any time withdraw such powers.

Power to invest officers with Assistant Collector's powers, and withdraw them.

98. Assistant Collectors of either class shall have, as such, power to try suits and applications of the following descriptions:—

Suits and applications cognizable by Assistant Collectors.

(*a*) suits for arrears of rent or the money equivalent of rent on account of land, or on account of any rights of pasturage, forest rights, fisheries or the like;

(*b*) suits for compensation for withholding receipts for rent paid, under section 48;

(*c*) suits to contest the exercise of the powers of distress conferred on landholders and others by this Act, or anything purporting to be done in exercise of the said powers, or for compensation for wrongful acts or omissions of a distrainer;

(*d*) suits by lambardárs for arrears of Government-revenue, payable through them by the co-sharers whom they represent, and for village-expenses and other dues, for which the co-sharers may be responsible to the lambardár;

(*e*) suits by muáfidárs or assignees of the Government-revenue for arrears of revenue due to them as such;

(*f*) suits by taluqdárs or other superior proprietors for arrears of revenue due to them as such;

(*g*) applications by a landholder, or by an agent employed by a landholder, to compel the production of accounts by patwáris;

(*h*) applications by a tenant or landholder to determine the value of any standing crops or ungathered products of the earth, and being on the land at the time of his ejectment, under section 42;

(*i*) applications by a landholder to determine the amount of rent payable by a tenant using land for the purpose of tending or gathering in crops, under section 42;

(*j*) applications by a landholder or a tenant for assistance in the division or appraisement of standing crops, under section 43;

(*k*) applications by tenants for leave to deposit rent;

(*l*) suits under section 93, clause (*k*), to recover arrears of revenue.

(*m*) applications under section 22A to survey land.

99. Assistant Collectors of the first class, in addition to the suits and applications specified in section 98, shall have power to try suits and applications of the following descriptions:—

Additional suits and applications triable by Assistant Collectors, first class.

(*a*) suits to eject a tenant for any act or omission detrimental to the land in his occupation, or inconsistent with the purpose for which the land was let;

(*b*) suits to cancel a lease for any breach of any condition binding on the tenant;

(*bb*) suits for compensation for, or to prohibit, any act, omission or breach mentioned in clause (*a*) or clause (*b*);

(*c*) suits for the recovery of any over-payment of rent or for compensation, under section 48 or section 49;

(*d*) suits by co-sharers for their shares of the profits of a mahál or any part thereof, after payment of the Government-revenue and village-expenses, or for a settlement of accounts;

(*e*) applications by a landholder to eject a tenant, under section 35;

(*f*) applications under section 39 by a tenant contesting notice of ejectment;

(*g*) applications by a landholder under section 40, for assistance to eject a tenant on whom notice of ejectment has been served;

(*h*) applications for compensation for wrongful dispossession;

(*i*) applications by a landholder or tenant to determine the amount to be paid as compensation for improvements;

(*j*) applications to recover the occupancy of any land from which a tenant has been wrongfully dispossessed by the landholder;

(*k*) applications under section 30 for the resumption of rent-free grants or for the assessment to rent of land hitherto held rent-free;

(*l*) applications under section 7 to have the holding of an ex-proprietary tenant divided off;

(*m*) applications under section 33 A to have a notice of relinquishment declared invalid;

(*n*) applications to take out of deposit amounts deposited under section 55A.

100. In addition to the powers specified in sections 98 and 99, an Assistant Collector of the first class, specially empowered by Government in this behalf, shall have power to try the following applications:

Additional applications triable by Assistant Collector, first class, with special powers.

(*a*) applications for enhancement or determination of rent;

(*b*) applications for abatement of rent;

(*c*) applications for leases or counterparts, and the determination of the rates of rent at which such leases or counterparts are to be delivered;

(*d*) applications to determine the nature or class of a tenant's tenure.

101. The Collector of the District, or any Assistant Collector in charge of a sub-division of a district, may make over any case, or class of cases, for inquiry and decision, from his own file, to any of his subordinates competent to deal with such case or class of cases under the provisions of this Act.

Power to make over cases.

102. Collectors of Districts, and Assistant Collectors in charge of sub-divisions of districts, may, respectively, withdraw any case or class of cases from any officers subordinate to them, and may deal with such case or class of cases themselves, or refer it for disposal to any other such Revenue-officer competent to deal with the same under the provisions of this Act.

Power to withdraw cases.

103. The Collector of the District may exercise—

Powers exercisable by Collector of District.

(*a*) all powers given by this Act to Collectors of Districts,

(*b*) all powers which by this Act are conferred, or can be conferred, on Assistant Collectors.

The Local Government may invest any officer in charge of a sub-division of a district with all or any of the powers conferred by this Act on a Collector of a District.

Investment of officer in charge of sub-division with powers of Collector of District.

In conferring powers under this Act, the Local Government may empower persons specially by name, or classes of officials generally by their official titles.

Mode of conferring powers.

CHAPTER VI.

PROCEDURE IN SUITS UP-TO JUDGMENT.

104. Suits under this Act shall be instituted in the district in which the subject of the suit, or some part thereof, is situate, and all such suits shall be commenced by presenting to the Court a plaint, which shall contain—

Place of instituting suits.

Plaint.

(*a*) the name, description and place of abode of the plaintiff;

(*b*) the name, description and place of abode of the defendant, so far as they can be ascertained;

(*c*) the subject-matter of the claim, and its amount or value computed according to the Court-fees Act, 1870; and

(*d*) the date on which the right to sue accrued.

105. For the purpose of suing or being sued under this Act, the managers of mahals, whether held under the Court of Wards or under direct management, shall be deemed to be landholders.

Managers of mahál to be, for purpose of litigation, deemed landholders.

106. No co-sharer in an undivided property shall, in that character, be entitled separately to sue a tenant under this Act, unless he is authorized to receive from such tenant the whole of the rent payable by such tenant; but nothing in this section shall affect any local custom or any special contract.

Suits by co-sharers in undivided property.

107. The plaint shall be presented by the plaintiff, or by an agent duly authorized on his behalf, who has personal knowledge of the facts of the case, or by an agent accompanied by a person who has such knowledge.

Plaint by whom presented.

The plaint shall be subscribed and verified at the foot by the plaintiff or his agent in the manner following, or to the like effect:—

Verification of plaint.

"I, *A. B.*, the plaintiff named in the above plaint, do declare that what is stated therein is true to the best of my knowledge and belief."

If the plaint contains any averment which the person making the verification knows or believes to be false, or does not know or believe to be true, he shall be punishable according to the law for the punishment of giving or fabricating false evidence.

False averment.

108. If the plaintiff rely in support of his claim on any document in his possession, he shall deliver the same to the Court at the time of presenting his plaint.

Document relied on by plaintiff to be presented with plaint.

Unless such document be so delivered, or its non-production be sufficiently excused, or unless the Court see fit to extend the time for producing the same, it shall not afterwards be admitted.

Admission afterwards.

109. If the plaintiff require the production of any document in the possession or power of the defendant, he may, at the time of presenting his plaint, deliver to the Court a description of the document, in order that the defendant may be required to produce the same.

Procuring production of document in possession of defendant.

110. If the suit be for the recovery of an arrear of rent or revenue, or of a share of profits or village-expenses, or other dues under section 93, the plaint shall specify the name of the village and estate, and of the pargana or other local division in which the land is situate:

Plaint in suits for arrears of rent.

and, if the suit be for an arrear of rent alleged to be due from any tenant, the plaint shall also specify the quantity of land, and (where fields have been numbered in a Government-survey) the number of each field, and yearly rent of the land; the amount (if any) received on account of the year for which the claim is made; and in all cases coming under this section the plaint shall specify the amount in arrear, and the time in respect of which it is alleged to be due.

111. If the suit be for the ejectment of a tenant from any land, the plaint shall describe (as circumstances may require) the extent, situation and designation of the land; and, if necessary for its identification, shall set forth its boundaries.

Plaint in suits for ejectment.

112. If the plaint do not contain the several particulars hereinbefore required to be specified therein, or be not subscribed and verified as hereinbefore required, the Court may, at its discretion, return it to the plaintiff, or allow it to be amended.

Return or amendment of plaint.

112A. The Court may, on or before the first hearing upon the application of either party, and on such terms as the Court thinks just, order that the name of any party, whether as plaintiff or as defendant, improperly joined, be struck out;

Court may dismiss or add parties.

and the Court may at any time, either upon or without such application, and on such terms as the Court thinks just, order that any plaintiff be made a defendant, or that any defendant be made a plaintiff, and that the name of any person who ought to have been joined whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

No person shall be added as a plaintiff without his own consent thereto.

Consent of person added as plaintiff.

All parties whose names are so added as defendants shall be served with a summons in manner hereinafter mentioned, and the proceedings as against them shall be deemed to have begun only on the service of such summons:

Defendants added to be served.

Provided that, when a defendant dies and the suit is continued against his legal representative, it shall, as regards him, be deemed to have been instituted when it was instituted against the deceased defendant.

112B. Where a defendant is added, the plaint, if previously filed, shall, unless the Court directs otherwise, be amended in such manner as may be necessary, and an amended copy of the summons shall be served on the new defendant and the original defendants.

When defendant added, plaintiff to amend.

112C. All objections for want of parties, or for joinder of parties who have no interest in the suit, or for mis-joinder as co-plaintiffs or co-defendants, shall be taken at the earliest possible opportunity, and in all cases before the first hearing, and any such objection not so taken shall be deemed to have been waived by the defendant.

Time for taking objections as to non-joinder or mis-joinder of parties.

112D. If the plaint be admitted, the plaintiff shall present as many copies on plain paper of the plaint as there are defendants, unless the Court, by reason of the length of the plaint, or the number of the defendants, or for any other sufficient reason, permits him to present a like number of concise statements of the nature of the claim made, or of the relief or remedy required in the suit, in which case he shall present such statements.

Procedure on admitting plaint.

Concise statements.

113. If the plaint be in proper form, the Court, except as otherwise hereinafter specially provided, shall direct the issue of a summons to the defendant,

Issue of summons.

and if the plaintiff require the personal attendance of the defendant, and satisfy the Court that such attendance is necessary, or the Court of its own accord require such attendance, the summons shall contain an order for the defendant to appear personally on a day to be specified in the summons.

Order for personal attendance or appearance by agent.

If the plaintiff or the Court does not require the personal attendance of the defendant, the summons shall order the defendant to appear either personally or by an agent duly authorized on his behalf, who has personal knowledge of the subject, or is accompanied by a person who has such personal knowledge.

114. The day to be specified in the summons shall be fixed with reference to the state of the file and the distance that the defendant may be or be supposed to be at the time from the place where the Court is held,

Fixing of day to be specified in the summons.

and the summons shall order the defendant to produce any document in his possession or power of which the plaintiff demands inspection, or upon which the defendant relies in support of his defence.

Order to produce documents.

It shall also direct him to bring with him his witnesses, if they are willing to attend without issue of process,

Order to bring witnesses.

and it shall be in the form (D) contained in the first schedule hereto annexed, or to the like effect.

Form of summons.

It shall be accompanied with one of the copies or concise statements mentioned in section 112 D.

Copy or statement annexed to summons.

115. The summons shall be served by delivering a copy thereof to the defendant personally when practicable;

Mode of serving summons.

or, if the copy cannot be delivered to the defendant personally, by affixing copy of the summons to some conspicuous part of his usual residence, and also affixing a copy of the same in the Court.

116. If the summons be served by delivering a copy to the defendant personally, the Názir shall endorse on the summons the fact of such service.

Endorsement on summons.

If personal service be not effected, the Názir shall endorse on the summons the reason of not serving it personally, and how it has been served.

117. If the usual residence of the defendant be in another district, the summons shall be sent by the public post to the Collector of such district, who shall issue the summons, and return the same, after service, with the prescribed endorsement, to the officer by whom it was transmitted to him.

Service of summons in another district.

117A. If the defendant resides out of British India, and has no agent in British India empowered to accept the service, the summons shall be addressed to the defendant at the place where he is residing, and forwarded to him by post, if there be postal communication between such place and the place where the Court is situate.

Service when defendant resides out of British India and has no agent to accept service.

117B. If there be a British Resident or Agent of Government in or for the territory in which the defendant resides, the summons may be sent to such Resident or Agent by post or otherwise for the purpose of being served upon the defendant; and if the Resident or Agent return the summons with an endorsement under his hand that the summons has been served on the defendant in manner hereinbefore directed, such endorsement shall be conclusive evidence of such service.

Service through British Resident or Agent of Government.

Deposit of cost of serving summons or warrant.

118. The amount of the cost of serving the summons, or, if a warrant be issued as provided in the next following section, of serving the warrant,

shall in all cases be deposited in Court by the plaintiff within such time before the issue of such summons or warrant as is fixed by the Court issuing the process.

If the said amount be not so deposited (except where the Court in exercise of the discretion reserved to it in section 91 allows the summons to be served gratis), the case shall be struck out of the list of pending suits;

Effect of failure to deposit.

but in such case the plaintiff may present another plaint at any time within the period allowed by the rules herein contained for the limitation of suits.

119. (*a*) If in any suit against a tenant for the recovery of an arrear of rent, or in any suit for the recovery of an arrear of revenue, or a share of profits or village-expenses or other dues, the plaintiff desires a warrant of arrest to be issued against the defendant, such defendant being resident within the district in which the suit is instituted, the plaintiff small present, with his plaint, an application for the issue of such warrant.

Procedure when plaintiff desires issue of warrant of arrest.

(*b*) When such application is presented, the Court shall examine the plaintiff or his agent, and inspect the documents adduced by him in support of his claim; and if *primâ facie* it appear to the Court that the claim is well founded, and that, if a summons be issued, the defendant will abscond instead of appearing to answer the claim, the Court may issue a warrant for his arrest.

(*c*) The Court shall fix a reasonable time for the return of the warrant, and the officer entrusted with the service thereof shall, at the time of arresting the defendant, deliver to him one of the copies or concise statements mentioned in section 112D and a notice requiring him, if he contest the claim, to bring with him any document upon which he relies in support of his defence.

(*d*) Every warrant issued and notice delivered under this section shall be respectively in the forms (E) and (F) in the first schedule hereto annexed, or to the like effect.

120. If a defendant be arrested under the warrant of arrest, he shall be brought with all convenient speed before the Court.

Procedure after arrest of defendant.

121. When a defendant is brought before the Court under warrant, the Court shall, with all convenient speed, proceed to try the case in the manner hereinafter provided,

Procedure when defendant is brought before Court under warrant.

and if the suit cannot be at once adjudicated, the Court may, if it think fit, require the defendant to give security for his appearance whenever the same may be required at any time whilst the suit is pending, or until execution of the final decree which may be passed thereon,

and may commit him to the civil jail to be there detained until he furnishes such security or deposits such sum as the Court orders.

The security-bond shall be in the form (G) contained in the first schedule hereto annexed, or to the like effect.

Form of security-bond.

122. If the defendant cannot be arrested under the warrant, the Court, on the application of the plaintiff, shall either postpone the case for such period as to it seems proper, in order that the plaintiff may apply within the said period for another warrant to be issued for the arrest of the defendant, or shall forthwith issue a proclamation, to be affixed in its own office and at the residence of the defendant, appointing a day for the hearing of the case, which shall not be less than ten days from the date of the publication of the notice, at the residence of the defendant.

Procedure when defendant cannot be arrested under warrant.

If the defendant appear in pursuance of the proclamation, he shall be dealt with as provided in the last preceding section.

123. If it appear to the Court that the arrest of the defendant was applied for without reasonable cause, the Court may, in its decree, award to him such sum not exceeding one hundred rupees as it may deem a reasonable compensation for any injury or loss which he has sustained by reason of such arrest, or of his detention in jail during the pendency of the suit.

Compensation for arrest applied for without reasonable cause.

124. If on the day fixed by the summons or proclamation for the appearance of the defendant, or on any subsequent day to which the hearing of the case may be adjourned prior to the recording of an issue for trial as hereinafter provided, neither of the parties appear in person or by an agent, the case may be struck off, with liberty to the plaintiff to bring a fresh suit, unless precluded by the rules herein contained for the limitation of suits.

Consequence of neither party appearing on day fixed.

125. If on any such day only the defendant appears, the Court shall pass judgment against the plaintiff by default, unless the defendant admits the plaintiff's right to the relief which he claims, in which case the Court shall proceed to give judgment for the plaintiff upon such admission without costs:

Judgment by default.

Judgment upon admission of claim.

Provided that such judgment, if there be more than one defendant, shall be only against the defendant who makes the admission.

Proviso.

126. If on any such day the plaintiff only appear, the Court, upon proof that the summons or proclamation has been duly served according to the provisions of this Act, shall proceed to examine the plaintiff or his agent, and after considering the allegations of the plaintiff, and any documentary or other evidence adduced by him, may either dismiss the case or postpone the hearing of it to a future day for the attendance of any witness the plaintiff may wish to call, or may pass judgment *ex parte* against the defendant.

If plaintiff only appear, Court may proceed *ex parte*.

127. If the defendant appear on any subsequent day to which the hearing of the suit is postponed under the last preceding section, the Court may, upon such conditions, if any, as to costs or otherwise as it thinks proper, allow the defendant to be heard in answer to the suit as if he had appeared on the day fixed for his attendance.

If defendant appear on adjourned hearing, Court may allow him to be heard in answer.

128. (*a*) No appeal shall lie from a judgment passed *ex parte* against a defendant who has not appeared, or from a judgment against a plaintiff by default for non-appearance.

No appeal from judgment *ex parte* or by default;

(*b*) But in all such cases, if the party against whom judgment has been given appears, either in person or by agent, if a plaintiff, within fifteen days from the date of the Court's decree, and, if a defendant, within fifteen days after any process for enforcing the judgment has been executed, or at any earlier period, and shows sufficient cause for his previous non-appearance, and satisfies the Court that there has been a failure of justice, the Court may, upon such terms as to costs or otherwise as it thinks proper, revive the suit and alter or rescind the judgment according to the justice of the case.

but Court may revive suit and alter or rescind judgment.

(*c*) But no judgment shall be reversed or altered without previously summoning the adverse party to appear and be heard in support of it.

Adverse party to be summoned.

129. When both parties appear in person or by agent on the day named in the summons, or upon any subsequent day to which the hearing of the case may be adjourned, for sufficient reason to be recorded by the Court, the Court shall proceed to examine such of the parties as may be present, and either party or his agent may cross-examine the other party or his agent.

Examination.

130. If either of the parties be not bound to attend personally, any agent by whom he appears, or any person accompanying such agent, may be examined and cross-examined in like manner as the party himself would have been if he had attended personally.

Examination and cross-examination of agents.

131. At the time of the examination, the defendant may, if he think fit, file a written statement in his defence.

Defendant may file written statement.

Such written statement shall be subscribed and verified in the manner hereinbefore provided for subscribing and verifying plaints, and if it contains any averment which the person making the verification knows or believes to be false, or does not know or believe to be true, he shall be punishable according to the law for the punishment of giving or fabricating false evidence.

Verification of written statement.

False averment.

132. The examination of the parties or their agents, or such other persons as aforesaid, shall be according to the law for the time being in force relative to the examination of witnesses in the civil Courts.

Mode of examination.

The substance of the examination shall be reduced to writing in the mother-tongue of the presiding officer, and shall be filed with the record.

133. If either of the parties produce a witness on such day, the presiding officer may take the evidence of such witness.

Witness produced may be examined.

134. If the defendant rely on any document in support of his defence, he shall deliver the same into Court at the first hearing of the suit:

Document relied on by defendant to be produced at first hearing.

and unless such document be so delivered, or its non-production be sufficiently excused, or unless the presiding officer see fit to extend the time for delivering the same, it shall not afterwards be admitted.

135. If after the examination required by section 129, and also the examination of any witness who may attend to give evidence on behalf of either of the parties, and after a consideration of the documentary evidence adduced, a decree can be properly made without further evidence, the Court shall make its decree accordingly.

Decree after examination, if no further evidence is required.

136. If on such examination as aforesaid either party is absent and his agent is unable to answer any material question relating to the case which the Court is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Court may postpone the hearing of the case to a future day, and direct that the party whose agent was unable to answer as aforesaid shall attend in person on such day;

Party to attend in person when his agent is unable to answer.

and if such party fails to appear in person on the day appointed, the Court may pass judgment as in case of default, or make such other order as it deems proper in the circumstances of the case.

Judgment or order if he fail to appear.

137. If on such examination as aforesaid it appear that the parties are at issue on any question upon which it is necessary to hear further evidence, the Court shall declare and record such issue, and shall fix a convenient day for the examination of witnesses and the trial of the suit; and the trial shall take place on that day, unless there be sufficient reason for adjourning it, which reason shall be recorded by the Court.

Procedure when parties at issue on question requiring evidence.

138. The parties shall produce their witnesses on the day of trial, and if either party require assistance to procure the attendance of a witness on such day, either to give evidence or to produce a document, he shall apply to the Court in sufficient time before the day fixed for the trial, to enable the witness to be summoned to attend on that day; and the Court shall thereupon issue a summons requiring such witness to attend.

Parties to produce witnesses or procure attendance by summons.

139. The law and rules for the time being in force relating to the evidence of witnesses, for procuring the attendance of witnesses and the production of documents, and for the examination, remuneration and punishment of witnesses, whether parties to the case or not, in cases before the civil Courts, shall, except so far as may be inconsistent with the provisions herein contained, apply to suits under this Act.

Provisions regarding attendance, examination, &c., of witnesses.

140. If on the day fixed for the trial of any issue neither of the parties appear, the case may be struck off, with liberty to the plaintiff to bring a fresh suit.

Case to be struck off if neither party appears.

If on any such day one only of the parties appear, the issue may be tried and determined in the absence of the other party, upon such evidence as may be then before the Court.

Trial of issue *ex parte*.

141. When suits under this Act are instituted or defended by agents employed in the collection of rent or management of land, in the name and on the behalf of the landholders by whom they are so employed, all the provisions of this Act, by which the personal appearance or attendance of parties to a suit is or may be required, shall be applicable to such agents;

Provisions to apply when suits are instituted or defended on behalf of landholders by agents.

and anything which by this Act is required or permitted to be done by a party in person may be done by any such agent as aforesaid.

Processes served on any such agent shall be as effectual for all purposes in relation to the suit as if the same had been served on the landholder in person;

Processes served on such agents.

and all the provisions of this Act relative to the service of processes on a party to the suit shall be applicable to the service of processes on such agent.

142. A female plaintiff or defendant shall not be required to attend in person, if she is of a rank or class which, according to the custom and manners of the country, would render it improper for her to appear in public.

Personal attendance of female plaintiff or defendant when not required.

143. Any party to a suit may employ an authorized agent to conduct the case on his behalf:

Parties may employ agents.

but the employment of such agent shall not excuse the personal attendance of the plaintiff or defendant, in cases where his personal attendance is required by the summons, or any order of the Court;

Personal attendance when not excused.

and no fee for any agent shall be charged as part of the costs of suit in any case under this Act, unless the Court certifies that, under the circumstances of the case, such fee is proper to be allowed.

Fee for agents not chargeable as costs.

144. The Court may in any case grant time to the plaintiff or defendant to proceed in the prosecution or defence of a suit,

Court may grant time or adjourn hearing.

and may also, from time to time, in order to the production of further evidence, or for other sufficient reason to be recorded by the Court, adjourn the hearing of any case to such day as to it may seem fit.

145. The presiding officer may, at any stage of a case, cause a local enquiry and report respecting the matter in dispute to be made by any officer subordinate to him, or by any other officer of Government, with the consent of the authority to whom such officer is subordinate, or may himself proceed to the spot and make such local enquiry in person.

Court may cause local enquiry and report, or may itself enquire.

The provisions of the law for the time being in force relative to local inquiries by Amins or Commissioners, under orders of the civil Courts, shall apply to any local inquiry made by any officer under this section,

Provisions applied to such inquiry.

and, so far as they are applicable, to inquiries made by the presiding officer of the Court in person.

In the latter case the presiding officer, after completing the inquiry, shall record such observations as appear to him appropriate, and the observations so recorded shall form part of the proceedings in the suit.

Record in case of inquiry by Court.

146. The defendant in any suit under this Act may pay into Court such sum of money as he thinks a full satisfaction for the demand of the plaintiff, together with the costs incurred by the plaintiff up to the time of such payment, and such sums shall be paid to the plaintiff.

Defendant may pay admitted debt and costs into Court.

If the defendant deposit less than the sum claimed and the plaintiff elect to proceed in the case, and ultimately recover no further sum than has been paid into Court, the plaintiff shall be charged with any costs incurred by the defendant in the suit after such payment.

Plaintiff chargeable with subsequent costs if he proceed and recover no further sum.

147. No interest shall be allowed to a plaintiff on any sum paid by the defendant into the Court from the date of such payment, whether such sum be in full of the plaintiff's claim, or fall short thereof.

No interest to plaintiff after date of deposit by defendant.

148. When, in any suit between a landholder and a tenant under this Act, the right to receive the rent of the land or tenure cultivated or held by the tenant is disputed on the ground that some third person has actually and in good faith received and enjoyed such rent before and up to the time when the right to sue accrued, such third person may be made a party to the suit,

In suits where right to receive rent is disputed, third person who has received it may be made a party.

and the question of such receipt and enjoyment of the rent by such third person may be enquired into, and the suit shall be decided according to the result of such enquiry:

Provided that the decision of the Court shall not affect the right of either party entitled to the rent of such land to establish his title by suit in the civil Court, if instituted within one year from the date of the decision.

Saving of right to sue in civil Court to prove title to rent.

149. Whenever a decree is given for the ejectment of a tenant, or the cancelment of his lease, on account of any act or omission by which the land in his occupation has been damaged, or which is inconsistent with the purpose for which the land has been let, the Court may, if it think fit, allow him to repair such damage within one month from the date of the decree, or order him to pay such compensation, within such time, or make such other order in the case, as the Court thinks fit,

Court may allow tenant to repair damage caused by certain acts or omissions.

and if such damage be so repaired, or compensation so paid, or order obeyed, the decree shall not be executed.

150. Every judgment under this Chapter shall be pronounced in open Court.

Delivery of judgment.

151. The judgment shall be written in the mother-tongue of the presiding officer, and shall contain the reasons for the same, and shall be dated and signed by the presiding officer at the time it is pronounced:

Its language and contents.

Provided that, where his mother-tongue is not English, the judgment may be written in English, if he is able to write a clear and intelligible decision in that language.

When it may be in English.

151A. The judgment shall direct by whom the costs of each party are to be paid, whether by himself or by any other party to the suit, and whether in whole or in what part or proportion.

To direct payment of costs.

151B. Except as hereinbefore provided, the Court shall have full power to give and apportion costs of every suit in any manner it thinks fit; and the fact that the Court has no jurisdiction to try the case is no bar to the exercise of such power; but if the Court directs that the costs of any suit shall not follow the event, the Court shall state its reasons in writing.

Power of Court as to costs.

151C. The Court may direct that the costs payable to one party by another shall be set off against sums admitted or found in the suit to be due from the former to the latter.

Costs may be set off.

151D. Except as hereinbefore provided, the Court may give interest at any rate not exceeding six per cent. per annum, on any sum decreed or found to be due, or on costs.

Power to give interest.

152. Every officer invested with powers under this Act may hold a Court for hearing and determining suits under this Act in any place within the limits of the district to which he is appointed.

Power to hold Court in any place within district.

Every hearing shall be in open Court, and the parties to the suit or their authorized agents shall have due notice to attend in such place.

CHAPTER VII.

PROCEDURE IN EXECUTION OF DECREES IN SUITS.

153. If the decree be for the ejectment of any tenant from land occupied by him, the decree shall be executed by giving the possession or occupancy of the land to the person entitled by the decree thereto.

Mode of executing decree for ejectment of tenant.

If any opposition is made to the execution of the order for giving such possession or occupancy, by the party against whom the order is made, the Magistrate, on the application of the Collector of the District or Assistant Collector, shall give effect to the same.

Magistrate to give it effect in case of opposition.

154. If the decree be for the payment of arrears of rent or revenue, or of money, and the defendant has been committed to jail, or appear in Court pursuant to the conditions of any security-bond given under

Power to order detention in, or commitment to, civil jail in certain cases.

section 121, the Collector of the District or Assistant Collector may order that he be detained in, or committed to, the civil jail, unless he immediately pays into Court the amount of the decree with costs, or otherwise complies with the terms of the decree.

155. If the judgment-debtor has given security for his appearance, and is not present when judgment is pronounced, and the surety fails to deliver him into custody when required so to do, process of execution may be taken out against the surety in the same manner as if a decree for the amount due by the debtor had been passed against the surety.

Process against surety on failure to deliver judgment-debtor into custody.

156. (*a*). A writ of execution may be issued against either the person or the property of a judgment-debtor;

Process of execution against person or property, but not both.

but process shall not be issued simultaneously against both person and property.

(*b*). Such writ may be issued on the oral application of the judgment-creditor or his agent, made at the time the decree is passed, or, thereafter, upon the written application of the judgment-creditor or his agent.

Applications on which it may issue.

(*c*). Writ of execution against the person or moveable property of a debtor shall be in the form (H) or (I) contained in the first schedule hereto annexed, or to the like effect.

Form of writ of execution.

157. Any moveable property required to be seized under an execution shall, if practicable, be described in a list to be furnished by the judgment-creditor;

Execution against moveable property.

but, if the creditor is unable to furnish such list, he may apply for a general attachment of the debtor's effects, to the amount of the judgment and costs.

In either case, the property to be seized shall be pointed out to the officer entrusted with execution of the process, by the creditor or his agent:

Provided that no implements of husbandry, or cattle actually employed in agriculture, or tools of artisans, or necessary wearing apparel of the judgment-debtor, his wife or children, shall be attached under this section.

Articles exempted from attachment.

158. Every writ of execution shall bear date on the day on which it is signed by the Collector of the District or Assistant Collector, and shall continue in force for such period as he may direct (not being more than sixty days) calculated from such date.

Date and duration of writs.

159. Second and successive writs of execution may be issued by order of the Collector of the District or Assistant Collector on the application of the judgment-creditor, after the expiration of the period fixed for the continuance in force of a previous warrant.

Second and successive writs.

160. Process of execution shall not be issued upon any judgment, without previous notice to the party against whom execution is applied for, if, when application for the issue of the process is made, a period of more than one year has elapsed from the date of the judgment, or from the date of the last previous application for execution.

After one year execution not to issue without notice to party concerned.

161. Execution on a judgment shall not issue against the heir or other representative of a deceased party, unless notice to appear and be heard has been previously served on such heir or other representative.

Execution not to issue against heir or representative of deceased party without notice.

162. No process of execution shall be issued on a judgment under this Act, when the application for the issue of such process is made after the lapse of three years from the date of such judgment, unless the judgment be for a sum exceeding five hundred rupees;

No process of execution after three years, unless judgment be for sum exceeding 500 rupees.

in which case the period within which execution may be had shall be regulated by the general rules in force in respect to the period allowed for the execution of decrees of the civil Court.

Regulation of period in such case.

163. If a writ issues for taking any person in execution, the officer charged with the execution of the writ shall bring him with all convenient speed before the Collector of the District or Assistant Collector.

Procedure in execution of writ against person.

If such person does not then deposit in Court the full amount specified in the writ,

or make such arrangement for the payment of the same as is satisfactory to the judgment-creditor,

or satisfy the Collector of the District or Assistant Collector that he has no present means of paying the same amount,

the Collector of the District or Assistant Collector shall send him to the civil jail, there to remain for such time as may be directed by a warrant addressed to the keeper of the jail, unless in the meanwhile he pays the full amount for the payment of which he is liable under the decree:

Provided that the time for which a debtor may be confined in execution of a decree under this Act shall not exceed three months when the amount decreed (exclusive of costs) does not exceed fifty rupees,

Limit of imprisonment.

or six months when such amount does not exceed five hundred rupees,

or two years in any other case.

164. (*a*.) Any person once discharged from jail shall not be imprisoned a second time under the same judgment.

No person to be imprisoned a second time under same judgment.

(*b*.) If the amount due under the decree does not exceed one hundred rupees, the Collector of the District or Assistant Collector may declare him absolved from further liability under that decree, and such liability shall thereupon be extinguished.

When further liability extinguished.

(*c*.) In other cases the discharge shall not extinguish the liability of the discharged person under the decree, or exempt any property belonging to him from attachment in execution of the same.

When not extinguished.

165. Every person applying for the issue of a warrant of arrest under section 119, or suing out process of execution against the person of any judgment-debtor, shall deposit in Court, when the warrant issues, diet-money for thirty days at such rate not exceeding two annas per diem, as the Collector of the District or Assistant Collector may direct, unless for any special reason he directs that deposit be made at a higher rate, which shall not exceed four annas per diem.

Diet-money to be deposited at time of issue of warrant.

166. Payment of diet-money at the same rate shall be made previously to the commencement of each succeeding month of the imprisonment, on failure of which the party confined shall be discharged.

Effect of non-payment of diet-money in advance during imprisonment.

167. All diet-money spent in providing subsistence for any prisoner shall be added to the costs in the suit,

Diet-money spent to be costs in suit.

and any diet-money not so spent shall be returned to the person who deposited the same.

Refund of remainder.

168. In executing a writ of execution against the moveable property of a debtor liable under this Act, the officer charged with the execution of the writ shall prepare a list of the property pointed out by the judgment-creditor, and shall publish a proclamation, specifying the day upon which the sale is intended to be held, together with a copy of the said list, at the intended place of sale and at the residence of the debtor.

Procedure in executing writ against moveable property.

A copy of the said proclamation and list shall be sent to the Collector of the District or Assistant Collector, and shall be affixed in his office.

169. No moveable property taken in execution under this Act shall be sold before the expiration of ten days next after the day on which such property is so taken.

Time to elapse before sale of moveable property.

Until such sale the property shall be deposited in some fit place, or it may remain in custody of some fit person approved by the officer executing the writ.

Custody meanwhile.

The provisions of sections 74 to 78 (both inclusive), so far as the same are applicable, shall apply to sales under this section.

Provisions applied to sale.

170. No irregularity in publishing or conducting a sale of any moveable property under an execution shall vitiate such sale.

Sale not vitiated by irregularity.

But any person injured by such irregularity may recover compensation for such injury by suit in the civil Court:

Right to sue for compensation.

Provided that such suit be brought within one year from the date of sale.

Limitation.

171. In the execution of any decree for the payment of arrears of rent or revenue, or of money, under this Act, if satisfaction of the judgment cannot be obtained by execution against the person or moveable property of the debtor, the judgment-creditor may apply for execution against any immoveable property belonging to such debtor, except the materials of buildings actually occupied by a debtor who is an agriculturist.

In executing decrees for money when execution may be applied for against immoveable property.

172. If the immoveable property against which execution is applied for be other than a mahál, or share of a mahál, process shall be issued in the same manner as for the attachment and sale of moveable property: and the provisions of sections 168, 169 and 170 shall be applicable.

Process when the immoveable property is not a mahál.

In the event of the sale of such property being completed, possession thereof shall be given to the auction-purchaser by the Collector of the district in which such property is situate.

Possession to be given to auction-purchaser.

173. When such property is a mahál, or a share of a mahál, the decree shall be sent for execution to the Collector of the District in which such property is situate,

Procedure when it is a mahál.

and if the judgment-debtor satisfies the Collector of the District that there is reasonable ground to believe that the amount of the judgment-debt may be raised by mortgage of the property, or by letting it on lease, or by disposing by private sale of a portion of the property or any other property belonging to the judgment-debtor, the Collector of the District may, on the application of the judgment-debtor, postpone the sale for such period as the Collector of the District thinks proper to enable the judgment-debtor to raise the amount,

and if the judgment-debtor satisfies his creditor, the execution shall be stayed, and the Collector of the District shall report the fact to the Court by which the decree was made.

174. If the judgment-debtor obtaining a postponement of the sale fails to satisfy his creditor within the period so fixed, or, if the judgment-debtor does not apply for, or applies for but does not obtain, a postponement of the sale, and the Collector of the District considers that the sale of the mahál or share is inexpedient, and that satisfaction of the decree may be made by means of a temporary alienation of the property,

Procedure where judgment-debtor fails to satisfy creditor within further time, or Collector thinks sale inexpedient.

the Collector of the District shall cause an accurate rent-roll of the property to be prepared, and ascertain the annual income derivable therefrom.

If, in the opinion of the Collector of the District, such income is sufficient to pay off the judgment-debt with interest at six per cent. per annum, within any period not exceeding fifteen years from the date of the decree, he may transfer the property to the judgment-creditor, or if the judgment-creditor refuse to take it, to some other person, or he may hold it under his own management, for such period not exceeding fifteen years, as may be sufficient for the recovery of the debt with interest as aforesaid, and on such conditions as to the payment of such debt and interest as he deems expedient.

Power to transfer property to judgment-creditor.

Power to hold property under management.

Orders passed under this section and section 173 shall be subject to revision by the Commissioner of the Division and the Board, but shall not be open to appeal to the civil Court.

174A. When the property of a judgment-debtor which is transferred or held under management under section 174 includes any sír-land of such debtor, he shall, until such property is restored to him, be treated as an ex-proprietary tenant of such sír-land under section 7.

Proprietor to be treated as ex-proprietary tenant of sír-land.

175. If in the opinion of the Collector of the District the recovery of the debt under section 174 is impossible, or if the sale of the property appear to him advisable on other grounds, he shall report, through the Commissioner of the Division, the case for orders to the Board.

Report of case to Board.

176. On the receipt of such report, the Board may make, or cause to be made, such further endeavours for the recovery of the debt under the provisions of section 174, as to it may seem practicable.

Procedure on receipt of report.

177. If it appear to the Board that the debt cannot be recovered under section 174, or if the sale of the property appear to it advisable on other grounds, it shall order the property to be sold, in which case the sale shall be made under the rules in force for the sale of land for arrears of land-revenue, but without prejudice to the incumbrances (if any) to which such property may be subject.

Power to order sale of property.

178. If, before the day fixed for any sale of any property under this Act, a third party appear before the Collector of the District or Assistant Collector, and claim a right or interest to or in any of the property, he shall examine such party or his agent, according to the law for the time being in force relative to the examination of witnesses,

Examination of third party claiming interest in property.

and, if he see sufficient reason for so doing, may stay the sale of such property.

Stay of sale.

179. The Collector of the District or Assistant Collector may adjudicate upon such claim, and make such order as he thinks fit between the claimant and the plaintiff and defendant in the original suit.

Adjudication of such claims.

In trying such claim, the Collector of the District or Assistant Collector shall be guided by the rules contained in this Act, so far as they may be applicable.

Rules applied.

180. If the claimant fail to establish his right to the property taken in execution, the Collector of the District or Assistant Collector may, at the time of disposing of the case, order him to pay to the judgment-creditor the costs of the proceedings on the claim, and also such sum as the Collector or Assistant Collector thinks sufficient to cover any loss of interest or damage which the judgment-creditor may have sustained by reason of the postponement of the sale of the property.

Compensation awardable against claimant failing to establish right.

181. (*a.*) No appeal shall lie from any order passed under section 179 or section 180 by the Collector of the District.

No appeal from order under section 179 or 180.

(*b.*) But the party against whom the same is passed may institute a suit in the Civil Court to establish his right at any time within one year from the date of the order:

Right to sue in civil Court.

(*c.*) Provided that, if the order be for the sale of the property taken in execution, and the property is moveable the suit shall not be for the recovery of such property, but shall be for compensation from the judgment-creditor by whom it was brought to sale.

Proviso.

CHAPTER VIII.

APPEAL, REHEARING AND REVIEW.

(A).—From Decrees in Suits.

182. In suits under this Act, tried and decided by a Collector of a District or an Assistant Collector of the first class, his judgment shall be final.

Judgment of Collector of District or Assistant Collector of first class when final.

183. All decisions of the Assistant Collector of the second class in suits mentioned in section 93 shall be appealable to the Collector of the District, whose order thereon shall be final.

Appeal from decision of Assistant Collector of second class.

184. The petition of appeal shall be presented to the Collector of the District within thirty days from the date of the decree.

Time for presentation.

185. The Collector of the District may either dismiss the petition or may fix a day for hearing the appeal, and in that case he shall cause notice of the same to be served on the respondent in the manner hereinbefore prescribed for the service of summons.

Procedure on appeal.

If, on the day fixed for hearing the appeal, or any other day to which the hearing may be adjourned, the appellant does not appear in person or by an agent, the appeal may be dismissed for default.

If the appellant appears and the respondent does not appear in person or by an agent, the appeal may be heard *ex parte*.

186. If an appeal be dismissed for default of prosecution, the appellant may, within fifteen days from the date of the dismissal, apply to the Collector of the District to re-admit the appeal,

Re-admission of appeal.

and if it be proved to the satisfaction of the Collector of the District that the appellant was prevented by any sufficient cause from appearing when the appeal was called on for hearing, the Collector of the District may re-admit the appeal.

187 After hearing the appeal, the Collector of the District shall give judgment in the manner hereinbefore prescribed for giving judgment in original suits.

Judgment in appeal.

188. In suits in which the judgment of the Collector of the District or Assistant Collector is final, as provided in section 182, he may, upon the application of either party, if preferred within thirty days from the date of the decision, order the rehearing of a suit, upon the ground of the discovery of new evidence or matter material to the issue of the case, which the applicant had no knowledge of, or could not produce, at the time of trial.

Rehearing of suits not open to appeal.

189. Notwithstanding anything contained, in sections 182 and 183 an appeal shall lie to the District Judge from the decision of the Collector of the District or Assistant Collector of the first class, in all suits mentioned in section 93,

Appeal to District Judge.

in which the amount or value of the subject-matter exceeds one hundred rupees, or

in which the proprietary title to land has been determined between parties making conflicting claims thereto:

Provided that, where the amount or value of the subject-matter of the suits exceeds five thousand rupees, the appeal shall lie to the High Court.

Appeal to High Court.

190. The rules for the time being in force in regard to the time within which appeals from the decisions of civil Courts may be received, and to the manner in which such appeals are heard and determined, and to all proceedings which may be had in respect of such appeals, shall be applicable to appeals to the District Judge or High Court under this Act.

Rules as to time of presentation, &c., to apply.

191. The decisions of District Judges passed in regular appeal under this Act shall be open to special appeal to the High Court, in the same manner, and subject to the same rules, as the decisions of District Judges passed in regular appeal are open to special appeal under the Code of Civil Procedure and the Indian Limitation Act, 1877.

Special appeal to High Court from District Judge.

(B).—From Orders on Applications or relating to the Execution of Decrees.

(1) Assistant Collectors of the Second Class.

192. An appeal to the Collector of the District shall lie from all orders passed under this Act by an Assistant Collector of the second class.

Appeal from Assistant Collector of second class.

(2) Assistant Collectors of the First Class.

193. An appeal to the Commissioner of the Division shall lie from all orders passed by an Assistant Collector of the first class,

Appeal from orders of Assistant Collectors of first class on certain applications.

(a) on applications under section 99, where the amount or value of the subject-matter exceeds one hundred rupees,

(b) on applications under section 100.

194. An appeal to the Collector of the District shall lie from all other orders passed under this Act by an Assistant Collector of the first class, except—

Appeal from other orders of Assistant Collector of first class.

(a) orders on applications mentioned in section 98;

(b) orders on applications mentioned in section 99;

(c) orders passed in the course of a suit and relating to the trial thereof.

195. The orders of an Assistant Collector of the first class on the following applications shall be final, subject to revision by the Commissioner of the Division or the Board—

Final orders of Assistant Collector of first class.

(a) applications mentioned in section 98;

(b) applications mentioned in section 99 where the amount or value of the subject-matter does not exceed one hundred rupees.

(3) Collector of the District.

196. An appeal to the Commissioner of the Division shall lie from orders passed by the Collector of the District,

Appeal from certain orders of Collector of District.

(a) under section 99, when the amount or value of the subject-matter exceeds one hundred rupees,

(b) under section 100.

In all other cases orders under this Act passed by the Collector of the District shall be final, subject to revision by the Commissioner of the Division or the Board.

(4) Commissioner of the Division.

197. Save as provided by section 198, the orders of the Commissioner of the Division on appeals shall be final, subject to revision by the Board.

Finality of orders of Commissioner of Division.

198. An appeal from the decisions of the Commissioner of Division on appeals against orders passed by the Collector of the District or Assistant Collector on the applications mentioned in section 100 shall lie to the Board, except where the Commissioner of the Division dismisses the appeal.

Appeal to Board from his decisions on appeals against orders on applications mentioned in section 100.

In such case the provisions of section 199 shall apply.

199. The Board may at any time call for any case (other than a suit mentioned in section 189) which has come before any Commissioner of a Division, or any Court subordinate to him, and pass such orders thereon, consistent with this Act, as the Board thinks fit.

Power of Board to call for cases and pass orders thereon.

200. No appeal shall be brought to the Collector of the District after the expiration of thirty days, or to the Commissioner of the Division after the expiration of sixty days, or to the Board of Revenue after ninety days, from the date of the order complained of.

Time for appealing.

201. Any appeal under this Act may be admitted after the period of limitation prescribed therefor when the appellant satisfies the officer to whom he appeals that he had sufficient cause for not presenting the appeal within such period.

Admission of appeals after prescribed period.

No appeal shall lie against an order under this section admitting an appeal.

(5) Review.

201A. The Board may review and may rescind, alter or confirm any order made by itself, or by a single member, on the application of one of the parties to the case, if preferred within ninety days from the passing of the order.

Power of Board to review its orders.

201B. In the case of any application in which the order of the Commissioner, Collector of the District or Assistant Collector is final, as provided in sections 195, 196 and 197, such Commissioner, Collector or Assistant Collector, as the case may be, may, upon the petition of either party, if presented within thirty days from the date of the decision, review his order upon the ground of the discovery of new evidence or matter material to the issue of the case which the applicant had no knowledge of or could not produce at the time of trial.

Reviewing of applications not open to appeal.

CHAPTER IX.

MISCELLANEOUS.

202. In computing the period of limitation prescribed for any suit under this Act, the day on which the right to sue accrued shall be excluded.

Time to be excluded in computing limitation period.

In computing the period of limitation prescribed for any appeal under this Act, the day on which the judgment or order complained of was pronounced, and the time requisite for obtaining a copy of the decree or order appealed against, shall be excluded.

203. Whenever a Court is closed on the last day of any period provided in this Act for the presentation of any memorandum of appeal, or for the deposit or payment of any money in or into court, the day on which the Court re-opens shall be deemed to be such last day.

Rule as to last day for presentation or deposit, when Court is closed on such day.

204. *(a.)* If in any suit instituted, or on any application made, under this Act, it appears to the presiding officer that any question in issue involving a point of law is more proper for the decision of a civil Court, such officer, if a Collector of a District, or the Collector of the District on the representation of such officer, may cause a case to be stated for the opinion of the District Judge, who shall hear the case in such manner as nearly as may be as is prescribed for the hearing of cases by the High Court by section 619 of the Code of Civil Procedure.

Power to state case involving point of law for opinion of District Judge.

(b.) If the District Judge finds that the case is insufficiently stated, he may return it to the Collector of the District for amendment.

(c.) Subject to any limits of value or time provided by law for cases falling under the Code of Civil Procedure, an appeal shall lie from the judgment of the District Judge to the High Court.

(d.) The District Judge shall return the case with the opinion of the civil Court to the Collector of the District, and the revenue Courts shall decide the suit or application in accordance with such opinion.

(e.) The costs attending such case shall be dealt with as costs in the suit or on the application in the revenue Court.

205. *(a.)* If in any suit instituted, or on any appeal presented, in a civil or revenue Court, the Judge or presiding officer doubts whether he is precluded by this Act from taking cognizance of the suit or appeal, he may refer the matter to the High Court.

Power to refer to High Court questions as to jurisdiction.

(b.) On any such reference being made, the High Court may order the Judge or presiding officer, either to proceed with the case, or to return the plaint or appeal for presentation in such other Court as it may in its order declare to be competent to take cognizance of the suit or appeal.

(c.) The order of the High Court on any such reference shall be final, and shall not be questioned by the same parties in the same suit.

206. In all suits instituted in any civil or revenue Court, in which an appeal lies to the District Judge or High Court, an objection that the suit was instituted in the wrong Court shall not be entertained by the appellate Court, unless such objection was taken in the Court of first instance; but the appellate Court shall dispose of the appeal as if the suit had been instituted in the right Court.

Procedure where objection that suit was instituted in wrong Court was not taken in Court of first instance.

207. If in any such suit such objection was taken in the Court of first instance, but the appellate Court has before it all the materials necessary for the determination of the suit, it shall dispose of the appeal as if the suit had been instituted in the right Court.

Procedure where such objection was taken in, Court of first instance.

208. If in any such suit the appellate Court has not before it the materials necessary for the determination of the suit, it shall proceed under the provisions of the Code of Civil Procedure relating to appeals; but if it remands the suit, or frames and refers issues for trial, or requires additional evidence to be taken by the Court of first instance, it may direct its order either to the Court in which the suit was instituted, or to any other Court competent to entertain the suit,

Procedure where, in such cases, the appellate Court has not materials for determining the suit.

and the objection that the order of a subordinate appellate Court has been directed to a Court which was not competent to entertain the suit shall not be taken on special appeal.

208A. If, in any suit or application pending before a Revenue Court exercising original, appellate or revisional jurisdiction under this Act, it appears to such Court that any question in issue is more proper for decision by a civil Court, such Revenue Court may, by order in writing, require any party to such suit or application to institute, within such time as it may appoint in this behalf, a suit in the civil Court with a view to obtaining a decision on such question; and, if he fails to comply with such requisition, shall decide such question against him.

Power to refer party to civil Court.

If he institutes such suit, the Revenue Court shall dispose of the suit or application pending before it in accordance with the final decision of the civil Court of first instance or appeal (as the case may be) upon such question.

Suits by co-sharer against lambardár for share of profits.

209. In any suit brought by a co-sharer against a lambardár for a share of the profits, the Court may award to the plaintiff not only a share of the profits actually collected, but also a sum equal to the plaintiff's share in the profits which, through gross negligence or misconduct, the lambardár has omitted to collect.

Tenant's power to implead persons claiming through landholder.

210. In any application made by a tenant against a landholder to recover possession of a holding, the plaintiff may join as a defendant any other person in possession of the holding, who may claim title through the landholder.

Landholder's power to implead persons claiming through tenant.

In any suit instituted, or application made, by a landholder to eject a tenant, the plaintiff may join as a defendant any other person in possession of the holding, who may claim title through the tenant.

Power of Local Government to make rules.

211. The Local Government may from time to time make rules consistent with this Act—

(*a*) for the guidance of officers in determining, under sections 13, 14, 15, 17, 18 and 20, the rent payable by tenants,

(*b*) for the guidance of officers assessing rent under section 30,

(*c*) as to the dates on which instalments of rent shall fall due,

(*d*) as to the procedure to be followed on all applications under section 95.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

Power of Board to make rules.

The Board, with the previous sanction of the Local Government, may from time to time make rules, consistent with the provisions herein contained, for the guidance of all persons in matters connected with the enforcement of this Act.

Instalments when to be deemed in arrear.

212. When the Local Government has made a rule fixing the date on which any instalment of rent shall fall due, no such instalment shall, for the purposes of this Act, be deemed to be in arrear unless it remains unpaid after the date fixed by such rule.

THE FIRST SCHEDULE.

FORM A. (*See Section 51.*)

I, *A. B.*, of , solemnly declare that I did personally [*or* by my agent *C. D.*], on the day of , tender payment to *E. F.* of the sum of Rs. as and for the whole amount due from me on account of rent from the month of to the month of both inclusive. I further declare that the said *E. F.* refused to accept the sum so tendered, and to give a receipt in full for the same, and I declare that, to the best of my belief, the sum of rupees so tendered, and which I now desire to pay into Court, is the full amount I owe the said *E. F.*, and I hereby apply for leave to pay the same accordingly.

FORM B. (*See Section 52.*)

Court of the Collector of , dated the day of

To *E. F.* &c.

WITH reference to the written declaration of *A. B.*, you are hereby informed that the sum of rupees therein mentioned is now in deposit in this Court, and that the above sum will be paid to you, or to your duly authorized agent, on application.

[This is to be written on a copy of the declaration in Form A made by the person paying the money into Court.]

FORM C. (*See Section 69.*)

FORM OF NOTICE TO OWNER OF DISTRAINED PROPERTY.

Office of Commissioner for sale of distrained property.

A. B., Distrainer.

[*Name, description and address of the owner of the property.*]

WHEREAS the said *A. B.* has applied to have the distrained property specified below sold for the recovery of alleged to be due to him as arrears of rent, you are hereby required, either to pay the said sum to the said *A. B.*, or to institute a suit before the Collector to contest the demand within fifteen days from the receipt of this notice, failing which the property will be sold.

Dated this day of 188 .

FORM D. (*See Section 114.*)

FORM OF SUMMONS TO DEFENDANT.

No. (*of suit*) dated

In the Court of

A. B., Plaintiff.

[*Name, description and address of plaintiff.*]

C. D., Defendant.

[*Name, description and address of Defendant.*]

WHEREAS the said *A. B.* has brought a claim against you in this Court for , you are hereby required to appear in person in this Court on the day of [*if not specially required to appear in person, state,* "in person, or by an agent who has personal knowledge of the subject or who shall be accompanied by a person who has such knowledge"] to answer the above-named plaintiff; and you will bring with you (or send by your agent) [*here mention any document the production of which may be required by the plaintiff*] which the plaintiff desires to inspect, and all documents on which you may intend to rely in support of your defence. You will also bring with you your witnesses, if they are willing to attend without issue of process.

FORM E. (*See section 119.*)

FORM OF WARRANT OF ARREST.

No. (*of suit*) dated

In the Court of

A. B., Plaintiff.

C. D., Defendant.

To the Názir of the Court of the Collector of

WHEREAS the plaintiff in this suit has obtained an order from the Court for the arrest of the defendant, you are hereby commanded to bring the defendant before the Court on or before the day of to be dealt with according to law.

Dated this day of 188 .

FORM F. (*See section 119.*)

FORM OF NOTICE TO ACCOMPANY SUCH WARRANT.

In the Court of

A. B., Plaintiff.

[*Name, description and address of plaintiff.*]

C. D., Defendant.

[*Name, description and address of defendant.*]

WHEREAS the said *A. B.* has brought a claim against you in this Court for (*here specify particulars of claim as given in the plaint*) and has obtained a warrant for your arrest, you are hereby required, unless you admit the claim, to bring with you to the Court all documents on which you may intend to rely in support of your defence.

FORM G. (*See section 121.*)

FORM OF SECURITY-BOND FOR APPEARANCE OF DEFENDANT.

WHEREAS *A. B.*, plaintiff, has instituted a suit in the Court of the Collector of against *C. D.*, defendant, and the said *C. D.* has been required to give security for his appearance at any time when called on while the suit is pending and until execution of the decree, I, *E. F.*, hereby declare myself surety for the said *C. D.'s* appearance as aforesaid, and in case of his making default in such appearance, I engage to pay any sum for the payment of which the said *C. D.* may be liable under the decree. *If the suit be for the delivery of papers or accounts, specify some sum to be fixed by the Collector.*

FORM H. (*See section 156.*)

WRIT OF EXECUTION AGAINST THE PERSON.

A. B., Plaintiff.

C. D., Defendant.

To the Názir of the Court of the Collector of

WHEREAS the said *C. D.* was directed by a decree of this Court, under date the day of 188 , to pay to *A. B.* the sum of and for costs of suit, amounting to , and whereas the said *C. D.* has omitted to pay the same, you are hereby commanded to apprehend the said *C. D.*, and to bring him with all convenient speed before this Court to be dealt with according to law.

FORM I. (*See section 156.*)

WRIT OF EXECUTION AGAINST THE EFFECTS.

A. B., Plaintiff.

C. D., Defendant.

To the Názir of the Court of the Collector of

WHEREAS *C. D.* was directed by a decree of this Court, under date the day of 188 , to pay to *A. B.* the sum of and for costs of suit, amounting to , and whereas the said *C. D.* has omitted to pay the same, you are hereby commanded to levy the said sum of , and the sum of for costs of executing this process, by seizure and sale of such moveable property of the said *C. D.* as (is described in the list annexed and) [*if no list is furnished, these words to be omitted*] shall be pointed out to you by the judgment-creditor or his agent; and you are hereby ordered to sell such property of the said *C. D.*, on some convenient day, not being less than ten nor more than fifteen days from the day of seizure, unless the amount leviable as aforesaid shall be sooner paid; and you are hereby commanded to certify to me what you shall do by virtue of this warrant.

THE SECOND SCHEDULE.

(*See section 1.*)

TERRITORIES EXEMPTED, IN THE FIRST INSTANCE, FROM THE OPERATION OF THE ACT.

I. The province of Kumaon and Garhwál.

II. The Tarai Parganas, comprising—Bázpúr, Káshípúr, Jaspúr, Rudarpúr, Gadarpúr, Kilpúrí, Nának-Mattha, and Bilheri.

III. The portion of the Mirzápúr District lying to the South of the Kaimor Range.

IV. The Family Domains of the Maháráját of Benares comprising the following parganas :—
Bhadohi and Kera Mangror in the Mirzapur District,
Kaswár Rájá in the Benares District.

V. The tract of country known as Jaunsar Báwar in the Dehra Dún District.

D. FITZPATRICK,
Secretary to the Government of India.

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 11th March, 1881, and is hereby promulgated for general information :—

ACT No. XIII OF 1881.

An Act to provide for the better government of Fort William.

WHEREAS it is expedient to give power to make rules for the better government of Fort William in Bengal and to provide for the establishment of a Court within the said Fort for the trial of persons charged with breaches of such rules; It is hereby enacted as follows :—

Preamble.

Short title.

1. This Act may be called "The Fort William Act, 1881;"

Commencement.

and it shall come into force on the first day of April, 1881.

But nothing herein contained shall be deemed to confer jurisdiction over any persons (other than artificers, labourers, sutlers and followers) to whom the Army Discipline and Regulation Act, 1879, or the Indian Articles of War, 1869, is or are applicable.

"The Fort."

2. The Governor General in Council may, from time to time, by notification in the *Gazette of India*, define, for the purposes of this Act, the limits of Fort William in Bengal; and in this Act the expression "the Fort" means the area so defined.

Commander-in-Chief may make rules.

3. The Commander-in-Chief in India may, from time to time, with the sanction of the Governor General in Council, make rules, to be in force within the Fort, in regard to the matters specified in the schedule hereto annexed, and other matters of a like nature, and may by such rules prescribe, as penalties for the infringement thereof, fine which may extend to fifty rupees, or imprisonment for a term which may extend to four days, or both.

When a sentence of fine is passed under any such rule, the term for which the Court directs the offender to be imprisoned in default of payment of such fine may extend to, and shall not exceed, four days.

When any rule is made under this section, a copy thereof, in English and such other languages as the Governor General in Council may from time to time direct, shall be exhibited in such conspicuous places within the Fort as the officer commanding the Fort may from time to time direct.

Governor General in Council may invest officer with power to try breaches of rules.

4. The Governor General in Council may invest any commissioned officer in Her Majesty's Army with power to try persons charged with any infringement of the rules made under section three.

The officer so invested is hereinafter called the Fort Magistrate.

Procedure to be followed.

5. In all cases under this Act, the Fort Magistrate shall, except as herein otherwise provided, exercise within the Fort the powers, and, as nearly as may be, follow the procedure, conferred on, and prescribed for, a Presidency Magistrate by the Presidency Magistrates Act, 1877; and, subject to the power conferred by the High Courts Criminal Procedure Act, 1875, section 147, every finding, sentence or order of such Magistrate under this Act shall be final.

Power to arrest without warrant.

6. Any Police-officer, or any other person empowered in this behalf by the Governor General in Council, by name or as a member of a specified class, may arrest without warrant any person who in his sight commits an offence punishable under this Act.

Power to Police-officer to release on bail.

Every person so arrested shall be taken to the police-station within the Fort, and shall be detained there until he gives to the Police-officer in charge of such station a bond, with or without sureties, as such officer may require, for a sum not exceeding one hundred rupees, to appear before the Fort Magistrate at a time to be specified in such bond, or until he can be brought before such Magistrate.

Jurisdiction of Presidency Magistrates and prosecutions under other laws saved.

7. Nothing in this Act or in any rule made hereunder shall affect the jurisdiction of the Magistrates appointed under the Presidency Magistrates Act, 1877, or shall prevent any person from being prosecuted under any other law for any offence punishable under this Act, or from being liable to any other punishment than is provided for such offence by this Act: Provided that no person shall be punished twice for the same offence.

Limitation of time for prosecutions under Act.

8. No prosecution for any offence under this Act shall be commenced after the expiration of three months next after such offence has been committed.

Validation of penalties heretofore imposed by Garrison Quarter Master.

9. All penalties heretofore imposed by the Garrison Quarter Master of the Fort for offences against garrison rules and regulations shall be deemed to have been imposed in accordance with law.

THE SCHEDULE.

(*See section 3.*)

(1). Throwing dirt or rubbish of any description into the drains or roads or anywhere but in the appointed places.

(2). Removing night-soil without a covering or at unauthorized hours.

(3). Camp-followers, servants and others not keeping the godowns they live in clean.

(4). Performing offices of nature in other than the appointed places.

(5). Bathing, or washing clothes or animals, in the *cunette* or other unauthorized places.

(6). Selling unwholesome articles of food, grain or drinks.

(7). Adulterating food or drinks.

(8). Making evacuations in unauthorized places.

(9). Rash or negligent driving.

(10). Picketting, training or breaking in animals.

(11). Causing obstruction by vehicles on the road.

(12). Exposing or hawking articles for sale about the roads and barracks, or within the Fort, without a Fort pass.

(13). Beating drums or tom-toms.

(14). Damaging lamps, posts, masonry or other Government-property in any part of the Fort.

(15). Disorderly behaviour in the public thoroughfares.

(16). Gambling.

(17). Spitting pán on any of the public staircases, gateways, walls and verandahs, or defacing in any way the walls of barracks, buildings or gateways.

(18). Throwing slops into the drains.

(19). Washing cooking-pots at the water-taps and wasting water.

(20). Cooking in unauthorized places.

(21). Hanging clothes to dry on the guns or masonry-work.

(22). Laying out clothes, accoutrements or stable-bedding after the authorized hours.

(23). Destroying the trees, bushes or plants, or climbing trees.

(24). Servants smoking hookahs in their masters' quarters or cook-houses, or keeping such quarters or cook-houses in an insanitary state.

(25). Trespassing on parade-grounds, or making footpaths across the grass-plots.

(26). Being drunk and incapable.

(27). Fighting, quarrelling and creating a disturbance, or making unnecessary noise of any kind.

(28). Affixing bills and papers on any walls in the Fort.

(29). Cutting grass or interfering with the grass-contractor.

(30). Declining to show a tin pass when called upon to do so.

(31). Being found in the garrison without a tin pass, or being in possession of a ticket belonging to another.

(32). Driving vehicles without lights or with insufficiently greased wheels.

(33). Swinging or sitting on the chain-fences.

(34). Interfering in any way with the guns, carriages or piles of shot and shell on the works, or with the packed ordnance.

(35). Mounting the ramparts or parapets or entering the embrasures without authority.

(36). Smuggling liquor into the Fort.

(37). Burning stable-litter or lighting fires except in authorized places and at authorized hours.

(38). Carrying lights except in closed lanterns, or letting off fireworks.

(39). Removing property of any kind or description from the Fort without written authority.

(40). Allowing animals of any sort to stray into the Fort, or to graze within the same.

(41). Slaughtering animals or exposing carcasses or offal within the Fort.

(42). Keeping dogs or poultry in unauthorized places.

(43). Buying, selling or receiving any portion of a soldier's kit.

(44). Disobedience of lawful authority in failing to attend to authorized instructions of the police or of the several sentries posted throughout the Fort.

(45). Occupying buildings of any kind without proper allotment.

D. FITZPATRICK,
Secretary to the Government of India.

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 11th March, 1881, and is hereby promulgated for general information:—

ACT No. XIV OF 1881.

An Act to amend Bengal Regulation VII of 1828.

Preamble.

WHEREAS it is expedient to amend Bengal Regulation VII of 1828 (*for amending the Provisions of Regulation XV of 1795, and for defining the Authority of the Rajah of Benares in the Mahâls therein referred to*) in manner hereinafter appearing; It is hereby enacted as follows:—

Short title. Commencement of Act.

1. This Act may be called "The Benares Family Domains Act, 1881": And it shall come into force on such day as the Lieutenant-Governor of the North-Western Provinces may, by notification in the official Gazette, appoint in this behalf.

Repeal of certain portions of Bengal Regulation VII of 1828.

2. The following portions of Bengal Regulation VII of 1828 shall be repealed, namely:—

(*a*) in section 5, the words and figures "under the rules contained in Regulation XLI, 1795";

(*b*) in section 14, the words "under the Regulations," in both places in which they occur;

(*c*) in section 19, the words "before the Court of circuit";

(*d*) in section 20, the proviso.

New section substituted for section 3 of same Regulation.

3. In the same Regulation, for section 3, the following shall be substituted, namely:—

Superintendence of mahâls vested in Commissioner.

"**3.** The superintendence of the said mahâls shall be vested in the Commissioner of the Benares Division, hereinafter called 'the Superintendent.'

"The Lieutenant-Governor of the North-Western Provinces may, from time to time, appoint a Deputy Superintendent of the said mahâls, and confer upon him all or any of the powers of the Superintendent, to be exercised by him subject to the general control of the Superintendent."

Amendment of same Regulation, section 7.

4. In the same Regulation, section 7, for the last twenty-two words, the following shall be substituted, namely:—

"The orders thus passed by the Superintendent shall be subject to appeal to, and revision by, the Board of Revenue, whose order thereon shall be final, unless altered or set aside by the said Lieutenant-Governor."

Amendment of same Regulation, section 9.

5. In the same Regulation, section 9, for the words "the Regulations at present in force within the Province of Benares" the words "the enactments for the time being in force in the North-Western Provinces" shall be substituted, and after the word "applicable" the words "and the Local Government with the concurrence of the Mahárájá may direct" shall be inserted.

Clause added to section 10 of same Regulation.

6. To section 10 of the same Regulation the following clause shall be added, namely:—

"The Mahárájá may delegate to one or more of his officers the exercise of all or any of the powers vested in him under this section in the whole or any part of the said mahâls."

Amendment of same Regulation, section 11.

7. In the same Regulation, section 11, for the words and figures "Regulation XI, 1822," the words "the enactments for the time being in force in the North-Western Provinces" shall be substituted.

Amendment of same Regulation, section 12.

8. In the same Regulation, section 12, for the words "Boards of Revenue" the words "Commissioners of Divisions and the Board of Revenue" shall be substituted;

and, for the words "towards the Board" the words "towards the Commissioner" shall be substituted.

Amendment of same Regulation, section 13.

9. In the same Regulation, section 13, for the words "Governor General in Council" the words "Board of Revenue" shall be substituted.

Amendment of, and addition to, same Regulation, section 16.

10. In the same Regulation, section 16, for the words "a Native Commissioner shall be maintained by the Rajah in each of the pergunnahs referred to in Regulation XV, 1795," the following shall be substituted, namely:—"A Native Commissioner, or two or three Native Commissioners, as the said Lieutenant-Governor may, from time to time, direct, shall be maintained by the Mahárájá."

And to the same section the following shall be added, namely :—

"The local limits of the jurisdiction of the Native Commissioners shall be determined by the Mahárájá, and may be altered by him from time to time."

11. In the same Regulation, section 21, for the words and figures "contained in Regulation XXIII of 1814" to the end of the section, the following shall be substituted, namely :—"prescribed by the said Lieutenant-Governor under section 22 of this Regulation."

Amendment of same Regulation, section 21.

12. For sections 22 to 26, both inclusive, of the same Regulation, the following sections shall be substituted, that is to say :—

Sections substituted for sections 22 to 26 of same Regulation.

"22. The said Lieutenant-Governor may, from time to time, make rules consistent with this Regulation—

Power to make rules.

"(*a*) to regulate the procedure and powers of the Native Commissioners, and to determine the cases in which, the mode in which, and the authority to or by which, the orders and decisions of such Commissioners shall be subject to appeal or revision, and

"(*b*) to regulate, in matters not hereinbefore provided for, the administration of the Family Domains in so far as it is entrusted to the Mahárájá;

"such rules shall, when published in the local Gazette, have the force of law:

"Provided that no such rule shall be so published until the opinion of the Mahárájá thereon has been taken and considered by the Lieutenant-Governor.

"In matters not otherwise provided for by the rules made under clause (*a*), the Code of Civil Procedure shall apply.

"23. If, in any suit instituted or appeal presented under this Regulation in any Court, the Judge or presiding officer doubts whether he has jurisdiction, he may refer the matter to the Board of Revenue; and, on any such reference being made, the said Board may order the Judge or presiding officer either to proceed with the case, or to return the plaint or appeal for presentation in such other Court as it may in its order declare to be competent to take cognizance of the suit or appeal.

Procedure in case of doubt as to Judge's jurisdiction.

"The order of the said Board on any such reference shall be final.

"24. Except as provided by or under this Regulation, or any other enactment for the time being in force,

Operation of general Acts.

"(*a*) the administration of the Family Domains, in so far as it is entrusted to the Mahárájá, shall be regulated by the principles and spirit of the enactments for the time being in force in the North-Western Provinces, and

"(*b*) the administration of the said Domains, in so far as it has not been so entrusted, shall be regulated by those enactments.

"25. In this Regulation, unless there is something repugnant in the subject or context,—

Interpretation-clause.

"'Board of Revenue' means the Board of Revenue of the North-Western Provinces, or such officer or officers as may hereafter be lawfully appointed to exercise, within the Province of Benares, the powers of such Board.

'Board of Revenue:'

"'Regulations' includes Acts for the time being in force in the North-Western Provinces."

'Regulations.'

13. All orders heretofore passed by the Governor General in Council, or the Lieutenant-Governor of the North-Western Provinces, or any other authority, regarding revisions of settlement or other matters connected with the revenue-administration of the tracts of territory mentioned in the preamble to Bengal Regulation VII of 1828, shall be deemed to have been passed in accordance with law; and no order or decision purporting to have been passed by any civil or revenue authority under the provisions of that Regulation shall be called in question in any Court.

Validation of past orders, &c.

14. In the Scheduled Districts Act, 1874, first schedule, Part IV, and in the Laws Local Extent Act, 1874, sixth schedule, Part IV, the following shall be repealed, that is to say :—

Parts of Acts XIV and XV of 1874 repealed.

"V. The Family Domains of the Mahárájá of Benares comprising the following parganas :—

"Bhadohi and Kheyra Mángror in the Mirzapur District.

"Kaswá Rájá in the Benares District."

15. In the Laws Local Extent Act, 1874, section 8, after clause (*j*), the following shall be inserted, namely :—

Clause added to Act XV of 1874, s. 8.

"(*jj*) extend to Pargana Bhadohi or Pargana Kera Mangror in the Mirzapur District, or to Pargana Kaswár Rájá in the Benares District, any law not now in force therein."

D. FITZPATRICK,
Secretary to the Government of India.

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 15th March, 1881, and is hereby promulgated for general information :—

ACT No. XV OF 1881.

THE FACTORIES ACT, 1881.

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An Act to regulate labour in Factories.

WHEREAS it is expedient to regulate labour in factories; It is hereby enacted as follows :—

Preamble.

Preliminary.

1. This Act may be called "The Indian Factories Act, 1881."

Short title.

It applies to the whole of British India, and shall come into force on the first day of July, 1881.

Local extent. Commencement.

2. In this Act, unless there is something repugnant in the subject or context,—

Interpretation-clause.

"factory" means any premises (other than indigo-factories or premises situated on, and used solely for the purposes of, a tea or coffee plantation) wherein is carried on, for not less than four months in the whole in any one year, any process for, or incidental to, making, altering, repairing, ornamenting, finishing or otherwise adapting for use, transport or sale, any article or part of an article; and

"factory:"

(*a*) wherein steam, water or other mechanical power is used in aid of any such process; and

(*b*) wherein not less than one hundred persons are on any day simultaneously employed in any manual labour in, or incidental to, any such process; and

every part of a factory shall be deemed to be a factory, except any part used exclusively as a dwelling :

"child" means a person under the age of twelve years :

"child."

"mill-gearing" includes every shaft, whether upright, oblique or horizontal, and every wheel, drum, pulley, rope, driving strap or band, by which the motion of the first moving power is communicated to any machine :

"mill-gearing:"

a child who works in a factory, whether for wages or not, either in a manufacturing process or handicraft, or in cleaning any part of the factory used for any manufacturing process or handicraft, or in cleaning or oiling any part of the machinery, or in any other kind of work whatsoever incidental to, or connected with, the manufacturing process or handicraft, or connected with the article made or otherwise the subject of the manufacturing process or handicraft therein, shall be deemed to be employed therein within the meaning of this Act.

"employed."

Inspectors and certifying Surgeons.

3. The Local Government may in its discretion, by notification in the official Gazette, appoint such persons as it thinks fit to be Inspectors of factories within such local limits as it may assign to such Inspectors, and may suspend or dismiss any person so appointed.

Inspectors.

In default of such appointment, the Magistrate of the district shall, in virtue of his office, be Inspector of all factories (if any) in the District.

Such Inspectors shall be deemed public servants within the meaning of the Indian Penal Code; and shall be officially subordinate to such authority as the Local Government may, from time to time, indicate in this behalf.

4. An Inspector of factories may, within the local limits for which he is appointed,

Powers of Inspector.

(*a*) enter, with such assistants (if any) as he thinks fit, any factory whenever he has reason to believe that any person is employed therein;

(*b*) make such examination of the premises and machinery, and of the registers hereinafter prescribed, and take on the spot or otherwise such evidence of any person as such Inspector may deem necessary for carrying out the provisions of this Act;

(*c*) order that any person shall not be employed in a factory when he has reason to believe that such employment would be in contravention of this Act—

until the age of such person has been certified, in the manner hereinafter provided, to be above seven years; or,

for more than the time allowed by this Act for the employment of children, until his age has been so certified to be above twelve years.

5. The Civil Surgeon or such other person practising medicine or surgery as the Local Government may, from time to time, appoint in this behalf for any local area (hereinafter called the certifying surgeon) shall, at the request of any person employed or desirous of being employed in a factory situate in such local area, or of the parent or guardian of such person, examine such person and grant him a certificate, stating whether his age, as nearly as it can be ascertained from such examination, is above or below seven years, or twelve years, as the case may be.

Certifying surgeons.

Children.

6. No child shall be employed in any factory, if he is under the age of seven years.

Age of employment.

7. No child shall be actually employed in any factory more than nine hours in any one day.

Hours of employment for children.

And no child shall be employed in any factory on any day without an interval, or intervals, amounting in the whole to at least an hour, being allowed to him for food and rest.

The times at which such intervals shall be allowed, and the length of each interval, shall be fixed by the Local Government for each factory, after ascertaining, as far as possible, the existing practice in such factory and the wishes of the occupier thereof.

The occupier shall set up and maintain, in some conspicuous place in the factory, a printed or written notice, in English and the languages of the District in which the factory is situate, showing the times at which such intervals shall be allowed and the length of each interval.

A child shall not be deemed to be employed within the meaning of the first clause of this section during any interval allowed for food or rest.

8. Every occupier of a factory in which children are employed shall, before the beginning of each month, fix not less than four days in such month on which no child shall be employed in such factory, and shall forthwith give notice of the days so fixed to such officer as the Local Government may, from time to time, appoint in this behalf.

Child to be allowed holidays.

An occupier of a factory may, with the previous sanction of the Inspector, substitute, for any day fixed under this section, another day in the same month.

No child shall be employed in such factory on a day fixed under this section, unless when another day has been substituted for such day as hereinbefore provided, in which event no child shall be employed in such factory on the day so substituted.

9. No occupier of a factory shall employ therein on any day any child who has to his knowledge already been employed on the same day in any other factory.

Not to be employed in two factories on same day.

10. No occupier of a factory shall allow any child to clean any part of the mill-gearing or machinery of such factory while the same is in motion, or to work between the fixed and traversing parts of any self-acting machine while such machine is in motion by the action of the steam-engine, water-wheel or other mechanical power, as the case may be.

Not to be engaged in certain dangerous work.

11. The Local Government may direct any occupier of a factory to keep, in such form and with such particulars as such Government may, from time to time, prescribe, registers of the children (if any) employed in such factory, and of their respective employments.

Register of children in a factory.

Fencing.

12 (*a*). Every fly-wheel directly connected with a steam-engine, or water-wheel or other mechanical power in any part of a factory, and every part of a steam-engine or water-wheel,

Fencing.

(*b*) every hoist or teagle near which any person is liable to pass or be employed, and

(*c*) every other part of the machinery or mill-gearing of a factory which may, in the opinion of the local Inspector, be dangerous if left unfenced, and which he may have ordered to be fenced,

shall, while the same is in motion, be kept by the occupier of such factory securely fenced.

Any order under clause (*c*) may be set aside, on appeal or otherwise, by the Local Government or such authority as it may appoint in this behalf.

Notices.

13. When any accident occurs in a factory causing death or bodily injury whereby the person injured is prevented from returning to his work in the factory during forty-eight hours after the occurrence of the accident, the occupier of such factory, or, in his absence, his principal agent in the management of such factory, shall send such notice of such accident to such authorities in such form and within such time as the Local Government may, from time to time, by rule, direct.

Notice to be given of accidents.

14. Every person shall, within one month after he begins to occupy a factory, send to the local Inspector a written notice containing the name of the factory, the place where it is situate, the address to which he desires his letters to be addressed, the nature of the work performed in such factory, the nature and amount of the moving power therein, and the name of the person (if any) under whom the business of the factory is to be carried on.

Person beginning to occupy factory to give notice.

Penalties.

15. Any person who, in breach of this Act, or of any order or rule made hereunder—

Penalties.

(*a*) employs any child in any factory;

(*b*) neglects to set up or maintain the notice required by section seven or to fix the days referred to in section eight;

(*c*) allows any child to perform the work forbidden by, or to work in contravention of, section ten;

(*d*) neglects to keep a register in manner prescribed under section eleven;

(*e*) neglects to fence any machinery or mill-gearing in any factory; or

(*f*) neglects to give any notice,

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

Provided that—

1st, no prosecution under this section shall be instituted except by, or with the previous sanction of, the local Inspector; and

2nd, no person shall be liable under this section to more than one penalty for any one description of offence committed on the same day, except where two or more children are employed contrary to the provisions of this Act, in which case one penalty may be imposed in respect of each child so employed.

Only one penalty for same kind of offence on one day.

16. Where an act or omission would, if a person were under seven or twelve years of age, be an offence punishable under this Act, and such person is, in the opinion of the Court, apparently under such age, it shall lie on the accused to prove that such person is not under such age.

Burden of proof as to age.

A declaration in writing by a certifying Surgeon that he has personally examined a person employed in a factory, and believes him to be under or over the age set forth in such declaration, shall, for the purposes of this Act, be admissible as evidence of the age of that person.

Certifying Surgeon's declaration in writing.

17. Every occupier of a factory shall be deemed primarily liable for any breach therein of the provisions of this Act; but he may discharge himself from such liability by proof to the satisfaction of the local Inspector, before prosecution therefor, that such breach was committed by some other person without his knowledge or consent; and the person committing such breach shall be liable therefor.

Occupier primarily liable for breaches of Act.

Miscellaneous.

18. The Local Government may, from time to time, make rules consistent with this Act to provide for—

Power to make rules.

(*a*) the fencing of machinery and mill-gearing in factories;

(*b*) the inspection of factories;

(*c*) the manner in which appeals under this Act shall be presented and heard; and

(*d*) otherwise carrying out the provisions of this Act.

Such rules shall be published in the official Gazette, and shall thereupon have the force of law.

19. This Act shall apply to factories belonging to the Crown; provided that, in case of any public emergency, the Governor General in Council or the Local Government may, by an order in writing, exempt any such factory from this Act to such extent and during such period as the Governor General in Council or the Local Government, as the case may be, thinks fit.

Crown factories.

D. FITZPATRICK,
Secretary to the Government of India.

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 15th March, 1881, and is hereby promulgated for general information:—

ACT No. XVI OF 1881.

An Act to empower the Government to remove or destroy obstructions in fairways, and to prevent the creation of such obstructions.

WHEREAS it is expedient to empower the Government to remove or destroy obstructions to navigation in fairways leading to ports in British India, and to prevent the creation of such obstructions; It is hereby enacted as follows:— Preamble.

1. This Act may be called "The Obstructions in Fairways Act, 1881;" and it shall come into force at once. Short title. Commencement.

But nothing herein contained shall apply to vessels belonging to Her Majesty or hired by Her Majesty or by the Secretary of State for India in Council.

2. Whenever, in any fairway leading to any port in British India, any vessel is sunk, stranded or abandoned, or any fishing-stake, timber or other thing is placed or left, the Local Government of the part of British India in which such port is situate may, if in its opinion such thing is, or is likely to become, an obstruction or danger to navigation, Local Government empowered to remove or destroy obstruction in fairway.

(*a*) cause such thing or any part thereof to be removed; or,

(*b*) if such thing is of such a description or so situate that, in the opinion of the Local Government, it is not worth removing, cause the same or any part thereof to be destroyed.

3. Whenever anything is removed under section two, the Government shall be entitled to receive a reasonable sum, having regard to all the circumstances of the case, for the expenses incurred in respect of such removal. Government entitled to expenses incurred in removing obstruction.

Any dispute arising concerning the amount due under this section, in respect of anything so removed, shall be decided by the Magistrate of the District or Presidency Magistrate having jurisdiction at the place where such thing is, upon application to him for that purpose by either of the disputing parties; and such decision shall be final. Dispute concerning such expenses.

4. The Local Government shall, whenever anything is removed under section two, publish in the local official Gazette a notification containing a description of such thing, and the time at which and the place from which the same was so removed. Notice of removal to be given by Local Government.

5. If after publishing such notification, such thing is unclaimed, or Things removed may, in certain cases, be sold.

if the person claiming the same fails to pay the amount due for the said expenses and any customs duties or other charges properly incurred by the Local Government in respect thereof,

the Local Government may sell such thing by public auction, if it is of a perishable nature, forthwith, and if it is not of a perishable nature, at any time not less than six months after publishing such notification as aforesaid.

6. On realizing the proceeds of such sale, the amount due for expenses and charges as aforesaid, together with the expenses of the sale, shall be deducted therefrom, and the surplus (if any) shall be paid to the owner of the thing sold, or, if no such person appear and claim such surplus, shall be held in deposit for payment, without interest, to any person thereafter establishing his right to the same: Proceeds how applied.

Provided that he makes the claim within one year from the date of the sale.

7. For the purposes of this Act, the term "vessel" shall be deemed to include also every article or thing or collection of things being or forming part of the tackle, equipment, cargo, stores or ballast of a vessel, and any proceeds arising from the sale of a vessel, and of the cargo thereof, or of any other property recovered therefrom, shall be regarded as a common fund. "Vessel" to include tackle, cargo, &c.

8. The Governor General in Council may from time to time, by notification in the *Gazette of India*, make rules to regulate or prohibit in any fairway leading to a port in British India, the placing of fishing-stakes, the casting or Power to make rules to regulate and prohibit the placing of obstructions in fairways.

throwing of ballast, rubbish, or any other thing likely to give rise to a bank or shoal, or the doing of any other act which will, in his opinion, cause, or be likely to cause, obstruction or danger to navigation.

Penalty for breach of such rules.

9. Whoever is guilty of any act or omission in contravention of the rules made under section eight, may be tried for such offence in any district or Presidency-town in which he is found, and 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.

Compensation payable in certain cases for damage caused under this Act.

10. Whenever the maintenance or creation of an obstruction in any fairway has become lawful by long usage or otherwise, and such obstruction is removed or destroyed under section two, or its creation is regulated or prohibited under section eight, any person having a right to maintain or create such obstruction shall be entitled to receive from the Secretary of State for India in Council reasonable compensation for any damage caused to him by such removal, destruction, regulation or prohibition.

Every dispute arising concerning the right to such compensation, or the amount thereof, shall be determined according to the law for the time being in force relating to like disputes in the case of land needed for public purposes and not otherwise; and for the purposes of such law the fairway from or in which such obstruction was removed or destroyed, or in which its creation was regulated or prohibited, shall be deemed to be a part of the Presidency-town or district in which the port to which such fairway leads is situate.

Certain action of the Government previous to passing of this Act to be deemed to have been taken hereunder.

11. Whenever any obstruction in a fairway leading to a port in British India has been removed or destroyed, or whenever the creation of any such obstruction has been regulated or prohibited, by an order of the Governor General in Council or a Local Government, previous to the passing of this Act, such removal, destruction, regulation or prohibition shall be deemed to have been effected under this Act.

Saving of other powers possessed by Government.

12. Nothing herein contained shall be deemed to prevent the exercise by the Government of any other powers possessed by it in this behalf.

D. FITZPATRICK,
Secretary to the Government of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, APRIL 2, 1881.

☞ 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 15th March, 1881, and is hereby promulgated for general information :—

ACT No. XV OF 1881.

THE FACTORIES ACT, 1881.

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19. Crown factories.

An Act to regulate labour in Factories.

WHEREAS it is expedient to regulate labour in factories; It is hereby enacted as follows :—

Preamble.

Preliminary.

Short title. 1. This Act may be called "The Indian Factories Act, 1881."

Local extent. Commencement. It applies to the whole of British India, and shall come into force on the first day of July, 1881.

Interpretation-clause. 2. In this Act, unless there is something repugnant in the subject or context,—

"factory :" "factory" means any premises (other than indigo-factories or premises situated on, and used solely for the purposes of, a tea or coffee plantation) wherein is carried on, for not less than four months in the whole in any one year, any process for, or incidental to, making, altering, repairing, ornamenting, finishing or otherwise adapting for use, transport or sale, any article or part of an article; and

(*a*) wherein steam, water or other mechanical power is used in aid of any such process; and

(*b*) wherein not less than one hundred persons are on any day simultaneously employed in any manual labour in, or incidental to, any such process; and

every part of a factory shall be deemed to be a factory, except any part used exclusively as a dwelling :

"child." "child" means a person under the age of twelve years :

"mill-gearing :" "mill-gearing" includes every shaft, whether upright, oblique or horizontal, and every wheel, drum, pulley, rope, driving strap or band, by which the motion of the first moving power is communicated to any machine :

"employed." a child who works in a factory, whether for wages or not, either in a manufacturing process or handicraft, or in cleaning any part of the factory used for any manufacturing process or handicraft, or in cleaning or oiling any part of the machinery, or in any other kind of work whatsoever incidental to, or connected with, the manufacturing process or handicraft, or connected with the article made or otherwise the subject of the manufacturing process or handicraft therein, shall be deemed to be employed therein within the meaning of this Act.

Inspectors and certifying Surgeons.

3. The Local Government may in its discretion, by notification in the official Gazette, appoint such persons as it thinks fit to be Inspectors of factories within such local limits as it may assign to such Inspectors, and may suspend or dismiss any person so appointed.

Inspectors.

In default of such appointment, the Magistrate of the district shall, in virtue of his office, be Inspector of all factories (if any) in the District.

Such Inspectors shall be deemed public servants within the meaning of the Indian Penal Code; and shall be officially subordinate to such authority as the Local Government may, from time to time, indicate in this behalf.

4. An Inspector of factories may, within the local limits for which he is appointed,

Powers of Inspector.

(*a*) enter, with such assistants (if any) as he thinks fit, any factory whenever he has reason to believe that any person is employed therein;

(*b*) make such examination of the premises and machinery, and of the registers hereinafter prescribed, and take on the spot or otherwise such evidence of any person as such Inspector may deem necessary for carrying out the provisions of this Act;

(*c*) order that any person shall not be employed in a factory when he has reason to believe that such employment would be in contravention of this Act—

until the age of such person has been certified, in the manner hereinafter provided, to be above seven years; or,

for more than the time allowed by this Act for the employment of children, until his age has been so certified to be above twelve years.

5. The Civil Surgeon or such other person practising medicine or surgery as the Local Government may, from time to time, appoint in this behalf for any local area (hereinafter called the certifying surgeon) shall, at the request of any person employed or desirous of being employed in a factory situate in such local area, or of the parent or guardian of such person, examine such person and grant him a certificate, stating whether his age, as nearly as it can be ascertained from such examination, is above or below seven years, or twelve years, as the case may be.

Certifying surgeons.

Children.

6. No child shall be employed in any factory, if he is under the age of seven years.

Age of employment.

7. No child shall be actually employed in any factory more than nine hours in any one day.

Hours of employment for children.

And no child shall be employed in any factory on any day without an interval, or intervals, amounting in the whole to at least an hour, being allowed to him for food and rest.

The times at which such intervals shall be allowed, and the length of each interval, shall be fixed by the Local Government for each factory after ascertaining, as far as possible, the existing practice in such factory and the wishes of the occupier thereof.

The occupier shall set up and maintain, in some conspicuous place in the factory, a printed or written notice, in English and the languages of the District in which the factory is situate, showing the times at which such intervals shall be allowed and the length of each interval.

A child shall not be deemed to be employed within the meaning of the first clause of this section during any interval allowed for food or rest.

8. Every occupier of a factory in which children are employed shall, before the beginning of each month, fix not less than four days in such month on which no child shall be employed in such factory, and shall forthwith give notice of the days so fixed to such officer as the Local Government may, from time to time, appoint in this behalf.

Child to be allowed holidays.

An occupier of a factory may, with the previous sanction of the Inspector, substitute, for any day fixed under this section, another day in the same month.

No child shall be employed in such factory on a day fixed under this section, unless when another day has been substituted for such day as hereinbefore provided, in which event no child shall be employed in such factory on the day so substituted.

9. No occupier of a factory shall employ therein on any day any child who has to his knowledge already been employed on the same day in any other factory.

Not to be employed in two factories on same day.

10. No occupier of a factory shall allow any child to clean any part of the mill-gearing or machinery of such factory while the same is in motion, or to work between the fixed and traversing parts of any self-acting machine while such machine is in motion by the action of the steam-engine, water-wheel or other mechanical power, as the case may be.

Not to be engaged in certain dangerous work.

11. The Local Government may direct any occupier of a factory to keep, in such form and with such particulars as such Government may, from time to time, prescribe, registers of the children (if any) employed in such factory, and of their respective employments.

Register of children in a factory.

Fencing.

12 (*a*). Every fly-wheel directly connected with a steam-engine, or water-wheel or other mechanical power in any part of a factory, and every part of a steam-engine or water-wheel,

Fencing.

(*b*) every hoist or teagle near which any person is liable to pass or be employed, and

(*c*) every other part of the machinery or mill-gearing of a factory which may, in the opinion of the local Inspector, be dangerous if left unfenced, and which he may have ordered to be fenced,

shall, while the same is in motion, be kept by the occupier of such factory securely fenced.

Any order under clause (*c*) may be set aside, on appeal or otherwise, by the Local Government or such authority as it may appoint in this behalf.

Notices.

13. When any accident occurs in a factory causing death or bodily injury whereby the person injured is prevented from returning to his work in the factory during forty-eight hours after the occurrence of the accident, the occupier of such factory, or, in his absence, his principal agent in the management of such factory, shall send such notice of such accident to such authorities in such form and within such time as the Local Government may, from time to time, by rule, direct.

Notice to be given of accidents.

14. Every person shall, within one month after he begins to occupy a factory, send to the local Inspector a written notice containing the name of the factory, the place where it is situate, the address to which he desires his letters to be addressed, the nature of the work performed in such factory, the nature and amount of the moving power therein, and the name of the person (if any) under whom the business of the factory is to be carried on.

Person beginning to occupy factory to give notice.

Penalties.

15. Any person who, in breach of this Act, or of any order or rule made hereunder—

Penalties.

(*a*) employs any child in any factory;

(*b*) neglects to set up or maintain the notice required by section seven or to fix the days referred to in section eight;

(*c*) allows any child to perform the work forbidden by, or to work in contravention of, section ten;

(*d*) neglects to keep a register in manner prescribed under section eleven;

(*e*) neglects to fence any machinery or mill-gearing in any factory; or

(*f*) neglects to give any notice,

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

Provided that—

1st, no prosecution under this section shall be instituted except by, or with the previous sanction of, the local Inspector; and

2nd, no person shall be liable under this section to more than one penalty for any one description of offence committed on the same day, except where two or more children are employed contrary to the provisions of this Act, in which case one penalty may be imposed in respect of each child so employed.

Only one penalty for same kind of offence on one day.

16. Where an act or omission would, if a person were under seven or twelve years of age, be an offence punishable under this Act, and such person is, in the opinion of the Court, apparently under such age, it shall lie on the accused to prove that such person is not under such age.

Burden of proof as to age.

A declaration in writing by a certifying Surgeon that he has personally examined a person employed in a factory, and believes him to be under or over the age set forth in such declaration, shall, for the purposes of this Act, be admissible as evidence of the age of that person.

Certifying Surgeon's declaration in writing.

17. Every occupier of a factory shall be deemed primarily liable for any breach therein of the provisions of this Act; but he may discharge himself from such liability by proof to the satisfaction of the local Inspector, before prosecution therefor, that such breach was committed by some other person without his knowledge or consent; and the person committing such breach shall be liable therefor.

Occupier primarily liable for breaches of Act.

Miscellaneous.

18. The Local Government may, from time to time, make rules consistent with this Act to provide for—

Power to make rules.

(*a*) the fencing of machinery and mill-gearing in factories;

(*b*) the inspection of factories;

(*c*) the manner in which appeals under this Act shall be presented and heard; and

(*d*) otherwise carrying out the provisions of this Act.

Such rules shall be published in the official Gazette, and shall thereupon have the force of law.

19. This Act shall apply to factories belonging to the Crown; provided that, in case of any public emergency, the Governor General in Council or the Local Government may, by an order in writing, exempt any such factory from this Act to such extent and during such period as the Governor General in Council or the Local Government, as the case may be, thinks fit.

Crown factories.

D. FITZPATRICK,
Secretary to the Government of India.

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 15th March, 1881, and is hereby promulgated for general information:—

ACT No. XVI OF 1881.

An Act to empower the Government to remove or destroy obstructions in fairways, and to prevent the creation of such obstructions.

WHEREAS it is expedient to empower the Government to remove or destroy obstructions to navigation in fairways leading to ports in British India, and to prevent the creation of such obstructions; **It is hereby enacted as follows:—**

Preamble.

1. This Act may be called "The Obstructions in Fairways Act, 1881;" and it shall come into force at once.

Short title.

Commencement.

But nothing herein contained shall apply to vessels belonging to Her Majesty or hired by Her Majesty or by the Secretary of State for India in Council.

2. Whenever, in any fairway leading to any port in British India, any vessel is sunk, stranded or abandoned or any fishing-stake, timber or other thing is placed or left, the Local Government of the part of British India in which such port is situate may, if in its opinion such thing is, or is likely to become, an obstruction or danger to navigation,

Local Government empowered to remove or destroy obstruction in fairway.

(*a*) cause such thing or any part thereof to be removed; or,

(*b*) if such thing is of such a description or so situate that, in the opinion of the Local Government, it is not worth removing, cause the same or any part thereof to be destroyed.

3. Whenever anything is removed under section two, the Government shall be entitled to receive a reasonable sum, having regard to all the circumstances of the case, for the expenses incurred in respect of such removal.

Government entitled to expenses incurred in removing obstruction.

Any dispute arising concerning the amount due under this section, in respect of anything so removed, shall be decided by the Magistrate of the District or Presidency Magistrate having jurisdiction at the place where such thing is, upon application to him for that purpose by either of the disputing parties; and such decision shall be final.

Dispute concerning such expenses.

4. The Local Government shall, whenever anything is removed under section two, publish in the local official Gazette a notification containing a description of such thing, and the time at which and the place from which the same was so removed.

Notice of removal to be given by Local Government.

5. If after publishing such notification, such thing is unclaimed, or

Things removed may, in certain cases, be sold.

if the person claiming the same fails to pay the amount due for the said expenses and any customs duties or other charges properly incurred by the Local Government in respect thereof,

the Local Government may sell such thing by public auction, if it is of a perishable nature, forthwith, and if it is not of a perishable nature, at any time not less than six months after publishing such notification as aforesaid.

6. On realizing the proceeds of such sale, the amount due for expenses and charges as aforesaid, together with the expenses of the sale, shall be deducted therefrom, and the surplus (if any) shall be paid to the owner of the thing sold, or, if no such person appear and claim such surplus, shall be held in deposit for payment, without interest, to any person thereafter establishing his right to the same:

Proceeds how applied.

Provided that he makes the claim within one year from the date of the sale.

7. For the purposes of this Act, the term "vessel" shall be deemed to include also every article or thing or collection of things being or forming part of the tackle, equipment, cargo, stores or ballast of a vessel, and any proceeds arising from the sale of a vessel, and of the cargo thereof, or of any other property recovered therefrom, shall be regarded as a common fund.

"Vessel" to include tackle, cargo, &c.

8. The Governor General in Council may from time to time, by notification in the *Gazette of India*, make rules to regulate or prohibit in any fairway leading to a port in British India, the placing of fishing-stakes, [illegible] sinking or

Power to make rules to regulate and prohibit the placing of obstructions in fairways.

throwing of ballast, rubbish, or any other thing likely to give rise to a bank or shoal, or the doing of any other act which will, in his opinion, cause, or be likely to cause, obstruction or danger to navigation.

Penalty for breach of such rules.

9. Whoever is guilty of any act or omission in contravention of the rules made under section eight, may be tried for such offence in any district or Presidency-town in which he is found, and 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.

Compensation payable in certain cases for damage caused under this Act.

10. Whenever the maintenance or creation of an obstruction in any fairway has become lawful by long usage or otherwise, and such obstruction is removed or destroyed under section two, or its creation is regulated or prohibited under section eight, any person having a right to maintain or create such obstruction shall be entitled to receive from the Secretary of State for India in Council reasonable compensation for any damage caused to him by such removal, destruction, regulation or prohibition.

Every dispute arising concerning the right to such compensation, or the amount thereof, shall be determined according to the law for the time being in force relating to like disputes in the case of land needed for public purposes and not otherwise; and for the purposes of such law the fairway from or in which such obstruction was removed or destroyed, or in which its creation was regulated or prohibited, shall be deemed to be a part of the Presidency-town or district in which the port to which such fairway leads is situate.

Certain action of the Government previous to passing of this Act to be deemed to have been taken hereunder.

11. Whenever any obstruction in a fairway leading to a port in British India has been removed or destroyed, or whenever the creation of any such obstruction has been regulated or prohibited, by an order of the Governor General in Council or a Local Government, previous to the passing of this Act, such removal, destruction, regulation or prohibition shall be deemed to have been effected under this Act.

Saving of other powers possessed by Government.

12. Nothing herein contained shall be deemed to prevent the exercise by the Government of any other powers possessed by it in this behalf.

D. FITZPATRICK,
Secretary to the Government of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY MAY 28, 1881.

☞ **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 25th May, 1881, and is hereby promulgated for general information:—

ACT No. XVII OF 1881.

An Act to give effect to the Convention between the Governors General of British India and Portuguese India regarding their respective systems of moneys, weights and measures.

Preamble.

WHEREAS by the fifth article of a Treaty of Commerce and Extradition executed at Lisbon on the twenty-sixth day of December, 1878, and ratified on the sixth day of August, 1879, between His Most Faithful Majesty the King of Portugal and the Algarves and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, it was provided that the High Contracting Parties should use their best endeavours to establish between their respective systems of moneys, weights and measures the harmony desirable for the development of commercial relations between their respective dominions:

And whereas by the same article it was further provided that the detailed measures to be adopted should form the subject of a separate Convention between the Governors General of British India and Portuguese India, to be executed within two years from the date when the said Treaty came into force:

And whereas the said Treaty came into force on the fifteenth day of January, 1880:

And whereas, in pursuance of the said recited article, the Convention set forth in the schedule hereto annexed has been made:

It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Portuguese Convention Act, 1881."

Local extent.

It extends to the whole of British India.

Commencement and continuance.

It shall come into force at once, and shall remain in force until the expiration of one year from the date of any notice which may be given under the fourteenth clause of the said Convention.

Provisions of Convention enacted.

2. The provisions of the said Convention, so far as they are binding upon the Government of British India, shall be deemed to have the force of law.

Act XXIII of 1870 to apply to coin and bullion made and brought for coinage to mint under Convention.

3. The provisions of the Indian Coinage Act, 1870, or any other law for the time being in force relating to coinage and the mint, shall, so far as they are consistent with the said Convention, apply to all coin made, and bullion brought for coinage to the mint, under the said Convention, as if such coin and bullion were respectively made and brought for coinage to the mint under the said Act.

THE SCHEDULE.

Whereas, by the fifth article of a Treaty of Commerce and Extradition executed at Lisbon on the twenty-sixth day of December, 1878, and ratified on the sixth day of August, 1879, between His Most Faithful Majesty the King of Portugal and the Algarves and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, it is provided that the High Contracting Parties shall use their best endeavours to establish between their respective systems of moneys, weights and measures the harmony desirable for the development of commercial relations between their respective dominions; and whereas by the same article it is further provided that the detailed measures to be adopted shall form the subject of a separate Convention between the Governors General of British India and

Portuguese India, to be executed within two years from the date when the said Treaty comes into force; and whereas the said Treaty came into force on the fifteenth day of January, 1880:

In pursuance of the said article, the following Convention has been made:—

1. The Governor General of Portuguese India shall adopt, in the Portuguese possessions in India, the monetary system of British India, for the time being in force, provided that the coins shall have on one side the effigy of the King of Portugal, with the legend *Ludovicus I, Portugaliæ et Algarbiorum Rex*, around it, or such other effigy and legend as the said Governor General may from time to time desire, and on the other side the value of each coin, the year of the Christian era, and the words *India Portugueza*.

2. Subject to the provisions of clause 7, so long as this Convention remains in force, the following coins and no others shall be struck for Portuguese India:—

Silver.—Rupee, weighing 180 grains troy;

Half-rupee, weighing 90 grains troy;

Quarter-rupee, weighing 45 grains troy;

Eighth of a rupee, weighing 22½ grains troy.

The standard fineness of the said silver coins shall be eleven-twelfths of fine silver and one-twelfth of alloy, subject to a remedy not exceeding the following:—

	Remedy in weight.	Remedy in fineness.
Rupee ...	Five thousandths.	Two thousandths.
Half-rupee ...		
Quarter-rupee...	Seven thousandths.	Three thousandths.
Eighth of a rupee	Ten thousandths.	

Copper.—Half *tanga*, weighing 200 grains troy, and corresponding with the double pice or half-anna of British India;

Quarter *tanga*, weighing 100 grains troy, and corresponding with the pice of British India;

Eighth of a *tanga*, weighing 50 grains troy, and corresponding with the half-pice of British India;

Real, or twelfth of a *tanga*, corresponding with the pie of British India;

In the making of copper coins, a remedy shall be allowed not exceeding one-fortieth in weight.

The value in copper of one Portuguese rupee will be sixteen Portuguese *tangas*, sixty-four quarter *tangas* or pices, or one hundred and ninety-two *reaes* or pies.

3. The Portuguese silver and copper coins established by this Convention shall be issued by the authority of the Government of Portuguese India, and shall be coined on behalf of the said Government by the Government of British India, and by no other agency whatever.

The Governor General of Portuguese India engages that, while this Convention continues in force, no coins other than those established by this Convention shall be coined in or imported into Portuguese India.

4. With the view of obtaining in the shortest possible time the desired uniformity of coinage throughout the respective Indian possessions of the High Contracting Parties, the Governor General of British India engages that the Government of British India shall—

(*a*) forego, for the period of three years from the date on which this Convention comes into force, all duty or other charge for melting, cutting, refining or recoining any coin of the existing Portuguese Indian silver currency tendered for recoinage into Portuguese Indian coin;

(*b*) deliver, for the period of five years from the date of this Convention, copper coins of the Portuguese copper currency established by this Convention in exchange for copper coins of the existing Portuguese Indian copper currency which may be brought to the said Mint for the purpose of such exchange, at the value represented by such last-mentioned coins in the existing Portuguese currency. The relative representative value of the old and new coin to be thus exchanged on equal terms, and without charge for manufacture, shall, if the Governor General of Portuguese India so desires, be determined, once for all, by a mixed commission appointed in the manner provided in the sixteenth article of the above-cited Treaty;

(*c*) advance to the Governor General of Portuguese India, in the Portuguese currency established by this Convention, such sums in such denominations of coin, and in such instalments (if any), as the said Governor General of Portuguese India may require: provided—

1*stly*.—That the amount of such advances outstanding at any time shall not exceed in the whole ten lákhs of rupees.

2*ndly*.—That an interval of two months shall be allowed for compliance with any such requisition, and that no such advance shall be made after the expiration of eighteen months from the date on which this Convention comes into force.

3*rdly*.—That every such advance shall be, within two months, repaid in coin of the existing Portuguese Indian currency, equivalent thereto in intrinsic value ascertained upon assay at Her Majesty's Mint, or in copper coin of the existing Portuguese Indian currency valued as prescribed in clause (*b*).

5. The Governor General of British India engages that the Government of British India shall,—

(*a*) on presentation by or on behalf of the Governor General of Portuguese India of any silver bullion or coin at the Mint at Bombay, or at such other Mint as the said Government from time to time appoints, deliver to the said Governor General or his agent, after such interval as in the judgment of the Mint Master is necessary for the process of coinage, the produce of such silver bullion or coin, in the silver coin established by this Convention, subject, always, to the same duty, charges, fees and regulations as are for the time being in force for the conversion into British Indian currency of bullion and coin, presented at the said Mint: provided that, save as provided in clause 4, the said Government shall not be bound thus to deliver more than four lákhs of rupees in any one year;

(*b*) coin for the Governor General of Portuguese India the copper coins established by this Convention, to such amounts and in such denominations as the said Governor General may require, upon payment of the value inscribed upon such coins in the silver coin established by this Convention or in British Indian rupees: provided that, saving as engaged in clause 4, the said Government shall not be bound thus to coin more than twenty thousand rupees' worth of such coin in any one year.

In lieu of any seignorage or profits which the Portuguese Government might otherwise claim on account of the coinage on their behalf provided by this clause, the Governor General of British India engages to pay the Governor General of Portuguese India an indemnity of four thousand rupees per annum, commencing from the first day of November, one thousand eight hundred and eighty-three, and continuing as long as this Convention remains in force.

6. All silver and copper Portuguese coins, coined under the provisions of this Convention, shall, while this Convention remains in force, be legal tender in payment or on account throughout British India to the same extent, and subject to the same exceptions in the case of coin which has been called in, or is under weight, or has been clipped, filed or defaced, as in the case of the corresponding silver and copper coins issued by the authority of the Government of British India for the time being in British India.

All silver and copper coin which has been issued by the authority of the Government of British India shall, to the said same extent and subject to the same exceptions, be a legal tender in payment or on account throughout Portuguese India.

7. The Governor General of Portuguese India agrees that, if at any time while this Convention continues in force the Government of British India should recall the whole body of British Indian coin corresponding to any description of Portuguese coin issued under this Convention, or change the monetary system of British India, he will, if requested by such Government so to do, recall all Portuguese coin of that description, or change in like manner, as the case may be, the monetary system of Portuguese India: provided that the expense incurred in recalling such coin or making such change shall be defrayed by the Government of British India.

8. When any silver coin, purporting to have been issued under the provisions of this Convention, is tendered to any officer of the Government of British India, authorized by that Government to act under this clause, and is deemed by such officer to be counterfeit, or to have been reduced in weight otherwise than by reasonable wearing, he may, by himself or another (subject to the rules which the said Government prescribes in this behalf), cut or break such coin and return the pieces to the person tendering the same, and the loss caused by such cutting and breaking shall be borne by such person.

9. When any such silver coin which has been called in is tendered to any officer of the Government of British India authorized by that Government to act under this clause, he may cut or break such coin, and shall receive it at the rate of one rupee per tola; but the expense thus incurred shall, except when such coin has been recalled under clause 7, be borne by the Portuguese Government.

10. In like manner, when any British Indian coin which has been called in is tendered to any officer of the Government of Portuguese India authorized by that Government to act under this clause, he may cut or break such coin, and shall receive it at the rate of one rupee per tola, and the expense so incurred shall be borne by the Government of British India.

11. The Governor General of Portuguese India engages to appoint an officer who will receive, while this Convention continues in force, from any person tendering the coin next hereinafter mentioned, all silver coin issued under this Convention which may have lost, by reasonable wearing, more than two per cent., and shall pay for the same at the rate of one rupee per tola.

12. Nothing in this Convention shall be held to limit the powers of His Most Faithful Majesty the King of Portugal and the Algarves to establish at any time such system of paper currency as he may deem fit.

The Governor General of Portuguese India has the power for the present to issue the following paper money:—

Five-rupee notes, payable in copper.	
Ten-rupee notes, payable in silver.	
Twenty	ditto.
Fifty	ditto.
One hundred	ditto.
Five hundred	ditto.

The amount of paper money issued will never be above four per cent. of the value of the money in circulation, the Portuguese India Government notes being guaranteed by the Portuguese Government and payable to the bearer.

13. The Governor General of Portuguese India engages that, whenever the Government of British India exercises in respect of British India generally, or of all the territories adjacent to Portuguese India, the powers conferred on it under a certain Act of the Governor General of British India in Council, called "The Indian Weights and Measures of Capacity Act, 1871," then he, the said Governor General of Portuguese India, will enforce throughout Portuguese India provisions similar to those of that Act.

14. This Convention shall come into force on the first day of November, one thousand eight hundred and eighty, and shall remain in force until the expiration of a year counting from the

day on which one or other of the Contracting Parties shall have given notice to the other of its intention to put an end to it: provided that no such notice shall be given until four years after the date on which the Convention comes into force.

15. The Governor General of Portuguese India undertakes that, in the event of this Convention being put an end to under clause 14 or otherwise, no coins resembling any of the coins struck under this Convention shall be struck in or imported into Portuguese India, or shall be struck under the authority of, or with the sanction of, His Most Faithful Majesty in any other place.

Done at Pangim on the twelfth day of April, one thousand eight hundred and eighty.

(Sd.) CAETANO ALDRE. D'ALMEIDA ALBUQUERQUE,
Governor General of Portuguese India.

Done at Calcutta on the eighteenth day of March, one thousand eight hundred and eighty.

(Sd.) LYTTON,
Viceroy and Governor General of British India.

R. J. CROSTHWAITE,
Offg. Secy. to the Govt. of India.

The Gazette of India.

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SIMLA, SATURDAY JUNE 4, 1881.

☞ **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 25th May, 1881, and is hereby promulgated for general information:—

ACT No. XVII OF 1881.

An Act to give effect to the Convention between the Governors General of British India and Portuguese India regarding their respective systems of moneys, weights and measures.

Preamble.

WHEREAS by the fifth article of a Treaty of Commerce and Extradition executed at Lisbon on the twenty-sixth day of December, 1878, and ratified on the sixth day of August, 1879, between His Most Faithful Majesty the King of Portugal and the Algarves and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, it was provided that the High Contracting Parties should use their best endeavours to establish between their respective systems of moneys, weights and measures the harmony desirable for the development of commercial relations between their respective dominions:

And whereas by the same article it was further provided that the detailed measures to be adopted should form the subject of a separate Convention between the Governors General of British India and Portuguese India, to be executed within two years from the date when the said Treaty came into force:

And whereas the said Treaty came into force on the fifteenth day of January, 1880:

And whereas, in pursuance of the said recited article, the Convention set forth in the schedule hereto annexed has been made:

It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Portuguese Convention Act, 1881."

Local extent.

It extends to the whole of British India.

Commencement and continuance.

It shall come into force at once, and shall remain in force until the expiration of one year from the date of any notice which may be given under the fourteenth clause of the said Convention.

Provisions of Convention enacted.

2. The provisions of the said Convention, so far as they are binding upon the Government of British India, shall be deemed to have the force of law.

Act XXIII of 1870 to apply to coin and bullion made and brought for coinage to mint under Convention.

3. The provisions of the Indian Coinage Act, 1870, or any other law for the time being in force relating to coinage and the mint, shall, so far as they are consistent with the said Convention, apply to all coin made, and bullion brought for coinage to the mint, under the said Convention, as if such coin and bullion were respectively made and brought for coinage to the mint under the said Act.

THE SCHEDULE.

Whereas, by the fifth article of a Treaty of Commerce and Extradition executed at Lisbon on the twenty-sixth day of December, 1878, and ratified on the sixth day of August, 1879, between His Most Faithful Majesty the King of Portugal and the Algarves and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, it is provided that the High Contracting Parties shall use their best endeavours to establish between their respective systems of moneys, weights and measures the harmony desirable for the development of commercial relations between their respective dominions; and whereas by the same article it is further provided that the detailed measures to be adopted shall form the subject of a separate Convention between the Governors General of British India and

Portuguese India, to be executed within two years from the date when the said Treaty comes into force; and whereas the said Treaty came into force on the fifteenth day of January, 1880:

In pursuance of the said article, the following Convention has been made:—

1. The Governor General of Portuguese India shall adopt, in the Portuguese possessions in India, the monetary system of British India, for the time being in force, provided that the coins shall have on one side the effigy of the King of Portugal, with the legend *Ludovicus I, Portugaliæ et Algarbiorum Rex*, around it, or such other effigy and legend as the said Governor General may from time to time desire, and on the other side the value of each coin, the year of the Christian era, and the words *India Portugueza*.

2. Subject to the provisions of clause 7, so long as this Convention remains in force, the following coins and no others shall be struck for Portuguese India:—

Silver.—Rupee, weighing 180 grains troy;

Half-rupee, weighing 90 grains troy;

Quarter-rupee, weighing 45 grains troy;

Eighth of a rupee, weighing 22½ grains troy.

The standard fineness of the said silver coins shall be eleven-twelfths of fine silver and one-twelfth of alloy, subject to a remedy not exceeding the following:—

	Remedy in weight.	Remedy in fineness.
Rupee ...	Five thousandths.	Two thousandths.
Half-rupee ...		
Quarter-rupee...	Seven thousandths.	Three thousandths.
Eighth of a rupee	Ten thousandths.	

Copper.—Half *tanga*, weighing 200 grains troy, and corresponding with the double pice or half-anna of British India;

Quarter *tanga*, weighing 100 grains troy, and corresponding with the pice of British India;

Eighth of a *tanga*, weighing 50 grains troy, and corresponding with the half-pice of British India;

Real, or twelfth of a *tanga*, corresponding with the pie of British India;

In the making of copper coins, a remedy shall be allowed not exceeding one-fortieth in weight.

The value in copper of one Portuguese rupee will be sixteen Portuguese *tangas*, sixty-four quarter *tangas* or pices, or one hundred and ninety-two *reaes* or pies.

3. The Portuguese silver and copper coins established by this Convention shall be issued by the authority of the Government of Portuguese India, and shall be coined on behalf of the said Government by the Government of British India, and by no other agency whatever.

The Governor General of Portuguese India engages that, while this Convention continues in force, no coins other than those established by this Convention shall be coined in or imported into Portuguese India.

4. With the view of obtaining in the shortest possible time the desired uniformity of coinage throughout the respective Indian possessions of the High Contracting Parties, the Governor General of British India engages that the Government of British India shall—

(*a*) forego, for the period of three years from the date on which this Convention comes into force, all duty or other charge for melting, cutting, refining or recoining any coin of the existing Portuguese Indian silver currency tendered for recoinage into Portuguese Indian coin;

(*b*) deliver, for the period of five years from the date of this Convention, copper coins of the Portuguese copper currency established by this Convention in exchange for copper coins of the existing Portuguese Indian copper currency which may be brought to the said Mint for the purpose of such exchange, at the value represented by such last-mentioned coins in the existing Portuguese currency. The relative representative value of the old and new coin to be thus exchanged on equal terms, and without charge for manufacture, shall, if the Governor General of Portuguese India so desires, be determined, once for all, by a mixed commission appointed in the manner provided in the sixteenth article of the above-cited Treaty;

(*c*) advance to the Governor General of Portuguese India, in the Portuguese currency established by this Convention, such sums in such denominations of coin, and in such instalments (if any), as the said Governor General of Portuguese India may require: provided—

1*stly*.—That the amount of such advances outstanding at any time shall not exceed in the whole ten lákhs of rupees.

2*ndly*.—That an interval of two months shall be allowed for compliance with any such requisition, and that no such advance shall be made after the expiration of eighteen months from the date on which this Convention comes into force.

3*rdly*.—That every such advance shall be, within two months, repaid in coin of the existing Portuguese Indian currency, equivalent thereto in intrinsic value ascertained upon assay at Her Majesty's Mint, or in copper coin of the existing Portuguese Indian currency valued as prescribed in clause (*b*).

5. The Governor General of British India engages that the Government of British India shall,—

(*a*) on presentation by or on behalf of the Governor General of Portuguese India of any silver bullion or coin at the Mint at Bombay, or at such other Mint as the said Government from time to time appoints, deliver to the said Governor General or his agent, after such interval as in the judgment of the Mint Master is necessary for the process of coinage, the produce of such silver bullion or coin, in the silver coin established by this Convention, subject, always, to the same duty, charges, fees and regulations as are for the time being in force for the conversion into British Indian currency of bullion and coin, presented at the said Mint: provided that, save as provided in clause 4, the said Government shall not be bound thus to deliver more than four lákhs of rupees in any one year;

(*b*) coin for the Governor General of Portuguese India the copper coins established by this Convention, to such amounts and in such denominations as the said Governor General may require, upon payment of the value inscribed upon such coins in the silver coin established by this Convention or in British Indian rupees: provided that, saving as engaged in clause 4, the said Government shall not be bound thus to coin more than twenty thousand rupees' worth of such coin in any one year.

In lieu of any seignorage or profits which the Portuguese Government might otherwise claim on account of the coinage on their behalf provided by this clause, the Governor General of British India engages to pay the Governor General of Portuguese India an indemnity of four thousand rupees per annum, commencing from the first day of November, one thousand eight hundred and eighty-three, and continuing as long as this Convention remains in force.

6. All silver and copper Portuguese coins, coined under the provisions of this Convention, shall, while this Convention remains in force, be legal tender in payment or on account throughout British India to the same extent, and subject to the same exceptions in the case of coin which has been called in, or is under weight, or has been clipped, filed or defaced, as in the case of the corresponding silver and copper coins issued by the authority of the Government of British India for the time being in British India.

All silver and copper coin which has been issued by the authority of the Government of British India shall, to the said same extent and subject to the same exceptions, be a legal tender in payment or on account throughout Portuguese India.

7. The Governor General of Portuguese India agrees that, if at any time while this Convention continues in force the Government of British India should recall the whole body of British Indian coin corresponding to any description of Portuguese coin issued under this Convention, or change the monetary system of British India, he will, if requested by such Government so to do, recall all Portuguese coin of that description, or change in like manner, as the case may be, the monetary system of Portuguese India: provided that the expense incurred in recalling such coin or making such change shall be defrayed by the Government of British India.

8. When any silver coin, purporting to have been issued under the provisions of this Convention, is tendered to any officer of the Government of British India, authorized by that Government to act under this clause, and is deemed by such officer to be counterfeit, or to have been reduced in weight otherwise than by reasonable wearing, he may, by himself or another (subject to the rules which the said Government prescribes in this behalf), cut or break such coin and return the pieces to the person tendering the same, and the loss caused by such cutting and breaking shall be borne by such person.

9. When any such silver coin which has been called in is tendered to any officer of the Government of British India authorized by that Government to act under this clause, he may cut or break such coin, and shall receive it at the rate of one rupee per tola; but the expense thus incurred shall, except when such coin has been recalled under clause 7, be borne by the Portuguese Government.

10. In like manner, when any British Indian coin which has been called in is tendered to any officer of the Government of Portuguese India authorized by that Government to act under this clause, he may cut or break such coin, and shall receive it at the rate of one rupee per tola, and the expense so incurred shall be borne by the Government of British India.

11. The Governor General of Portuguese India engages to appoint an officer who will receive, while this Convention continues in force, from any person tendering the coin next hereinafter mentioned, all silver coin issued under this Convention which may have lost, by reasonable wearing, more than two per cent., and shall pay for the same at the rate of one rupee per tola.

12. Nothing in this Convention shall be held to limit the powers of His Most Faithful Majesty the King of Portugal and the Algarves to establish at any time such system of paper currency as he may deem fit.

The Governor General of Portuguese India has the power for the present to issue the following paper money:—

Five-rupee notes, payable in copper.	
Ten-rupee notes, payable in silver.	
Twenty	ditto.
Fifty	ditto.
One hundred	ditto.
Five hundred	ditto.

The amount of paper money issued will never be above four per cent. of the value of the money in circulation, the Portuguese India Government notes being guaranteed by the Portuguese Government and payable to the bearer.

13. The Governor General of Portuguese India engages that, whenever the Government of British India exercises in respect of British India generally, or of all the territories adjacent to Portuguese India, the powers conferred on it under a certain Act of the Governor General of British India in Council, called "The Indian Weights and Measures of Capacity Act, 1871," then he, the said Governor General of Portuguese India, will enforce throughout Portuguese India provisions similar to those of that Act.

14. This Convention shall come into force on the first day of November, one thousand eight hundred and eighty, and shall remain in force until the expiration of a year counting from the

day on which one or other of the Contracting Parties shall have given notice to the other of its intention to put an end to it: provided that no such notice shall be given until four years after the date on which the Convention comes into force.

15. The Governor General of Portuguese India undertakes that, in the event of this Convention being put an end to under clause 14 or otherwise, no coins resembling any of the coins struck under this Convention shall be struck in or imported into Portuguese India, or shall be struck under the authority of, or with the sanction of, His Most Faithful Majesty in any other place.

Done at Pangim on the twelfth day of April, one thousand eight hundred and eighty.

(Sd.) CAETANO ALDRE. D'ALMEIDA ALBUQUERQUE,
Governor General of Portuguese India.

Done at Calcutta on the eighteenth day of March, one thousand eight hundred and eighty.

(Sd.) LYTTON,
Viceroy and Governor General of British India.

R. J. CROSTHWAITE,
Offg. Secy. to the Govt. of India.

The Gazette of India.

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SIMLA, SATURDAY JUNE 18, 1881.

☞ **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 8th June, 1881, and is hereby promulgated for general information :—

ACT No. XVIII OF 1881.

THE CENTRAL PROVINCES LAND-REVENUE ACT, 1881.

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SCHEDULE—ENACTMENTS REPEALED.

An Act to consolidate and amend the law relating to Land-revenue and the powers of Revenue-officers in the Central Provinces.

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to Land-revenue and to the powers of Revenue-officers in the Central Provinces; It is hereby enacted as follows:—

PART I.

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called "The Central Provinces Land-revenue Act, 1881":

Local extent.

It extends to all the territories for the time being under the administration of the Chief Commissioner of the Central Provinces, except those specified in Part VI of the first schedule of the Scheduled Districts Act, 1874:

Commencement.

And it shall come into force on such day as the Chief Commissioner, with the previous sanction of the Governor General in Council, may direct by notification in the local official Gazette.

Enactments repealed.

2. On and from such day the enactments mentioned in the schedule hereto annexed, so far as they relate to the territories to which this Act extends, and all other rules, regulations and enactments relating to the settlement and collection of the land-revenue in such territories, shall be repealed.

Pending proceedings.

3. All proceedings relating to matters dealt with by this Act and, when this Act comes into force, pending before officers by whom they would be cognizable under this Act, shall be deemed, so far as may be, to have been commenced hereunder.

Interpretation-clause.

4. In this Act, unless there is something repugnant in the subject or context,—

"Assistant Commissioner":

(1) "Assistant Commissioner" includes also "Extra Assistant Commissioner":

"Legal Practitioner":

(2) "Legal Practitioner" means an advocate, vakíl or attorney of any High Court, a pleader, mukhtár or revenue-agent:

"Village-cess":

(3) "Village-cess" means any cess which a person resident or holding lands in a village pays or renders to the proprietors as such of the village, and includes service rendered or things furnished as well as money paid:

"Recognized agent":

(4) "Recognized agent" means a person authorized in writing by any party to a proceeding under this Act to make appearances and applications and to do other acts on his behalf in such proceeding and also belonging to any class which the Chief Commissioner may, from time to time, by notification in the official Gazette, declare in this behalf:

"Agricultural year":

(5) "Agricultural year" means the year commencing on the first day of June, or on such other date as the Chief Commissioner may, in the case of any specified District or Districts, from time to time, appoint:

"Sír-land":

(6) "Sír-land" means (*a*) land recorded as "sír" in the papers of the last preceding settlement of the local area in which such land is situate; and (*b*) land not so recorded, but which has been cultivated by the proprietor or one of the proprietors thereof for a period of not less than twelve consecutive years; and (*c*) waste land which has been broken up by the proprietor or one of the proprietors thereof and cultivated by him for a period of not less than six consecutive years; and (*d*) in Sambalpúr, includes also "bhogra" land.

Explanation.—Land which has, after the date of such settlement, or the expiry of such period of twelve years, or six years (as the case may be), been for a period of six consecutive years unoccupied by such proprietor is not sír-land. Land is not unoccupied by the proprietor when it is leased out by him with an express reservation of his sír-rights:

"Mahál":

(7) "Mahál" means any local area held under a separate engagement for the payment of the land-revenue direct to Government, and includes also any local area declared, under the provisions of this Act, to be a mahál:

"Village":

(8) "Village" includes any tract of land which, at the last settlement of such land, has been recognized as a village, or which the Chief Commissioner may, from time to time, declare to be a village for the purposes of this Act:

"Málguzár":

(9) "Málguzár" means a person who, under the provisions of this Act, has accepted, or is to be deemed to have accepted, the assessment of a mahál, and includes his representatives and assigns; and also any person with whom a settlement has been made before this Act comes into force, and his representatives and assigns:

"Málik-makbúzá":

(10) "Málik-makbúzá" means any person owning one or more plots of land assessed with revenue in a mahál; but it does not include a málguzár or inferior proprietor:

"Lambardár":

(11) "Lambardár" means a person appointed in manner prescribed by this Act to represent the proprietary body of a mahál in its relations with the Government:

"Sub-lambardár":

(12) "Sub-lambardár" means a person so appointed to represent the inferior proprietary body of a mahál in its relations with the superior proprietors:

"Mukaddam":

(13) "Mukaddam" means the executive headman of a village, appointed in manner prescribed by this Act:

"Tenant":

(14) "Tenant" means a person who holds land of another person, and is, or but for a special contract would be, liable to pay rent for such land to such other person; but it does not include a farmer, mortgagee or thekadár of proprietary rights.

Explanation.—An inferior proprietor is not, as such, a tenant:

"Rent":

(15) "Rent" means whatever is paid, delivered or rendered, in money, kind or service, by a tenant on account of the use or occupation of land let to him:

"Absolute occupancy-tenant":

(16) "Absolute occupancy-tenant" means, in reference to any land, a tenant who, at a settlement of such land made before this Act comes into force, or after such a settlement but before this Act comes into force, was recorded, by order of a Revenue or Settlement officer, in respect of such land, as an "absolute occupancy-raiyat," or in terms equivalent thereto:

"Record-of-rights."

(17) "Record-of-rights" includes the supplementary administration-paper prepared at or after the time of making a settlement before this Act comes into force.

PART II.

CHAPTER II.

OF REVENUE-OFFICERS: THEIR POWERS AND PROCEDURE.

Chief Controlling Revenue-authority.

5. The Chief Commissioner shall, subject to the control of the Governor General in Council, be the Chief Controlling Revenue-authority.

Revenue-officers.

6. Besides the Chief Commissioner, there shall be the following classes of Revenue-officers (namely):—

(*a*) Commissioners, who, subject to the control of the Chief Commissioner, shall be the Chief Revenue-authorities within their respective divisions:

(*b*) Deputy Commissioners, who, subject to the control of the Commissioner, shall be the Chief Revenue-authorities within their respective districts:

(*c*) Assistant Commissioners, who shall be subordinate to, and under the control of, the Deputy Commissioners of the districts to which they are respectively attached:

(*d*) Tahsíldárs, who, subject to the control of the Deputy Commissioner, shall be the Chief Executive Revenue-authorities in the tahsíls to which they are respectively attached:

(*e*) Náib Tahsíldárs, who shall be subordinate to the Tahsíldárs of the tahsíls to which they are respectively attached.

Appointment, suspension and removal of Commissioners, Deputy and Assistant Commissioners.

7. Subject to the control of the Governor General in Council, the Chief Commissioner shall appoint, and may suspend or remove, Commissioners, Deputy Commissioners and Assistant Commissioners.

Appointment, suspension and removal of Tahsíldárs and Náib Tahsíldárs.

8. The Chief Commissioner shall appoint, and may suspend or remove, Tahsíldárs; and may also make rules for regulating the appointment, duties, suspension and removal of Náib Tahsíldárs.

Persons holding office when Act comes into force.

9. All Commissioners, Deputy Commissioners, Assistant Commissioners, Tahsíldárs and Náib Tahsíldárs holding office as such in the territories to which this Act extends when this Act comes into force shall be deemed to have been appointed hereunder.

Power to appoint additional Commissioners, Deputy Commissioners and Tahsíldárs.

10. The Chief Commissioner may appoint any person to be an additional Tahsíldár in any tahsíl, or, with the sanction of the Governor General in Council, to be an additional Commissioner or additional Deputy Commissioner, in any division or district, and may suspend or remove any person so appointed, but subject, in the case of an additional Commissioner or additional Deputy Commissioner, to the like sanction.

The Chief Commissioner may invest any additional Commissioner, Deputy Commissioner or Tahsíldár appointed under this section with all or any of the powers conferred by this Act on a Commissioner, Deputy Commissioner or Tahsíldár, as the case may be.

Chief Commissioner may invest Assistant Commissioner with powers of Deputy Commissioner.

11. The Chief Commissioner may invest any Assistant Commissioner attached to a district with all or any of the powers conferred by this Act on Deputy Commissioners.

Officers transferred to retain powers with which they were invested.

12. Whenever any Assistant Commissioner, Tahsíldár or Náib Tahsíldár is transferred from one district or tahsíl to another, he shall, unless the Chief Commissioner otherwise directs, exercise in the district or tahsíl to which he is transferred all the powers with which he was, under any provision of this Act, invested by the Chief Commissioner in the district or tahsíl from which he is transferred.

Provision for discharge of duties of Deputy Commissioner dying or being disabled.

13. When a Deputy Commissioner dies or is disabled from performing his duties, such officer as the Chief Commissioner may by rule direct shall take executive charge of his district, and shall be deemed to be a Deputy Commissioner under this Act, until a successor to the Deputy Commissioner so dying or disabled is appointed and such successor

takes charge of his office, or until the person so disabled resumes charge of his office.

14. The Chief Commissioner may, from time to time, by notification in the official Gazette, alter the limits of any district or tahsíl, create new districts or tahsíls and abolish existing districts or tahsíls.

Chief Commissioner may alter limits of district or tahsíl.

15. The Chief Commissioner may, subject to the control of the Governor General in Council, invest any Revenue-officer with any of the following powers:—

Power to invest Revenue-officers,—

for the purpose of disposing of cases under this Act, any power conferred by the Code of Civil Procedure on a Civil Court;

with power conferred by Code of Civil Procedure;

power to delegate to any Revenue-officer subordinate to him the exercise of any power or performance of any duty conferred or imposed on him by this Act;

with power to delegate powers.

and, subject to the like control, may determine the Revenue-officer by whom any case or class of cases for which no express provision in this behalf is made in this Act shall be disposed of.

16. Subject to any rules which the Chief Commissioner may make in this behalf, a Deputy Commissioner may—

Power of Deputy Commissioner to distribute work.

(*a*) refer any case to any Revenue-officer subordinate to him for investigation and report, or, if such officer has power to dispose of such case, for disposal; or

(*b*) direct that any Revenue-officer subordinate to him shall, without such reference, deal with any case or class of cases arising within any specified area, and either investigate and report on such case or class, or, if he has power, dispose of it himself.

The subordinate Revenue-officer shall submit his report on any case referred to him under this section for report to the Deputy Commissioner, or otherwise, as may be directed in the order of reference; and the officer receiving such report may, if he has power to dispose of the case, dispose of the same, or may return it for further investigation to the officer submitting the report, or may hold such investigation himself.

17. The Chief Commissioner, the Commissioner or the Deputy Commissioner may withdraw any case pending before any Revenue-officer subordinate to him, and either dispose of it himself, or refer it for disposal to any other Revenue-officer subordinate to him and having power to dispose of the same.

Power of superior Revenue-authorities to withdraw and transfer cases.

18. All Revenue-officers and persons acting under their orders may, in the performance of any duty under this Act, enter upon and survey land, and demarcate boundaries, and do all other acts necessary to the business in which they are engaged.

Power of Revenue-officers to enter on land, &c.

19. The Chief Commissioner may, with the previous sanction of the Governor General in Council, make rules consistent with this Act for regulating the procedure of Revenue-officers in cases for which a procedure is not prescribed by this Act, and may, by any such rule, direct that any provisions of the Code of Civil Procedure shall apply, with or without modification, to all or any classes of cases before Revenue-officers.

Power to make rules to regulate procedure.

20. All appearances before, applications to, and acts to be done before, any Revenue-officer under this Act may be made or done—

Persons by whom appearances and applications may be made before and to Revenue-officers.

(*a*) by the parties themselves; or,

(*b*) with the permission of the officer, by their recognized agents or any legal practitioner:

Provided that the employment of a legal practitioner or recognized agent shall not excuse the personal attendance of a party to any proceeding in cases where such attendance is required by any order of the Revenue-officer.

Obligation of parties to attend in person.

21. The fees of a legal practitioner or recognized agent shall not be allowed as costs before any Revenue-officer unless such officer considers, for reasons to be recorded by him in writing, that such fees should be allowed.

Legal practitioner's or agent's fees not allowed unless for special reasons.

22. An appeal shall lie against every decision or order under this Act—

Appeals.

(*a*) when such decision or order is passed by any Revenue-officer subordinate to the Deputy Commissioner, except an Assistant Commissioner exercising the powers of a Deputy Commissioner,—to the Deputy Commissioner;

(*b*) when such decision or order is passed by a Deputy Commissioner, or by an Assistant Commissioner exercising the powers of a Deputy Commissioner, whether in the first instance or on appeal,—to the Commissioner of the division;

(*c*) when such decision or order is passed on appeal or otherwise by the Commissioner of a division,—to the Chief Commissioner:

Provided that in no case shall a third appeal be allowed.

Limitation of appeals.

23. No appeal shall lie—

(*a*) in the Court of the Deputy Commissioner or an Assistant Commissioner exercising the powers of a Deputy Commissioner—after the expiration of thirty days from the date of the decision or order complained of; or

(*b*) in the Court of the Commissioner—after the expiration of sixty days from such date; or

(*c*) in the Court of the Chief Commissioner—after the expiration of ninety days from such date.

In computing such periods of limitation, and in all respects not herein specified, the provisions of the Indian Limitation Act, 1877, shall apply.

24. Any Commissioner or Deputy Commissioner may at any time, for the purpose of satisfying himself as to the legality or propriety of any order passed by, and as to the regularity of the proceedings of, any Revenue-officer subordinate to him, call for and examine the record of any case pending before, or disposed of by, such officer, and may pass such order in reference thereto as he thinks fit:

Powers of revision of Commissioner and Deputy Commissioner.

Provided that he shall not under this section modify or reverse any order affecting any question of right between private persons, without having given to the parties interested reasonable notice to appear and be heard in support of such order.

25. The Chief Commissioner may at any time call for and examine the record of any case pending before, or disposed of by, any Revenue-officer, and may pass such order in reference thereto as he thinks fit:

Powers of revision of Chief Commissioner.

Provided that no order affecting any question of right between private persons shall be passed under this section unless the Chief Commissioner has given the parties interested an opportunity of being heard.

26. Every Revenue-officer may, either on his own motion or on the application of any party interested, review, and on so reviewing modify, reverse or confirm orders passed by himself or by any of his predecessors in office:

Review of orders.

Provided as follows—

(1) when a Commissioner or Deputy Commissioner thinks it necessary to review any order which he has not himself passed, and when an officer under the rank of a Deputy Commissioner proposes to review any order, whether passed by himself or by any predecessor, he shall first obtain the sanction of the officer to whom he is immediately subordinate:

(2) no order shall be modified or reversed unless reasonable notice has been given to the parties interested to appear and be heard in support of such order:

(3) no order against which an appeal has been preferred shall be reviewed while such appeal is pending:

(4) no order affecting any question of right between private persons shall be reviewed except on the application of a party to the proceedings; and no application for the review of such an order shall be entertained unless it is made within ninety days from the passing of the order, or unless the applicant satisfies the Revenue-officer that he had sufficient cause for not making the application within such period.

For the purposes of this section, the Deputy Commissioner shall be deemed to be the successor in office of any Revenue-officer who has left the district or has ceased to exercise powers as a Revenue-officer, and to whom there is no successor in office.

PART III.

OF SURVEY AND SETTLEMENT.

CHAPTER III.

PRELIMINARY.

27. Whenever it appears to the Chief Commissioner that a revenue-survey should be made in any local area, he shall publish a notification in the official Gazette directing that such survey be made, and cause translations of such notification in the language of the district to be posted up in conspicuous places in such area; and thereupon all officers in charge of such survey, their assistants, servants, agents and workmen may enter upon the lands to be surveyed, and erect survey-marks, and do all other acts necessary for making the survey.

Notification of revenue-survey.

Effect thereof.

28. When any local area is to be settled, the Chief Commissioner may, with the previous sanction of the Governor General in Council, issue a notification of settlement, and in such notification shall—

Notification of settlement.

(*a*) define the local area to be settled;

(*b*) specify the operations which are to be carried out in the settlement;

and may from time to time, with the like sanction, amend, alter or cancel such notification.

Power to amend notification.

Every such notification, amendment, alteration and cancellation shall be published in the local official Gazette.

29. The Chief Commissioner may, from time to time, appoint one or more officers (hereinafter called Settlement-officers) to make the settlement of such area; and when he appoints more than one such officer, he shall appoint one of them (hereinafter called the Chief Settlement-officer) to control such settlement; and all other officers appointed for the purposes of such settlement shall be subordinate to the Chief Settlement-officer.

Power to appoint Settlement-officers;

The Chief Commissioner may suspend or remove any officer appointed under this section.

and to suspend and remove them.

30. During the progress of the settlement of any local area, the Chief Commissioner may invest any Settlement-officer within such area with all or any of the powers of a Deputy Commissioner under this Act, to be exercised by him in such classes of cases as the Chief Commissioner may, from time to time, direct.

Settlement-officer may be invested with powers of Deputy Commissioner.

31. The provisions of section eleven and sections fifteen to twenty-six, both inclusive, shall apply, *mutatis mutandis*, to Settlement-officers and to proceedings before them, the expression "Settlement-officer" being read for the expressions "Assistant Commissioner" and "Revenue-officer," and the expression "Chief Settlement-officer," for the expression "Deputy Commissioner," wherever those expressions occur:

Certain provisions of Chapter II applied to Settlement-officers.

Provided that an appeal from any appealable order passed by a subordinate Settlement-officer shall lie to the Chief Settlement-officer if preferred within sixty days from the date of such order:

Provided also that no appeal shall lie from any decision of a Chief Settlement-officer which can be called in question in a Civil Court.

32. The Chief Commissioner may, from time to time, with the previous sanction of the Governor General in Council,

Appointment of Settlement-Commissioner;

(*a*) appoint a Settlement-Commissioner, and transfer to him, within any local area under settlement, all or any of the powers which the Commissioner of the division, if the land to be settled were wholly situate within such division, would otherwise exercise under this Act in matters connected with such settlement; and

(*b*) delegate to the Settlement-Commissioner such of his own powers in regard to matters connected with such settlement as he thinks fit.

Delegation to him of Chief Commissioner's powers.

33. When any local area is under settlement, the Chief Commissioner may invest any subordinate Settlement-officer with the powers of any of the first five grades of Courts described in section four of the Central Provinces Courts' Act, 1865, and the Chief Settlement-officer with the powers of a Court of a Deputy Commissioner described in the same Act, sections twelve, nineteen and twenty, for the trial, in the first instance, of any of the following classes of suits instituted within such area (namely) :—

Power to invest Settlement-officers with Civil Court powers.

(*a*) suits for arrears of rent due on account of any right of pasturage, forest-rights, fisheries or the like ;

(*b*) suits by lambardárs for arrears of revenue payable through them by the proprietors whom they represent ;

(*c*) suits by proprietors for their share of the profits of an estate or any part thereof after payment of the revenue and village-expenses, or for a settlement of accounts ;

(*d*) suits by muáfidárs or assignees of revenue for arrears of revenue owing to them as such muáfidárs or assignees ;

(*e*) suits by superior proprietors for arrears of revenue due to them as such superior proprietors ;

(*f*) suits by proprietors and others in receipt of the rent of land against any agents employed by them in the management of land or collection of rents, or against the sureties of such agents, for money received or accounts kept by such agents in the course of such employment, or for papers in their possession ;

(*g*) suits regarding any matter which a Settlement-officer is required to decide or to enter in the record-of-rights, and of which Civil Courts can take cognizance ;

(*h*) suits relating to land, or the rent, profits or occupation of land.

34. When the Chief Commissioner invests any subordinate Settlement-officer with the powers of a Civil Court for the trial of any of the suits mentioned in section thirty-three, the Chief Settlement-officer to whom such Settlement-officer is subordinate shall have the powers of the Court of a Deputy Commissioner described in the Central Provinces Courts' Act, 1865, sections twelve, nineteen and twenty, with reference to proceedings before, or decrees and orders of, such Settlement-officer in such suits.

Chief Settlement-officer to have powers of Deputy Commissioner.

35. When any local area is under settlement and Settlement-officers have been invested with the powers mentioned in section thirty-three in such local area, the Chief Commissioner may, with respect to all or to any of the suits specified in that section, declare that all or any of the decrees and orders passed in exercise of the powers of Courts of the first four grades aforesaid, by Assistant Commissioners or Tahsíldárs not being Settlement-officers, shall be appealable to the Chief Settlement-officer, and not to the Deputy Commissioner of the district.

Appeals in suits specified in section 33 when to lie to Chief Settlement-officer.

36. When any local area is under settlement and the Settlement-officers therein have been invested with powers under section thirty-three, the Chief Commissioner may withdraw from the jurisdiction of the ordinary Civil Courts within such area the classes of suits which Settlement-officers have power to dispose of under that section, or he may direct that, in respect of such suits, the Settlement-officers shall have concurrent jurisdiction with the ordinary Civil Courts :

Division of civil work between Settlement-officers and ordinary Courts.

Provided that no proceedings which have been inadvertently or erroneously taken before the Civil Court shall be deemed to be invalid merely on the ground that, by the Chief Commissioner's order, they should have been taken before a Settlement-officer.

37. Nothing in section thirty-one shall apply to suits and appeals or other proceedings instituted before, or determined by, Settlement-officers in pursuance of powers conferred upon them under section thirty-three, thirty-four or thirty-five.

Provisions of section 31 not to apply to certain suits.

38. Except as provided in sections thirty-three, thirty-four and thirty-five, the decrees and orders of a Settlement-officer passed, whether in the first instance or on appeal, in exercise of the powers of a Civil Court of any grade, shall, for the purposes of appeal, reference and revision, be deemed to be decrees and orders of a Civil Court of such grade, and no appeal shall lie under the provisions of section twenty-two from such decrees or orders.

Appeal, reference and revision.

39. Every settlement notified under section twenty-eight shall be deemed to be in progress until the Chief Commissioner, by notification in the official Gazette, declares that it is completed.

Duration of settlement operations.

When the settlement of any local area has been notified as completed, all the powers exercised by the Settlement-officers in such area shall cease ; and all suits and applications pending before such officers shall be transferred to such of the Courts ordinarily having jurisdiction in such cases as the Commissioner of the Division directs, or, if there are no such Courts, shall be disposed of in such manner as the Chief Commissioner directs.

Cases pending at close of settlement-operations.

CHAPTER IV.

OF DEMARCATION.

Unowned Lands.

40. When any local area is under settlement, the Settlement-officer shall make lists of all lands in such area which appear to him to have no lawful owner, and shall thereupon issue a notification declaring his intention to demarcate such lands as the property of the Government and inviting every person having claims to or over them to present in his Court, within three months from the date of the notification, a petition in writing setting forth such claims and the respective grounds thereof.

Settlement-officer to invite claims to lands appearing to have no owner.

41. Every such notification shall be deemed to be an advertisement under Act No. XXIII of 1863 (*to provide for the adjudication of claims to waste lands*), section one ;

Application of Act XXIII of 1863.

the demarcation of such lands shall be deemed to be a disposition of them within the meaning of that Act ;

the Settlement-officer shall exercise all the powers vested in the Collector by that Act ; and

claims to or over the land comprised in such notification shall be dealt with as nearly as may be in the manner prescribed in that Act.

42. Whenever a claim to the exercise or enjoyment of any right (not amounting to the right of exclusive possession) in, to or over, any land comprised in such notification is established, either before the Settlement-officer or before the Court constituted under the said Act No. XXIII of 1863, section seven, the Settlement-officer may assign to the claimant as his property a definite portion of such land, or, with the sanction of the Chief Commissioner, he may otherwise compensate the claimant ; and such assignment or compensation shall be held to extinguish all claims on account of such exercise or enjoyment.

Procedure when limited right over land established.

Mahál.

43. The Settlement-officer may declare any local area to be a mahál.

Power to form mahál.

Excluded Lands.

44. For the purpose of excluding from all or any of the operations of the settlement any town or any land from which the owner can derive no profit, the Settlement-officer may mark off the site and determine the limits of such town or land :

Settlement-officer may exclude any town or land from settlement operations.

Provided that no land in respect of which land-revenue is payable at the date of the notification issued under section twenty-eight shall, under this section, be exempted from assessment without the sanction of the Chief Commissioner.

Boundary-marks.

45. When any local area is under settlement, the Settlement-officer may order all persons who have proprietary rights in the land comprised in such area to erect boundary-marks of such description and at such places as he thinks necessary in order to define the limits of the mahál, fields or other lands in their possession, or to repair boundary-marks already existing ; and may fix a reasonable time for obeying his order ;

Erection of new, and repair of existing, boundary-marks.

and if his order is not obeyed within such time, may cause such marks to be erected or repaired under his own orders, and may recover the cost of such erection or repair from the persons against whom his order was made, in such proportion as he thinks fit.

CHAPTER V.

OF THE ASSESSMENT OF LAND-REVENUE.

46. On every mahál a definite and separate sum shall be assessed as land-revenue ; but the sum so assessed may be reduced in such manner and to such extent as the Chief Commissioner thinks fit, for any period not exceeding ten years from the date on which the assessment takes effect.

Separate sum to be assessed on every mahál.

Progressive assessments.

47. The Chief Commissioner may, from time to time, with the previous sanction of the Governor General in Council, give instructions to the Settlement-officer as to the principle on which land-revenue is to be assessed, and as to the sources of miscellaneous income to be taken into account in the assessment.

Matters as to which Chief Commissioner is to instruct Settlement-officer.

48. In assessing a mahál all land situate therein shall be taken into account except the following (that is to say) :—

What land taken into account in assessing mahál.

(*a*) land purchased free from revenue under any rules for the time being in force to regulate the sale of waste-lands ;

(*b*) land in respect of which the revenue has been redeemed under any rules for the time being in force ;

(*c*) land excluded from assessment under section forty-four ;

(*d*) land in respect of which a claim to hold it free from revenue as against the Government is established under the provisions hereinafter contained ;

(*e*) land which the Chief Commissioner, subject to the control of the Governor General in Council, may, from time to time, exempt from assessment.

49. The assessment of every mahál shall be offered to the entire proprietary body of such mahál : provided that, when superior and inferior proprietary rights co-exist in the same mahál, the Settlement-officer may, subject to such rules as the Chief Commissioner may make in this behalf, determine whether the assessment shall be offered to the superior or to the inferior proprietors.

Assessment to whom to be offered.

Subject to such rules as the Chief Commissioner may make in this behalf, the Settlement-officer may determine the manner and proportion in which the proprietary profits of the mahál shall be allotted between the superior and the inferior proprietors.

When a proprietor has mortgaged his rights in any mahál, and the mortgagee has entered into possession, such mortgagee, so long as he is in possession, shall, for the purposes of this section, stand in the place of the mortgagor.

50. When in a mahál in which superior and inferior proprietors co-exist, the Settlement-officer makes a settlement with the superior proprietors, he shall make on their behalf a sub-settlement with the inferior proprietors, by which such inferior proprietors shall be bound to pay to the superior proprietors an annual revenue equal to the land-revenue with which the mahál is assessed and to the profits to which the superior proprietors are entitled under section forty-nine.

Sub-settlement to be made with inferior proprietors when settlement is made with superior.

51. When in any such mahál the settlement is made with the inferior proprietors, the Settlement-officer may direct that the profits to which the superior

Power to give directions as to payment of certain profits of superior proprietors.

proprietors are entitled under section forty-nine, shall be paid by the inferior proprietors direct to such superior proprietors, or that such profits shall be collected as if they were land-revenue and shall be paid to the superior proprietors from the Government Treasury.

52. The Chief Commissioner may make rules prescribing the manner in which the Settlement-officer shall report for sanction his rates and method of assessment; and no assessment shall be offered without the previous sanction of the Chief Commissioner.

Power to make rules for reporting assessment for sanction.

53. In making any offer of assessment the Settlement-officer shall state that it is made subject to confirmation by the Governor General in Council, and also to revision by the Chief Commissioner at any time before such confirmation is received.

Offers of assessment to be made subject to revision and confirmation.

54. It shall be in the option of the persons to whom an assessment is offered to accept or refuse the same.

Option to accept or refuse assessment.

If they are willing to accept it, they shall make and sign an acceptance in writing, in such form as the Chief Commissioner may, from time to time, prescribe in this behalf, and deliver the same to the Settlement-officer.

Mode of acceptance.

55. Any proprietor who, within such reasonable period as may be specified by the Chief Commissioner, fails to make, sign and deliver such acceptance, or to inform the Settlement-officer that he refuses the proposed assessment, shall, if the Settlement-officer by an order in writing so directs, be deemed to have accepted such assessment.

Proprietor not accepting in manner prescribed may be deemed to have accepted.

56. Whenever the assessment of a mahál has been accepted under this Act, the persons who have accepted it shall be bound to pay the amount thereof from such date and for such term as the Chief Commissioner may appoint in this behalf, or, if at the expiry of that term no new assessment has been made and is ready to take effect, until a new assessment has been made and is ready to take effect: Provided as follows:—

Effect of acceptance of assessment.

1st—any assessment may be rescinded by the Chief Commissioner at any time before it has been confirmed by the Governor General in Council;

Assessment may be rescinded by Chief Commissioner;

2ndly—the Governor General in Council may rescind any assessment submitted to him for confirmation;

or by Governor General in Council.

3rdly—if all the málguzárs of a mahál, six months before the expiry of the term fixed under this section, apply in writing to the Deputy Commissioner stating that they are unwilling that the assessment should continue in force beyond the expiry of such term, the assessment shall, on the expiry of such term, cease to be in force.

Málguzárs may object to continuance of assessment beyond term of settlement.

57. Where there is but one class of proprietors in a mahál, and all refuse to accept in manner required by section fifty-four the assessment offered; the Settlement-officer may, with the previous sanction of the Chief Commissioner, exclude them from settlement for a period not exceeding thirty years from the date of such exclusion, and may either let the mahál in farm, or take it under direct management.

Procedure when assessment is refused.

58. If some of the proprietors consent, and some refuse, so to accept the assessment offered, the Settlement-officer may, with the previous sanction of the Chief Commissioner, if the interest of the recusant proprietors in the lands taken into account in the assessment consists entirely of lands held by them separately from the other proprietors, exclude such recusant proprietors from settlement for a period not exceeding thirty years from the date of such exclusion, and either let their lands in farm or take such lands under direct management.

Procedure when only some proprietors accept assessment.

In other cases the assessment of the entire mahál shall be offered to the proprietors who consented to accept the assessment when originally offered, and if they refuse it the mahál shall be dealt with under the provisions of section fifty-seven.

When the recusant proprietors are excluded under this section, the lands of the proprietors who consented to accept the assessment originally offered shall be deemed to be a separate mahál, and shall be assessed as such; and such assessment shall be offered to the proprietors so consenting; and if the lands of the recusant proprietors are let in farm, the farm shall be first offered to the proprietors who consented to accept the assessment originally offered.

59. When an assessment is offered in a mahál in which both superior and inferior proprietors co-exist—

Procedure on refusal of assessment in village in which superior and inferior rights co-exist.

(*a*) if all the proprietors of the class with which the Settlement-officer proposes to make the settlement refuse to accept as aforesaid the assessment offered, the assessment shall be offered to the proprietors of the other class; and if all such proprietors refuse the assessment, the Settlement-officer shall proceed as provided in section fifty-seven;

(*b*) if some only of the proprietors of the class with which the Settlement-officer proposes to make the settlement refuse the assessment, he may either proceed as if all had refused it or may deal with the mahál under section fifty-eight:

Provided that if, in the case contemplated by clause (*b*), the proprietors who consented to accept the assessment when originally offered refuse to accept it, such assessment shall be offered to the other class of proprietors.

60. If all or any of the inferior proprietors refuse any assessment offered under section fifty, the Settlement-officer may exclude them all from the sub-settlement, and assign the proprietary management and profits of the mahál to the superior proprietor for any term not exceeding the term of settlement.

Procedure on refusal of assessment by inferior proprietors.

61. Any proprietor excluded from settlement under section fifty-seven or section fifty-nine, clause (*a*), shall be entitled to receive from the Government an annual allowance, the amount of which shall be fixed by the Chief Commissioner, but which shall not be less than five per cent., or more than ten per cent., on the amount of the assessment offered to him by the Settlement-officer.

Allowance to excluded proprietors.

62. Any proprietor excluded from settlement or sub-settlement under sections fifty-seven to sixty, both inclusive, shall be entitled to retain possession of his sír-land (if any) as if he were an absolute occupancy-tenant, and the rent to be paid by him for such land during the term of his exclusion shall be fixed by the Settlement-officer accordingly.

Excluded proprietors to have occupancy-rights in their sír-land.

63. The aggregate amount of any allowance under section sixty-one, and of the difference between the rent fixed under section sixty-two and the rent which the excluded proprietor would be liable to pay if he were a tenant-at-will, shall not be less than five or more than fifteen per cent. on the amount of the assessment offered to him by the Settlement-officer.

Aggregate amount of allowance granted to, and deduction from rent allowed to, excluded proprietor.

64. The Settlement-officer may make, on behalf of málik-makbúzás or other like holders of land, such a sub-settlement as shall secure to them from the málguzárs of the mahál their existing rights; and may provide that, in addition to the land-revenue payable by them, they shall pay to the málguzárs such percentage thereon, not exceeding twenty per cent., as may in his opinion be sufficient to compensate the said málguzárs for their responsibility in respect of the land-revenue, and to provide for the fees of lambardárs and mukaddams.

Sub-settlement with málik-makbúzás and other like holders of land.

65. The amount of revenue payable under a sub-settlement shall be a first charge upon all the land comprised in such sub-settlement.

Revenue payable under sub-settlement to be first charge on land.

66. When the whole of the land comprised in a mahál is held in severalty, the Settlement-officer shall apportion to the several holdings the amount with which such land is assessed under a settlement or sub-settlement.

Settlement-officer to apportion assessment over lands held in severalty;

When only part of the land comprised in a mahál is held in severalty, the Settlement-officer shall apportion such amount to the part held in common and the part held in severalty, and shall further apportion to the several holdings the amount to which they are liable under the former apportionment.

67. When by established custom the land held by each proprietor in any mahál is subject to periodical redistribution, the Settlement-officer may, in his discretion, on the application of the proprietors, make such redistribution according to such custom.

to redistribute land according to custom.

CHAPTER VI.

OF CERTAIN INVESTIGATIONS BY THE SETTLEMENT-OFFICER AND THE PREPARATION OF THE RECORD-OF-RIGHTS.

68. The Settlement-officer shall ascertain the persons who are in possession as proprietors of the land comprised in each mahál.

Settlement-officer to ascertain proprietors;

69. The Settlement-officer shall ascertain the situation and determine the extent of all the land held as sír in each mahál.

to determine extent of sír-land;

70. The Settlement-officer shall ascertain the customs or rules by which the proprietors in each mahál are mutually bound as to the granting of pattás, the ejectment of tenants, the realization and distribution of rents and other profits, the payment of land-revenue, village-expenses and other charges, and generally as to the control and management of the mahál; and shall decide all disputes and record all agreements regarding the matters mentioned in this section.

to decide disputes among shareholders regarding management of mahál;

71. The Settlement-officer shall determine through which of the lambardárs or sub-lambardárs the amount of revenue payable by each proprietor, sub-proprietor or málik-makbúzá shall be paid.

to determine through what lambardárs revenue shall be paid;

72. The Settlement-officer shall ascertain, and record for each mahál, the status of all tenants occupying land therein, the lands respectively held by them, the conditions on which they respectively hold such lands, and the rents (if any) payable by them respectively.

to ascertain status and rents of tenants.

73. The Settlement-officer shall investigate all claims against the Government to hold land free from revenue or at less than a full assessment, or to receive the whole or part of the land-revenue assessed on land which is not free from revenue.

Enquiry into claims to hold free from revenue as against Government.

The Chief Commissioner may, with the previous sanction of the Governor General in Council, make rules determining the principles by which the Settlement-officer shall be guided in the disposal of claims coming under this section.

Power of Chief Commissioner to make rules.

74. When any land not being land which any person is entitled to hold free from revenue as against the Government is held by a proprietor, whether himself a málguzár or not, who claims to hold it wholly or partially free from revenue as against the other málguzárs of the mahál, the Settlement-officer shall decide whether the claimant is entitled to be exempted from paying the whole or any part of the revenue which would otherwise be payable in respect of such land, and, if he decides that the claimant is so entitled, shall also determine the conditions under which, and the term for which, the claimant is entitled to such exemption:

Enquiry as to claims to hold free from revenue as against málguzárs.

Provided that no decision under this section shall exempt any land from the payment of revenue, when the mahál in which such land is comprised is sold for arrears of revenue.

The Chief Commissioner may make rules for the guidance of Settlement-officers in dealing with cases under this section.

Chief Commissioner may make rules for disposal of such cases.

75. When the Settlement-officer decides, under section seventy-three or section seventy-four, that land which has been held free from revenue, or at less than a full assessment, is

Time from which orders under sections 73 and 74 take effect.

liable to pay revenue, or to pay the same at enhanced rates, such decision shall take effect from the first day of the agricultural year next ensuing; unless the Chief Commissioner directs that the amount payable in respect of such land on account of the revenue accruing due within any one or more of the last preceding twelve years shall be realized.

Settlement-officer to decide what village-cesses are leviable;

76. The Settlement-officer shall determine and record the village-cesses, if any, which are leviable in accordance with village-custom, and the persons by and from whom, and the rates at which, they are leviable; and such cesses shall, if sanctioned by the Chief Commissioner, be leviable accordingly.

to determine certain disputes.

77. The Settlement-officer may determine disputes regarding any of the following matters (namely):—

(*a*) the right of any lambardár, mukaddam, patwárí, village-watchman or other village-servant to any customary dues, or other remuneration, and his liability to render any customary service in return for such dues or remuneration;

(*b*) the rights of persons resident in the village or holding lands comprised in the mahál, in or to the common land of the mahál and its produce, and the village-site;

(*c*) any customs relating to irrigation or to rights-of-way and other easements;

(*d*) any other rights and customs which the Chief Commissioner directs to be recorded in the administration-paper.

Procedure in cases under sections 68, 69, 70, 72 and 77, clauses (*b*), (*c*) and (*d*).

78. If a dispute arises regarding any matter mentioned or referred to in sections sixty-eight, sixty-nine, seventy, seventy-two and seventy-seven, clauses (*b*), (*c*) and (*d*), the Settlement-officer shall decide it summarily after making such enquiry as he thinks fit, and shall not be bound to hear any party to such dispute or to receive any evidence tendered by any such party; but in the case of every such dispute he shall record a proceeding stating the nature of such dispute, his decision thereon, the grounds of such decision and such other particulars as he thinks fit.

Record-of-rights.

79. The Settlement-officer shall prepare for every mahál, or, if he thinks fit, for any group of neighbouring mahals, a record-of-rights, and shall include in it—

(*a*) the results of the inquiries made under this chapter in respect of such mahál or group; and

(*b*) any other matters which the Chief Commissioner may, by rules in this behalf, direct to be entered in such paper.

Chief Commissioner may make rules regarding record-of-rights.

80. The Chief Commissioner may make rules prescribing the language in which the record-of-rights shall be drawn up, the form of the papers of which it shall consist, and the manner in which such papers shall be signed and attested by the Settlement-officer and the parties interested in the matters to which they refer.

Record-of-rights to be made over to Deputy Commissioner.

81. When the Settlement-officer has completed a record-of-rights in manner hereinbefore prescribed, he shall, subject to any order issued by the Chief Commissioner in this behalf, make it over to the Deputy Commissioner for custody.

Effect of entries in record-of-rights.

82. When the record-of-rights is duly made and attested, all entries therein shall be presumed to be correct until the contrary is shown.

Suits to contest certain settlement decisions or entries.

83. Any person deeming himself aggrieved by any decision under section seventy-eight, or by any decision of the Chief Settlement-officer in appeal therefrom, or by any entry made in the record-of-rights as to any matter referred to in that section, may institute a suit in the Civil Court to have such decision set aside or such entry cancelled or amended:

Provided as follows:—

When any suit under this section is instituted for the cancellation or amendment of an entry, the Government, if it so desires, and all persons interested in the entry, shall be made parties to the suit:

No persons by whom the record-of-rights was signed, and no persons claiming through or under them shall, without the previous sanction of the Chief Commissioner, institute any suit with a view to modify or set aside any entry relating to any matter mentioned in section seventy or section seventy-seven, clause (*b*), (*c*) or (*d*).

Revision of record-of-rights by Chief Commissioner.

84. After an assessment has been confirmed by the Governor General in Council, the Chief Commissioner shall not exercise in respect of any entry of the descriptions referred to in section eighty-three duly made in a record-of-rights prepared in connection with such assessment and duly attested, the power of revision conferred by sections twenty-five and thirty-one, unless it is proved that such entry was made inadvertently.

Proceedings regarding lands the property of Government.

85. In respect of lands declared to be the property of Government, the Settlement-officer shall, instead of proceeding as hereinbefore provided, conduct such operations, and prepare such record, as the Chief Commissioner may direct.

CHAPTER VII.

OF SETTLEMENTS MADE BEFORE THIS ACT COMES INTO FORCE.

Former settlements deemed to have been made under this Act.

86. Settlements made before this Act comes into force shall be deemed, so far as may be, to have been made hereunder; and the provisions of this Act in regard to proceedings taken and records prepared by Settlement-officers in the making of settlements hereunder shall apply in like manner to proceedings taken and records prepared before this Act comes into force.

Effect of awards of proprietary rights at such settlements.

87. When a Settlement-officer or Settlement Court has, at any settlement made before this Act comes into force, made an award of proprietary rights in any land, all claims which after consideration by such officer or Court may have been expressly decided by him or it to be invalid, or inferior to the claims of the persons in whose favour the award was made, shall be barred both as against Government and as against the persons last mentioned; and no suit shall lie for the enforcement of such claims in any Civil Court.

The award at any such settlement of proprietary rights in land to a widow shall be deemed to confer on her those rights only which, in accordance with the personal law to which she is subject, she would enjoy in land inherited by her from her husband.

When suits for proprietary rights will lie in Civil Courts.

88. Any person whose claim to proprietary rights in any land was not expressly decided by such officer or Court may sue in a Civil Court to establish such claim; and if he can prove that, when proprietary rights in such land were awarded by such officer or Court to other persons, he was entitled to interests therein of the same nature as those upon consideration of which the award was made, the Civil Court may declare him entitled to a proprietary right of such nature and extent in the land as it may deem just.

Chief Commissioner may allot waste-land to málik-makbúzás entitled thereto.

89. When at any settlement made before this Act comes into force málik-makbúzás have been declared entitled to a portion of the waste-lands comprised in any mahál, the Chief Commissioner may, notwithstanding anything contained in the record of such settlement, prescribe the extent of such portion and the mode in which the same shall be assigned to them; and may determine the nature and extent of their interests therein and the conditions on which they may hold it.

PART IV.

OF REVENUE-ADMINISTRATION.

CHAPTER VIII.

OF THE COLLECTION OF LAND-REVENUE.

Power of Chief Commissioner to regulate payment of land-revenue.

90. Notwithstanding anything contained in the record-of-rights of any village, the Chief Commissioner may fix the number and amount of the instalments, and the times, places and manner at and in which land-revenue, whether payable direct to the Government or not, shall be paid.

Until the Chief Commissioner otherwise directs, all such payments shall be made on the dates, in the instalments, in the manner and at the places on, in and at which they are payable when this Act comes into force.

"Arrear."
"Defaulters."

91. When any sum payable under a settlement or sub-settlement is not paid within the time at which it is payable under section ninety, such sum shall be deemed to be an arrear; and all the persons with whom such settlement or sub-settlement was made, their representatives and assigns, shall thereupon become jointly and severally liable for it, and shall be deemed to be defaulters within the meaning of this Act.

Realization of Revenue from Málguzárs.

Tahsíldár's statement of account to be conclusive evidence of arrear.

92. A statement of account, authenticated by the signature of the Tahsíldár, shall, for the purposes of this chapter, be conclusive evidence of the existence of any arrear payable direct to the Government, of its amount, and of the persons who in respect thereof are defaulters.

Notice of demand.

93. The Deputy Commissioner or any officer empowered by him in this behalf may, if he thinks fit, before any of the processes hereinafter referred to are issued for the recovery of such an arrear, cause a notice of demand to be served on any of the defaulters.

Processes for recovery of arrears.

94. An arrear payable directly to Government may be recovered by any one or more of the following processes:—

(*a*) by arresting the defaulter and imprisoning him in the civil jail;

(*b*) by attaching and selling his moveable property;

(*c*) by attaching the mahál in respect of which the arrear has accrued or the share or land of any málguzár who has not paid the portion of the revenue which, as between him and the other málguzárs, is payable by him, and taking the same mahál, share or land under direct management;

(*d*) by transferring the share or land of any málguzár who has not paid such portion to any málguzár who has paid the same, or if every such málguzár declines to accept such share or land, to any person having a mortgage or charge upon the same, and who consents to accept it;

(*e*) by annulling the settlement of the mahál in respect of which the arrear has accrued, and taking such mahál under direct management or farming the same;

(*f*) by selling such mahál, or the share or land of any málguzár who has not paid the portion of the revenue aforesaid;

(*g*) by selling immoveable property belonging to the defaulter other than the land in respect of which the arrear has accrued:

Provided as follows:—

(1) the process mentioned in clause (*a*) shall not be issued against any female, minor, lunatic or idiot;

(2) the processes mentioned in clauses (*d*), (*e*), (*f*) and (*g*) shall not be enforced without the previous sanction of the Chief Commissioner;

(3) no land shall be sold, and the settlement of no land shall be annulled, on account of an arrear accruing in respect of land whilst it is under attachment, or under charge of the Superintendent of Government Wards, or held under direct management, or let in farm in accordance with any of the provisions of this Act.

The processes specified in clauses (*a*), (*b*) and (*g*) may be enforced either in the district in which the default has been made, or in any other district.

Arrest and imprisonment for recovery of arrear.

95. The process mentioned in section ninety-four, clause (*a*), may be executed by issuing a warrant directing the officer named therein, if the defaulter fails to pay the arrear by a date to be fixed in the warrant, to bring him to the tahsíl.

If, when the defaulter arrives at the tahsíl, the arrear is still unpaid, the Tahsíldár may order him to be taken before the Deputy Commissioner, or may keep him under personal restraint at the

tahsíl for a period not exceeding ten days, unless within such period the arrear is paid, and may then, if the arrear is still unpaid, cause him to be taken before the Deputy Commissioner.

96. If the arrear is not paid when the defaulter arrives before the Deputy Commissioner, the Deputy Commissioner may issue an order to the officer in charge of the civil jail of the district, directing him to confine the defaulter in such jail for such period, not exceeding three months from the date of the order, as the Deputy Commissioner may think fit, unless within such period the arrear is paid.

Imprisonment of defaulter in civil jail.

97. Attachments and sales of moveable property made under this chapter shall be conducted as nearly as may be according to the law for the time being in force for the attachment and sale of moveable property under the decree of a Civil Court.

Procedure in sales of moveable property.

98. After causing any attachment to be made under section ninety-four, clause (*c*), the Deputy Commissioner shall issue a proclamation declaring the attachment to be in force, and shall take the attached mahál, share or land under his own management, or place it under the management of any agent whom he may appoint for the purpose.

Management of mahál, share or land attached under section 94 (*c*).

99. During the continuance of an attachment under section ninety-eight, the defaulters shall be excluded from possession of the land attached, and the Deputy Commissioner or the agent appointed by him shall have all their rights to manage the land and to realize the rents and profits arising therefrom, and shall be bound by all their liabilities as málguzárs or proprietors to any subordinate proprietors or tenants of such land.

Effect of attachment.

100. The surplus profits of such land, after defraying the cost of attachment and management, shall be applied, first, to the payment of any revenue becoming due in respect of such land during the attachment; and next, to discharging the arrear for the recovery of which the attachment was made.

Profits of land how applied.

101. The attachment shall continue until the arrear is paid or realized from the profits of the land attached, or the Deputy Commissioner reinstates the defaulters in possession:

Attachment when to cease.

Provided that no attachment shall continue beyond five years from the first day of the agricultural year next following its commencement.

102. When it is proposed to execute the process mentioned in section ninety-four, clause (*d*), the persons to whom the share or land in respect of which the arrear is due is to be transferred shall be required to pay such arrear, or to secure its payment to the satisfaction of the Deputy Commissioner.

Transfer under section 94 (*d*).

No such transfer shall be made for a term exceeding fifteen years from the first day of the agricultural year next after the date on which it is sanctioned by the Chief Commissioner.

No proceedings taken under this section shall affect the joint and several liability of the málguzárs of the mahál for arrears accruing in respect of such mahál subsequently to the transfer of the share or land except that, as regards all such arrears, the transferee shall stand in the place of the málguzár whose share or land is transferred.

Joint and several liability not affected by transfer.

103. When the Chief Commissioner sanctions the annulment of the settlement of any mahál, the Deputy Commissioner shall proclaim such annulment, and may then exclude the defaulters from the possession of the mahál, and either manage the mahál or any portion thereof himself or through an agent, or let the mahál or any portion thereof in farm for such term and on such conditions as the Chief Commissioner directs:

Procedure after receipt of sanction to annulment of settlement.

Provided that no management or farm under this section shall continue for a longer period than fifteen years from the first day of the agricultural year next after the proclamation of annulment of settlement.

After the date of such proclamation no liabilities shall accrue under the settlement so annulled; but such annulment shall not affect anything done or any liability incurred under the settlement before such date.

104. When a portion only of the mahál is managed or let in farm under section one hundred and three, the rest of such mahal shall be separately resettled with the proprietors thereof for the remainder of the term of settlement.

Case of a portion of a mahál being managed or farmed.

105. As soon as the management or farm of any mahál or portion thereof has come to an end, the Deputy Commissioner shall offer to the persons entitled under section forty-nine to an offer of assessment a new assessment of the land, on such conditions as the Chief Commissioner may direct, for the remainder of the term of the settlement of the mahál; and, if such offer is refused, may, with the previous sanction of the Chief Commissioner, let such mahál or portion in farm for the remainder of the term of settlement to some other person, or manage it himself or through an agent for such period.

Settlement on expiry of management or farm.

106. No leases, liens or other incumbrances created by the defaulters, or by any person through or under whom they claim, of, or upon any land managed or let in farm under this Act, shall, during such management or farm, be binding upon the Deputy Commissioner or Settlement-officer, his agent or lessee.

Effect of annulment of settlement.

107. No defaulter shall be deprived of the possession of his sír-land in the execution of any of the processes mentioned in section ninety-four, clauses (*c*), (*d*) and (*e*); but every such defaulter shall, while such process is being enforced, be entitled to retain possession of, and liable to pay rent for, such land as if he were an absolute occupancy-tenant, at such rent as may be fixed by the Deputy Commissioner.

Saving of rights in sír-land.

108. Unless the Chief Commissioner in sanctioning the sale otherwise directs, a purchaser of any land sold for arrears of revenue due in respect thereof acquires the full proprietorship or superior or inferior proprietorship of it, as the case may be, free of all leases, liens and other incumbrances; and all grants or contracts previously made by any person other than the purchaser in respect of such land shall become void as against such purchaser.

Nature of estate taken by purchaser of land sold for arrears due thereon.

Nothing in this section shall—

(*a*) affect the rights of any proprietor superior or inferior to the defaulters or of any málik-makbúzá or occupancy-tenant who does not derive his rights as such proprietor, málik-makbúzá or tenant from express contract with such defaulters, or any person through whom they claim; or

(*b*) apply to lands held under leases at fair rents for the erection thereon of dwelling-houses, places of worship or manufactories, or for working mines, minerals, coals and quarries, or for laying out and maintaining gardens and burial-grounds, or for constructing tanks and canals, so long as the lands continue to be used for the purposes specified in such leases respectively; or

(*c*) deprive any defaulter whose property is sold of the rights in respect to his sír-land conferred by any law for the time being in force.

The Chief Commissioner may, from time to time, determine what rents shall be deemed to be fair rents within the meaning of this section.

109. When immoveable property is sold under this Act, the rules prescribed in sections 287, 288, 293 and 306 to 316, both inclusive, of the Code of Civil Procedure shall be followed, except in the following particulars (that is to say):—

Rules for sale of immoveable property.

(*a*) The defaulter may pay the arrear in respect of which the land is to be sold at any time before the day fixed for the sale, and on such payment the sale shall be stayed.

(*b*) The proclamation directed by the said section 287 shall, when the sale is under clause (*f*), section ninety-four of this Act, declare that, subject to the provisions of section one hundred and eight, the full proprietorship, or superior or inferior proprietorship, as the case may be, is to be sold free from all leases, liens and other incumbrances, and the certificate mentioned in section 316 of the said Code shall contain a similar statement.

(*c*) The last two clauses of the said section 287 shall not apply.

(*d*) An appeal from any order under section 312 of the said Code for confirming or setting aside the sale shall lie to the Commissioner of the Division, and an appeal from the Commissioner's order on such appeal shall lie to the Chief Commissioner.

(*e*) The Deputy Commissioner may, from time to time, postpone any sale which he has proclaimed, reporting such postponement to the Commissioner of the Division.

(*f*) Section 309 of the said Code shall be read as if, after the words "for such payment," the words "and every sale of such property made after a postponement" were added.

(*g*) Section 313 of the said Code shall not apply to sales under section ninety-four, clause (*f*), of this Act.

(*h*) Section 316 of the said Code shall be read as if the words "The Deputy Commissioner shall place the purchaser in possession of the lands which he has purchased" were added thereto.

110. In the course of a sale under section ninety-four, clause (*f*), if the property is knocked down to a stranger, the following persons may claim to take it at the sum last bid in the following order:—

Pre-emption at sales.

(*a*) any málguzár who has paid the revenue which as between him and the other málguzárs is payable by him;

(*b*) if the superior proprietorship is sold, the inferior proprietor;

(*c*) if the inferior proprietorship is sold, the superior proprietor:

Provided that such claim is made before the officer conducting the sale closes the sitting at which the sale is held, and that the claimant undertakes to fulfil all the conditions of the sale binding on the purchaser.

111. The proceeds of every sale in execution of any process mentioned in section ninety-four shall be applied, first, in satisfaction of the arrear on account of which the sale was held and of the expenses of such sale; secondly, to the payment of any other arrear due to Government by the defaulter; and the surplus, if any, shall then be payable to him, or, where there are more defaulters than one, to such defaulters according to their respective shares in the property sold.

Application of proceeds of sale of immoveable property.

112. The costs of serving a notice of demand under section ninety-three and of enforcing any process mentioned in section ninety-four shall be recoverable as part of the arrear in respect of which the notice was served and the process was issued.

Costs recoverable as part of arrear.

113. The Chief Commissioner may make rules—

Matters as to which Chief Commissioner may make rules.

(*a*) for the guidance of Revenue-officers in issuing notices of demand under section ninety-three and executing the processes mentioned in section ninety-four;

(*b*) defining the classes of officers by whom the processes mentioned in section ninety-four, clauses (*a*) and (*b*), may be enforced;

(*c*) prescribing the agency by which any of the processes issued under section ninety-four shall be executed.

114. Notwithstanding anything contained in section ninety-two, when proceedings are taken under this Act for the recovery of an arrear, the person against whom such proceedings are taken may, if he denies that the arrear or any part thereof is due,

Remedies open to person denying that sum demanded as an arrear is due.

pay the same under protest made at the time of payment and duly signed by him or by his agent, and institute a suit in the Civil Court for the recovery of the amount which he denies to be due.

Realization of Revenue by Málguzárs.

Limitation of right to set-off, &c., in suit for arrears.

115. In a suit for the recovery of an arrear of revenue not being revenue payable directly to Government, and in a suit brought by a lambardár to recover the amount of any revenue payable to Government through him, *the defendant shall not, except with the permission of the Court,*—

(*a*) set-off against the plaintiff's demand any sum of money recoverable by him from the plaintiff; or

(*b*) claim credit for any payment purporting to have been made on account when such payment was made before the date on which the amount thereof became due.

Recovery of arrear through Deputy Commissioner instead of by suit.

116. Any lambardár or sub-lambardár entitled to recover an arrear, or any málguzár to whom such an arrear is due under a sub-settlement, may, before instituting a suit for the recovery thereof, apply to the Deputy Commissioner to recover such arrear on his behalf as if it were an arrear of revenue payable directly to Government.

The Deputy Commissioner may, if he thinks fit, comply with such application, but shall, before compliance therewith, give to the persons who would be defendants if a suit were instituted for the recovery of such arrear, opportunity to show cause against the order which he proposes to make.

The Deputy Commissioner shall not be made a defendant to any suit instituted under section one hundred and fourteen in respect of an arrear as to which an order has been made under this section.

No person on whose account the Deputy Commissioner proceeds under this section to recover an arrear shall thereby be relieved of his responsibility for such arrear.

Saving of right of málguzár to demand revenue of land assessed to revenue and held free.

117. Nothing in the Indian Limitation Act, 1877, and no agreement made after this Act comes into force, shall bar the right of the málguzárs of any mahál assessed with land-revenue to demand revenue in respect of any land which, having been taken into account in such assessment, has been held by any person without payment of revenue.

The Chief Commissioner may, in his discretion, exempt any case from the operation of this section.

Limitation in suits for revenue.

118. No suit for the recovery of revenue payable under a settlement or sub-settlement shall be instituted after three years reckoned from the date on which such revenue becomes payable.

In other respects the limitation of such suits shall be governed by the Indian Limitation Act, 1877.

Interest on Arrears.

Interest on arrears.

119. Interest shall not be charged on an arrear of revenue unless the Chief Commissioner, by general or special order, so directs; provided that the Court may award interest at such rate as it thinks fit on sums payable under a sub-settlement.

CHAPTER IX.

OF REVENUE AND VILLAGE RECORDS.

Correction of record-of-rights.

120. Any entry in the record-of-rights may, after such record has been made over to the Deputy Commissioner, be corrected by the Deputy Commissioner on the application of any person interested, or of his own motion. Such correction may be made on one or more of the following grounds and on no others:—

(*a*) that all persons interested in such entry wish to have it corrected; or

(*b*) that by a decree in a suit brought under section eighty-three it has been declared to be erroneous; or

(*c*) that, being founded on a decree or order of a Civil Court, or on the order of a Revenue or Settlement officer, it is not in accordance with such decree or order; or

(*d*) that, being founded on such decree or order, the order or decision has subsequently been modified on appeal or review, or has been revised by the Chief Commissioner.

Revision of record in accordance with provision therein contained.

121. The Deputy Commissioner may revise a record-of-rights when such revision is provided for in such record.

Powers of Deputy Commissioner as to correction of entry or revision of record.

122. When the Deputy Commissioner takes proceedings for the correction of any entry in the record-of-rights or for the revision of such record-of-rights, he shall exercise, for the purpose of such correction or revision, all the powers which the Chief Settlement-officer might have exercised if the proceedings had been taken whilst the settlement was in progress.

Power to direct that rule or custom entered in record-of-rights shall be enforced by Government.

123. The Chief Commissioner may, in his discretion, by notification in the official Gazette, direct that any specified rule, custom or condition duly entered in the record-of-rights of any specified village shall be enforced by the Government.

Punishment of violation of such rule or custom.

If any of the persons with whom a settlement or sub-settlement has been made, violate or neglect any rule, custom or condition with respect to which the Chief Commissioner has made a direction under this section, the Deputy Commissioner may, if no penalty is provided by any law for the time being in force for such violation or neglect, recover from such person a penalty not exceeding two hundred rupees.

Suit to set aside proceedings under section 123.

124. Any person against whom proceedings have been taken under section one hundred and twenty-three may institute a suit against Government to set aside such proceedings on the ground that no rule, custom or condition was, in fact, violated or neglected. If the Court finds that no rule, custom or condition has been violated or neglected, it may by its order annul such proceedings, and direct that any penalty paid by the plaintiff be refunded; and may also award to him such costs as he has necessarily incurred in the proceedings, and such further sum as compensation as it thinks fit.

Powers of Chief Commissioner as to registration of changes after preparation of record-of-rights.

125. The Chief Commissioner may—

(*a*) direct that the mukaddam of each village shall, for the purpose of showing the changes occurring therein subsequently to the preparation of the record-of-rights, prepare, or, where there is a patwárí, cause to be prepared, and furnish, annually for such village, papers in such form, at such time, containing such particulars, and attested in such manner, as the Chief Commissioner may, from time to time, prescribe;

(*b*) lay down the procedure to be followed in order to ascertain that a change has occurred in the village, and the nature of such change.

All changes referred to in this section shall be recorded in such registers as the Chief Commissioner appoints, and not in the record-of-rights, and the Chief Commissioner may direct that, before any specified changes are recorded, the order of a specified Revenue-officer shall be obtained in this behalf.

Possession of proprietary rights to be notified.

126. All persons lawfully entering into possession of proprietary rights and interests in any land shall, within a reasonable time, give notice of such entry to the Tahsíldár of the tahsíl in which such land is situated.

If any question arises whether any right or interest is a proprietary right or interest within the meaning of this section, the decision thereof by the Chief Commissioner shall be final.

Notice to be given by guardian in case of minority or idiotcy.

If the person so entering is a minor, lunatic or idiot, the guardian or other person who has charge of his property shall give the notice required by this section.

Fine for neglect to give notice of possession.

127. Any person neglecting to give the notice required by section one hundred and twenty-six shall be liable, at the discretion of the Deputy Commissioner or Assistant Commissioner, to fine which may extend to fifty rupees for each day during which such neglect continues.

Obligation to aid in preparation of village-papers.

128. All persons being in possession of proprietary rights in land shall, on being so required by the Deputy Commissioner, prepare, or cause to be prepared, such papers, and furnish such information, as may be required for the preparation of the village-papers prescribed under section one hundred and twenty-five.

Fees for recording changes; from whom leviable.

129. The Chief Commissioner may direct that fees shall be leviable when changes are recorded under the last clause of section one hundred and twenty-five, and may fix the amount of such fees.

All fees so leviable shall be levied from the person in whose favour the change is made.

Annual enquiry regarding land held free from revenue.

130. The Deputy Commissioner shall in each year make enquiry regarding all cases in which land has been granted by Government, conditionally or for a time, free, wholly or in part, from the payment of revenue.

Procedure on breach of conditions of grant.

If it appears to the Deputy Commissioner that the conditions of any grant have been broken by the grantee, he shall report the case through the Commissioner of the Division for the orders of the Chief Commissioner, who may direct that the land be assessed, or may pass such other order as he thinks fit.

Procedure on expiry of term of grant.

If it appears to the Deputy Commissioner that the term of any such grant has expired, or (when the grant is for a life or lives) if the person last entitled to hold the land comprised in the grant, free from revenue, or at less than full revenue-rates, has died, he shall assess the same, and shall report his proceedings through the Commissioner of the Division for the sanction of the Chief Commissioner.

Inspection of revenue-records.

131. All records kept under this Act shall be open to public inspection at such times, and on such conditions as to fees or otherwise, as the Chief Commissioner from time to time directs.

CHAPTER X.

OF CERTAIN ADDITIONAL POWERS AND FUNCTIONS OF REVENUE-OFFICERS.

Purposes for which, when settlement is not in progress, Deputy Commissioner shall exercise Settlement-officers' powers.

132. The Deputy Commissioner shall, when a settlement is not in progress, exercise the powers conferred by this Act on Settlement-officers for the following purposes:—

(*a*) causing boundary-marks to be erected or repaired, and recovering the cost of such erection and repair;

(*b*) assessing land-revenue on lands which are liable to assessment, but have not been assessed;

(*c*) declaring any local area to be a mahál;

(*d*) settling lands from which the proprietors were excluded at settlement and to which they have been or are about to be readmitted;

(*e*) settling mahals in respect of which an application has been made under the third proviso to section fifty-six;

(*f*) dealing with claims to hold land wholly or partially free from revenue as against the málguzárs;

(*g*) assessing lands gained by alluvion;

(*h*) ascertaining and recording village-cesses which are levied when this Act comes into force, but have not been recorded at the settlement.

Purposes for which officers may be invested with Settlement-officers' powers.

133. The Chief Commissioner may, during the currency of a settlement, invest any officer with the powers conferred on a Settlement-officer by sections forty, forty-one and forty-two; or,

with the sanction of the Governor General in Council, with any other of the powers which are by this Act conferred on a Settlement-officer; but not so as to enable him to enhance the amount of an assessment in force under section fifty-six.

Cognizance of, and penalty for, offence of injuring boundary-marks.

134. Any person wilfully erasing, removing or damaging a boundary-mark may be ordered by the Deputy Commissioner or by a Tahsíldár or Náib Tahsíldár empowered by the Chief Commissioner in this behalf to pay to the officer making the order, in addition to any fine to which such person would be liable under section 434 of the Indian Penal Code, such sum, not exceeding fifty rupees, as may in the opinion of such officer be necessary to defray the expense of restoring the same, and of rewarding the person (if any) who gave information of such erasure, removal or damage.

Procedure when person injuring cannot be found.

135. Whenever the person erasing, removing or damaging such mark cannot be discovered, or if for any other reason it is found impracticable to recover from him the sum which he has been ordered to pay, the mark shall be re-erected or repaired at the cost of the proprietors, mortgagees or farmers of such one or more of the adjoining lands as the Deputy Commissioner thinks fit.

Partition of a mahál into two maháls.

136. Any málguzárs of a mahál who are not co-sharers with the other málguzárs of such mahál in any lands comprised in such mahál, except such lands as are under the law relating to partition for the time being in force indivisible, may apply to the Deputy Commissioner to make the lands held by them separately from such other málguzárs a separate mahál; and the Deputy Commissioner shall thereupon make such lands and the lands held separately by the remaining málguzárs separate maháls, and shall, with the previous sanction of the Commissioner, apportion between the two new maháls thus constituted the entire revenue assessed upon the original mahál.

CHAPTER XI.

VILLAGE-OFFICERS AND PATWÁRIS.

Power to make rules as to officers.

137. The Chief Commissioner may make rules regulating the appointment, remuneration, suspension and removal of lambardárs, sub-lambardárs and mukaddams:

Provided that, except with the previous sanction of the Governor General in Council, proprietors, other than málik-makbúzás, shall not be liable to pay, on account of the aggregate remuneration of lambardárs or sub-lambardárs and mukaddams, a sum exceeding five per cent. on the land-revenue which is assessed on their land, or which, when their land is free from revenue, would, in the judgment of the Deputy Commissioner, be assessed on their land if it were subject to assessment.

In framing rules for the appointment under this section of lambardárs and sub-lambardárs for any mahál, the Chief Commissioner shall have regard among other matters to local custom and hereditary claims, and to entries on the subject in the record-of-rights of such mahál.

In every village in which there are resident málguzárs, one of such málguzárs shall be the mukaddam.

Duties of lambardárs.

138. It shall be the duty of every lambardár and sub-lambardár—

(*a*) to collect and pay into the Government Treasury so much of the land-revenue as may under section seventy-one be payable through him, either solely or jointly with other lambardárs or sub-lambardárs;

(*b*) to collect and pay to the mukaddam, or into the Government Treasury, as the Deputy Commissioner may direct, all sums of money payable through him, either solely or jointly with other lambardárs or sub-lambardárs, by the proprietors whom he represents, on account of the remuneration of the mukaddam, patwáris or village-watchmen, or on account of any expenses which the mukaddam is authorized to recover from the lambardárs or sub-lambardárs of his village;

(*c*) to assist the mukaddam in obtaining all particulars which he is bound to enter in the annual village-papers, or to report under this Act.

Lambardárs may recover fees and other charges from proprietors.

139. Together with the land-revenue, lambardárs and sub-lambardárs may recover from the proprietors whom they respectively represent—

(*a*) any remuneration to which they are entitled as such; and

(*b*) the sum which, under section one hundred and thirty-eight, they are bound to pay to mukaddams:

Provided that no such recovery shall be made from málik-makbúzás paying a percentage which includes remuneration to mukaddams and lambardárs.

Deputy Commissioner may alter channel through which málik-makbúzá pays revenue.

140. On the application of any málik-makbúzá or other like holder of land, or of the lambardár or sub-lambardár through whom such málik-makbúzá or other holder of land pays the revenue assessed on his holding, the Deputy Commissioner may, for sufficient cause shown, order that such revenue be paid through any other lambardár or sub-lambardár, or that it be paid into the Government Treasury.

Effect of order for payment of revenue direct to Government.

When the Deputy Commissioner orders such payment to be made into the Government Treasury, such portion of the percentage fixed under section sixty-four as the Deputy Commissioner, subject to the control of the Chief Commissioner, may determine, shall be so paid, and the málik-makbúzá or other person shall pay the rest to the mukaddams on account of their fees and the other village-expenses.

Duties of mukaddams.

141. It shall be the duty of every mukaddam—

(*a*) to control and superintend the village-patwári and village-watchmen; to report their deaths or absence from duty; to maintain them in the possession of any lands appertaining to their office; to recover and pay to them any cash allowances to which they may be entitled; and to take such steps as may be necessary to compel them to perform their duties;

(*b*) to furnish reports regarding the state of his village, at such places and times as the Deputy Commissioner fixes in this behalf;

(*c*) to report and, if possible, to prevent encroachments on the public paths and roadways in his village;

(*d*) to preserve such stations and marks erected in his village by Government-surveyors as may be made over to his care;

(*e*) subject to any rules issued by the Chief Commissioner, to keep his village in good sanitary condition;

(*f*) to report violations of any rules which the Chief Commissioner may make for the preservation of underwood, forests and trees growing on the village-lands, and for securing to persons entitled to cut wood and enjoy other privileges in the waste-lands of the village the rights to which they are entitled;

(*g*) to collect, or aid in the collection of, all payments due to Government in his village;

(*h*) to report all births and deaths taking place in his village.

The Chief Commissioner may make rules—

(1) adding to the list of duties which a mukaddam is required to perform under this section; and

(2) regulating the liability of persons residing in any village for charges necessarily incurred by mukaddams in the performance of the duties specified in clause (*c*) in respect of such village, and for apportioning such charges among such persons; and

(3) determining the officers to whom reports under this section shall be made.

Liabilities imposed by law on landholders to attach to mukaddams.

142. When, by any enactment for the time being in force, any public duties are imposed on, or public liabilities are declared to attach to, landholders, their managers and agents and the like, such duties shall be deemed to be imposed on, and such liabilities shall be held to attach to, mukaddams appointed under this Act:

Provided that nothing herein contained shall discharge landholders, their managers or agents, or the like, from any liabilities imposed upon them by law.

Power of mukaddams to recover certain expenses incurred.

143. Every mukaddam may recover from the lambardárs or sub-lambardárs of the village to which he is appointed his own remuneration, together with any expenses necessarily incurred in the performance of his duties.

Chief Commissioner may make rules as to patwáris.

144. The Chief Commissioner may make rules—

(*a*) regulating the manner in which patwáris are to be selected; prescribing the conditions under which they may be appointed; and fixing the limits of their circles and the nature, mode and amount of their remuneration;

(*b*) prescribing the conditions under which substitutes may be appointed for persons having hereditary claims to the office of patwári, when such persons are unable to act;

(*c*) prescribing the fines which may be imposed on patwáris and their substitutes for neglect of their duty, and stating the circumstances under which they may be suspended or removed:

Provided that, except with the previous sanction of the Governor General in Council, no proprietor shall be compelled to pay as remuneration to patwáris a sum exceeding six per cent. on the revenue for the time being assessed on his land, or which, when his land is free from revenue, would, in the judgment of the Deputy Commissioner, be assessable on his land if it were liable to assessment.

Chief Commissioner may make rules for guidance of Deputy Commissioners in certain matters.

145. The Chief Commissioner may make rules for the guidance of Deputy Commissioners in dealing with cases where, at the time of making the settlement next before this Act comes into force, the maintenance of a patwári was made optional, and the persons settled with are unable to agree as to whether a patwári should be maintained, and for dealing with cases where no patwári is, under such option, maintained and the mukaddams or proprietors have made default in the performance of the duties of a patwári.

Such rules may empower the Deputy Commissioner, in the latter class of cases—

(*a*) to impose fines not exceeding fifty rupees on such mukaddams or proprietors, and therefrom to make provision for the temporary performance of the duties in respect of which they have made default;

(*b*) to appoint patwáris in the villages of such proprietors, either for the term of the settlement or for any shorter term, and to fix the remuneration of such patwáris.

Nothing in the proviso to section one hundred and forty-four shall apply to patwáris so appointed.

Chief Commissioner may define duties of patwáris.

146. The Chief Commissioner may make rules prescribing the duties of patwáris—

(*a*) towards the Government; and may in such rules determine the registers, returns or other papers which they shall keep or furnish, the forms and language in which such registers and returns are to be prepared, the mode of their preparation and attestation, and the dates on which they are to be furnished;

(*b*) towards the members of the village-community; and may in such rules fix the remuneration, if any, other than the fixed emoluments of their office, which the patwáris may demand in respect of the performance of such duties.

Patwáris' papers to be public documents.

All records and papers which patwáris are required to prepare or keep by any rule made by the Chief Commissioner under this section shall be deemed to be public documents within the meaning of the Indian Evidence Act, 1872, and to be the property of Government.

Patwáris to produce papers for inspection, and to allow copies to be made.

147. Patwáris shall produce at all reasonable times, for the inspection of all persons interested therein, all records and papers which they are so required to prepare or keep, and shall allow such persons to make copies of such records and papers.

148. All existing lambardárs, sub-lambardárs, mukaddams and patwáris shall, unless the Chief Commissioner in any specified case otherwise directs, be deemed to have been appointed under this Act.

Existing officers confirmed.

149. Any sums which lambardárs, sub-lambardárs, mukaddams and patwáris are entitled to recover or demand under this chapter may, if the Deputy Commissioner so directs, be recovered in the same manner as an arrear of revenue payable directly to the Government.

Lambardárs' and other officers' dues recoverable as arrears.

150. In each village of the district of Sambalpúr all persons holding sír-land, other than mukaddams, are bound to provide for the due remuneration of the mukaddam of the village; and the Chief Commissioner may make rules for the enforcement of this obligation.

Holders of sír-land in Sambalpúr to provide for remuneration of mukaddams.

PART V.

CHAPTER XII.

MISCELLANEOUS.

151. Unless it is otherwise expressly provided in the records of a settlement or by the terms of a grant made by the Government, the right to all mines, minerals, coals and quarries, and to all fisheries in navigable rivers, and the right to extract sap from all palmyra and cocoanut trees, shall be deemed to belong to Government; and the Government shall have all powers necessary for the proper enjoyment of such rights:

Right to mines and quarries.

Provided that, whenever in the exercise by the Government of the rights herein referred to over any land, the rights of any persons are infringed by the occupation or disturbance of the surface of such land, the Government shall pay to such persons compensation for such infringement, and the amount of such compensation shall be determined as nearly as may be in accordance with the provisions of the Land Acquisition Act, 1870.

152. Except as otherwise hereinbefore provided,—

Exclusive jurisdiction of Revenue-authorities.

(*a*) no Civil Court shall entertain any suit instituted, or application made, to obtain a decision or order on any matter which the Governor General in Council, the Chief Commissioner or a Revenue or Settlement officer is, by this Act, empowered to determine or dispose of; and in particular

Matters excepted from jurisdiction of Civil Courts.

(*b*) no Civil Court shall exercise jurisdiction over any of the following matters:—

(1) any matters provided for in sections forty, forty-one, forty-two and eighty-nine, as to waste-lands:

(2) the claim of any person to have an assessment offered to, or sub-settlement made with, him:

(3) the amount of revenue or rate to be assessed on any mahál, share or portion of a mahál under this or any other Act for the time being in force:

(4) questions as to the validity of any engagement with Government for the payment of land-revenue, or of any agreement entered into by superior or inferior proprietors in a settlement or sub-settlement:

(5) claims connected with or arising out of any process enforced on account of refusal to accept the assessment offered in a settlement or sub-settlement by the Settlement-officer or Deputy Commissioner:

(6) the amount of the allowance or rent fixed under section sixty-one or sixty-two:

(7) the redistribution according to established custom, by a Settlement-officer, of land comprised in a mahál:

(8) the formation of the record-of-rights,

the preparation, signing or attestation of any of the documents contained therein, or

the notification of settlement:

(9) any matters provided for or referred to in section seventy-three, seventy-four or one hundred and thirty as to lands held or claimed to be held free from revenue, except rights arising under any contract between the Government of India and grantees of land:

(10) claims connected with, or arising out of, the collection of revenue, or any process enforced on account of an arrear of revenue, or on account of any sum which is under this or any other Act realizable as revenue:

(11) claims to set aside, on any ground other than fraud, sales for arrears of revenue:

(12) corrections of entries or revisions of records under sections one hundred and twenty, one hundred and twenty-one and one hundred and twenty-two:

(13) claims to have a partition and apportionment made under section one hundred and thirty-six, and questions as to the distribution or apportionment under that section of the land or of the revenue of a mahál:

(14) claims to the office of patwárí, lambardár, sub-lambardár or mukaddam, or in respect of any injury caused by exclusion therefrom, or to compel the performance of the duties thereof:

(15) claims to compel the performance of any duties imposed by this Act on any Revenue or Settlement officer.

In all the above cases jurisdiction shall rest with the Revenue-authorities only.

153. No suit shall lie in any Civil or Revenue Court for the recovery of any village-cess which has not been sanctioned by the Chief Commissioner and also either recorded at a settlement or under section one hundred and thirty-two, clause (*h*).

For what village-cesses suit lies.

154. Whenever, at any settlement made before this Act comes into force, waste-lands have been demarcated as the property of Government, no claim of any person to, or in respect of, such lands shall be entertained by any Civil Court after the expiration of three years from the date of such demarcation.

Limitation of claims for compensation in case of waste-land demarcated as property of Government.

155. No Revenue or Settlement officer, and no person employed in any Revenue or Settlement office, shall, except with the express permission of the Chief Commissioner,—

Restriction on Revenue and Settlement officers trading and holding land.

(*a*) engage in trade, or be in any way concerned, directly or indirectly, in any commercial transaction, or in the purchase or hiring of land, in the district to which he is appointed, or in which he is employed;

(*b*) purchase or bid for, either in person or by agent, in his own name or in that of another, or jointly or in shares with others, any property which may be sold by order of any Revenue-authority in such district.

The Chief Commissioner may delegate to Commissioners of Divisions or to Deputy Commissioners the power of granting the permission mentioned in this section in the case of any specified class of officers.

Nothing in this section shall be deemed to preclude any person from becoming a member of a company incorporated under the Indian Companies Act, 1866.

156. When any mahál is managed or let in farm under section fifty-seven or fifty-eight, or when either of the proclamations mentioned in sections ninety-eight and one hundred and three has been made, all sums due to the proprietor in respect of the mahál, share or land mentioned in any of the said sections shall be payable only to the Deputy Commissioner or Settlement-officer, his agent or lessee; and no payment made to such proprietor in anticipation of the usual period for such payment shall, without the sanction of the Deputy Commissioner or Settlement-officer, be credited to the person making the same in account with the Deputy Commissioner or Settlement-officer, his agent or lessee.

When mahál managed or farmed, or upon proclamation under section 98 or 103, rent payable to Deputy Commissioner.

Payment to proprietor in anticipation of due date.

157. When any land has been let in farm under the provisions of this Act, any revenue due from the farmer in respect of such land may be recovered from him or his surety as an arrear of revenue payable directly to Government.

Recovery of balances due by farmers.

158. All land-revenue due when this Act comes into force, and all penalties or other moneys payable to, or recoverable by, an officer of Government under this Act, shall be recovered from the persons from whom they are due and from the sureties (if any) of such persons as if such land-revenue, penalties or moneys were an arrear of revenue payable directly to Government due under this Act by such persons and their sureties.

Recovery of revenue due when Act comes into force; and of money payable under Act.

159. All proceedings taken before this Act comes into force for the collection of the land-revenue or the realization of arrears thereof shall be deemed to have been taken in accordance with law.

Past proceedings for collection of revenue legalized.

160. In conferring powers under this Act the Chief Commissioner may empower persons by name or classes of officials generally by their official titles.

Chief Commissioner may empower persons by name, or confer powers on classes.

161. The Chief Commissioner may vary or cancel any order conferring powers under this Act.

Chief Commissioner may vary or cancel orders.

162. The Chief Commissioner may, with the previous sanction of the Governor General in Council, make rules consistent with this Act for carrying out its provisions, and may attach to the breach of any such rule, or of any other rule made by him under this Act, a penalty which may extend to two hundred rupees, or, when such breach is a continuing breach, to fifty rupees for each day during which such breach continues.

Chief Commissioner may make rules and attach penalty to breach thereof.

All powers to make rules conferred by this Act on the Chief Commissioner shall be exercised subject to the control of the Governor General in Council, and may be exercised from time to time as occasion requires.

No rule made by the Chief Commissioner under this Act shall take effect until it has been published in the local official Gazette.

All such rules, when so published, shall have the force of law.

SCHEDULE.

(*See section 2.*)

ENACTMENTS REPEALED.

Number and year.	Title.	Extent of repeal.
Act XII of 1841.	For amending the Bengal Code in regard to sales of land for arrears of revenue.	So much as has not been repealed.
Act I of 1847	For the establishment and maintenance of boundary-marks in the North-Western Provinces of Bengal.	The whole.
Act XXXI of 1858.	To make further provision for the settlement of land gained by alluvion in the Presidency of Fort William in Bengal.	The whole.

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(*Nothing hereinafter contained shall be deemed to have the force of law.*)

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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 publicatin.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 8th June, 1881, and is hereby promulgated for general information :—

ACT No. XVIII OF 1881.

THE CENTRAL PROVINCES LAND-REVENUE ACT, 1881.

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119. Interest on arrears.

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SCHEDULE—ENACTMENTS REPEALED.

An Act to consolidate and amend the law relating to Land-revenue and the powers of Revenue-officers in the Central Provinces.

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to Land-revenue and to the powers of Revenue-officers in the Central Provinces; It is hereby enacted as follows:—

PART I.

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called "The Central Provinces Land-revenue Act, 1881":

Local extent.

It extends to all the territories for the time being under the administration of the Chief Commissioner of the Central Provinces, except those specified in Part VI of the first schedule of the Scheduled Districts Act, 1874:

Commencement.

And it shall come into force on such day as the Chief Commissioner, with the previous sanction of the Governor General in Council, may direct by notification in the local official Gazette.

Enactments repealed.

2. On and from such day the enactments mentioned in the schedule hereto annexed, so far as they relate to the territories to which this Act extends, and all other rules, regulations and enactments relating to the settlement and collection of the land-revenue in such territories, shall be repealed.

Pending proceedings.

3. All proceedings relating to matters dealt with by this Act and, when this Act comes into force, pending before officers by whom they would be cognizable under this Act, shall be deemed, so far as may be, to have been commenced hereunder.

Interpretation-clause.

4. In this Act, unless there is something repugnant in the subject or context,—

"Assistant Commissioner":

(1) "Assistant Commissioner" includes also "Extra Assistant Commissioner":

"Legal Practitioner":

(2) "Legal Practitioner" means an advocate, vakíl or attorney of any High Court, a pleader, mukhtár or revenue-agent:

"Village-cess":

(3) "Village-cess" means any cess which a person resident or holding lands in a village pays or renders to the proprietors as such of the village, and includes service rendered or things furnished as well as money paid:

"Recognized agent":

(4) "Recognized agent" means a person authorized in writing by any party to a proceeding under this Act to make appearances and applications and to do other acts on his behalf in such proceeding and also belonging to any class which the Chief Commissioner may, from time to time, by notification in the official Gazette, declare in this behalf:

"Agricultural year":

(5) "Agricultural year" means the year commencing on the first day of June, or on such other date as the Chief Commissioner may, in the case of any specified District or Districts, from time to time, appoint:

"Sír-land":

(6) "Sír-land" means (*a*) land recorded as "sír" in the papers of the last preceding settlement of the local area in which such land is situate; and (*b*) land not so recorded, but which has been cultivated by the proprietor or one of the proprietors thereof for a period of not less than twelve consecutive years; and (*c*) waste land which has been broken up by the proprietor or one of the proprietors thereof and cultivated by him for a period of not less than six consecutive years; and (*d*) in Sambalpúr, includes also "bhogra" land.

Explanation.—Land which has, after the date of such settlement, or the expiry of such period of twelve years, or six years (as the case may be), been for a period of six consecutive years unoccupied by such proprietor is not sír-land. Land is not unoccupied by the proprietor when it is leased out by him with an express reservation of his sír-rights:

"Mahál":

(7) "Mahál" means any local area held under a separate engagement for the payment of the land-revenue direct to Government, and includes also any local area declared, under the provisions of this Act, to be a mahál:

"Village":

(8) "Village" includes any tract of land which, at the last settlement of such land, has been recognized as a village, or which the Chief Commissioner may, from time to time, declare to be a village for the purposes of this Act:

"Málguzár":

(9) "Málguzár" means a person who, under the provisions of this Act, has accepted, or is to be deemed to have accepted, the assessment of a mahál, and includes his representatives and assigns; and also any person with whom a settlement has been made before this Act comes into force, and his representatives and assigns:

(10) "Málik-makbúzá" means any person owning one or more plots of land assessed with revenue in a mahál; but it does not include a málguzár or inferior proprietor:

"Málik-makbúzá":

(11) "Lambardár" means a person appointed in manner prescribed by this Act to represent the proprietary body of a mahál in its relations with the Government:

"Lambardár":

(12) "Sub-lambardár" means a person so appointed to represent the inferior proprietary body of a mahál in its relations with the superior proprietors:

"Sub-lambardár":

(13) "Mukaddam" means the executive headman of a village, appointed in manner prescribed by this Act:

"Mukaddam":

(14) "Tenant" means a person who holds land of another person, and is, or but for a special contract would be, liable to pay rent for such land to such other person; but it does not include a farmer, mortgagee or thekadár of proprietary rights.

"Tenant":

Explanation.—An inferior proprietor is not, as such, a tenant:

(15) "Rent" means whatever is paid, delivered or rendered, in money, kind or service, by a tenant on account of the use or occupation of land let to him:

"Rent":

(16) "Absolute occupancy-tenant" means, in reference to any land, a tenant who, at a settlement of such land made before this Act comes into force, or after such a settlement but before this Act comes into force, was recorded, by order of a Revenue or Settlement officer, in respect of such land, as an "absolute occupancy-raiyat," or in terms equivalent thereto:

"Absolute occupancy-tenant":

(17) "Record-of-rights" includes the supplementary administration-paper prepared at or after the time of making a settlement before this Act comes into force.

"Record-of-rights."

PART II.

CHAPTER II.

OF REVENUE-OFFICERS: THEIR POWERS AND PROCEDURE.

Chief Controlling Revenue-authority.

5. The Chief Commissioner shall, subject to the control of the Governor General in Council, be the Chief Controlling Revenue-authority.

Revenue-officers.

6. Besides the Chief Commissioner, there shall be the following classes of Revenue-officers (namely):—

(*a*) Commissioners, who, subject to the control of the Chief Commissioner, shall be the Chief Revenue-authorities within their respective divisions:

(*b*) Deputy Commissioners, who, subject to the control of the Commissioner, shall be the Chief Revenue-authorities within their respective districts:

(*c*) Assistant Commissioners, who shall be subordinate to, and under the control of, the Deputy Commissioners of the districts to which they are respectively attached:

(*d*) Tahsíldárs, who, subject to the control of the Deputy Commissioner, shall be the Chief Executive Revenue-authorities in the tahsíls to which they are respectively attached:

(*e*) Náib Tahsíldárs, who shall be subordinate to the Tahsíldárs of the tahsíls to which they are respectively attached.

Appointment, suspension and removal of Commissioners, Deputy and Assistant Commissioners.

7. Subject to the control of the Governor General in Council, the Chief Commissioner shall appoint, and may suspend or remove, Commissioners, Deputy Commissioners and Assistant Commissioners.

Appointment, suspension and removal of Tahsíldárs and Náib Tahsíldárs.

8. The Chief Commissioner shall appoint, and may suspend or remove, Tahsíldárs; and may also make rules for regulating the appointment, duties, suspension and removal of Náib Tahsíldárs.

Persons holding office when Act comes into force.

9. All Commissioners, Deputy Commissioners, Assistant Commissioners, Tahsíldárs and Náib Tahsíldárs holding office as such in the territories to which this Act extends when this Act comes into force shall be deemed to have been appointed hereunder.

Power to appoint additional Commissioners, Deputy Commissioners and Tahsíldárs.

10. The Chief Commissioner may appoint any person to be an additional Tahsíldár in any tahsíl, or, with the sanction of the Governor General in Council, to be an additional Commissioner or additional Deputy Commissioner in any division or district, and may suspend or remove any person so appointed, but subject, in the case of an additional Commissioner or additional Deputy Commissioner, to the like sanction.

The Chief Commissioner may invest any additional Commissioner, Deputy Commissioner or Tahsíldár appointed under this section with all or any of the powers conferred by this Act on a Commissioner, Deputy Commissioner or Tahsíldár, as the case may be.

Chief Commissioner may invest Assistant Commissioner with powers of Deputy Commissioner.

11. The Chief Commissioner may invest any Assistant Commissioner attached to a district with all or any of the powers conferred by this Act on Deputy Commissioners.

Officers transferred to retain powers with which they were invested.

12. Whenever any Assistant Commissioner, Tahsíldár or Náib Tahsíldár is transferred from one district or tahsíl to another, he shall, unless the Chief Commissioner otherwise directs, exercise in the district or tahsíl to which he is transferred all the powers with which he was, under any provision of this Act, invested by the Chief Commissioner in the district or tahsíl from which he is transferred.

Provision for discharge of duties of Deputy Commissioner dying or being disabled.

13. When a Deputy Commissioner dies or is disabled from performing his duties, such officer as the Chief Commissioner may by rule direct shall take executive charge of his district, and shall be deemed to be a Deputy Commissioner under this Act, until a successor to the Deputy Commissioner so dying or disabled is appointed and such successor

takes charge of his office, or until the person so disabled resumes charge of his office.

14. The Chief Commissioner may, from time to time, by notification in the official Gazette, alter the limits of any district or tahsíl, create new districts or tahsíls and abolish existing districts or tahsíls.

Chief Commissioner may alter limits of district or tahsíl.

15. The Chief Commissioner may, subject to the control of the Governor General in Council, invest any Revenue-officer with any of the following powers:—

Power to invest Revenue-officers,—

for the purpose of disposing of cases under this Act, any power conferred by the Code of Civil Procedure on a Civil Court;

with power conferred by Code of Civil Procedure;

power to delegate to any Revenue-officer subordinate to him the exercise of any power or performance of any duty conferred or imposed on him by this Act;

with power to delegate powers.

and, subject to the like control, may determine the Revenue-officer by whom any case or class of cases for which no express provision in this behalf is made in this Act shall be disposed of.

16. Subject to any rules which the Chief Commissioner may make in this behalf, a Deputy Commissioner may—

Power of Deputy Commissioner to distribute work.

(*a*) refer any case to any Revenue-officer subordinate to him for investigation and report, or, if such officer has power to dispose of such case, for disposal; or

(*b*) direct that any Revenue-officer subordinate to him shall, without such reference, deal with any case or class of cases arising within any specified area, and either investigate and report on such case or class, or, if he has power, dispose of it himself.

The subordinate Revenue-officer shall submit his report on any case referred to him under this section for report to the Deputy Commissioner, or otherwise, as may be directed in the order of reference; and the officer receiving such report may, if he has power to dispose of the case, dispose of the same, or may return it for further investigation to the officer submitting the report, or may hold such investigation himself.

17. The Chief Commissioner, the Commissioner or the Deputy Commissioner may withdraw any case pending before any Revenue-officer subordinate to him, and either dispose of it himself, or refer it for disposal to any other Revenue-officer subordinate to him and having power to dispose of the same.

Power of superior Revenue-authorities to withdraw and transfer cases.

18. All Revenue-officers and persons acting under their orders may, in the performance of any duty under this Act, enter upon and survey land, and demarcate boundaries, and do all other acts necessary to the business in which they are engaged.

Power of Revenue-officers to enter on land, &c.

19. The Chief Commissioner may, with the previous sanction of the Governor General in Council, make rules consistent with this Act for regulating the procedure of Revenue-officers in cases for which a procedure is not prescribed by this Act, and may, by any such rule, direct that any provisions of the Code of Civil Procedure shall apply, with or without modification, to all or any classes of cases before Revenue-officers.

Power to make rules to regulate procedure.

20. All appearances before, applications to, and acts to be done before, any Revenue-officer under this Act may be made or done—

Persons by whom appearances and applications may be made before and to Revenue-officers.

(*a*) by the parties themselves; or,

(*b*) with the permission of the officer, by their recognized agents or any legal practitioner:

Provided that the employment of a legal practitioner or recognized agent shall not excuse the personal attendance of a party to any proceeding in cases where such attendance is required by any order of the Revenue-officer.

Obligation of parties to attend in person.

21. The fees of a legal practitioner or recognized agent shall not be allowed as costs before any Revenue-officer unless such officer considers, for reasons to be recorded by him in writing, that such fees should be allowed.

Legal practitioner's or agent's fees not allowed unless for special reasons.

22. An appeal shall lie against every decision or order under this Act—

Appeals.

(*a*) when such decision or order is passed by any Revenue-officer subordinate to the Deputy Commissioner, except an Assistant Commissioner exercising the powers of a Deputy Commissioner,—to the Deputy Commissioner;

(*b*) when such decision or order is passed by a Deputy Commissioner, or by an Assistant Commissioner exercising the powers of a Deputy Commissioner, whether in the first instance or on appeal,—to the Commissioner of the division;

(*c*) when such decision or order is passed on appeal or otherwise by the Commissioner of a division,—to the Chief Commissioner:

Provided that in no case shall a third appeal be allowed.

Limitation of appeals.

23. No appeal shall lie—

(*a*) in the Court of the Deputy Commissioner or an Assistant Commissioner exercising the powers of a Deputy Commissioner—after the expiration of thirty days from the date of the decision or order complained of; or

(*b*) in the Court of the Commissioner—after the expiration of sixty days from such date; or

(*c*) in the Court of the Chief Commissioner—after the expiration of ninety days from such date.

In computing such periods of limitation, and in all respects not herein specified, the provisions of the Indian Limitation Act, 1877, shall apply.

24. Any Commissioner or Deputy Commissioner may at any time, for the purpose of satisfying himself as to the legality or propriety of any order passed by, and as to the regularity of the proceedings of, any Revenue-officer subordinate to him, call for and examine the record of any case pending before, or disposed of by, such officer, and may pass such order in reference thereto as he thinks fit:

Powers of revision of Commissioner and Deputy Commissioner.

Provided that he shall not under this section modify or reverse any order affecting any question of right between private persons, without having given to the parties interested reasonable notice to appear and be heard in support of such order.

25. The Chief Commissioner may at any time call for and examine the record of any case pending before, or disposed of by, any Revenue-officer, and may pass such order in reference thereto as he thinks fit:

Powers of revision of Chief Commissioner.

Provided that no order affecting any question of right between private persons shall be passed under this section unless the Chief Commissioner has given the parties interested an opportunity of being heard.

26. Every Revenue-officer may, either on his own motion or on the application of any party interested, review, and on so reviewing modify, reverse or confirm orders passed by himself or by any of his predecessors in office:

Review of orders.

Provided as follows—

(1) when a Commissioner or Deputy Commissioner thinks it necessary to review any order which he has not himself passed, and when an officer under the rank of a Deputy Commissioner proposes to review any order, whether passed by himself or by any predecessor, he shall first obtain the sanction of the officer to whom he is immediately subordinate:

(2) no order shall be modified or reversed unless reasonable notice has been given to the parties interested to appear and be heard in support of such order:

(3) no order against which an appeal has been preferred shall be reviewed while such appeal is pending:

(4) no order affecting any question of right between private persons shall be reviewed except on the application of a party to the proceedings; and no application for the review of such an order shall be entertained unless it is made within ninety days from the passing of the order, or unless the applicant satisfies the Revenue-officer that he had sufficient cause for not making the application within such period.

For the purposes of this section, the Deputy Commissioner shall be deemed to be the successor in office of any Revenue-officer who has left the district or has ceased to exercise powers as a Revenue-officer, and to whom there is no successor in office.

PART III.

OF SURVEY AND SETTLEMENT.

CHAPTER III.

PRELIMINARY.

27. Whenever it appears to the Chief Commissioner that a revenue-survey should be made in any local area, he shall publish a notification in the official Gazette directing that such survey be made, and cause translations of such notification in the language of the district to be posted up in conspicuous places in such area; and thereupon all officers in charge of such survey, their assistants, servants, agents and workmen may enter upon the lands to be surveyed, and erect survey-marks, and do all other acts necessary for making the survey.

Notification of revenue-survey.

Effect thereof.

28. When any local area is to be settled, the Chief Commissioner may, with the previous sanction of the Governor General in Council, issue a notification of settlement, and in such notification shall—

Notification of settlement.

(*a*) define the local area to be settled;

(*b*) specify the operations which are to be carried out in the settlement;

and may from time to time, with the like sanction, amend, alter or cancel such notification.

Power to amend notification.

Every such notification, amendment, alteration and cancellation shall be published in the local official Gazette.

29. The Chief Commissioner may, from time to time, appoint one or more officers (hereinafter called Settlement-officers) to make the settlement of such area; and when he appoints more than one such officer, he shall appoint one of them (hereinafter called the Chief Settlement-officer) to control such settlement; and all other officers appointed for the purposes of such settlement shall be subordinate to the Chief Settlement-officer.

Power to appoint Settlement-officers;

The Chief Commissioner may suspend or remove any officer appointed under this section.

and to suspend and remove them.

30. During the progress of the settlement of any local area, the Chief Commissioner may invest any Settlement-officer within such area with all or any of the powers of a Deputy Commissioner under this Act, to be exercised by him in such classes of cases as the Chief Commissioner may, from time to time, direct.

Settlement-officer may be invested with powers of Deputy Commissioner.

31. The provisions of section eleven and sections fifteen to twenty-six, both inclusive, shall apply, *mutatis mutandis*, to Settlement-officers and to proceedings before them, the expression "Settlement-officer" being read for the expressions "Assistant Commissioner" and "Revenue-officer," and the expression "Chief Settlement-officer," for the expression "Deputy Commissioner," wherever those expressions occur:

Certain provisions of Chapter II applied to Settlement-officers.

Provided that an appeal from any appealable order passed by a subordinate Settlement-officer shall lie to the Chief Settlement-officer if preferred within sixty days from the date of such order:

Provided also that no appeal shall lie from any decision of a Chief Settlement-officer which can be called in question in a Civil Court.

32. The Chief Commissioner may, from time to time, with the previous sanction of the Governor General in Council,

Appointment of Settlement-Commissioner;

(*a*) appoint a Settlement-Commissioner, and transfer to him, within any local area under settlement, all or any of the powers which the Commissioner of the division, if the land to be settled were wholly situate within such division, would otherwise exercise under this Act in matters connected with such settlement; and

(*b*) delegate to the Settlement-Commissioner such of his own powers in regard to matters connected with such settlement as he thinks fit.

Delegation to him of Chief Commissioner's powers.

33. When any local area is under settlement, the Chief Commissioner may invest any subordinate Settlement-officer with the powers of any of the first five grades of Courts described in section four of the Central Provinces Courts' Act, 1865, and the Chief Settlement-officer with the powers of a Court of a Deputy Commissioner described in the same Act, sections twelve, nineteen and twenty, for the trial, in the first instance, of any of the following classes of suits instituted within such area (namely) :—

Power to invest Settlement-officers with Civil Court powers.

(*a*) suits for arrears of rent due on account of any right of pasturage, forest-rights, fisheries or the like ;

(*b*) suits by lambardárs for arrears of revenue payable through them by the proprietors whom they represent ;

(*c*) suits by proprietors for their share of the profits of an estate or any part thereof after payment of the revenue and village-expenses, or for a settlement of accounts ;

(*d*) suits by muáfidárs or assignees of revenue for arrears of revenue owing to them as such muáfidárs or assignees ;

(*e*) suits by superior proprietors for arrears of revenue due to them as such superior proprietors ;

(*f*) suits by proprietors and others in receipt of the rent of land against any agents employed by them in the management of land or collection of rents, or against the sureties of such agents, for money received or accounts kept by such agents in the course of such employment, or for papers in their possession ;

(*g*) suits regarding any matter which a Settlement-officer is required to decide or to enter in the record-of-rights, and of which Civil Courts can take cognizance ;

(*h*) suits relating to land, or the rent, profits or occupation of land.

34. When the Chief Commissioner invests any subordinate Settlement-officer with the powers of a Civil Court for the trial of any of the suits mentioned in section thirty-three, the Chief Settlement-officer to whom such Settlement-officer is subordinate shall have the powers of the Court of a Deputy Commissioner described in the Central Provinces Courts' Act, 1865, sections twelve, nineteen and twenty, with reference to proceedings before, or decrees and orders of, such Settlement-officer in such suits.

Chief Settlement-officer to have powers of Deputy Commissioner.

35. When any local area is under settlement and Settlement-officers have been invested with the powers mentioned in section thirty-three in such local area, the Chief Commissioner may, with respect to all or to any of the suits specified in that section, declare that all or any of the decrees and orders passed in exercise of the powers of Courts of the first four grades aforesaid, by Assistant Commissioners or Tahsíldárs not being Settlement-officers, shall be appealable to the Chief Settlement-officer, and not to the Deputy Commissioner of the district.

Appeals in suits specified in section 33 when to lie to Chief Settlement-officer.

36. When any local area is under settlement and the Settlement-officers therein have been invested with powers under section thirty-three, the Chief Commissioner may withdraw from the jurisdiction of the ordinary Civil Courts within such area the classes of suits which Settlement-officers have power to dispose of under that section, or he may direct that, in respect of such suits, the Settlement-officers shall have concurrent jurisdiction with the ordinary Civil Courts :

Division of civil work between Settlement-officers and ordinary Courts.

Provided that no proceedings which have been inadvertently or erroneously taken before the Civil Court shall be deemed to be invalid merely on the ground that, by the Chief Commissioner's order, they should have been taken before a Settlement-officer.

37. Nothing in section thirty-one shall apply to suits and appeals or other proceedings instituted before, or determined by, Settlement-officers in pursuance of powers conferred upon them under section thirty-three, thirty-four or thirty-five.

Provisions of section 31 not to apply to certain suits.

38. Except as provided in sections thirty-three, thirty-four and thirty-five, the decrees and orders of a Settlement-officer passed, whether in the first instance or on appeal, in exercise of the powers of a Civil Court of any grade, shall, for the purposes of appeal, reference and revision, be deemed to be decrees and orders of a Civil Court of such grade, and no appeal shall lie under the provisions of section twenty-two from such decrees or orders.

Appeal, reference and revision.

39. Every settlement notified under section twenty-eight shall be deemed to be in progress until the Chief Commissioner, by notification in the official Gazette, declares that it is completed.

Duration of settlement operations.

When the settlement of any local area has been notified as completed, all the powers exercised by the Settlement-officers in such area shall cease ; and all suits and applications pending before such officers shall be transferred to such of the Courts ordinarily having jurisdiction in such cases as the Commissioner of the Division directs, or, if there are no such Courts, shall be disposed of in such manner as the Chief Commissioner directs.

Cases pending at close of settlement-operations.

CHAPTER IV.

OF DEMARCATION.

Unowned Lands.

40. When any local area is under settlement, the Settlement-officer shall make lists of all lands in such area which appear to him to have no lawful owner, and shall thereupon issue a notification declaring his intention to demarcate such lands as the property of the Government and inviting every person having claims to or over them to present in his Court, within three months from the date of the notification, a petition in writing setting forth such claims and the respective grounds thereof.

Settlement-officer to invite claims to lands appearing to have no owner.

41. Every such notification shall be deemed to be an advertisement under Act No. XXIII of 1863 (*to provide for the adjudication of claims to waste lands*), section one ;

Application of Act XXIII of 1863.

the demarcation of such lands shall be deemed to be a disposition of them within the meaning of that Act ;

the Settlement-officer shall exercise all the powers vested in the Collector by that Act ; and

claims to or over the land comprised in such notification shall be dealt with as nearly as may be in the manner prescribed in that Act.

42. Whenever a claim to the exercise or enjoyment of any right (not amounting to the right of exclusive possession) in, to or over, any land comprised in such notification is established, either before the Settlement-officer or before the Court constituted under the said Act No. XXIII of 1863, section seven, the Settlement-officer may assign to the claimant as his property a definite portion of such land, or, with the sanction of the Chief Commissioner, he may otherwise compensate the claimant ; and such assignment or compensation shall be held to extinguish all claims on account of such exercise or enjoyment.

Procedure when limited right over land established.

Maháls.

43. The Settlement-officer may declare any local area to be a mahál.

Power to form mahals.

Excluded Lands.

44. For the purpose of excluding from all or any of the operations of the settlement any town or any land from which the owner can derive no profit, the Settlement-officer may mark off the site and determine the limits of such town or land :

Settlement-officer may exclude any town or land from settlement operations.

Provided that no land in respect of which land-revenue is payable at the date of the notification issued under section twenty-eight shall, under this section, be exempted from assessment without the sanction of the Chief Commissioner.

Boundary-marks.

45. When any local area is under settlement, the Settlement-officer may order all persons who have proprietary rights in the land comprised in such area to erect boundary-marks of such description and at such places as he thinks necessary in order to define the limits of the mahals, fields or other lands in their possession, or to repair boundary-marks already existing ; and may fix a reasonable time for obeying his order ;

Erection of new, and repair of existing, boundary-marks.

and if his order is not obeyed within such time, may cause such marks to be erected or repaired under his own orders, and may recover the cost of such erection or repair from the persons against whom his order was made, in such proportion as he thinks fit.

CHAPTER V.

OF THE ASSESSMENT OF LAND-REVENUE.

46. On every mahál a definite and separate sum shall be assessed as land-revenue ; but the sum so assessed may be reduced in such manner and to such extent as the Chief Commissioner thinks fit, for any period not exceeding ten years from the date on which the assessment takes effect.

Separate sum to be assessed on every mahál.

Progressive assessments.

47. The Chief Commissioner may, from time to time, with the previous sanction of the Governor General in Council, give instructions to the Settlement-officer as to the principle on which land-revenue is to be assessed, and as to the sources of miscellaneous income to be taken into account in the assessment.

Matters as to which Chief Commissioner is to instruct Settlement-officer.

48. In assessing a mahál all land situate therein shall be taken into account except the following (that is to say) :—

What land taken into account in assessing mahál.

(*a*) land purchased free from revenue under any rules for the time being in force to regulate the sale of waste-lands ;

(*b*) land in respect of which the revenue has been redeemed under any rules for the time being in force ;

(*c*) land excluded from assessment under section forty-four ;

(*d*) land in respect of which a claim to hold it free from revenue as against the Government is established under the provisions hereinafter contained ;

(*e*) land which the Chief Commissioner, subject to the control of the Governor General in Council, may, from time to time, exempt from assessment.

49. The assessment of every mahál shall be offered to the entire proprietary body of such mahál : provided that, when superior and inferior proprietary rights co-exist in the same mahál, the Settlement-officer may, subject to such rules as the Chief Commissioner may make in this behalf, determine whether the assessment shall be offered to the superior or to the inferior proprietors.

Assessment to whom to be offered.

Subject to such rules as the Chief Commissioner may make in this behalf, the Settlement-officer may determine the manner and proportion in which the proprietary profits of the mahál shall be allotted between the superior and the inferior proprietors.

When a proprietor has mortgaged his rights in any mahál, and the mortgagee has entered into possession, such mortgagee, so long as he is in possession, shall, for the purposes of this section, stand in the place of the mortgagor.

50. When in a mahál in which superior and inferior proprietors co-exist, the Settlement-officer makes a settlement with the superior proprietors, he shall make on their behalf a sub-settlement with the inferior proprietors, by which such inferior proprietors shall be bound to pay to the superior proprietors an annual revenue equal to the land-revenue with which the mahal is assessed and to the profits to which the superior proprietors are entitled under section forty-nine.

Sub-settlement to be made with inferior proprietors when settlement is made with superior.

51. When in any such mahál the settlement is made with the inferior proprietors, the Settlement-officer may direct that the profits to which the superior

Power to give directions as to payment of certain profits of superior proprietors.

proprietors are entitled under section forty-nine, shall be paid by the inferior proprietors direct to such superior proprietors, or that such profits shall be collected as if they were land-revenue and shall be paid to the superior proprietors from the Government Treasury.

Power to make rules for reporting assessment for sanction.

52. The Chief Commissioner may make rules prescribing the manner in which the Settlement-officer shall report for sanction his rates and method of assessment; and no assessment shall be offered without the previous sanction of the Chief Commissioner.

Offers of assessment to be made subject to revision and confirmation.

53. In making any offer of assessment the Settlement-officer shall state that it is made subject to confirmation by the Governor General in Council, and also to revision by the Chief Commissioner at any time before such confirmation is received.

Option to accept or refuse assessment.

54. It shall be in the option of the persons to whom an assessment is offered to accept or refuse the same.

Mode of acceptance.

If they are willing to accept it, they shall make and sign an acceptance in writing, in such form as the Chief Commissioner may, from time to time, prescribe in this behalf, and deliver the same to the Settlement-officer.

Proprietor not accepting in manner prescribed may be deemed to have accepted.

55. Any proprietor who, within such reasonable period as may be specified by the Chief Commissioner, fails to make, sign and deliver such acceptance, or to inform the Settlement-officer that he refuses the proposed assessment, shall, if the Settlement-officer by an order in writing so directs, be deemed to have accepted such assessment.

Effect of acceptance of assessment.

56. Whenever the assessment of a mahál has been accepted under this Act, the persons who have accepted it shall be bound to pay the amount thereof from such date and for such term as the Chief Commissioner may appoint in this behalf, or, if at the expiry of that term no new assessment has been made and is ready to take effect, until a new assessment has been made and is ready to take effect: Provided as follows:—

Assessment may be rescinded by Chief Commissioner;

1st—any assessment may be rescinded by the Chief Commissioner at any time before it has been confirmed by the Governor General in Council;

or by Governor General in Council.

2ndly—the Governor General in Council may rescind any assessment submitted to him for confirmation;

Málguzárs may object to continuance of assessment beyond term of settlement.

3rdly—if all the málguzárs of a mahál, six months before the expiry of the term fixed under this section, apply in writing to the Deputy Commissioner stating that they are unwilling that the assessment should continue in force beyond the expiry of such term, the assessment shall, on the expiry of such term, cease to be in force.

Procedure when assessment is refused.

57. Where there is but one class of proprietors in a mahál, and all refuse to accept in manner required by section fifty-four the assessment offered, the Settlement-officer may, with the previous sanction of the Chief Commissioner, exclude them from settlement for a period not exceeding thirty years from the date of such exclusion, and may either let the mahál in farm, or take it under direct management.

Procedure when only some proprietors accept assessment.

58. If some of the proprietors consent, and some refuse, so to accept the assessment offered, the Settlement-officer may, with the previous sanction of the Chief Commissioner, if the interest of the recusant proprietors in the lands taken into account in the assessment consists entirely of lands held by them separately from the other proprietors, exclude such recusant proprietors from settlement for a period not exceeding thirty years from the date of such exclusion, and either let their lands in farm or take such lands under direct management.

In other cases the assessment of the entire mahál shall be offered to the proprietors who consented to accept the assessment when originally offered, and if they refuse it the mahál shall be dealt with under the provisions of section fifty-seven.

When the recusant proprietors are excluded under this section, the lands of the proprietors who consented to accept the assessment originally offered shall be deemed to be a separate mahál, and shall be assessed as such; and such assessment shall be offered to the proprietors so consenting; and if the lands of the recusant proprietors are let in farm, the farm shall be first offered to the proprietors who consented to accept the assessment originally offered.

Procedure on refusal of assessment in village in which superior and inferior rights co-exist.

59. When an assessment is offered in a mahál in which both superior and inferior proprietors co-exist—

(*a*) if all the proprietors of the class with which the Settlement-officer proposes to make the settlement refuse to accept as aforesaid the assessment offered, the assessment shall be offered to the proprietors of the other class; and if all such proprietors refuse the assessment, the Settlement-officer shall proceed as provided in section fifty-seven;

(*b*) if some only of the proprietors of the class with which the Settlement-officer proposes to make the settlement refuse the assessment, he may either proceed as if all had refused it or may deal with the mahál under section fifty-eight:

Provided that if, in the case contemplated by clause (*b*), the proprietors who consented to accept the assessment when originally offered refuse to accept it, such assessment shall be offered to the other class of proprietors.

Procedure on refusal of assessment by inferior proprietors.

60. If all or any of the inferior proprietors refuse any assessment offered under section fifty, the Settlement-officer may exclude them all from the sub-settlement, and assign the proprietary management and profits of the mahál to the superior proprietor for any term not exceeding the term of settlement.

Allowance to excluded proprietors.

61. Any proprietor excluded from settlement under section fifty-seven or section fifty-nine, clause (*a*), shall be entitled to receive from the Government an annual allowance, the amount of which shall be fixed by the Chief Commissioner, but which shall not be less than five per cent., or more than ten per cent., on the amount of the assessment offered to him by the Settlement-officer.

Excluded proprietors to have occupancy-rights in their sír-land.

62. Any proprietor excluded from settlement or sub-settlement under sections fifty-seven to sixty, both inclusive, shall be entitled to retain possession of his sír-land (if any) as if he were an absolute occupancy-tenant, and the rent to be paid by him for such land during the term of his exclusion shall be fixed by the Settlement-officer accordingly.

Aggregate amount of allowance granted to, and deduction from rent allowed to, excluded proprietor.

63. The aggregate amount of any allowance under section sixty-one, and of the difference between the rent fixed under section sixty-two and the rent which the excluded proprietor would be liable to pay if he were a tenant-at-will, shall not be less than five or more than fifteen per cent. on the amount of the assessment offered to him by the Settlement-officer.

Sub-settlement with málik-makbúzás and other like holders of land.

64. The Settlement-officer may make, on behalf of málik-makbúzás or other like holders of land, such a sub-settlement as shall secure to them from the málguzárs of the mahál their existing rights; and may provide that, in addition to the land-revenue payable by them, they shall pay to the málguzárs such percentage thereon, not exceeding twenty per cent., as may in his opinion be sufficient to compensate the said málguzárs for their responsibility in respect of the land-revenue, and to provide for the fees of lambardárs and mukaddams.

Revenue payable under sub-settlement to be first charge on land.

65. The amount of revenue payable under a sub-settlement shall be a first charge upon all the land comprised in such sub-settlement.

Settlement-officer to apportion assessment over lands held in severalty;

66. When the whole of the land comprised in a mahál is held in severalty, the Settlement-officer shall apportion to the several holdings the amount with which such land is assessed under a settlement or sub-settlement.

When only part of the land comprised in a mahál is held in severalty, the Settlement-officer shall apportion such amount to the part held in common and the part held in severalty, and shall further apportion to the several holdings the amount to which they are liable under the former apportionment.

to redistribute land according to custom.

67. When by established custom the land held by each proprietor in any mahál is subject to periodical redistribution, the Settlement-officer may, in his discretion, on the application of the proprietors, make such redistribution according to such custom.

CHAPTER VI.

OF CERTAIN INVESTIGATIONS BY THE SETTLEMENT-OFFICER AND THE PREPARATION OF THE RECORD-OF-RIGHTS.

Settlement-officer to ascertain proprietors;

68. The Settlement-officer shall ascertain the persons who are in possession as proprietors of the land comprised in each mahál.

to determine extent of sír-land;

69. The Settlement-officer shall ascertain the situation and determine the extent of all the land held as sír in each mahál.

to decide disputes among shareholders regarding management of mahál;

70. The Settlement-officer shall ascertain the customs or rules by which the proprietors in each mahál are mutually bound as to the granting of pattás, the ejectment of tenants, the realization and distribution of rents and other profits, the payment of land-revenue, village-expenses and other charges, and generally as to the control and management of the mahál; and shall decide all disputes and record all agreements regarding the matters mentioned in this section.

to determine through what lambardárs revenue shall be paid;

71. The Settlement-officer shall determine through which of the lambardárs or sub-lambardárs the amount of revenue payable by each proprietor, sub-proprietor or málik-makbúzá shall be paid.

to ascertain status and rents of tenants.

72. The Settlement-officer shall ascertain, and record for each mahál, the status of all tenants occupying land therein, the lands respectively held by them, the conditions on which they respectively hold such lands, and the rents (if any) payable by them respectively.

Enquiry into claims to hold free from revenue as against Government.

73. The Settlement-officer shall investigate all claims against the Government to hold land free from revenue or at less than a full assessment, or to receive the whole or part of the land-revenue assessed on land which is not free from revenue.

Power of Chief Commissioner to make rules.

The Chief Commissioner may, with the previous sanction of the Governor General in Council, make rules determining the principles by which the Settlement-officer shall be guided in the disposal of claims coming under this section.

Enquiry as to claims to hold free from revenue as against málguzárs.

74. When any land not being land which any person is entitled to hold free from revenue as against the Government is held by a proprietor, whether himself a málguzár or not, who claims to hold it wholly or partially free from revenue as against the other málguzárs of the mahál, the Settlement-officer shall decide whether the claimant is entitled to be exempted from paying the whole or any part of the revenue which would otherwise be payable in respect of such land, and, if he decides that the claimant is so entitled, shall also determine the conditions under which, and the term for which, the claimant is entitled to such exemption:

Provided that no decision under this section shall exempt any land from the payment of revenue, when the mahál in which such land is comprised is sold for arrears of revenue.

Chief Commissioner may make rules for disposal of such cases.

The Chief Commissioner may make rules for the guidance of Settlement-officers in dealing with cases under this section.

Time from which orders under sections 73 and 74 take effect.

75. When the Settlement-officer decides, under section seventy-three or section seventy-four, that land which has been held free from revenue, or at less than a full assessment, is

liable to pay revenue, or to pay the same at enhanced rates, such decision shall take effect from the first day of the agricultural year next ensuing; unless the Chief Commissioner directs that the amount payable in respect of such land on account of the revenue accruing due within any one or more of the last preceding twelve years shall be realized.

Settlement-officer to decide what village-cesses are leviable;

76. The Settlement-officer shall determine and record the village-cesses, if any, which are leviable in accordance with village-custom, and the persons by and from whom, and the rates at which, they are leviable; and such cesses shall, if sanctioned by the Chief Commissioner, be leviable accordingly.

to determine certain disputes.

77. The Settlement-officer may determine disputes regarding any of the following matters (namely):—

(*a*) the right of any lambardár, mukaddam, patwárí, village-watchman or other village-servant to any customary dues, or other remuneration, and his liability to render any customary service in return for such dues or remuneration;

(*b*) the rights of persons resident in the village or holding lands comprised in the mahál, in or to the common land of the mahál and its produce, and the village-site;

(*c*) any customs relating to irrigation or to rights-of-way and other easements;

(*d*) any other rights and customs which the Chief Commissioner directs to be recorded in the administration-paper.

Procedure in cases under sections 68, 69, 70, 72 and 77, clauses (*b*), (*c*) and (*d*).

78. If a dispute arises regarding any matter mentioned or referred to in sections sixty-eight, sixty-nine, seventy, seventy-two and seventy-seven, clauses (*b*), (*c*) and (*d*), the Settlement-officer shall decide it summarily after making such enquiry as he thinks fit, and shall not be bound to hear any party to such dispute or to receive any evidence tendered by any such party; but in the case of every such dispute he shall record a proceeding stating the nature of such dispute, his decision thereon, the grounds of such decision and such other particulars as he thinks fit.

Record-of-rights.

79. The Settlement-officer shall prepare for every mahál, or, if he thinks fit, for any group of neighbouring mahals, a record-of-rights, and shall include in it—

(*a*) the results of the inquiries made under this chapter in respect of such mahál or group; and

(*b*) any other matters which the Chief Commissioner may, by rules in this behalf, direct to be entered in such paper.

Chief Commissioner may make rules regarding record-of-rights.

80. The Chief Commissioner may make rules prescribing the language in which the record-of-rights shall be drawn up, the form of the papers of which it shall consist, and the manner in which such papers shall be signed and attested by the Settlement-officer and the parties interested in the matters to which they refer.

Record-of-rights to be made over to Deputy Commissioner.

81. When the Settlement-officer has completed a record-of-rights in manner hereinbefore prescribed, he shall, subject to any order issued by the Chief Commissioner in this behalf, make it over to the Deputy Commissioner for custody.

Effect of entries in record-of-rights.

82. When the record-of-rights is duly made and attested, all entries therein shall be presumed to be correct until the contrary is shown.

Suits to contest certain settlement decisions or entries.

83. Any person deeming himself aggrieved by any decision under section seventy-eight, or by any decision of the Chief Settlement-officer in appeal therefrom, or by any entry made in the record-of-rights as to any matter referred to in that section, may institute a suit in the Civil Court to have such decision set aside or such entry cancelled or amended:

Provided as follows:—

When any suit under this section is instituted for the cancellation or amendment of an entry, the Government, if it so desires, and all persons interested in the entry, shall be made parties to the suit:

No persons by whom the record-of-rights was signed, and no persons claiming through or under them shall, without the previous sanction of the Chief Commissioner, institute any suit with a view to modify or set aside any entry relating to any matter mentioned in section seventy or section seventy-seven, clause (*b*), (*c*) or (*d*).

Revision of record-of-rights by Chief Commissioner.

84. After an assessment has been confirmed by the Governor General in Council, the Chief Commissioner shall not exercise in respect of any entry of the descriptions referred to in section eighty-three duly made in a record-of-rights prepared in connection with such assessment and duly attested, the power of revision conferred by sections twenty-five and thirty-one, unless it is proved that such entry was made inadvertently.

Proceedings regarding lands the property of Government.

85. In respect of lands declared to be the property of Government, the Settlement-officer shall, instead of proceeding as hereinbefore provided, conduct such operations, and prepare such record, as the Chief Commissioner may direct.

CHAPTER VII.

OF SETTLEMENTS MADE BEFORE THIS ACT COMES INTO FORCE.

Former settlements deemed to have been made under this Act.

86. Settlements made before this Act comes into force shall be deemed, so far as may be, to have been made hereunder; and the provisions of this Act in regard to proceedings taken and records prepared by Settlement-officers in the making of settlements hereunder shall apply in like manner to proceedings taken and records prepared before this Act comes into force.

Effect of awards of proprietary rights at such settlements.

87. When a Settlement-officer or Settlement Court has, at any settlement made before this Act comes into force, made an award of proprietary rights in any land, all claims which after consideration by such officer or Court may have been expressly decided by him or it to be invalid, or inferior to the claims of the persons in whose favour the award was made, shall be void both as against Government and as against the persons last mentioned; and no suits shall lie for the enforcement of such claims in any Civil Court.

The award at any such settlement of proprietary rights in land to a widow shall be deemed to confer on her those rights only which, in accordance with the personal law to which she is subject, she would enjoy in land inherited by her from her husband.

When suits for proprietary rights will lie in Civil Courts.

88. Any person whose claim to proprietary rights in any land was not expressly decided by such officer or Court may sue in a Civil Court to establish such claim; and if he can prove that, when proprietary rights in such land were awarded by such officer or Court to other persons, he was entitled to interests therein of the same nature as those upon consideration of which the award was made, the Civil Court may declare him entitled to a proprietary right of such nature and extent in the land as it may deem just.

Chief Commissioner may allot waste-land to málik-makbúzás entitled thereto.

89. When at any settlement made before this Act comes into force málik-makbúzás have been declared entitled to a portion of the waste-lands comprised in any mahál, the Chief Commissioner may, notwithstanding anything contained in the record of such settlement, prescribe the extent of such portion and the mode in which the same shall be assigned to them; and may determine the nature and extent of their interests therein and the conditions on which they may hold it.

PART IV.

OF REVENUE-ADMINISTRATION.

CHAPTER VIII.

OF THE COLLECTION OF LAND-REVENUE.

Power of Chief Commissioner to regulate payment of land-revenue.

90. Notwithstanding anything contained in the record-of-rights of any village, the Chief Commissioner may fix the number and amount of the instalments, and the times, places and manner at and in which land-revenue, whether payable direct to the Government or not, shall be paid.

Until the Chief Commissioner otherwise directs, all such payments shall be made on the dates, in the instalments, in the manner and at the places on, in and at which they are payable when this Act comes into force.

"Arrear."
"Defaulters."

91. When any sum payable under a settlement or sub-settlement is not paid within the time at which it is payable under section ninety, such sum shall be deemed to be an arrear; and all the persons with whom such settlement or sub-settlement was made, their representatives and assigns, shall thereupon become jointly and severally liable for it, and shall be deemed to be defaulters within the meaning of this Act.

Realization of Revenue from Málguzárs.

Tahsíldár's statement of account to be conclusive evidence of arrear.

92. A statement of account, authenticated by the signature of the Tahsíldár, shall, for the purposes of this chapter, be conclusive evidence of the existence of any arrear payable direct to the Government, of its amount, and of the persons who in respect thereof are defaulters.

Notice of demand.

93. The Deputy Commissioner or any officer empowered by him in this behalf may, if he thinks fit, before any of the processes hereinafter referred to are issued for the recovery of such an arrear, cause a notice of demand to be served on any of the defaulters.

Processes for recovery of arrears.

94. An arrear payable directly to Government may be recovered by any one or more of the following processes:—

(*a*) by arresting the defaulter and imprisoning him in the civil jail;

(*b*) by attaching and selling his moveable property;

(*c*) by attaching the mahál in respect of which the arrear has accrued or the share or land of any málguzár who has not paid the portion of the revenue which, as between him and the other málguzárs, is payable by him, and taking the same mahál, share or land under direct management;

(*d*) by transferring the share or land of any málguzár who has not paid such portion to any málguzár who has paid the same, or if every such málguzár declines to accept such share or land, to any person having a mortgage or charge upon the same, and who consents to accept it;

(*e*) by annulling the settlement of the mahál in respect of which the arrear has accrued, and taking such mahál under direct management or farming the same;

(*f*) by selling such mahál, or the share or land of any málguzár who has not paid the portion of the revenue aforesaid;

(*g*) by selling immoveable property belonging to the defaulter other than the land in respect of which the arrear has accrued.

Provided as follows:—

(1) the process mentioned in clause (*a*) shall not be issued against any female, minor, lunatic or idiot;

(2) the processes mentioned in clauses (*d*), (*e*), (*f*) and (*g*) shall not be enforced without the previous sanction of the Chief Commissioner;

(3) no land shall be sold, and the settlement of no land shall be annulled, on account of an arrear accruing in respect of land whilst it is under attachment, or under charge of the Superintendent of Government Wards, or held under direct management, or let in farm in accordance with any of the provisions of this Act.

The processes specified in clauses (*a*), (*b*) and (*g*) may be enforced either in the district in which the default has been made, or in any other district.

Arrest and imprisonment for recovery of arrear.

95. The process mentioned in section ninety-four, clause (*a*), may be executed by issuing a warrant directing the officer named therein, if the defaulter fails to pay the arrear by a date to be fixed in the warrant, to bring him to the tahsíl.

If, when the defaulter arrives at the tahsíl, the arrear is still unpaid, the Tahsíldár may order him to be taken before the Deputy Commissioner, or may keep him under personal restraint at the

tahsíl for a period not exceeding ten days, unless within such period the arrear is paid, and may then, if the arrear is still unpaid, cause him to be taken before the Deputy Commissioner.

Imprisonment of defaulter in civil jail.

96. If the arrear is not paid when the defaulter arrives before the Deputy Commissioner, the Deputy Commissioner may issue an order to the officer in charge of the civil jail of the district, directing him to confine the defaulter in such jail for such period, not exceeding three months from the date of the order, as the Deputy Commissioner may think fit, unless within such period the arrear is paid.

Procedure in sales of moveable property.

97. Attachments and sales of moveable property made under this chapter shall be conducted as nearly as may be according to the law for the time being in force for the attachment and sale of moveable property under the decree of a Civil Court.

Management of mahál, share or land attached under section 94 (c).

98. After causing any attachment to be made under section ninety-four, clause (*c*), the Deputy Commissioner shall issue a proclamation declaring the attachment to be in force, and shall take the attached mahál, share or land under his own management, or place it under the management of any agent whom he may appoint for the purpose.

Effect of attachment.

99. During the continuance of an attachment under section ninety-eight, the defaulters shall be excluded from possession of the land attached, and the Deputy Commissioner or the agent appointed by him shall have all their rights to manage the land and to realize the rents and profits arising therefrom, and shall be bound by all their liabilities as málguzárs or proprietors to any subordinate proprietors or tenants of such land.

Profits of land how applied.

100. The surplus profits of such land, after defraying the cost of attachment and management, shall be applied, first, to the payment of any revenue becoming due in respect of such land during the attachment; and next, to discharging the arrear for the recovery of which the attachment was made.

Attachment when to cease.

101. The attachment shall continue until the arrear is paid or realized from the profits of the land attached, or the Deputy Commissioner reinstates the defaulters in possession:

Provided that no attachment shall continue beyond five years from the first day of the agricultural year next following its commencement.

Transfer under section 94 (*d*).

102. When it is proposed to execute the process mentioned in section ninety-four, clause (*d*), the persons to whom the share or land in respect of which the arrear is due is to be transferred shall be required to pay such arrear, or to secure its payment to the satisfaction of the Deputy Commissioner.

No such transfer shall be made for a term exceeding fifteen years from the first day of the agricultural year next after the date on which it is sanctioned by the Chief Commissioner.

Joint and several liability not affected by transfer.

No proceedings taken under this section shall affect the joint and several liability of the málguzárs of the mahál for arrears accruing in respect of such mahál subsequently to the transfer of the share or land except that, as regards all such arrears, the transferee shall stand in the place of the málguzár whose share or land is transferred.

Procedure after receipt of sanction to annulment of settlement.

103. When the Chief Commissioner sanctions the annulment of the settlement of any mahál, the Deputy Commissioner shall proclaim such annulment, and may then exclude the defaulters from the possession of the mahál, and either manage the mahál or any portion thereof himself or through an agent, or let the mahál or any portion thereof in farm for such term and on such conditions as the Chief Commissioner directs:

Provided that no management or farm under this section shall continue for a longer period than fifteen years from the first day of the agricultural year next after the proclamation of annulment of settlement.

After the date of such proclamation no liabilities shall accrue under the settlement so annulled; but such annulment shall not affect anything done or any liability incurred under the settlement before such date.

Case of a portion of a mahál being managed or farmed.

104. When a portion only of the mahál is managed or let in farm under section one hundred and three, the rest of such mahál shall be separately resettled with the proprietors thereof for the remainder of the term of settlement.

Settlement on expiry of management or farm.

105. As soon as the management or farm of any mahál or portion thereof has come to an end, the Deputy Commissioner shall offer to the persons entitled under section forty-nine to an offer of assessment a new assessment of the land, on such conditions as the Chief Commissioner may direct, for the remainder of the term of the settlement of the mahál; and, if such offer is refused, may, with the previous sanction of the Chief Commissioner, let such mahál or portion in farm for the remainder of the term of settlement to some other person, or manage it himself or through an agent for such period.

Effect of annulment of settlement.

106. No leases, liens or other incumbrances created by the defaulters, or by any person through or under whom they claim, of, or upon any land managed or let in farm under this Act, shall, during such management or farm, be binding upon the Deputy Commissioner or Settlement-officer, his agent or lessee.

Saving of rights in sír-land.

107. No defaulter shall be deprived of the possession of his sír-land in the execution of any of the processes mentioned in section ninety-four, clauses (*c*), (*d*) and (*e*); but every such defaulter shall, while such process is being enforced, be entitled to retain possession of, and liable to pay rent for, such land as if he were an absolute occupancy-tenant, at such rent as may be fixed by the Deputy Commissioner.

Nature of estate taken by purchaser of land sold for arrears due thereon.

108. Unless the Chief Commissioner in sanctioning the sale otherwise directs, a purchaser of any land sold for arrears of revenue due in respect thereof acquires the full proprietorship or superior or inferior proprietorship of it, as the case may be, free of all leases, liens and other incumbrances; and all grants or contracts previously made by any person other than the purchaser in respect of such land shall become void as against such purchaser.

Nothing in this section shall—

(*a*) affect the rights of any proprietor superior or inferior to the defaulters or of any málik-makbúzá or occupancy-tenant who does not derive his rights as such proprietor, málik-makbúzá or tenant from express contract with such defaulters, or any person through whom they claim; or

(*b*) apply to lands held under leases at fair rents for the erection thereon of dwelling-houses, places of worship or manufactories, or for working mines, minerals, coals and quarries, or for laying out and maintaining gardens and burial-grounds, or for constructing tanks and canals, so long as the lands continue to be used for the purposes specified in such leases respectively; or

(*c*) deprive any defaulter whose property is sold of the rights in respect to his sír-land conferred by any law for the time being in force.

The Chief Commissioner may, from time to time, determine what rents shall be deemed to be fair rents within the meaning of this section.

Rules for sale of immoveable property.

109. When immoveable property is sold under this Act, the rules prescribed in sections 287, 288, 293 and 306 to 316, both inclusive, of the Code of Civil Procedure shall be followed, except in the following particulars (that is to say):—

(*a*) The defaulter may pay the arrear in respect of which the land is to be sold at any time before the day fixed for the sale, and on such payment the sale shall be stayed.

(*b*) The proclamation directed by the said section 287 shall, when the sale is under clause (*f*), section ninety-four of this Act, declare that, subject to the provisions of section one hundred and eight, the full proprietorship, or superior or inferior proprietorship, as the case may be, is to be sold free from all leases, liens and other incumbrances, and the certificate mentioned in section 316 of the said Code shall contain a similar statement.

(*c*) The last two clauses of the said section 287 shall not apply.

(*d*) An appeal from any order under section 312 of the said Code for confirming or setting aside the sale shall lie to the Commissioner of the Division, and an appeal from the Commissioner's order on such appeal shall lie to the Chief Commissioner.

(*e*) The Deputy Commissioner may, from time to time, postpone any sale which he has proclaimed, reporting such postponement to the Commissioner of the Division.

(*f*) Section 309 of the said Code shall be read as if, after the words "for such payment," the words "and every sale of such property made after a postponement" were added.

(*g*) Section 313 of the said Code shall not apply to sales under section ninety-four, clause (*f*), of this Act.

(*h*) Section 316 of the said Code shall be read as if the words "The Deputy Commissioner shall place the purchaser in possession of the lands which he has purchased" were added thereto.

Pre-emption at sales.

110. In the course of a sale under section ninety-four, clause (*f*), if the property is knocked down to a stranger, the following persons may claim to take it at the sum last bid in the following order:—

(*a*) any málguzár who has paid the revenue which as between him and the other málguzárs is payable by him;

(*b*) if the superior proprietorship is sold, the inferior proprietor;

(*c*) if the inferior proprietorship is sold, the superior proprietor:

Provided that such claim is made before the officer conducting the sale closes the sitting at which the sale is held, and that the claimant undertakes to fulfil all the conditions of the sale binding on the purchaser.

Application of proceeds of sale of immoveable property.

111. The proceeds of every sale in execution of any process mentioned in section ninety-four shall be applied, first, in satisfaction of the arrear on account of which the sale was held and of the expenses of such sale; secondly, to the payment of any other arrear due to Government by the defaulter; and the surplus, if any, shall then be payable to him, or, where there are more defaulters than one, to such defaulters according to their respective shares in the property sold.

Costs recoverable as part of arrear.

112. The costs of serving a notice of demand under section ninety-three and of enforcing any process mentioned in section ninety-four shall be recoverable as part of the arrear in respect of which the notice was served and the process was issued.

Matters as to which Chief Commissioner may make rules.

113. The Chief Commissioner may make rules—

(*a*) for the guidance of Revenue-officers in issuing notices of demand under section ninety-three and executing the processes mentioned in section ninety-four;

(*b*) defining the classes of officers by whom the processes mentioned in section ninety-four, clauses (*a*) and (*b*), may be enforced;

(*c*) prescribing the agency by which any of the processes issued under section ninety-four shall be executed.

Remedies open to person denying that sum demanded as an arrear is due.

114. Notwithstanding anything contained in section ninety-two, when proceedings are taken under this Act for the recovery of an arrear, the person against whom such proceedings are taken may, if he denies that the arrear or any part thereof is due,

pay the same under protest made at the time of payment and duly signed by him or by his agent, and institute a suit in the Civil Court for the recovery of the amount which he denies to be due.

Realization of Revenue by Málguzárs.

Limitation of right to set-off, &c., in suit for arrears.

115. In a suit for the recovery of an arrear of revenue not being revenue payable directly to Government, and in a suit brought by a lambardár to recover the amount of any revenue payable to Government through him, the defendant shall not, except with the permission of the Court,—

(*a*) set-off against the plaintiff's demand any sum of money recoverable by him from the plaintiff; or

(*b*) claim credit for any payment purporting to have been made on account when such payment was made before the date on which the amount thereof became due.

Recovery of arrear through Deputy Commissioner instead of by suit.

116. Any lambardár or sub-lambardár entitled to recover an arrear, or any málguzár to whom such an arrear is due under a sub-settlement, may, before instituting a suit for the recovery thereof, apply to the Deputy Commissioner to recover such arrear on his behalf as if it were an arrear of revenue payable directly to Government.

The Deputy Commissioner may, if he thinks fit, comply with such application, but shall, before compliance therewith, give to the persons who would be defendants if a suit were instituted for the recovery of such arrear, opportunity to show cause against the order which he proposes to make.

The Deputy Commissioner shall not be made a defendant to any suit instituted under section one hundred and fourteen in respect of an arrear as to which an order has been made under this section.

No person on whose account the Deputy Commissioner proceeds under this section to recover an arrear shall thereby be relieved of his responsibility for such arrear.

Saving of right of málguzár to demand revenue of land assessed to revenue and held free.

117. Nothing in the Indian Limitation Act, 1877, and no agreement made after this Act comes into force, shall bar the right of the málguzárs of any mahál assessed with land-revenue to demand revenue in respect of any land which, having been taken into account in such assessment, has been held by any person without payment of revenue.

The Chief Commissioner may, in his discretion, exempt any case from the operation of this section.

Limitation in suits for revenue.

118. No suit for the recovery of revenue payable under a settlement or sub-settlement shall be instituted after three years reckoned from the date on which such revenue becomes payable.

In other respects the limitation of such suits shall be governed by the Indian Limitation Act, 1877.

Interest on Arrears.

Interest on arrears.

119. Interest shall not be charged on an arrear of revenue unless the Chief Commissioner, by general or special order, so directs; provided that the Court may award interest at such rate as it thinks fit on sums payable under a sub-settlement.

CHAPTER IX.

OF REVENUE AND VILLAGE RECORDS.

Correction of record-of-rights.

120. Any entry in the record-of-rights may, after such record has been made over to the Deputy Commissioner, be corrected by the Deputy Commissioner on the application of any person interested, or of his own motion. Such correction may be made on one or more of the following grounds and on no others:—

(*a*) that all persons interested in such entry wish to have it corrected; or

(*b*) that by a decree in a suit brought under section eighty-three it has been declared to be erroneous; or

(*c*) that, being founded on a decree or order of a Civil Court, or on the order of a Revenue or Settlement officer, it is not in accordance with such decree or order; or

(*d*) that, being founded on such decree or order, the order or decision has subsequently been modified on appeal or review, or has been revised by the Chief Commissioner.

Revision of record in accordance with provision therein contained.

121. The Deputy Commissioner may revise a record-of-rights when such revision is provided for in such record.

Powers of Deputy Commissioner as to correction of entry or revision of record.

122. When the Deputy Commissioner takes proceedings for the correction of any entry in the record-of-rights or for the revision of such record-of-rights, he shall exercise, for the purpose of such correction or revision, all the powers which the Chief Settlement-officer might have exercised if the proceedings had been taken whilst the settlement was in progress.

Power to direct that rule or custom entered in record-of-rights shall be enforced by Government.

123. The Chief Commissioner may, in his discretion, by notification in the official Gazette, direct that any specified rule, custom or condition duly entered in the record-of-rights of any specified village shall be enforced by the Government.

Punishment of violation of such rule or custom.

If any of the persons with whom a settlement or sub-settlement has been made, violate or neglect any rule, custom or condition with respect to which the Chief Commissioner has made a direction under this section, the Deputy Commissioner may, if no penalty is provided by any law for the time being in force for such violation or neglect, recover from such person a penalty not exceeding two hundred rupees.

Suit to set aside proceedings under section 123.

124. Any person against whom proceedings have been taken under section one hundred and twenty-three may institute a suit against Government to set aside such proceedings on the ground that no rule, custom or condition was, in fact, violated or neglected. If the Court finds that no rule, custom or condition has been violated or neglected, it may by its order annul such proceedings, and direct that any penalty paid by the plaintiff be refunded; and may also award to him such costs as he has necessarily incurred in the proceedings, and such further sum as compensation as it thinks fit.

Powers of Chief Commissioner as to registration of changes after preparation of record-of-rights.

125. The Chief Commissioner may—

(*a*) direct that the mukaddam of each village shall, for the purpose of showing the changes occurring therein subsequently to the preparation of the record-of-rights, prepare, or, where there is a patwárí, cause to be prepared, and furnish, annually for such village, papers in such form, at such time, containing such particulars, and attested in such manner, as the Chief Commissioner may, from time to time, prescribe;

(*b*) lay down the procedure to be followed in order to ascertain that a change has occurred in the village, and the nature of such change.

All changes referred to in this section shall be recorded in such registers as the Chief Commissioner appoints, and not in the record-of-rights, and the Chief Commissioner may direct that, before any specified changes are recorded, the order of a specified Revenue-officer shall be obtained in this behalf.

Possession of proprietary rights to be notified.

126. All persons lawfully entering into possession of proprietary rights and interests in any land shall, within a reasonable time, give notice of such entry to the Tahsíldár of the tahsíl in which such land is situated.

If any question arises whether any right or interest is a proprietary right or interest within the meaning of this section, the decision thereof by the Chief Commissioner shall be final.

Notice to be given by guardian in case of minority or idiotcy.

If the person so entering is a minor, lunatic or idiot, the guardian or other person who has charge of his property shall give the notice required by this section.

Fine for neglect to give notice of possession.

127. Any person neglecting to give the notice required by section one hundred and twenty-six shall be liable, at the discretion of the Deputy Commissioner or Assistant Commissioner, to fine which may extend to fifty rupees for each day during which such neglect continues.

Obligation to aid in preparation of village-papers.

128. All persons being in possession of proprietary rights in land shall, on being so required by the Deputy Commissioner, prepare, or cause to be prepared, such papers, and furnish such information, as may be required for the preparation of the village-papers prescribed under section one hundred and twenty-five.

Fees for recording changes.

129. The Chief Commissioner may direct that fees shall be leviable when changes are recorded under the last clause of section one hundred and twenty-five, and may fix the amount of such fees.

All fees so leviable shall be levied from the person in whose favour the change is made.

Annual enquiry regarding land held free from revenue.

130. The Deputy Commissioner shall in each year make enquiry regarding all cases in which land has been granted by Government, conditionally or for a time, free, wholly or in part, from the payment of revenue.

Procedure on breach of conditions of grant.

If it appears to the Deputy Commissioner that the conditions of any grant have been broken by the grantee, he shall report the case through the Commissioner of the Division for the orders of the Chief Commissioner, who may direct that the land be assessed, or may pass such other order as he thinks fit.

Procedure on expiry of term of grant.

If it appears to the Deputy Commissioner that the term of any such grant has expired, or (when the grant is for a life or lives) if the person last entitled to hold the land comprised in the grant, free from revenue, or at less than full revenue-rates, has died, he shall assess the same, and shall report his proceedings through the Commissioner of the Division for the sanction of the Chief Commissioner.

Inspection of revenue-records.

131. All records kept under this Act shall be open to public inspection at such times, and on such conditions as to fees or otherwise, as the Chief Commissioner from time to time directs.

CHAPTER X.

OF CERTAIN ADDITIONAL POWERS AND FUNCTIONS OF REVENUE-OFFICERS.

Purposes for which, when settlement is not in progress, Deputy Commissioner shall exercise Settlement-officers' powers.

132. The Deputy Commissioner shall, when a settlement is not in progress, exercise the powers conferred by this Act on Settlement-officers for the following purposes:—

(*a*) causing boundary-marks to be erected or repaired, and recovering the cost of such erection and repair;

(*b*) assessing land-revenue on lands which are liable to assessment, but have not been assessed;

(*c*) declaring any local area to be a mahál;

(*d*) settling lands from which the proprietors were excluded at settlement and to which they have been or are about to be readmitted;

(*e*) settling mahals in respect of which an application has been made under the third proviso to section fifty-six;

(*f*) dealing with claims to hold land wholly or partially free from revenue as against the málguzárs;

(*g*) assessing lands gained by alluvion;

(*h*) ascertaining and recording village-cesses which are levied when this Act comes into force, but have not been recorded at the settlement.

Purposes for which officers may be invested with Settlement-officers' powers.

133. The Chief Commissioner may, during the currency of a settlement, invest any officer with the powers conferred on a Settlement-officer by sections forty, forty-one and forty-two; or,

with the sanction of the Governor General in Council, with any other of the powers which are by this Act conferred on a Settlement-officer; but not so as to enable him to enhance the amount of an assessment in force under section fifty-six.

Cognizance of, and penalty for, offence of injuring boundary-marks.

134. Any person wilfully erasing, removing or damaging a boundary-mark may be ordered by the Deputy Commissioner or by a Tahsíldár or Náib Tahsíldár empowered by the Chief Commissioner in this behalf to pay to the officer making the order, in addition to any fine to which such person would be liable under section 434 of the Indian Penal Code, such sum, not exceeding fifty rupees, as may in the opinion of such officer be necessary to defray the expense of restoring the same, and of rewarding the person (if any) who gave information of such erasure, removal or damage.

Procedure when person injuring cannot be found.

135. Whenever the person erasing, removing or damaging such mark cannot be discovered, or if for any other reason it is found impracticable to recover from him the sum which he has been ordered to pay, the mark shall be re-erected or repaired at the cost of the proprietors, mortgagees, or farmers of such one or more of the adjoining lands as the Deputy Commissioner thinks fit.

Partition of a mahál into two maháls.

136. Any málguzárs of a mahál who are not co-sharers with the other málguzárs of such mahál in any lands comprised in such mahál, except such lands as are under the law relating to partition for the time being in force indivisible, may apply to the Deputy Commissioner to make the lands held by them separately from such other málguzárs a separate mahál; and the Deputy Commissioner shall thereupon make such lands and the lands held separately by the remaining málguzárs separate maháls, and shall, with the previous sanction of the Commissioner, apportion between the two new maháls thus constituted the entire revenue assessed upon the original mahál.

CHAPTER XI.

VILLAGE-OFFICERS AND PATWÁRIS.

Power to make rules as to officers.

137. The Chief Commissioner may make rules regulating the appointment, remuneration, suspension and removal of lambardárs, sub-lambardárs and mukaddams:

Provided that, except with the previous sanction of the Governor General in Council, proprietors, other than málik-makbúzás, shall not be liable to pay, on account of the aggregate remuneration of lambardárs or sub-lambardárs and mukaddams, a sum exceeding five per cent. on the land-revenue which is assessed on their land, or which, when their land is free from revenue, would, in the judgment of the Deputy Commissioner, be assessed on their land if it were subject to assessment.

In framing rules for the appointment under this section of lambardárs and sub-lambardárs for any mahál, the Chief Commissioner shall have regard among other matters to local custom and hereditary claims, and to entries on the subject in the record-of-rights of such mahál.

In every village in which there are resident málguzárs, one of such málguzárs shall be the mukaddam.

Duties of lambardárs.

138. It shall be the duty of every lambardár and sub-lambardár—

(*a*) to collect and pay into the Government Treasury so much of the land-revenue as may under section seventy-one be payable through him, either solely or jointly with other lambardárs or sub-lambardárs;

(*b*) to collect and pay to the mukaddam, or into the Government Treasury, as the Deputy Commissioner may direct, all sums of money payable through him, either solely or jointly with other lambardárs or sub-lambardárs, by the proprietors whom he represents, on account of the remuneration of the mukaddam, patwáris or village-watchmen, or on account of any expenses which the mukaddam is authorized to recover from the lambardárs or sub-lambardárs of his village;

(*c*) to assist the mukaddam in obtaining all particulars which he is bound to enter in the annual village-papers, or to report under this Act.

Lambardárs may recover fees and other charges from proprietors.

139. Together with the land-revenue, lambardárs and sub-lambardárs may recover from the proprietors whom they respectively represent—

(*a*) any remuneration to which they are entitled as such; and

(*b*) the sum which, under section one hundred and thirty-eight, they are bound to pay to mukaddams:

Provided that no such recovery shall be made from málik-makbúzás paying a percentage which includes remuneration to mukaddams and lambardárs.

Deputy Commissioner may alter channel through which málik-makbúzá pays revenue.

140. On the application of any málik-makbúzá or other like holder of land, or of the lambardár or sub-lambardár through whom such málik-makbúzá or other holder of land pays the revenue assessed on his holding, the Deputy Commissioner may, for sufficient cause shown, order that such revenue be paid through any other lambardár or sub-lambardár, or that it be paid into the Government Treasury.

Effect of order for payment of revenue direct to Government.

When the Deputy Commissioner orders such payment to be made into the Government Treasury, such portion of the percentage fixed under section sixty-four as the Deputy Commissioner, subject to the control of the Chief Commissioner, may determine, shall be so paid, and the málik-makbúzá or other person shall pay the rest to the mukaddams on account of their fees and the other village-expenses.

Duties of mukaddams.

141. It shall be the duty of every mukaddam—

(*a*) to control and superintend the village-patwári and village-watchmen; to report their deaths or absence from duty; to maintain them in the possession of any lands appertaining to their office; to recover and pay to them any cash allowances to which they may be entitled; and to take such steps as may be necessary to compel them to perform their duties;

(*b*) to furnish reports regarding the state of his village, at such places and times as the Deputy Commissioner fixes in this behalf;

(*c*) to report and, if possible, to prevent encroachments on the public paths and roadways in his village;

(*d*) to preserve such stations and marks erected in his village by Government-surveyors as may be made over to his care;

(*e*) subject to any rules issued by the Chief Commissioner, to keep his village in good sanitary condition;

(*f*) to report violations of any rules which the Chief Commissioner may make for the preservation of underwood, forests and trees growing on the village-lands, and for securing to persons entitled to cut wood and enjoy other privileges in the waste-lands of the village the rights to which they are entitled;

(*g*) to collect, or aid in the collection of, all payments due to Government in his village;

(*h*) to report all births and deaths taking place in his village.

The Chief Commissioner may make rules—

(1) adding to the list of duties which a mukaddam is required to perform under this section; and

(2) regulating the liability of persons residing in any village for charges necessarily incurred by mukaddams in the performance of the duties specified in clause (*e*) in respect of such village, and for apportioning such charges among such persons; and

(3) determining the officers to whom reports under this section shall be made.

Liabilities imposed by law on landholders to attach to mukaddams.

142. When, by any enactment for the time being in force, any public duties are imposed on, or public liabilities are declared to attach to, landholders, their managers and agents and the like, such duties shall be deemed to be imposed on, and such liabilities shall be held to attach to, mukaddams appointed under this Act:

Provided that nothing herein contained shall discharge landholders, their managers or agents, or the like, from any liabilities imposed upon them by law.

Power of mukaddams to recover certain expenses incurred.

143. Every mukaddam may recover from the lambardárs or sub-lambardárs of the village to which he is appointed his own remuneration, together with any expenses necessarily incurred in the performance of his duties.

Chief Commissioner may make rules as to patwáris.

144. The Chief Commissioner may make rules—

(*a*) regulating the manner in which patwáris are to be selected; prescribing the conditions under which they may be appointed; and fixing the limits of their circles and the nature, mode and amount of their remuneration;

(*b*) prescribing the conditions under which substitutes may be appointed for persons having hereditary claims to the office of patwári, when such persons are unable to act;

(*c*) prescribing the fines which may be imposed on patwáris and their substitutes for neglect of their duty, and stating the circumstances under which they may be suspended or removed:

Provided that, except with the previous sanction of the Governor General in Council, no proprietor shall be compelled to pay as remuneration to patwáris a sum exceeding six per cent. on the revenue for the time being assessed on his land, or which, when his land is free from revenue, would, in the judgment of the Deputy Commissioner, be assessable on his land if it were liable to assessment.

Chief Commissioner may make rules for guidance of Deputy Commissioners in certain matters.

145. The Chief Commissioner may make rules for the guidance of Deputy Commissioners in dealing with cases where, at the time of making the settlement next before this Act comes into force, the maintenance of a patwári was made optional, and the persons settled with are unable to agree as to whether a patwári should be maintained, and for dealing with cases where no patwári is, under such option, maintained and the mukaddams or proprietors have made default in the performance of the duties of a patwári.

Such rules may empower the Deputy Commissioner, in the latter class of cases—

(*a*) to impose fines not exceeding fifty rupees on such mukaddams or proprietors, and therefrom to make provision for the temporary performance of the duties in respect of which they have made default;

(*b*) to appoint patwáris in the villages of such proprietors, either for the term of the settlement or for any shorter term, and to fix the remuneration of such patwáris.

Nothing in the provisions of section one hundred and forty-three shall apply to patwáris so appointed.

Chief Commissioner may define duties of patwáris.

146. The Chief Commissioner may make rules prescribing the duties of patwáris—

(*a*) towards the Government; and may in such rules determine the registers, returns or other papers which they shall keep or furnish, the forms and language in which such registers and returns are to be prepared, the mode of their preparation and attestation, and the dates on which they are to be furnished;

(*b*) towards the members of the village-community; and may in such rules fix the remuneration, if any, other than the fixed emoluments of their office, which the patwáris may demand in respect of the performance of such duties.

Patwáris' papers to be public documents.

All records and papers which patwáris are required to prepare or keep by any rule made by the Chief Commissioner under this section shall be deemed to be public documents within the meaning of the Indian Evidence Act, 1872, and to be the property of Government.

Patwáris to produce papers for inspection, and to allow copies to be made.

147. Patwáris shall produce at all reasonable times, for the inspection of all persons interested therein, all records and papers which they are so required to prepare or keep, and shall allow such persons to make copies of such records and papers.

148. All existing lambardárs, sub-lambardárs, mukaddams and patwáris shall, unless the Chief Commissioner in any specified case otherwise directs, be deemed to have been appointed under this Act.

Existing officers confirmed.

149. Any sums which lambardárs, sub-lambardárs, mukaddams and patwáris are entitled to recover or demand under this chapter may, if the Deputy Commissioner so directs, be recovered in the same manner as an arrear of revenue payable directly to the Government.

Lambardárs' and other officers' dues recoverable as arrears.

150. In each village of the district of Sambalpúr all persons holding sír-land, other than mukaddams, are bound to provide for the due remuneration of the mukaddam of the village; and the Chief Commissioner may make rules for the enforcement of this obligation.

Holders of sír-land in Sambalpúr to provide for remuneration of mukaddams.

PART V.

CHAPTER XII.

MISCELLANEOUS.

151. Unless it is otherwise expressly provided in the records of a settlement or by the terms of a grant made by the Government, the right to all mines, minerals, coals and quarries, and to all fisheries in navigable rivers, and the right to extract sap from all palmyra and cocoanut trees, shall be deemed to belong to Government; and the Government shall have all powers necessary for the proper enjoyment of such rights:

Right to mines and quarries.

Provided that, whenever in the exercise by the Government of the rights herein referred to over any land, the rights of any persons are infringed by the occupation or disturbance of the surface of such land, the Government shall pay to such persons compensation for such infringement, and the amount of such compensation shall be determined as nearly as may be in accordance with the provisions of the Land Acquisition Act, 1870.

152. Except as otherwise hereinbefore provided,—

Exclusive jurisdiction of Revenue-authorities.

(*a*) no Civil Court shall entertain any suit instituted, or application made, to obtain a decision or order on any matter which the Governor General in Council, the Chief Commissioner or a Revenue or Settlement officer is, by this Act, empowered to determine or dispose of; and in particular

Matters excepted from jurisdiction of Civil Courts.

(*b*) no Civil Court shall exercise jurisdiction over any of the following matters:—

(1) any matters provided for in sections forty, forty-one, forty-two and eighty-nine, as to waste-lands:

(2) the claim of any person to have an assessment offered to, or sub-settlement made with, him:

(3) the amount of revenue or rate to be assessed on any mahál, share or portion of a mahál under this or any other Act for the time being in force:

(4) questions as to the validity of any engagement with Government for the payment of land-revenue, or of any agreement entered into by superior or inferior proprietors in a settlement or sub-settlement:

(5) claims connected with or arising out of any process enforced on account of refusal to accept the assessment offered in a settlement or sub-settlement by the Settlement-officer or Deputy Commissioner;

(6) the amount of the allowance or rent fixed under section sixty-one or sixty-two:

(7) the redistribution according to established custom, by a Settlement-officer, of land comprised in a mahál:

(8) the formation of the record-of-rights,

the preparation, signing or attestation of any of the documents contained therein, or

the notification of settlement:

(9) any matters provided for or referred to in section seventy-three, seventy-four or one hundred and thirty as to lands held or claimed to be held free from revenue, except rights arising under any contract between the Government of India and grantees of land:

(10) claims connected with, or arising out of, the collection of revenue, or any process enforced on account of an arrear of revenue, or on account of any sum which is under this or any other Act realizable as revenue:

(11) claims to set aside, on any ground other than fraud, sales for arrears of revenue:

(12) corrections of entries or revisions of records under sections one hundred and twenty, one hundred and twenty-one and one hundred and twenty-two;

(13) claims to have a partition and apportionment made under section one hundred and thirty-six, and questions as to the distribution or apportionment under that section of the land or of the revenue of a mahál:

(14) claims to the office of patwári, lambardár, sub-lambardár or mukaddam, or in respect of any injury caused by exclusion therefrom, or to compel the performance of the duties thereof:

(15) claims to compel the performance of any duties imposed by this Act on any Revenue or Settlement officer.

In all the above cases jurisdiction shall rest with the Revenue-authorities only.

153. No suit shall lie in any Civil or Revenue Court for the recovery of any village-cess which has not been sanctioned by the Chief Commissioner and also either recorded at a settlement or under section one hundred and thirty-two, clause (*h*).

For what village-cesses suit lies.

154. Whenever, at any settlement made before this Act comes into force, waste-lands have been demarcated as the property of Government, no claim of any person to, or in respect of, such lands shall be entertained by any Civil Court after the expiration of three years from the date of such demarcation.

Limitation of claims for compensation in case of waste-land demarcated as property of Government.

155. No Revenue or Settlement officer, and no person employed in any Revenue or Settlement office, shall, except with the express permission of the Chief Commissioner,—

Restriction on Revenue and Settlement officers trading and holding land.

(*a*) engage in trade, or be in any way concerned, directly or indirectly, in any commercial transaction, or in the purchase or hiring of land, in the district to which he is appointed, or in which he is employed;

(*b*) purchase or bid for, either in person or by agent, in his own name or in that of another, or jointly or in shares with others, any property which may be sold by order of any Revenue-authority in such district.

The Chief Commissioner may delegate to Commissioners of Divisions or to Deputy Commissioners the power of granting the permission mentioned in this section in the case of any specified class of officers.

Nothing in this section shall be deemed to preclude any person from becoming a member of a company incorporated under the Indian Companies Act, 1866.

156. When any mahál is managed or let in farm under section fifty-seven or fifty-eight, or when either of the proclamations mentioned in sections ninety-eight and one hundred and three has been made, all sums due to the proprietor in respect of the mahál, share or land mentioned in any of the said sections shall be payable only to the Deputy Commissioner or Settlement-officer, his agent or lessee; and no payment made to such proprietor in anticipation of the usual period for such payment shall, without the sanction of the Deputy Commissioner or Settlement-officer, be credited to the person making the same in account with the Deputy Commissioner or Settlement-officer, his agent or lessee.

When mahál managed or farmed, or upon proclamations under section 98 or 103, rent payable to Deputy Commissioner.

Payment to proprietor in anticipation of due date.

157. When any land has been let in farm under the provisions of this Act, any revenue due from the farmer in respect of such land may be recovered from him or his surety as an arrear of revenue payable directly to Government.

Recovery of balances due by farmers.

158. All land-revenue due when this Act comes into force, and all penalties or other moneys payable to, or recoverable by, an officer of Government under this Act, shall be recovered from the persons from whom they are due and from the sureties (if any) of such persons as if such land-revenue, penalties or moneys were an arrear of revenue payable directly to Government due under this Act by such persons and their sureties.

Recovery of revenue due when Act comes into force, and of moneys payable under Act.

159. All proceedings taken before this Act comes into force for the collection of the land-revenue or the realization of arrears thereof shall be deemed to have been taken in accordance with law.

Past proceedings for collection of revenue legalized.

160. In conferring powers under this Act the Chief Commissioner may empower persons by name or classes of officials generally by their official titles.

Chief Commissioner may empower persons by name, or confer powers on classes.

161. The Chief Commissioner may vary or cancel any order conferring powers under this Act.

Chief Commissioner may vary or cancel orders.

162. The Chief Commissioner may, with the previous sanction of the Governor General in Council, make rules consistent with this Act for carrying out its provisions, and may attach to the breach of any such rule, or of any other rule made by him under this Act, a penalty which may extend to two hundred rupees, or, when such breach is a continuing breach, to fifty rupees for each day during which such breach continues.

Chief Commissioner may make rules and attach penalty to breach thereof.

All powers to make rules conferred by this Act on the Chief Commissioner shall be exercised subject to the control of the Governor General in Council, and may be exercised from time to time as occasion requires.

No rule made by the Chief Commissioner under this Act shall take effect until it has been published in the local official Gazette.

All such rules, when so published, shall have the force of law.

SCHEDULE.

(*See section 2.*)

ENACTMENTS REPEALED.

Number and year.	Title.	Extent of repeal.
Act XII of 1841.	For amending the Bengal Code in regard to sales of land for arrears of revenue.	So much as has not been repealed.
Act I of 1847	For the establishment and maintenance of boundary-marks in the North-Western Provinces of Bengal.	The whole.
Act XXXI of 1858.	To make further provision for the settlement of land gained by alluvion in the Presidency of Fort William in Bengal.	The whole.

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(*Nothing hereinafter contained shall be deemed to have the force of law.*)

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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 30th December, 1880, and was referred to a Select Committee :—

No. 21 OF 1880.

A Bill to empower the Government of Madras to alter the local limits of the Coroner's Jurisdiction, and for other purposes.

Preamble.

WHEREAS under the Coroners' Act, 1871, the local limits of the jurisdiction of the Coroner of Madras are made co-extensive with the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Madras;

and whereas it is expedient to empower the Governor of Fort St. George in Council to alter the local limits of the said Coroner's jurisdiction;

and whereas it is also expedient to correct an error in section nine of Madras Act No. VIII of 1867 (*an Act to incorporate the Police of the Town of Madras with the general Police of the Madras Presidency and for other purposes*) as amended by the Code of Criminal Procedure; It is hereby enacted as follows :—

Power to alter local limits of jurisdiction of Coroner of Madras.

1. The Governor of Fort St. George in Council may, from time to time, with the previous sanction of the Governor General in Council, by notification in the *Fort St. George Gazette*, alter the local limits of the jurisdiction of the Coroner of Madras :

Provided that such limits shall not extend beyond the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Madras.

Sections 133 to 135 of Act X of 1872 to extend to area excluded from Coroner's jurisdiction.

2. When, in exercise of the power conferred by section one, any area within the local limits of the said ordinary original civil jurisdiction is excluded from the local limits of the Coroner's jurisdiction, sections 133 to 135 (both inclusive) of the Code of Criminal Procedure shall extend to such area while so excluded, and all functions assigned to a Magistrate by those sections shall be discharged by the Commissioner of Police.

New section substituted for section 9 of Madras Act VIII of 1867.

3. For section nine of the said Madras Act No. VIII of 1867, the following section shall be substituted :—

Law to govern Town Police.

"9. The Town Police shall be governed by all the provisions of the Criminal Procedure Code, contained in sections 89, 91 to 103 (both inclusive), 108, 109, 110, 111, 112, 114, 116, 117 (first part), 118, 119, 120, 123, 124, 125, 127, 128, 129, 131, 136, 139, 140, 141, 142, 144, 147, chapter XII, sections 159, 161, 163 to 170 (both inclusive), 174 to 185 (both inclusive), chapter XXVII (except section 385), sections 415 to 420 (both inclusive), 480, so far as they are applicable :

"Provided always, that the officer in charge of a Police-station shall not be required to bind over the prosecutor and witnesses as directed in section 123 of the said Code, if their immediate attendance can be procured without recognizances."

Act X of 1872, schedule V, in part repealed.

4. The portion of Schedule V of the Code of Criminal Procedure, under the heading "Acts of the Governor of Madras in Council," shall be read as if the letter and figure "s. 9" in the first column, and all the words and figures in the second and third columns opposite the said letter and figure, were omitted.

STATEMENT OF OBJECTS AND REASONS.

UNDER Act No. IV of 1871 (The Coroners' Act, 1871), the local limits of the jurisdiction of the Coroners in the towns of Calcutta, Madras and Bombay are made co-extensive with the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Fort William, Madras and Bombay, respectively, no power to alter them being conferred. In Madras, these limits comprise twenty-seven square miles and include twenty-three agricultural villages. This area having of late years, owing to the increase in the number of inquests to be held, become too large for one Coroner, it is proposed that the Governor in Council should be empowered to restrict the local limits of the Coroner's jurisdiction by excluding from them the non-urban portion which differs but little from the adjoining mufassal district. To give effect to this proposal, the present Bill has been prepared. It empowers the Governor in Council, with the previous sanction of the Governor General in Council, to alter the local limits of the Coroner's jurisdiction, as may be from time to time convenient, provided that these limits are never extended beyond the present ones.

2. In the event of the powers conferred by the Bill being exercised and the local limits of the Coroner's jurisdiction restricted, the provisions of the Criminal Procedure Code relating to enquiries by the Police into unnatural and sudden deaths will (section 2) extend to the tract excluded from the jurisdiction of the Coroner, and the Commissioner of Police will discharge the functions of the Magistrate under those provisions.

3. The present opportunity has been taken to correct an error (the result of an oversight) in section 9 of the Madras Police Act (Madras Act No. VIII of 1867) as amended by the Code of Criminal Procedure.

WHITLEY STOKES.

The 24th December, 1880.

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 30th December, 1880, and was referred to a Select Committee :—

No. 22 OF 1880.

A Bill to empower the Government to remove or destroy obstructions in fairways, and to prevent the creation of such obstructions.

WHEREAS it is expedient to empower the Government to remove or destroy obstructions to navigation in fairways in the seas adjacent to British India, and to prevent the creation of such obstructions; It is hereby enacted as follows :— Preamble.

1. This Act may be called "The Obstructions in fairways Act, 1881;" Short title.

and it shall come into force at once. Commencement.

But nothing herein contained shall apply to vessels belonging to Her Majesty or hired by Her Majesty, or by the Secretary of State for India in Council.

2. Whenever in any fairway in any of the seas adjacent to British India, any vessel is sunk, stranded or abandoned, or any fishing stake, timber or other thing is placed or left, the Local Government of the part of British India in or near which such vessel, fishing-stake, timber or other thing is situate may, if in its opinion such thing is, or is likely to become, an obstruction or danger to navigation, Local Government empowered to remove or destroy obstruction in fairway.

(*a*) cause such thing or any part thereof to be removed; or,

(*b*) if such thing is of such a description or so situate that, in the opinion of the Local Government, it is not worth removing, destroy the same or any part thereof.

Act VII of 1880, s. 75.

3. Whenever anything is removed under section two, the Government shall be entitled to receive a reasonable sum, having regard to all the circumstances of the case, for the expenses incurred in respect of such removal. Government entitled to expenses incurred in removing obstruction.

Act VII of 1880, s. 75.

Any dispute arising concerning the amount due under this section, in respect of anything so removed, shall be determined by the Magistrate of the District or Presidency Magistrate having jurisdiction at the place where such thing is, upon application to him for that purpose by either of the disputing parties. Dispute concerning such expenses.

Act VII of 1880, s. 76.

4. The Local Government shall, when anything is removed under section two, publish in the local official Gazette a notification containing a description of such thing, and the time at which and the place from which the same was removed. Notice of removal to be given by Local Government.

Act VII of 1880, s. 77.

5. If after publishing such notification, such thing is unclaimed, Things removed may, in certain cases, be sold.

or if the person claiming the same fails to pay the amount due for the said expenses and any other charges properly incurred by the Local Government in respect thereof,

the Local Government may sell such thing by public auction, if it is of a perishable nature, forthwith, and if it is not of a perishable nature, at any time not less than six months after publishing such notification as aforesaid.

Act VII of 1880, s. 78.

6. On the realization of the proceeds of such sale, the amount due for expenses and charges as aforesaid, together with the expenses of the sale, shall be deducted therefrom, and the surplus (if any) shall be paid to the owner of the thing sold, or, if no such person appear and claim such surplus, shall be held in deposit for payment, without interest, to any person thereafter establishing his right to the same : Proceeds how applied.

Provided that he makes the claim within one year from the date of the sale.

40 & 41 Vic., c. 16, s. 6.

7. For the purposes of this Act, the term "vessel" shall be deemed to include every article or thing or collection of things being or forming part of the tackle, equipment, cargo, stores or ballast of a vessel, and any proceeds arising from the sale of a vessel, and of the cargo thereof, or of any other property recovered therefrom, shall be regarded as a common fund. "Vessel" to include tackle, cargo, &c.

8. The Governor General in Council may from time to time, by notification in the *Gazette of India*, make rules to regulate or prohibit in any fairway in any of the seas adjacent to British India, the placing of fishing stakes, the casting or throwing of ballast, rubbish, or any other thing likely to give rise to a bank or shoal, or the doing of any other act which will, in his opinion, cause or be likely to cause obstruction or danger to navigation. Power to make rules to regulate and prohibit the placing of obstructions in fairways.

9. Whoever is guilty of any act or omission in contravention of the rules made under section eight, may be tried for such offence in any district or Presidency-town in which he is found, and 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 such rules.

40 & 41 Vic., c. 16, s. 8.

10. Nothing herein contained shall be deemed to prevent the exercise by the Government of any other powers possessed by it in this behalf. Saving of other powers possessed by Government.

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to empower the Government to remove obstructions to navigation which may exist in fairways situate in seas adjacent to British India, and to prohibit the creation of such obstructions for the future. The advantages of having such a law have been impressed upon the Government by certain recent cases. In one of these a question has been raised as to the power of the Government to remove the fishing stakes which are

annually placed during the fine season in the sea off the port of Bombay, and which, having recently been advanced into the approach to the harbour, are now a source of serious danger to vessels frequenting that port. In another case which related to the deposit of ballast by ship-masters, at the mouth of the Rangoon river, a practice which, if permitted, might cause serious impediment and danger to the navigation of the approaches to the port of Rangoon, the need for some further preventive powers than those which Government now possesses, has been made apparent.

There can be no doubt that it is extremely desirable that the powers of Government officers, and the procedure to be followed by them, in relation to matters of this nature, should be clearly defined, and as the Indian Statute-Book, as it now stands, does not deal adequately with the subject, the present Bill has been prepared. A precedent for such legislation will be found in the Imperial Statute 40 & 41 Vic., c. 16 (the Removal of Wrecks Act, 1877). The Bill, while following generally the lines of the statute, goes beyond it in two material respects. The power to remove obstructions conferred by it is not confined, as in the statute, to the case of obstructions caused by wrecks, but extends also to fishing stakes, ballast and any other thing which may form an obstruction or danger to navigation. The other point in which the Bill goes beyond the statute is that, in addition to giving power to remove existing obstructions, it enables the Government to prevent the wilful creation of obstructions in the future. With this object the Governor General in Council is empowered (section 7) to make rules to regulate or prohibit in any fairway the placing of fishing stakes, the casting of ballast, or the doing of any other act which will, in his opinion, cause or be likely to cause danger or obstruction to navigation.

The 24th December, 1880.

WHITLEY STOKES.

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 30th December, 1880, and was referred to a Select Committee :—

No. 23 OF 1880.

A Bill to amend Bengal Act No. IX of 1880 (the Cess Act, 1880).

WHEREAS it is expedient to amend Bengal Act No. IX of 1880 (the Cess Act, 1880); It is hereby enacted as follows :— Preamble.

1. In the said Act, after section sixty-four, the following sections shall be inserted, and shall be deemed to have been so inserted on and from the date on which such Act came into force. Amendment of Bengal Act No. IX of 1880.

"64A. All sums due to the holder of any estate or tenure under the provisions of this chapter, in respect of any land held rent-free, may be recovered by such holder from any owner or holder of such rent-free land, or from any occupier of the same, by any means and any process by which the amount might be recovered if it were due on account of rent of a transferable tenure or holding, and subject to the same rules as to limitation : Holders of estates, &c., how to recover from holders of rent-free lands.

"Provided that, if any such objection as is mentioned in section 53, has been made before the Collector, no proceedings shall be commenced, and no proceedings which have been commenced shall be continued, for recovery of cess in respect of the lands which are the subject of such objection, until such objection shall have been disposed of by the Collector.

"64B. In every suit for the recovery of any such sum, the person to whom the sum is due may proceed at his option either against the owner or holder of the rent-free land in respect of which such amount is due, or against the occupier thereof; and any decree obtained in such suit against any occupier of such land shall have the same effect and be followed by the same consequences in respect of the execution of such decree against the owner or holder of such land, and in respect of the sale of such land in such execution, as if the suit had been brought and the decree given against such owner or holder of such land, but shall have effect against such occupier personally so long only as he remains in occupation of such land, and no longer." Owner, holder or occupier of rent-free lands may be sued. Decree against occupier tantamount to decree against owner.

STATEMENT OF OBJECTS AND REASONS.

WHEN the Bill, which has since become Bengal Act No. IX of 1880 (The Cess Act, 1880), was submitted, for the first time, by the Government of Bengal for the assent of the Governor General, His Excellency, though approving of the policy of the Bill, was unable to give his assent, as he was advised that two of its sections were *ultra vires* of the Bengal Legislative Council. Section 65 was *ultra vires*, inasmuch as it extended to suits the parties to which were not landholder and tenant, the special procedure which the provincial legislature is, by section 4 of the Code of Civil Procedure, permitted to prescribe only in suits between landholder and tenant; and section 66 also appeared to be *ultra vires*, as it was inconsistent with the same Code, in enacting that a decree might be executed against a person who was neither a party or privy.

Though, however, feeling compelled for these reasons to withhold his assent from the Bill in its then form, His Excellency intimated to the Government of Bengal that he would be willing to give his assent to the measure if it was re-enacted with the omission of the provisions to which exception had been taken, and further, that if the Lieutenant-Governor should think these provisions were indispensable, a Bill would be introduced into the Council of the Governor General incorporating them, and drawn so as to come in force simultaneously with the Bengal Bill when re-enacted.

In accordance with this intimation, the Government of Bengal re-submitted the Bill with the omission of the objectionable provisions, and His Excellency has given his assent to the measure as thus amended. But, as the Local Government has expressed at the same time a strong opinion that the omitted sections are essential to their scheme of legislation, the present Bill has been prepared in fulfilment of the promise made by His Excellency. It simply re-enacts the provisions to which exception was taken, and incorporates them in the Bengal Act, by inserting them retrospectively in that enactment from the date on which it became law.

WHITLEY STOKES.

The 24th December, 1880.

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

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, JANUARY 8, 1881.

☞ 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 30th December, 1880, and was referred to a Select Committee :—

No. 21 OF 1880.

A Bill to empower the Government of Madras to alter the local limits of the Coroner's Jurisdiction, and for other purposes.

Preamble.

WHEREAS under the Coroners' Act, 1871, the local limits of the jurisdiction of the Coroner of Madras are made co-extensive with the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Madras;

and whereas it is expedient to empower the Governor of Fort St. George in Council to alter the local limits of the said Coroner's jurisdiction;

and whereas it is also expedient to correct an error in section nine of Madras Act No. VIII of 1867 (*an Act to incorporate the Police of the Town of Madras with the general Police of the Madras Presidency and for other purposes*) as amended by the Code of Criminal Procedure; It is hereby enacted as follows :—

Power to alter local limits of jurisdiction of Coroner of Madras.

1. The Governor of Fort St. George in Council may, from time to time, with the previous sanction of the Governor General in Council, by notification in the *Fort St. George Gazette*, alter the local limits of the jurisdiction of the Coroner of Madras :

Provided that such limits shall not extend beyond the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Madras.

Sections 133 to 135 of Act X of 1872 to extend to area excluded from Coroner's jurisdiction.

2. When, in exercise of the power conferred by section one, any area within the local limits of the said ordinary original civil jurisdiction is excluded from the local limits of the Coroner's jurisdiction, sections 133 to 135 (both inclusive) of the Code of Criminal Procedure shall extend to such area while so excluded, and all functions assigned to a Magistrate by those sections shall be discharged by the Commissioner of Police.

New section substituted for section 9 of Madras Act VIII of 1867.

3. For section nine of the said Madras Act No. VIII of 1867, the following section shall be substituted :—

Law to govern Town Police.

"9. The Town Police shall be governed by all the provisions of the Criminal Procedure Code, contained in sections 89, 91 to 103 (both inclusive), 108, 109, 110, 111, 112, 114, 116, 117 (first part), 118, 119, 120, 123, 124, 125, 127, 128, 129, 131, 136, 139, 140, 141, 142, 144, 147, chapter XII, sections 159, 161, 163 to 170 (both inclusive), 174 to 185 (both inclusive), chapter XXVII (except section 385), sections 415 to 420 (both inclusive), 480, so far as they are applicable :

"Provided always, that the officer in charge of a Police-station shall not be required to bind over the prosecutor and witnesses as directed in section 123 of the said Code, if their immediate attendance can be procured without recognizances."

Act X of 1872, schedule V, in part repealed.

4. The portion of Schedule V of the Code of Criminal Procedure, under the heading "Acts of the Governor of Madras in Council," shall be read as if the letter and figure "s. 9" in the first column, and all the words and figures in the second and third columns opposite the said letter and figure, were omitted.

STATEMENT OF OBJECTS AND REASONS.

UNDER Act No. IV of 1871 (The Coroners' Act, 1871), the local limits of the jurisdiction of the Coroners in the towns of Calcutta, Madras and Bombay are made co-extensive with the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Fort William, Madras and Bombay, respectively, no power to alter them being conferred. In Madras, these limits comprise twenty-seven square miles and include twenty-three agricultural villages. This area having of late years, owing to the increase in the number of inquests to be held, become too large for one Coroner, it is proposed that the Governor in Council should be empowered to restrict the local limits of the Coroner's jurisdiction by excluding from them the non-urban portion which differs but little from the adjoining mufassal district. To give effect to this proposal, the present Bill has been prepared. It empowers the Governor in Council, with the previous sanction of the Governor General in Council, to alter the local limits of the Coroner's jurisdiction, as may be from time to time convenient, provided that these limits are never extended beyond the present ones.

2. In the event of the powers conferred by the Bill being exercised and the local limits of the Coroner's jurisdiction restricted, the provisions of the Criminal Procedure Code relating to enquiries by the Police into unnatural and sudden deaths will (section 2) extend to the tract excluded from the jurisdiction of the Coroner, and the Commissioner of Police will discharge the functions of the Magistrate under those provisions.

3. The present opportunity has been taken to correct an error (the result of an oversight) in section 9 of the Madras Police Act (Madras Act No. VIII of 1867) as amended by the Code of Criminal Procedure.

WHITLEY STOKES.

The 24th December, 1880.

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

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 30th December, 1880, and was referred to a Select Committee :—

No. 22 OF 1880.

A Bill to empower the Government to remove or destroy obstructions in fairways, and to prevent the creation of such obstructions.

Preamble.

WHEREAS it is expedient to empower the Government to remove or destroy obstructions to navigation in fairways in the seas adjacent to British India, and to prevent the creation of such obstructions; It is hereby enacted as follows :—

Short title. Commencement.

1. This Act may be called "The Obstructions in fairways Act, 1881;" and it shall come into force at once.

But nothing herein contained shall apply to vessels belonging to Her Majesty or hired by Her Majesty, or by the Secretary of State for India in Council.

Local Government empowered to remove or destroy obstruction in fairway.

2. Whenever in any fairway in any of the seas adjacent to British India, any vessel is sunk, stranded or abandoned, or any fishing stake, timber or other thing is placed or left, the Local Government of the part of British India in or near which such vessel, fishing stake, timber or other thing is situate may, if in its opinion such thing is, or is likely to become, an obstruction or danger to navigation,

(*a*) cause such thing or any part thereof to be removed; or,

(*b*) if such thing is of such a description or so situate that, in the opinion of the Local Government, it is not worth removing, destroy the same or any part thereof.

Government entitled to expenses incurred in removing obstruction.

3. Whenever anything is removed under section two, the Government shall be entitled to receive a reasonable sum, having regard to all the circumstances of the case, for the expenses incurred in respect of such removal.

Any dispute arising concerning the amount due under this section, in respect of anything so removed, shall be determined by the Magistrate of the District or Presidency Magistrate having jurisdiction at the place where such thing is, upon application to him for that purpose by either of the disputing parties. Act VII of 1880, s. 75.

Dispute concerning such expenses.

Notice of removal to be given by Local Government.

4. The Local Government shall, when anything is removed under section two, publish in the local official Gazette a notification containing a description of such thing, and the time at which and the place from which the same was removed. Act VII of 1880, s. 76.

Things removed may, in certain cases, be sold.

5. If after publishing such notification, such thing is unclaimed, Act VII of 1880, s. 77.

or if the person claiming the same fails to pay the amount due for the said expenses and any other charges properly incurred by the Local Government in respect thereof,

the Local Government may sell such thing by public auction, if it is of a perishable nature, forthwith, and if it is not of a perishable nature, at any time not less than six months after publishing such notification as aforesaid.

Proceeds how applied.

6. On the realization of the proceeds of such sale, the amount due for expenses and charges as aforesaid, together with the expenses of the sale, shall be deducted therefrom, and the surplus (if any) shall be paid to the owner of the thing sold, or, if no such person appear and claim such surplus, shall be held in deposit for payment, without interest, to any person thereafter establishing his right to the same: Act VII of 1880, s. 78.

Provided that he makes the claim within one year from the date of the sale.

"Vessel" to include tackle, cargo, &c.

7. For the purposes of this Act, the term "vessel" shall be deemed to include every article or thing or collection of things being or forming part of the tackle, equipment, cargo, stores or ballast of a vessel, and any proceeds arising from the sale of a vessel, and of the cargo thereof, or of any other property recovered therefrom, shall be regarded as a common fund. 40 & 41 Vic., c. 16, s. 6.

Power to make rules to regulate and prohibit the placing of obstructions in fairways.

8. The Governor General in Council may from time to time, by notification in the *Gazette of India*, make rules to regulate or prohibit in any fairway in any of the seas adjacent to British India, the placing of fishing stakes, the casting or

throwing of ballast, rubbish, or any other thing likely to give rise to a bank or shoal, or the doing of any other act which will, in his opinion, cause or be likely to cause obstruction or danger to navigation.

Penalty for breach of such rules.

9. Whoever is guilty of any act or omission in contravention of the rules made under section eight, may be tried for such offence in any district or Presidency-town in which he is found, and 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.

Saving of other powers possessed by Government.

10. Nothing herein contained shall be deemed to prevent the exercise by the Government of any other powers possessed by it in this behalf. 40 & 41 c. 16, s. 8.

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to empower the Government to remove obstructions to navigation which may exist in fairways situate in seas adjacent to British India, and to prohibit the creation of such obstructions for the future. The advantages of having such a law have been impressed upon the Government by certain recent cases. In one of these a question has been raised as to the power of the Government to remove the fishing stakes which are annually placed during the fine season in the sea off the port of Bombay, and which, having recently been advanced into the approach to the harbour, are now a source of serious danger to vessels frequenting that port. In another case which related to the deposit of ballast by ship-masters, at the mouth of the Rangoon river, a practice which, if permitted, might cause serious impediment and danger to the navigation of the approaches to the port of Rangoon, the need for some further preventive powers than those which Government now possesses, has been made apparent.

There can be no doubt that it is extremely desirable that the powers of Government officers, and the procedure to be followed by them, in relation to matters of this nature, should be clearly defined, and as the Indian Statute-Book, as it now stands, does not deal adequately with the subject, the present Bill has been prepared. A precedent for such legislation will be found in the Imperial Statute 40 & 41 Vic., c. 16 (the Removal of Wrecks Act, 1877). The Bill, while following generally the lines of the statute, goes beyond it in two material respects. The power to remove obstructions conferred by it is not confined, as in the statute, to the case of obstructions caused by wrecks, but extends also to fishing stakes, ballast and any other thing which may form an obstruction or danger to navigation. The other point in which the Bill goes beyond the statute is that, in addition to giving power to remove existing obstructions, it enables the Government to prevent the wilful creation of obstructions in the future. With this object the Governor General in Council is empowered (section 7) to make rules to regulate or prohibit in any fairway the placing of fishing stakes, the casting of ballast, or the doing of any other act which will, in his opinion, cause or be likely to cause danger or obstruction to navigation.

The 24th December, 1880.

WHITLEY STOKES.

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

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 30th December, 1880, and was referred to a Select Committee :—

No. 23 OF 1880.

A Bill to amend Bengal Act No. IX of 1880 (the Cess Act, 1880).

Preamble.

WHEREAS it is expedient to amend Bengal Act No. IX of 1880 (the Cess Act, 1880); It is hereby enacted as follows :—

Amendment of Bengal Act No. IX of 1880.

1. In the said Act, after section sixty-four, the following sections shall be inserted, and shall be deemed to have been so inserted on and from the date on which such Act came into force.

Holders of estates, &c., how to recover from holders of rent-free lands.

"64A. All sums due to the holder of any estate or tenure under the provisions of this chapter, in respect of any land held rent-free, may be recovered by such holder from any owner or holder of such rent-free land, or from any occupier of the same, by any means and any process by which the amount might be recovered if it were due on account of rent of a transferable tenure or holding, and subject to the same rules as to limitation :

"Provided that, if any such objection as is mentioned in section 53, has been made before the Collector, no proceedings shall be commenced, and no proceedings which have been commenced shall be continued, for recovery of cess in respect of the lands which are the subject of such objection, until such objection shall have been disposed of by the Collector.

Owner, holder or occupier of rent-free lands may be sued.

Decree against occupier tantamount to decree against owner.

"64B. In every suit for the recovery of any such sum, the person to whom the sum is due may proceed at his option either against the owner or holder of the rent-free land in respect of which such amount is due, or against the occupier thereof; and any decree obtained in such suit against any occupier of such land shall have the same effect and be followed by the same consequences in respect of the execution of such decree against the owner or holder of such land, and in respect of the sale of such land in such execution, as if the suit had been brought and the decree given against such owner or holder of such land, but shall have effect against such occupier personally so long only as he remains in occupation of such land, and no longer."

STATEMENT OF OBJECTS AND REASONS.

WHEN the Bill, which has since become Bengal Act No. IX of 1880 (The Cess Act, 1880), was submitted, for the first time, by the Government of Bengal for the assent of the Governor General, His Excellency, though approving of the policy of the Bill, was unable to give his assent, as he was advised that two of its sections were *ultra vires* of the Bengal Legislative Council. Section 65 was *ultra vires*, inasmuch as it extended to suits the parties to which were not landholder and tenant, the special procedure which the provincial legislature is, by section 4 of the Code of Civil Procedure, permitted to prescribe only in suits between landholder and tenant; and section 66 also appeared to be *ultra vires*, as it was inconsistent with the same Code, in enacting that a decree might be executed against a person who was neither a party or privy.

Though, however, feeling compelled for these reasons to withhold his assent from the Bill in its then form, His Excellency intimated to the Government of Bengal that he would be willing to give his assent to the measure if it was re-enacted with the omission of the provisions to which exception had been taken, and further, that if the Lieutenant-Governor should think these provisions were indispensable, a Bill would be introduced into the Council of the Governor General incorporating them, and drawn so as to come in force simultaneously with the Bengal Bill when re-enacted.

In accordance with this intimation, the Government of Bengal re-submitted the Bill with the omission of the objectionable provisions, and His Excellency has given his assent to the measure as thus amended. But, as the Local Government has expressed at the same time a strong opinion that the omitted sections are essential to their scheme of legislation, the present Bill has been prepared in fulfilment of the promise made by His Excellency. It simply re-enacts the provisions to which exception was taken, and incorporates them in the Bengal Act, by inserting them retrospectively in that enactment from the date on which it became law,

The 24th December, 1880.

WHITLEY STOKES.

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

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 6th January, 1881, and was referred to a Select Committee:—

No. 1 OF 1881.

THE BURMA FOREST BILL, 1881.

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SCHEDULE.—ENACTMENTS REPEALED.

A Bill to amend the law relating to Forests, Forest-produce, and the duty leviable on Timber in British Burma.

WHEREAS it is expedient to amend the law relating to forests, forest-produce, and the duty leviable on timber in British Burma; It is hereby enacted as follows:— Preamble.

CHAPTER I.

PRELIMINARY.

1. This Act may be called "The Burma Forest Act, 1881:" Short-title.

It extends to all the territories for the time being administered by the Chief Commissioner of British Burma, provided that the Chief Commissioner may, from time to time, by notification in the local official Gazette, exempt any place from its operation; but not so as to affect anything done, or any offence committed, or any fine or penalty incurred, or any proceedings commenced in such place before such exemption; and Local extent.

it shall come into force on the first day of May, 1881. Commencement.

2. On and from that day the enactments mentioned in the schedule hereto annexed shall be repealed to the extent mentioned in the third column of the same schedule. Repeal of enactments.

"and in all rules made hereunder" new.

3. In this Act, and in all rules made hereunder, unless there is something repugnant in the subject or context, — Interpretation-clause.

"Forest-officer" means all persons appointed by name or as holding an office by or under the orders of the Chief Commissioner to be— "Forest-officer:"

New. Conservators, Deputy Conservators, Assistant Conservators, Sub-Assistant Conservators, Forest Rangers, Foresters, Forest Guards or Forest-officers, or to discharge any function of a Forest-officer under this Act or the rules made hereunder:

Act VII of 1878, s. 2. "Forest-officer specially empowered" means in any provision of this Act any person whom the Chief Commissioner, or any officer empowered by the Chief Commissioner in this behalf, may, from time to time, appoint by name, or as holding an office, to discharge the functions of a Forest-officer under such provision: "Forest-officer specially empowered:"

Ibid. "tree" includes bamboos, stumps and brushwood: "tree:"

Ibid. "timber" includes trees when they have fallen or have been felled, and all wood, whether cut up or fashioned or hollowed out for any purpose or not: "timber:"

Ibid. "forest-produce" includes the following when found in, or brought from, a forest (that is to say) :— "forest-produce."

Ibid. minerals (including limestone and laterite), surface-soil, trees, timber, plants, grass, peat, canes, creepers, reeds, leaves, moss, flowers, fruits, seeds, roots, juice, catechu, bark, caoutchouc, gum, wood-oil, resin, varnish, lac and charcoal;

'Plants' and 'seeds' added, and the words 'honey', 'wax', 'grass-oil', 'silkworms' and 'cocoons', 'shells', 'skins', 'tusks', 'bones' and 'horns' omitted.

Act VII of 1878, s. 2. "forest-offence" means an offence punishable under this Act, or under any rule made under this Act: "forest-offence:"

Ibid. 'camels' omitted. "cattle" includes also elephants, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats and kids: "cattle:"

"river" includes also streams, canals, creeks and other channels, natural or artificial: "river:"

New. "Magistrate" means a Magistrate of the first or second class, or (when specially empowered by the Chief Commissioner to try forest-offences) a Magistrate of the third class. "Magistrate."

Cf. Act XV of 1877, s. 3, cl. 2. **4.** Nothing in the Burma Land and Revenue Act, 1876, shall be deemed to affect or ever to have affected any right by which one person is entitled to remove and appropriate for his own profit any part of the soil belonging to another person or to the Government or anything growing in or attached to or subsisting upon the land of another person or of the Government; and Saving of rights of profit from the Burma Land and Revenue Act, 1876.

and of ss. 20 & 21 of that Act. nothing in this Act shall be deemed to affect the provisions of sections twenty and twenty-one of the Burma Land and Revenue Act, 1876.

CHAPTER II.

OF RESERVED FORESTS.

Cf. Act VII of 1878, s. 3. **5.** The Chief Commissioner may from time to time constitute any land over which no person has a right created by any grant or lease made by or in behalf of the British Government or mentioned in section seven, eighteen, nineteen, twenty, twenty-one, forty or forty-eight of the Burma Land and Revenue Act, 1876, a reserved forest in manner hereinafter provided. Power to reserve forests.

Cf. Act VII of 1878, s. 4. **6.** Whenever it is proposed to constitute any land a reserved forest, the Chief Commissioner may publish a notification in the local official Gazette— Notification by Chief Commissioner.

(*a*) specifying the limits of such land or describing it in such a manner that its limits shall be readily ascertainable;

(*b*) declaring that it is proposed to constitute such land a reserved forest;

(*c*) appointing an officer (hereinafter called "the Forest-Settlement-officer") to inquire into and determine the existence, nature and extent of any rights alleged to exist in favour of any person in or over any land comprised within such limits, and to deal with the same as provided in this chapter.

The officer appointed under clause (*c*) of this section shall ordinarily be a person not holding any forest-office except that of Forest-Settlement-officer; but a Forest-officer may be appointed in subordination to the Forest-Settlement-officer to assist him in the inquiry prescribed by this chapter. New.

Cf. Act VII of 1878, s. 6. **7.** When a notification has been issued under section six, the Forest-Settlement-officer shall publish in the language of the country, at the head-quarters of each township in which any portion of the land comprised in such notification is situate, and in every town and village in the neighbourhood of such land, a proclamation— Proclamation by Forest-Settlement-officer.

(*a*) specifying the limits of the proposed forest, or describing it in such a manner that its limits shall be readily ascertainable;

(*b*) setting forth the provisions of section eight; New.

(*c*) explaining the consequences which, as hereinafter provided, will ensue on the reservation of such forest; and

(*d*) fixing a period of not less than three months from the date of publishing such proclamation, and requiring every person claiming any right mentioned in section six either to present to such officer within such period a written notice specifying, or to appear before him within such period and state, the nature of such right.

Cf. Act VII of 1878, s. 5. **8.** During the interval between the publication of such proclamation and the date fixed by the notification under section eighteen, no right shall be acquired in or over the land comprised in such notification, except by succession or under a grant or contract in writing made or entered into by, or on behalf of, the Government or some person in whom such right was vested when the proclamation was published; and on such land, except as hereinafter provided, no new house shall be built or plantation formed, and no fresh clearings for cultivation or for any other purpose shall be made and no trees Bar of accrual of forest-rights. Prohibition of building, clearing, &c.

shall be cut for the purpose of trade or manufacture.

New. Nothing in this section shall be deemed to prohibit any act done with the permission in writing of the Forest-Settlement-officer, or any clearings made for toungya cultivation by tribes or families in the habit of practising such cultivation on such land: provided that such clearings are not in contravention of any rule made under section twenty-one of the Burma Land and Revenue Act, 1876, and for the time being in force.

Cf. Act VII of 1878, s. 7. The words 'at some convenient place' omitted.

9. The Forest-Settlement-officer shall take down in writing all statements made under section seven, and shall inquire into all claims preferred under that section, and the existence of any rights mentioned in section six and not claimed under section seven.

Inquiry by Forest-Settlement-officer.

New. The Forest-Settlement-officer shall at the same time consider and record any objection to any claim which the Forest-officer (if any), appointed to assist him under section six, may make.

Cf. Act VII of 1878, s. 8.

10. For the purposes of such inquiry, the Forest-Settlement-officer may exercise the following powers (that is to say):—

Powers of Forest-Settlement-officer.

Wording changed. (*a*) the powers of a Demarcation-officer under The Burma Boundaries Act, 1880; and

(*b*) the powers conferred on a Civil Court by the Code of Civil Procedure for compelling the attendance of witnesses and the production of documents.

Act VII of 1878, s. 9.

11. Rights in respect of which no claim has been preferred under section seven, and of the existence of which no knowledge has been acquired by enquiry under section nine, shall be extinguished, unless, before the notification under section eighteen is published, the person claiming them satisfies the Forest-Settlement-officer that he had sufficient cause for not preferring such claim within the period fixed under section seven.

Extinction of rights not claimed.

Cf. Act VII of 1878, s. 10.

12. In the case of a claim to a right in or over any land other than the following:—

Power to acquire land over which right is claimed.

(*a*) right of way,
(*b*) right to a water-course,
(*c*) right of pasture,
(*d*) right to forest-produce,

the Forest-Settlement-officer shall pass an order specifying the particulars of such claim and admitting or rejecting the same wholly or in part.

If such claim is admitted wholly or in part, the Forest-Settlement-officer may (1) come to an agreement with the claimant for the surrender of the right; (2) exclude the land from the limits of the proposed forest; or (3) proceed to acquire such land in the manner provided by the Land Acquisition Act, 1870.

For the purpose of so acquiring such land—

(i) the Forest-Settlement-officer shall be deemed to be a Collector proceeding under the Land Acquisition Act, 1870;

(ii) the claimant shall be deemed to be a person interested and appearing before him in pursuance of a notice given under section nine of that Act;

(iii) the provisions of the preceding sections of that Act shall be deemed to have been complied with; and

(iv) the Collector, with the consent of the claimant, or the Court, with the consent of both parties, may award compensation in land, or partly in land and partly in money.

Cf. Act VII of 1878, ss. 11, 12 and 13. (That section relates only to the rights mentioned, cls. (*c*) and (*d*.)

13. In the case of a claim to rights of the kind specified in clauses (*a*), (*b*), (*c*) and (*d*) of section twelve, the Forest-Settlement-officer shall pass an order specifying the particulars of such claim and admitting or rejecting the same wholly or in part.

Order on claims to rights of way, water-course, pasture or to forest-produce.

Cf. Act VII of 1878, ss. 14 and 15.

14. When the Forest-Settlement-officer admits wholly or in part any claim to a right of the kind specified in clauses (*c*) and (*d*) of section twelve, he shall, if practicable, by an order in writing, either continue such right to the claimant, or alter the limits of the proposed reserved forest, so as to exclude land of sufficient extent, of a suitable kind, and in a locality reasonably convenient, for the purposes of the claimant; and permit him to exercise his right on such land.

Provision for rights of pasture or to forest-produce admitted.

The order passed under this section shall record—

(*a*) the number and description of the cattle which the claimant is from time to time entitled to graze, the local limits within which, and the season during which, such pasture is permitted; or

(*b*) the quantity of timber and other forest-produce which the claimant is authorized to take or receive, the local limits within which, and the season during which, the taking of such timber or forest-produce is permitted; and

(*c*) when the exercise of such right is claimed in respect of any land or buildings, the designation, position and area of such land, and the designation and position of such buildings; and

New. (*d*) such other particulars as may be required in order to specify the nature of the right which is continued.

Cf. Act VII of 1878, ss. 12 and 13.

15. Whenever any right of the kind specified in section twelve, clauses (*c*) and (*d*), and admitted under section thirteen, is not provided for in one of the ways prescribed in section fourteen, the Forest-Settlement-officer shall, subject to such rules as the Chief Commissioner may from time to time prescribe in this behalf, commute such right, by paying a sum of money in lieu thereof, or with the consent of the claimant, by the grant of land or in such other manner as such officer thinks fit;

Commutation of such rights.

For the purpose of granting land under this section, the Forest-Settlement-officer shall be deemed to be an Assistant Commissioner in charge of a sub-division.

Cf. Act VII of 1878, s. 16.

16. Any person who has made a claim under this chapter may, within three months from the date of any order passed on such claim by the Forest-Settlement-officer under section twelve, thirteen, fourteen or fifteen, present an appeal from such order to such officer of the Revenue Department, of rank not lower than that of a Deputy Commissioner, as the Chief Commissioner may from time to time, by notification in the local official Gazette, appoint by name, or as holding an office, to hear appeals from such orders.

Appeal from order passed under foregoing sections.

Proviso omitted.

Act VII of 1878, s. 17.

17. Every appeal under section sixteen shall be made by petition in writing, and may be delivered to the Forest-Settlement-officer, who shall forward it without delay to the officer competent to hear the same.

Appeal under section 16.

Every such appeal shall be heard in the manner prescribed for the time being for the hearing of appeals in matters relating to land-revenue, and the order passed thereon by such officer shall be final:

Hearing of appeals.

Provided that every order of a Forest-Settlement-officer, and every order passed on appeal under this section, shall be subject to revision by the Chief Commissioner.

Orders of Forest-Settlement-officer, and orders on appeal, subject to Chief Commissioner's confirmation.

Act VII of 1878, s. 19.

18. When the following events have occurred (namely)—

Notification declaring forest reserved.

(*a*) the period fixed under section seven for preferring claims has elapsed, and all claims (if any) made within such period have been disposed of by the Forest-Settlement-officer; and

(*b*) if such claims have been made, the period limited by section sixteen for appealing from the orders passed on such claims has elapsed, and all appeals (if any) presented within such period have been disposed of by the appellate officer; and

(*c*) all lands (if any) to be included in the proposed forest, which the Forest-Settlement-officer has, under section twelve, elected to acquire under the Land Acquisition Act, 1870, have become vested in the Government under section sixteen of that Act,

the Chief Commissioner may publish a notification in the local official Gazette, specifying, according to boundary-marks erected or otherwise, the limits of the forest which it is intended to reserve, and declaring the same to be reserved from a date fixed by such notification.

From the date so fixed, such forest shall be deemed to be a reserved forest.

Cf. Act VII of 1878, s. 20.

19. The Deputy Commissioner of the district in which the forest is situate shall, before the date fixed by such notification, cause a translation thereof into the language of the country to be published in the manner prescribed for the proclamation under section seven.

Publication of translation of such notification in neighbourhood of forest.

Act VII of 1878, s. 22.

20. No right of any description shall be acquired in or over a reserved forest, except by succession, or under a grant or contract in writing made by, or on behalf of, the Government, or some person in whom such right was vested when the notification under section eighteen was published.

No right acquired over reserved forest except as here provided.

Cf. Act VII of 1878, s. 23.

21. Notwithstanding anything herein contained, no right continued or created under section fourteen shall be alienated by way of grant, sale, lease, mortgage or otherwise, without the sanction of the Chief Commissioner: provided that, when any such right is appendant to any land or house, it may be sold or otherwise alienated with such land or house without such sanction.

Rights not to be alienated without sanction.

No timber or other forest-produce obtained in exercise of any right so continued or created shall be sold or bartered except to such extent as may be permitted by the Chief Commissioner.

Cf. Act VII of 1878, s. 24.

22. A Forest-officer may from time to time, with the previous sanction of the Chief Commissioner or of any officer duly authorized in that behalf, stop any public or private way or water-course in a reserved forest: provided that a substitute for the way or water-course so stopped, which the Chief Commissioner deems to be reasonably convenient, already exists, or has been provided or constructed by such Forest-officer in lieu thereof.

Power to stop ways and water-courses in reserved forest.

Cf. Act VII of 1878, s. 25.

23. Any person who in a reserved forest—

Penalties for trespass or damage in reserved forests.

(*a*) trespasses, or pastures cattle, or permits cattle to trespass;

(*b*) causes any damage by negligence in felling any tree or cutting or dragging any timber;

(*c*) in contravention of any rules which the Chief Commissioner may from time to time make in this behalf, hunts, shoots, fishes, poisons water, or sets traps or snares,

shall be punished with fine which may extend to fifty rupees, or when the damage resulting from his offence amounts to more than twenty-five rupees to double the amount of such damage.

Cf. Act VII of 1878, s. 25.

24. Any person who—

Acts prohibited in such forests.

(*a*) makes any fresh clearing prohibited by section eight, or

(*b*) sets fire to a reserved forest, or kindles any fire in such manner as to endanger the same,

or who, in a reserved forest,

(*c*) kindles, keeps or carries any fire except at such seasons and in such manner as a Forest-officer specially empowered may from time to time notify in this behalf;

(*d*) fells, girdles, lops, taps or burns any tree, or strips off the bark or leaves from, or otherwise damages the same;

(*e*) quarries stone, burns lime or charcoal, or collects, subjects to any manufacturing process or removes any forest-produce;

(*f*) clears or breaks up any land for cultivation or any other purpose,

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 when the damage resulting from his offence amounts to more than two hundred and fifty rupees to double the amount of such damage.

Act VII of 1878, s. 25.

25. Nothing in section twenty-three or section twenty-four shall be deemed to prohibit (*a*) any act done by permission in writing of a Forest-officer, specially empowered or under any rule made by the Chief Commissioner in that behalf; or (*b*) the exercise of any right continued or created under section fourteen or created by grant or contract in the manner described in section twenty.

Acts excepted from prohibition contained in sections 23 and 24.

Cf. Act VII of 1878, s. 26.

26. Whenever fire is caused wilfully or by gross negligence in a reserved forest, by any person having rights in such forest or by any person in his employ-

Penalty for offences committed by persons having rights in reserved forests.

ment, or whenever any person having rights in such forest contravenes the provisions of section twenty-one, the Chief Commissioner may (notwithstanding that a penalty has been inflicted under section twenty-four) direct that in such forest or any portion thereof the exercise of all rights of pasture or to forest-produce shall be extinguished or suspended for such period as he thinks fit.

Act VII of 1878, s. 26.

27. The Chief Commissioner may, with the previous sanction of the Governor General in Council, by notification in the local official Gazette, direct that, from a date fixed by such notification, any forest or any portion thereof reserved under this Act shall cease to be a reserved forest.

Power to declare forest no longer reserved.

From the date so fixed, such forest or portion shall cease to be reserved; but the rights (if any) which have been extinguished therein shall not revive in consequence of such cessation.

New.

28. Any forest which has been declared a reserved forest under any rules in force previous to the passing of this Act shall be deemed to have been reserved under this Act, all questions decided, orders issued and records prepared in connection with the reservation of such forest shall be deemed to have been decided, issued and prepared under this Act, and all the provisions of this Act relating to reserved forests shall apply to such forest.

Forests reserved under former rules.

CHAPTER III.

OF VILLAGE-FORESTS.

New.

29. The Chief Commissioner may from time to time, by notification in the local official Gazette, constitute any land over which no person has a right created by any grant or lease made by or on behalf of the British Government or mentioned in section seven, eighteen, nineteen, twenty, twenty-one, forty or forty-eight of the Burma Land and Revenue Act, 1876, a village-forest for the benefit of any village community or group of village communities, and may by a like notification cancel any such notification:

Constitution of village-forests.

Provided that no such notification shall be deemed to affect any teak or other trees, which the Chief Commissioner may previous to the issue of such notification have declared to be reserved.

Every such notification shall specify definitely, according to boundary-marks erected or otherwise, the limits of such village-forest.

Cf. Act VII of 1878, s. 27, para. 2.

30. The Chief Commissioner may from time to time make rules for regulating the management of village-forests, prescribing the conditions under which the communities for the benefit of which such forests are constituted may be provided with timber or other forest-produce, or with pasture and their duties in respect of the protection and improvement of such forest.

Power to make rules for village-forests.

The Chief Commissioner may, by such rules, declare any of the provisions of this Act relating to the management, protection and improvement of reserved forests to be applicable to village-forests.

New.

31. Nothing in this chapter shall be deemed to affect any existing rights of individuals or communities in or over any land constituted a village-forest:

Saving of private rights.

Provided that the Chief Commissioner may in any case inquire into and determine the existence, nature and extent of any such rights and deal with the same in the manner provided in Chapter II of this Act for reserved forests.

Power to inquire into and deal with such rights.

CHAPTER IV.

OF THE PROTECTION OF FORESTS ON GOVERNMENT LANDS NOT INCLUDED IN RESERVED OR VILLAGE-FORESTS.

32. All teak trees standing on land to which the second part of the Burma Land and Revenue Act, 1876, applies, and over which no person has a right created by any grant or lease made by or on behalf of the British Government or mentioned in section seven, eighteen, nineteen, twenty, twenty-one, forty or forty-eight of that Act, shall be reserved, and the Chief Commissioner may from time to time, by notification in the local official Gazette, declare any other trees or class of trees standing on such land to be reserved from a date fixed by such notification, and may alter or cancel any such notification.

Reserved trees.

33. Except as provided by rules made by the Chief Commissioner in this behalf, or with the permission in writing of a Forest-officer specially empowered, no reserved tree may be cut, marked, lopped, girdled or injured by fire or otherwise.

Protection of reserved trees.

Whoever cuts, marks, lops, girdles or injures by fire or otherwise any reserved tree in contravention of this section, shall be punished with fine which may extend to twenty rupees, or when the damage resulting from his offence amounts to more than ten rupees to double the amount of such damage.

Cf. Act VII of 1878, s. 31.

34. The Chief Commissioner may from time to time make rules relating to the forest on the land referred to in section thirty-two.

Power to make rules generally.

Such rules may—

(*a*) prohibit the kindling of fires, and prescribe the precautions to be taken to prevent the spreading of fires;

(*b*) regulate or prohibit the cutting, sawing, conversion and removal of trees and timber, and the collection, manufacture and removal of forest-produce;

(*c*) regulate or prohibit the quarrying of stone or the burning of lime or charcoal;

(*d*) regulate or prohibit the cutting of grass and pasturing of cattle, and regulate the payments (if any) to be made for such pasturing;

(*e*) regulate or prohibit hunting, shooting, fishing, poisoning water and setting traps or snares; and

(*f*) regulate the sale or free grant of timber or other forest-produce.

The Chief Commissioner may, by such rules, prescribe, as penalties for the infringement thereof, imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both.

Penalties for acts in contravention of rules.

35. Nothing in this chapter or in any rule made under this chapter shall be deemed to prohibit any act done with the permission in writing of a Forest-officer specially empowered, or in the exercise of any right.

Nothing in this chapter to prohibit acts done in certain cases.

CHAPTER V.

OF THE DUTY ON TIMBER.

Cf. Act VII of 1878, s. 39.

36. The Chief Commissioner may levy a duty, in such manner, at such places, and at such rates as he may from time to time prescribe by notification in the local official Gazette, on all timber which is brought into British Burma from any place beyond the frontier of British Burma.

Power to impose duty on timber.

In every case in which such duty is directed to be levied *ad valorem*, the Chief Commissioner may, from time to time fix, by like notification, the value on which such duty shall be assessed.

Power to fix value for *ad valorem* duty.

37. On all logs cut within the limits of the Attaran and Pandau Forests and floated down the Attaran and Salween rivers, duty shall be levied at the following rates, that is to say—

Duty on certain timber floated down the Salween and Attaran.

On logs floated down the Attaran river:

	Rs.	A.	P.	
Above five feet in girth	4	0	0	per log.
Below „ „	2	0	0	„
Stem pieces	0	9	0	„
Ship crooks	0	4	0	„
Boat „	0	1	0	„
Small „	0	0	6	„
„ pieces	0	2	0	„

On logs floated down the Salween river:

	Rs.	A.	P.	
Above five feet in girth	2	12	0	per log.
Below „ „	1	6	0	„
Stem pieces	0	9	0	„
Ship crooks	0	4	0	„
Boat „	0	1	0	„
Small „	0	0	6	„
„ pieces	0	2	0	„

New.

38. The Chief Commissioner may exempt any timber from duty, and may revoke such exemption.

Power to exempt timber from duty.

CHAPTER VI.

OF THE CONTROL OF TIMBER IN TRANSIT.

Cf. Act VII of 1878, s. 41. 'Forest-produce' omitted.

39. The control of all rivers and their banks as regards the floating of timber, as well as the control of all timber in transit by land or water, is vested in the Chief Commissioner, and he may from time to time make rules to regulate the transit of all timber:

Power to make rules to regulate transit of timber.

Such rules may (among other matters)—

Cl. (*a*). (*a*) prescribe the routes by which alone timber may be imported into, exported from, or moved within, British Burma;

Cl. (*b*). (*b*) prohibit the import and export or moving of such timber without a pass from an officer duly authorized to issue the same, or otherwise than in accordance with the conditions of such pass;

Cl. (*c*). (*c*) provide for the issue, production and return of such passes and for the payment of fees therefor;

New. (*d*) prohibit the loosening of timber formed into a raft or the setting adrift of any raft, by any person not the owner of such timber or raft, or not acting on behalf of the owner, or of Government;

Cl. (*d*). (*e*) provide for the stoppage, reporting, examination and marking of timber in transit in respect of which there is reason to believe that any money is payable to Government on account of the price thereof, or on account of any duty, fee, royalty or charge due thereon, or to which it is desirable for the purposes of this Act to affix a mark;

Cl. (*e*). 'stations' substituted for 'depôt.' (*f*) provide for the establishment and regulation of stations to which such timber shall be taken by those in charge of it for examination, or for the payment of such money, or in order that such mark may be affixed to it; and the conditions under which such timber shall be brought to, stored at, and removed from, such station;

New. (*g*) authorize the transport of timber the property of Government across any land which is not the property of Government, and regulate the compensation to be paid for any damage done by the transport of such timber;

Cl. (*f*). (*h*) prohibit the closing up or obstructing of the channel or banks of any river used for the transit of timber, and the throwing of grass, brushwood, branches and leaves into any such river, or any act which may cause such river to be obstructed;

Cl. (*g*). (*i*) provide for the prevention and removal of any obstruction in the channel or on the banks of any such river, and for recovering the cost of such prevention or removal from the person causing such obstruction.

Cl. (*h*). 'supermarking of timber' new. (*j*) prohibit absolutely, or subject to conditions within specified local limits, the establishment of sawpits, the converting, cutting, burning, concealing, marking or supermarking of timber, the altering or effacing of any marks on the same, and possession or carrying of marking-hammers or other implements used for marking timber;

Cl. (*i*). With additions. (*k*) regulate the use of property-marks for timber, and the registration of such marks; lay down the rules under which the registration of any property-marks may be refused or cancelled; prescribe the time for which such registration shall hold good; limit the number of such marks that may be registered by any one person, and provide for the levy of fees for such registration.

New. Nothing in this section shall be held to affect any private rights in immoveable property situate on the banks of rivers.

Cf. Act VII of 1878, s. 42.

40. The Chief Commissioner may by such rules prescribe as penalties for the infringement thereof, imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both.

Penalties for breach of rules made under section 39.

In cases where the offence is committed after sunset and before sunrise, or after preparation for resistance to lawful authority, or if the offender has been previously convicted of a like offence, the convicting Magistrate may inflict double the penalties so prescribed.

Cf. Act VII of 1878, s. 43. 'station' substituted for 'depôt.'

41. The Government shall not be responsible for any loss or damage which may occur in respect of any timber while at a station established under a rule made under section thirty-nine, or while detained elsewhere for the purposes of this Act; and no Forest-

Government and Forest-officers not liable for damage to timber at station.

officer shall be responsible for any such loss or damage unless he causes such loss or damage negligently, maliciously or fraudulently.

Act VII of 1878, s. 44.

All persons bound to aid in case of accident at station.

42. In case of any accident or emergency involving danger to any property at any such station, every person employed at such station, whether by the Government or by any private person, shall render assistance to any Forest-officer or Police-officer demanding his aid in averting such danger and securing such property from damage or loss.

CHAPTER VII.

OF THE COLLECTION OF DRIFT AND STRANDED TIMBER.

Act VII of 1878, s. 45

Certain kinds of timber to be deemed property of Government until title thereto proved, and may be collected accordingly.

43. All timber found adrift, beached, stranded or sunk;

all timber bearing marks which have not been registered under rules made under section thirty-nine, or on which the marks have been obliterated, altered or defaced by fire or otherwise, and,

in such areas as the Chief Commissioner directs, all unmarked timber,

shall be deemed to be the property of Government unless and until any person establishes his right thereto as provided in this chapter.

Such timber may be collected by any Forest-officer or other person entitled to collect the same by virtue of any rule made under section forty-nine, and may be brought to such stations as a Forest-officer specially empowered may from time to time notify as stations for the reception of drift-timber.

The words 'by Notification in local official Gazette' omitted.

The Chief Commissioner may exempt any class of timber from the provisions of this section, and withdraw such exemption.

Cf. Act VII of 1878, s. 46.

Notice to claimants of drift-timber.

44. Public notice shall from time to time be given by a Forest-officer specially empowered, of timber collected under section forty-three. Such notice shall contain a description of the timber, and shall require any person claiming the same to present to such officer, within a period not less than one month from the date on which such notice is given, a written statement of such claim.

'*One* month' substituted for '*two* months.'

Act VII of 1878, s. 47.

Procedure on claim preferred to such timber.

45. When any such statement is presented as aforesaid, the Forest-officer may, after making such inquiry as he thinks fit, either reject the claim after recording his reasons for so doing, or deliver the timber to the claimant.

If such timber is claimed by more than one person, the Forest-officer may either deliver the same to any of such persons whom he deems entitled thereto, or may refer the claimants to the Civil Court and retain the timber pending the receipt of an order from such Court for its disposal.

On rejection of claim to such timber, claimant may institute suit.

Any person whose claim has been rejected under this section may, within two months from the date of such rejection, institute a suit to recover possession of the timber claimed by him; but no person shall recover any compensation or costs against the Government or against any Forest-officer on account of such rejection, or the detention or removal of any timber, or the delivery thereof to any other person under this section.

Words 'Criminal or Revenue' omitted before 'Court.'

No such timber shall be subject to process of any Civil Court until it has been delivered, or a suit brought under this section has been decided.

Act VII of 1878, s. 48

Disposal of unclaimed timber.

46. If no such statement is presented as aforesaid, or if the claimant omits to prefer his claim in the manner and within the period prescribed by the notice issued under section forty-four, or, on such claim having been so preferred by him and having been rejected, omits to institute a suit to recover possession of such timber within the further period limited by section forty-five, the ownership of such timber shall vest in the Government, or, when such timber has been delivered to another person under section forty-five, in such other person, free from all incumbrances.

Act VII of 1878, s. 49.

Government and its officers not liable for damage to such timber.

47. The Government shall not be responsible for any loss or damage which may occur in respect of any timber collected under section forty-three.

Act VII of 1878, s. 50.

Payments to be made by claimant before timber is delivered to him.

48. No person shall be entitled to recover possession of any timber collected or delivered as aforesaid until he has paid to the Forest-officer or other person entitled to receive it such sum on account thereof as may be due under any rule made in pursuance of section forty-nine.

Act VII of 1878, s. 51.

Power to make rules and prescribe penalties.

49. The Chief Commissioner may from time to time make rules to regulate the following matters (namely):—

(*a*) the salving, collection and disposal of all timber mentioned in section forty-three;

(*b*) the use and registration of boats used in salving and collecting timber;

(*c*) the amounts to be paid for salving, collecting, moving, storing and disposing of such timber;

(*d*) the use and registration of hammers and other instruments to be used for marking such timber.

The Chief Commissioner may from time to time prescribe, as penalties for the infringement of any rules made under this section, imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both.

CHAPTER VIII.

PENALTIES AND PROCEDURE.

Cf. Act VII of 1878, s. 52.

Seizure of property liable to confiscation.

50. When there is reason to believe that a forest-offence has been committed in respect of any forest-produce, such produce, together with all tools, boats, carts and cattle used in committing any such offence, may be seized by any Forest-officer or Police-officer.

Application for confiscation.

Every officer seizing any property under this section shall place on such property a mark indicating that the same has been so seized, and shall, as soon as may be, make a report

of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made:

Change.

Provided that when no property is seized except the forest-produce with respect to which such offence is believed to have been committed and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior.

Cf. Act VII of 1878, s. 53. Slight changes.

Procedure thereupon.

51. Upon the receipt of any such report, the Magistrate shall take such measures as may be necessary for the appearance and trial of the accused and the disposal of the property according to law.

Cf. Act VII of 1878, s. 54. Words 'which is not the property of Government' omitted. See sec. 56.

Forest-produce, tools, &c., when liable to confiscation.

52. When any person is convicted of a forest-offence all timber or forest-produce in respect of which such offence has been committed, and all tools, boats, carts and cattle used in committing such offence, shall be liable, by order of the convicting Magistrate, to confiscation.

Such confiscation may be in addition to any other punishment prescribed for such offence.

Act VII of 1878, s. 55.

Disposal, on conclusion of trial for forest-offence, of produce in respect of which it was committed.

53. When the trial of any forest-offence is concluded, any forest-produce in respect of which such offence has been committed shall, if it is the property of Government, or has been confiscated, be taken charge of by a Forest-officer specially empowered; and in any other case may be disposed of in such manner as the Court may order.

Cf. Act VII of 1878, s. 56. Slight changes.

Procedure when offender not known or cannot be found.

54. When the offender is not known or cannot be found, the Magistrate may, on application in that behalf, if he finds that an offence has been committed, order the property in respect of which the offence has been committed to be confiscated and taken charge of by a Forest-officer specially empowered, or to be made over to such Forest-officer or to any other person whom he deems to be entitled to the same:

Provided that no such order shall be made until the expiration of one month from the date of seizing such property, or without hearing the person (if any) claiming any right thereto, and the evidence (if any) which he may produce in support of his claim.

New.

The Magistrate may cause a notice of any application under this section to be served upon any person whom he has reason to believe is interested in the property seized, or he may publish such notice in any way which he thinks fit.

Act VII of 1878, s. 57.

Procedure as to perishable property seized under section 50.

55. The Magistrate may, notwithstanding anything hereinbefore contained, direct the sale of any property seized under section fifty and subject to speedy and natural decay, and may deal with the proceeds as he would have dealt with such property if it had not been sold.

Cf. Act VII of 1878, s. 58. Change; right of Forest-officer to appeal taken away.

Appeal from orders under sections 52, 53 and 54.

56. Any person claiming to be interested in property seized under section fifty may, within one month from the date of any order passed under section fifty-two, fifty-three or fifty-four, present an appeal therefrom to the Court to which orders made by such Magistrate are ordinarily appealable, and the order passed on such appeal shall be final.

Act VII of 1878, s. 59.

Property when to vest in Government.

57. When an order for the confiscation of any property has been passed under section fifty-two or fifty-four, as the case may be, and the period limited by section fifty-six for presenting an appeal from such order has elapsed, and no such appeal has been preferred, or when, on such an appeal being preferred, the Appellate Court confirms such order in respect of the whole or a portion of such property, such property or such portion thereof, as the case may be, shall vest in the Government free from all incumbrances.

Cf. Act VII of 1878, s. 60. The words 'and the withdrawal of any proceedings instituted' added.

Saving of power to release property seized.

58. Nothing hereinbefore contained shall be deemed to prevent any officer empowered in this behalf by the Chief Commissioner from directing at any time the immediate release of any property seized under section fifty and the withdrawal of any proceedings instituted in respect of such property.

Cf. Act VII of 1878, s. 61.

Punishment for wrongful seizure.

59. Any Forest-officer or Police-officer who vexatiously and unnecessarily seizes any property on pretence of seizing property liable to confiscation under this Act, 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.

Last sentence new.

Any fine so imposed, or any portion thereof, may be given as compensation to the person aggrieved.

Cf. Act VII of 1878, s. 62. Slight change.

Penalty for counterfeiting or defacing marks in trees and timber and for altering boundary-marks.

60. Whoever, with intent to cause damage or injury to the public or to any person, or to cause wrongful gain as defined in the Indian Penal Code—

(*a*) knowingly counterfeits upon any timber or standing tree a mark used by Forest-officers to indicate that such timber or tree is the property of the Government or of some person, or that it may lawfully be cut or removed by some person; or

New.

(*b*) unlawfully affixes a mark used by Forest-officers; or

(*c*) alters, defaces or obliterates any such mark placed on a tree or on timber by or under the authority of a Forest-officer; or

(*d*) alters, moves, destroys or defaces any boundary-mark of any forest or waste-land to which the provisions of this Act are applied,

shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both.

Cf. Act VII of 1878, s. 63.

Power to arrest without warrant.

61. Any Forest-officer or Police-officer may, without orders from a Magistrate and without a warrant, arrest any person against whom a reasonable suspicion exists of his having been concerned in any forest-offence punishable with imprisonment for one month or upwards.

Third para. of s. 63 of Indian Forest Act omitted.

Every officer making an arrest under this section shall, without unnecessary delay, take or send the person arrested before the Magistrate having jurisdiction in the case.

Act VII of 1878, s. 64.

62. Every Forest-officer and Police-officer shall prevent, and may interfere for the purpose of preventing, the commission of any forest-offence.

Power to prevent commission of offence.

Sec. 65 of Indian Forest Act omitted. Act VII of 1878, s. 66.

63. 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, or from being liable under such other law to any higher punishment or penalty than that provided by the rules made under this Act:

Operation of other laws not barred.

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

Cf. Act VII of 1878, s. 67. Slight change.

64. Any Forest-officer specially empowered may accept from any person against whom a reasonable suspicion exists that he has committed any forest-offence other than an offence under section fifty-nine or section sixty a sum of money by way of compensation for any damage which may have been committed, and may release any property which has been seized as liable to confiscation on payment of the value thereof as estimated by such officer.

Power to compound offences.

On the payment of such sum of money, or such value, or both, as the case may be, to such officer, the accused person, if in custody, shall be discharged, the property seized shall be released, and no further proceedings shall be taken under this Act against such person or property; but nothing herein contained shall exempt such person from prosecution on the same facts under any other law for the time being in force.

Act VII of 1878, s. 65.

65. When in any proceedings taken under this Act, or in consequence of anything done under this Act, a question arises as to whether any forest-produce is the property of the Government, such produce shall be presumed to be the property of the Government until the contrary is proved.

Presumption that forest-produce belongs to Government.

CHAPTER IX.

CATTLE-TRESPASS.

Act VII of 1878, s. 69.

66. Cattle trespassing in a reserved forest or a village-forest shall be deemed to be cattle doing damage to a public plantation within the meaning of the eleventh section of the Cattle-trespass Act, 1871, and may be seized and impounded as such by any Forest-officer or Police-officer.

Cattle-trespass Act, 1871, to apply.

Act VII of 1878, s. 70.

67. The Chief Commissioner may from time to time, by notification in the local official Gazette, direct that, in lieu of the fines fixed by the twelfth section of the Act last aforesaid, there shall be levied for each head of cattle impounded under section sixty-six of this Act, such fines as he thinks fit, but not exceeding the following (that is to say):—

Power to alter fines fixed by that Act.

'Camel' omitted.

	Rs.	A.
For each elephant... ...	10	0
For each buffalo	2	0
For each horse, mare, gelding, pony, colt, filly, mule, bull, bullock, cow or heifer ...	1	0
For each calf, ass, pig, ram, ewe, sheep, lamb, goat or kid ...	0	8

CHAPTER X.

OF FOREST-OFFICERS.

Act VII of 1878, s. 71.

68. The Chief Commissioner may invest any Forest-officer by name, or as holding an office, with the following powers (that is to say):—

Chief Commissioner may invest Forest-officers with certain powers.

(*a*) the powers of a Demarcation-officer under the Burma Boundaries Act, 1880;

(*b*) the powers of a Civil Court to compel the attendance of witnesses and the production of documents;

(*c*) power to issue search-warrants under the Code of Criminal Procedure;

(*d*) power to hold enquiries into forest-offences, and in the course of such enquiries to receive and record evidence.

Any evidence recorded under clause (*d*) of this section shall be admissible in any subsequent trial before a Magistrate: provided that it has been taken in the presence of the accused person, and recorded in the manner provided by section 333 or section 334 of the Code of Criminal Procedure.

Last part of proviso new.

Act VII of 1878, s. 72.

69. All Forest-officers shall be deemed to be public servants within the meaning of the Indian Penal Code.

Forest-officers deemed public servants.

Cf. Act VII of 1878, s. 73. The words 'or criminal action' new.

70. No suit or criminal prosecution shall lie against any public servant for anything done by him in good faith under this Act.

Indemnity for acts done in good faith.

Act VII of 1878, s. 74.

71. Except with the permission in writing of the Chief Commissioner, no Forest-officer shall, as principal or agent, trade in timber or other forest-produce, or be or become interested in any lease of any forest or in any contract for working any forest, whether in British or foreign territory.

Forest-officers not to trade.

CHAPTER XI.

MISCELLANEOUS.

Cf. Act VII of 1878, s. 75.

72. The Chief Commissioner may from time to time make rules consistent with this Act—

Additional powers to make rules.

(*a*) to prescribe and limit the powers and duties of any Forest-officer;

(*b*) to regulate the powers and proceedings of Forest-Settlement-officers; New.

(*c*) to regulate the rewards to be paid to officers and informers out of the proceeds of fines and confiscations under this Act; and Cl. (c) of s. 75 of I. F. Act omitted.

(*d*) generally to carry out the provisions of this Act. Sec. 76 of I. F. Act omitted.

Cf. Act VII of 1878, s. 77.

73. All rules made by the Chief Commissioner under this Act shall be published in the local official Gazette, and shall thereupon have the force of law.

Rules when to have force of law.

Second para. omitted.

Act VII of 1878, s. 78.

74. Every person who exercises any right in a reserved forest or a village-forest, or who is permitted to take any forest-produce from, or to cut and remove timber or to pasture cattle in, such forest, and

Persons bound to assist Forest-officer and Police-officer.

every person in any village contiguous to such forest who is employed by the Government, or who receives emoluments from the Government for services to be performed to the community,

shall be bound to furnish without unnecessary delay to the nearest Forest-officer or Police-officer any information he may possess respecting the commission of, or intention to commit, any forest-offence, and shall assist any Forest-officer or Police-officer demanding his aid

(*a*) in extinguishing any fire occurring in such forest;

(*b*) in preventing any fire which may occur in the vicinity of such forest from spreading to such forest;

(*c*) in preventing the commission in such forest of any forest-offence; and

(*d*) when there is reason to believe that any such offence has been committed in such forest, in discovering and arresting the offender.

Act VII of 1878, s. 81.

75. All money payable to the Government under this Act, or under any rule made hereunder, or on account of the price of any forest-produce, or of expenses incurred in the execution of this Act in respect of such produce, may, if not paid when due, be recovered under the law for the time being in force as if it were an arrear of land-revenue.

Recovery of money due to Government.

Act VII of 1878, s. 82.

76. When any such money is payable for, or in respect of, any forest-produce, the amount thereof shall be deemed to be a first charge on such produce, and such produce may be taken possession of by a Forest-officer specially empowered and retained by him until such amount has been paid.

Lien on forest-produce for such money.

If such amount is not paid when due, such Forest-officer may sell such produce by public auction, and the proceeds of the sale shall be applied first in discharging such amount.

Power to sell such produce.

The surplus (if any), if not claimed within two months from the date of the sale by the person entitled thereto, shall be forfeited to Her Majesty.

Act VII of 1878, s. 83.

77. Whenever it appears to the Chief Commissioner that any land is required for any of the purposes of this Act, such land shall be deemed to be needed for a public purpose within the meaning of the Land Acquisition Act, 1870, section four.

Land required under this Act to be deemed to be needed for a public purpose under Land Acquisition Act.

SCHEDULE.

(*See section 1.*)

ENACTMENTS REPEALED.

Number and year of Act or Regulation.	Title.	Extent of repeal.
Act VII of 1865...	An Act to give effect to rules for the management and preservation of Government forests.	So much as has not been repealed.
Act VII of 1869...	An Act to give validity to certain rules relating to forests in British Burma.	The whole.
Act XIII of 1873	An Act to amend the law relating to timber floated down the rivers of British Burma.	So much as has not been repealed.
Regulation IX of 1874.	The Arakan Hill District Laws Regulation, 1874.	So far as it relates to Acts VII of 1865 and VII of 1869.

STATEMENT OF OBJECTS AND REASONS.

1. The necessity for placing forest-legislation in British Burma upon a satisfactory footing has been felt for a considerable time. The present state of the law is as follows:—

The Government Forests Act (Act No. VII of 1865) is in force, but it does not provide for all requirements. That Act gave power to make rules, having the force of law, for the management and preservation of the Government forests and for the control of the timber floated down rivers. Accordingly in August, 1865, rules for the administration of forests in British Burma were promulgated. These rules, though purporting to have been made under the Government Forest Act, were not covered by its provisions, and accordingly they were legalized by Act No. VII of 1869.

In 1873 it was deemed advisable to amend and consolidate the law relating to timber floated down the rivers of Burma. Accordingly the Burma Timber Act (No. XIII of 1873) was passed. This Act repealed Act No. VII of 1869 and the rules legalized by that Act as far as they related to duty on timber floated down the rivers of British Burma.

The rules of August, 1865, related only to a portion of the Government forests, as defined in the rules, and it became necessary to provide by another set of rules for the administration of the forests thus excluded. This was done by rules made under Act No. VII of 1865, which were promulgated in Burma in March, 1876, together with a notification defining the areas to which they were applicable.

Thus the administration of the Government forests in Burma and the management of the timber floated down its rivers is governed by three different enactments and two sets of rules having the force of law. Yet these enactments and rules leave several of the most important matters unprovided for, and hence it is necessary both to consolidate and to complete them.

Experience has shown that the only practical method to ensure the objects aimed at by forest-administration is to set apart and demarcate selected areas of Government forests, to liberate these areas as far as possible from rights of private persons, and to guard against the growth by prescription of fresh rights in forests thus set apart and demarcated.

Forests thus set apart and demarcated are called reserved forests, and the formation of such reserved forests in British Burma has proceeded steadily during the last five years. The formation of such reserved forests is preceded by a thorough and complete enquiry by a Settlement-officer into the rights and requirements of the people residing in and in the immediate vicinity of these areas. The guiding principle followed in this enquiry is, that such arrangements are made as will enable the people to provide for their requirements in the matter of forest-produce, either outside the reserved forests, or, under suitable rules, within their boundaries. And in the case of the tribes whose custom it is to carry on the shifting kind of cultivation by cutting and burning the forest which is called *Toungya* cultivation, defined areas are assigned to them where they may practice this kind of cultivation. Under these arrangements the formation of Government forest domains has been commenced, and their area aggregated, on 31st March last, 1,442 square miles.

The practical result of these proceedings is that the forests thus set apart and demarcated can be effectively protected and steadily improved, so that eventually a limited area will yield all the timber and other forest-produce required for home consumption and export, while the remainder can be thrown open for the use of the people and the extension of cultivation. The system here sketched enables Government to concentrate forest-conservancy upon limited areas, instead of attempting to enforce restrictions over the whole of the forests.

The procedure, however, hitherto followed in this respect in Burma, in some particulars, wants legal sanction, and hence the action of Government in setting apart reserved forests is not final, and may be called in question. The object of the present Bill is to legalize what has been done in this respect, and to lay down a procedure for the future.

3. The Indian Forest Act, which was passed in 1878, had the same object, and it must now be explained why it was not considered advisable to make the provisions of the Indian Forest Act applicable to Burma. One reason is that the procedure followed in the enquiry into, and the settlement of, forest-rights and in the demarcation of forests, as it has been developed by practical experience, is somewhat different from that prescribed by the Indian Forest Act. But this is a minor matter. The chief reason for special forest-legislation in Burma, consists in the provisions of the Burma Land and Revenue Act (Act No. II of 1876). Section 6 of that Act defines the rights in land subject to the second part of that Act, which are recognized by law, and clause (*b*) recognizes rights acquired under sections 27 and 28 of the Indian Limitation Act, 1871. The rights thus recognized are "easements" in the ordinary English acceptation of that term, including the use of light or air, way, watercourse, use of water, but not any prescriptive right by which one person is entitled to remove and appropriate, for his own profit, any part of the soil belonging to another, or, anything growing in, or attached to, or subsisting upon, the land of another.

The Indian Limitation Act of 1877 extended the definition of the term "easement" including in it all rights of the latter class. But it has been held that this did not affect the construction of the Burma Land and Revenue Act, and consequently the practical effect of section 6 of that Act is to deny the existence of all prescriptive rights of user of forest-produce in the forests of Burma.

But as a matter of fact there is no doubt that such rights existed in the Burma forests before the Burma Land and Revenue Act was passed, and their existence has been recognized in the enquiries which have preceded the demarcation of the existing reserved forests.

No forest-legislation for Burma could ignore these rights, and in framing the present Bill it was necessary to save them.

4. Several other important subjects have also been treated differently from the Indian Forest Act.

Thus the penalties for offences committed in reserved forests are all uniform in the Indian Forest Act, while in the present Bill it has been thought better to classify offences into two classes, and to assign to each class separate limits of punishment.

5. Again, as regards reserved forests which have already been demarcated it is proposed, having regard to the careful investigations made at the time they were reserved, that they should be placed by the direct operation of the Act in the position of reserved forests made under the Act, instead of leaving it to the local Government, as the Indian Forest Act does, to class them as such.

6. The provisions relating to village-forests differ from the corresponding provisions in the Indian Forest Act, in as far as they give power to constitute any forest which is at the disposal of Government, a village-forest, and not only such as have already been declared reserved forests.

7. A fundamental difference between the present Bill and the Indian Forest Act is in the chapter which deals with the protection of forests on Government lands not included in reserved or village-forests. The Indian Forest Act attempts to solve this question by authorizing the constitution of protected forests. These protected forests are intended to be defined areas in which the rights of Government and of private persons are enquired into and recorded.

In Burma, where a large portion (in many districts more than three-fourths of the area) is forest, this plan would be unnecessary. It would also be impracticable. Hence the present Bill only contemplates the formation of two classes of forests—reserved forests

and village-forests. The object of the former class is to furnish timber and other useful produce for the consumption of the Province and for export, while the object of the village-forests is to ensure a permanent supply of pasture and of wood and bamboos to the villages to which such forests are assigned. And while the first step is the formation of the State forest domains, which are styled reserved forests, it is intended that the formation of village-forests shall be taken in hand gradually as the growth of population and the clearing of the forests for cultivation may render necessary the setting apart of a certain area for the use of villages.

Outside these two classes of forests the great object in Burma must be to facilitate the extension of cultivation as much as possible. Hence it would not be expedient in any way to impede or limit the extension of cultivation by the establishment of a third class analogous to the protected forests of the Indian Forest Act. What is required is, outside the reserved forests and village-forests, to give a certain protection to the teak tree and to a few other reserved kinds, and to realize revenue from the timber, bamboos and other forest-produce used for purposes of trade.

These provisions must be maintained until the demarcation of the State (reserved) and village-forests has been completed, and until the forests of these two classes have been brought to such a condition by efficient protection and steadily-continued works of improvement, that they are capable of furnishing the timber and forest-produce required for the agricultural population, for the Province generally, and for export.

This aim cannot be expected to be accomplished for many years to come. But as it is accomplished in one district after another, the restrictions imposed upon the use of the forests outside the State and village-forests may be abolished in such districts.

8. That chapter of the Indian Forest Act which authorizes Government to exercise control in certain cases, for the public good, over forests which are not the property of Government is not required in Burma, and has therefore been omitted.

9. The power to impose a duty on foreign timber (section 36) is taken from the Indian Forest Act, and the duty imposed by section 37 on timber produced in certain forests in our own territory is one which has been levied for the last thirty years.

10. In the concluding chapters, which relate to the control of timber in transit, to the collection of drift or stranded timber, to penalties, cattle trespass, forest officers and to miscellaneous matters, the Bill follows generally the Indian Forest Act.

Briefly, it may be said that the Bill now published is the Indian Forest Act of 1878, with such changes as were necessary to adapt it to the peculiar circumstances of British Burma.

C. U. AITCHISON.

The 23rd December, 1880.

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

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, JANUARY 15, 1881.

☞ 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 30th December, 1880, and was referred to a Select Committee :—

No. 21 OF 1880.

A Bill to empower the Government of Madras to alter the local limits of the Coroner's Jurisdiction, and for other purposes.

Preamble.

WHEREAS under the Coroners' Act, 1871, the local limits of the jurisdiction of the Coroner of Madras are made co-extensive with the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Madras;

and whereas it is expedient to empower the Governor of Fort St. George in Council to alter the local limits of the said Coroner's jurisdiction;

and whereas it is also expedient to correct an error in section nine of Madras Act No. VIII of 1867 (*an Act to incorporate the Police of the Town of Madras with the general Police of the Madras Presidency and for other purposes*) as amended by the Code of Criminal Procedure; It is hereby enacted as follows :—

Power to alter local limits of jurisdiction of Coroner of Madras.

1. The Governor of Fort St. George in Council may, from time to time, with the previous sanction of the Governor General in Council, by notification in the *Fort St. George Gazette*, alter the local limits of the jurisdiction of the Coroner of Madras :

Provided that such limits shall not extend beyond the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Madras.

Sections 133 to 135 of Act X of 1872 to extend to area excluded from Coroner's jurisdiction.

2. When, in exercise of the power conferred by section one, any area within the local limits of the said ordinary original civil jurisdiction is excluded from the local limits of the Coroner's jurisdiction, sections 133 to 135 (both inclusive) of the Code of Criminal Procedure shall extend to such area while so excluded, and all functions assigned to a Magistrate by those sections shall be discharged by the Commissioner of Police.

New section substituted for section 9 of Madras Act VIII of 1867.

3. For section nine of the said Madras Act No. VIII of 1867, the following section shall be substituted :—

Law to govern Town Police.

"9. The Town Police shall be governed by all the provisions of the Criminal Procedure Code, contained in sections 89, 91 to 103 (both inclusive), 108, 109, 110, 111, 112, 114, 116, 117 (first part), 118, 119, 120, 123, 124, 125, 127, 128, 129, 131, 136, 139, 140, 141, 142, 144, 147, chapter XII, sections 159, 161, 163 to 170 (both inclusive), 174 to 185 (both inclusive), chapter XXVII (except section 385), sections 415 to 420 (both inclusive), 480, so far as they are applicable :

"Provided always, that the officer in charge of a Police-station shall not be required to bind over the prosecutor and witnesses as directed in section 123 of the said Code, if their immediate attendance can be procured without recognizances."

Act X of 1872, schedule V, in part repealed.

4. The portion of Schedule V of the Code of Criminal Procedure, under the heading "Acts of the Governor of Madras in Council," shall be read as if the letter and figure "s. 9" in the first column, and all the words and figures in the second and third columns opposite the said letter and figure, were omitted.

STATEMENT OF OBJECTS AND REASONS.

UNDER Act No. IV of 1871 (The Coroners' Act, 1871), the local limits of the jurisdiction of the Coroners in the towns of Calcutta, Madras and Bombay are made co-extensive with the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Fort William, Madras and Bombay, respectively, no power to alter them being conferred. In Madras, these limits comprise twenty-seven square miles and include twenty-three agricultural villages. This area having of late years, owing to the increase in the number of inquests to be held, become too large for one Coroner, it is proposed that the Governor in Council should be empowered to restrict the local limits of the Coroner's jurisdiction by excluding from them the non-urban portion which differs but little from the adjoining mufassal district. To give effect to this proposal, the present Bill has been prepared. It empowers the Governor in Council, with the previous sanction of the Governor General in Council, to alter the local limits of the Coroner's jurisdiction, as may be from time to time convenient, provided that these limits are never extended beyond the present ones.

2. In the event of the powers conferred by the Bill being exercised and the local limits of the Coroner's jurisdiction restricted, the provisions of the Criminal Procedure Code relating to enquiries by the Police into unnatural and sudden deaths will (section 2) extend to the tract excluded from the jurisdiction of the Coroner, and the Commissioner of Police will discharge the functions of the Magistrate under those provisions.

3. The present opportunity has been taken to correct an error (the result of an oversight) in section 9 of the Madras Police Act (Madras Act No. VIII of 1867) as amended by the Code of Criminal Procedure.

WHITLEY STOKES.

The 24th December, 1880.

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

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 30th December, 1880, and was referred to a Select Committee :—

No. 22 OF 1880.

A Bill to empower the Government to remove or destroy obstructions in fairways, and to prevent the creation of such obstructions.

Preamble.

WHEREAS it is expedient to empower the Government to remove or destroy obstructions to navigation in fairways in the seas adjacent to British India, and to prevent the creation of such obstructions; It is hereby enacted as follows :—

Short title. Commencement.

1. This Act may be called "The Obstructions in fairways Act, 1881;" and it shall come into force at once.

But nothing herein contained shall apply to vessels belonging to Her Majesty or hired by Her Majesty, or by the Secretary of State for India in Council.

Local Government empowered to remove or destroy obstruction in fairway.

2. Whenever in any fairway in any of the seas adjacent to British India, any vessel is sunk, stranded or abandoned, or any fishing stake, timber or other thing is placed or left, the Local Government of the part of British India in or near which such vessel, fishing stake, timber or other thing is situate may, if in its opinion such thing is, or is likely to become, an obstruction or danger to navigation,

(*a*) cause such thing or any part thereof to be removed; or,

(*b*) if such thing is of such a description or so situate that, in the opinion of the Local Government, it is not worth removing, destroy the same or any part thereof.

Government entitled to expenses incurred in removing obstruction.

3. Whenever anything is removed under section two, the Government shall be entitled to receive a reasonable sum, having regard to all the circumstances of the case, for the expenses incurred in respect of such removal.

Dispute concerning such expenses.

Any dispute arising concerning the amount due under this section, in respect of anything so removed, shall be determined by the Magistrate of the District or Presidency Magistrate having jurisdiction at the place where such thing is, upon application to him for that purpose by either of the disputing parties.

Notice of removal to be given by Local Government.

4. The Local Government shall, when anything is removed under section two, publish in the local official Gazette a notification containing a description of such thing, and the time at which and the place from which the same was removed.

Things removed may, in certain cases, be sold.

5. If after publishing such notification, such thing is unclaimed,

or if the person claiming the same fails to pay the amount due for the said expenses and any other charges properly incurred by the Local Government in respect thereof,

the Local Government may sell such thing by public auction, if it is of a perishable nature, forthwith, and if it is not of a perishable nature, at any time not less than six months after publishing the notification as aforesaid.

Proceeds how applied.

6. On the realization of the proceeds of such sale, the amount due for expenses and charges as aforesaid, together with the expenses of the sale, shall be deducted therefrom, and the surplus (if any) shall be paid to the owner of the thing sold, or, if no such person appear and claim such surplus, shall be held in deposit for payment, without interest, to any person thereafter establishing his right to the same :

Provided that he makes the claim within one year from the date of the sale.

"Vessel" to include tackle, cargo, &c.

7. For the purposes of this Act, the term "vessel" shall be deemed to include every article or thing or collection of things being or forming part of the tackle, equipment, cargo, stores or ballast of a vessel, and any proceeds arising from the sale of a vessel, and of the cargo thereof, or of any other property recovered therefrom, shall be regarded as a common fund.

Power to make rules to regulate and prohibit the placing of obstructions in fairways.

8. The Governor General in Council may from time to time, by notification in the *Gazette of India*, make rules to regulate or prohibit in any fairway in any of the seas adjacent to British India, the placing of fishing stakes, the casting or

throwing of ballast, rubbish, or any other thing likely to give rise to a bank or shoal, or the doing of any other act which will, in his opinion, cause or be likely to cause obstruction or danger to navigation.

Penalty for breach of such rules.

9. Whoever is guilty of any act or omission in contravention of the rules made under section eight, may be tried for such offence in any district or Presidency-town in which he is found, and 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.

Saving of other powers possessed by Government.

40 & 41 Vic., c. 16, s. 8.

10. Nothing herein contained shall be deemed to prevent the exercise by the Government of any other powers possessed by it in this behalf.

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to empower the Government to remove obstructions to navigation which may exist in fairways situate in seas adjacent to British India, and to prohibit the creation of such obstructions for the future. The advantages of having such a law have been impressed upon the Government by certain recent cases. In one of these a question has been raised as to the power of the Government to remove the fishing stakes which are annually placed during the fine season in the sea off the port of Bombay, and which, having recently been advanced into the approach to the harbour, are now a source of serious danger to vessels frequenting that port. In another case which related to the deposit of ballast by ship-masters, at the mouth of the Rangoon river, a practice which, if permitted, might cause serious impediment and danger to the navigation of the approaches to the port of Rangoon, the need for some further preventive powers than those which Government now possesses, has been made apparent.

There can be no doubt that it is extremely desirable that the powers of Government officers, and the procedure to be followed by them, in relation to matters of this nature, should be clearly defined, and as the Indian Statute-Book, as it now stands, does not deal adequately with the subject, the present Bill has been prepared. A precedent for such legislation will be found in the Imperial Statute 40 & 41 Vic., c. 16 (the Removal of Wrecks Act, 1877). The Bill, while following generally the lines of the statute, goes beyond it in two material respects. The power to remove obstructions conferred by it is not confined, as in the statute, to the case of obstructions caused by wrecks, but extends also to fishing stakes, ballast and any other thing which may form an obstruction or danger to navigation. The other point in which the Bill goes beyond the statute is that, in addition to giving power to remove existing obstructions, it enables the Government to prevent the wilful creation of obstructions in the future. With this object the Governor General in Council is empowered (section 7) to make rules to regulate or prohibit in any fairway the placing of fishing stakes, the casting of ballast, or the doing of any other act which will, in his opinion, cause or be likely to cause danger or obstruction to navigation.

The 24th December, 1880.

WHITLEY STOKES.

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

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 30th December, 1880, and was referred to a Select Committee :—

No. 23 OF 1880.

A Bill to amend Bengal Act No. IX of 1880 (the Cess Act, 1880).

Preamble.

WHEREAS it is expedient to amend Bengal Act No. IX of 1880 (the Cess Act, 1880); It is hereby enacted as follows :—

Amendment of Bengal Act No. IX of 1880.

1. In the said Act, after section sixty-four, the following sections shall be inserted, and shall be deemed to have been so inserted on and from the date on which such Act came into force.

Holders of estates, &c., how to recover from holders of rent-free lands.

"64A. All sums due to the holder of any estate or tenure under the provisions of this chapter, in respect of any land held rent-free, may be recovered by such holder from any owner or holder of such rent-free land, or from any occupier of the same, by any means and any process by which the amount might be recovered if it were due on account of rent of a transferable tenure or holding, and subject to the same rules as to limitation :

"Provided that, if any such objection as is mentioned in section 53, has been made before the Collector, no proceedings shall be commenced, and no proceedings which have been commenced shall be continued, for recovery of cess in respect of the lands which are the subject of such objection, until such objection shall have been disposed of by the Collector.

Owner, holder or occupier of rent-free lands may be sued.

Decree against occupier tantamount to decree against owner.

"64B. In every suit for the recovery of any such sum, the person to whom the sum is due may proceed at his option either against the owner or holder of the rent-free land in respect of which such amount is due, or against the occupier thereof; and any decree obtained in such suit against any occupier of such land shall have the same effect and be followed by the same consequences in respect of the execution of such decree against the owner or holder of such land, and in respect of the sale of such land in such execution, as if the suit had been brought and the decree given against such owner or holder of such land, but shall have effect against such occupier personally so long only as he remains in occupation of such land, and no longer."

STATEMENT OF OBJECTS AND REASONS.

WHEN the Bill, which has since become Bengal Act No. IX of 1880 (The Cess Act, 1880), was submitted, for the first time, by the Government of Bengal for the assent of the Governor General, His Excellency, though approving of the policy of the Bill, was unable to give his assent, as he was advised that two of its sections were *ultra vires* of the Bengal Legislative Council. Section 65 was *ultra vires*, inasmuch as it extended to suits the parties to which were not landholder and tenant, the special procedure which the provincial legislature is, by section 4 of the Code of Civil Procedure, permitted to prescribe only in suits between landholder and tenant; and section 66 also appeared to be *ultra vires*, as it was inconsistent with the same Code, in enacting that a decree might be executed against a person who was neither a party or privy.

Though, however, feeling compelled for these reasons to withhold his assent from the Bill in its then form, His Excellency intimated to the Government of Bengal that he would be willing to give his assent to the measure if it was re-enacted with the omission of the provisions to which exception had been taken, and further, that if the Lieutenant-Governor should think these provisions were indispensable, a Bill would be introduced into the Council of the Governor General incorporating them, and drawn so as to come in force simultaneously with the Bengal Bill when re-enacted.

In accordance with this intimation, the Government of Bengal re-submitted the Bill with the omission of the objectionable provisions, and His Excellency has given his assent to the measure as thus amended. But, as the Local Government has expressed at the same time a strong opinion that the omitted sections are essential to their scheme of legislation, the present Bill has been prepared in fulfilment of the promise made by His Excellency. It simply re-enacts the provisions to which exception was taken, and incorporates them in the Bengal Act, by inserting them retrospectively in that enactment from the date on which it became law.

WHITLEY STOKES.

The 24th December, 1880.

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

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 6th January, 1881, and was referred to a Select Committee:—

No. 1 OF 1881.

THE BURMA FOREST BILL, 1881.

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A Bill to amend the law relating to Forests, Forest-produce, and the duty leviable on Timber in British Burma.

WHEREAS it is expedient to amend the law relating to forests, forest-produce, and the duty leviable on timber in British Burma; It is hereby enacted as follows:— Preamble.

CHAPTER I.

PRELIMINARY.

1. This Act may be called "The Burma Forest Act, 1881:" Short-title.

It extends to all the territories for the time being administered by the Chief Commissioner of British Burma, provided that the Chief Commissioner may, from time to time, by notification in the local official Gazette, exempt any place from its operation; but not so as to affect anything done, or any offence committed, or any fine or penalty incurred, or any proceedings commenced in such place before such exemption; and Local extent.

it shall come into force on the first day of May, 1881. Commencement.

2. On and from that day the enactments mentioned in the schedule hereto annexed shall be repealed to the extent mentioned in the third column of the same schedule. Repeal of enactments.

"and in all rules made hereunder" new.

3. In this Act, and in all rules made hereunder, unless there is something repugnant in the subject or context,— Interpretation-clause.

"Forest-officer" means all persons appointed by name or as holding an office by or under the orders of the Chief Commissioner to be— "Forest-officer:"

New. Conservators, Deputy Conservators, Assistant Conservators, Sub-Assistant Conservators, Forest Rangers, Foresters, Forest Guards or Forest-officers, or to discharge any function of a Forest-officer under this Act or the rules made hereunder:

Act VII of 1878, s. 2. "Forest-officer specially empowered" means in any provision of this Act any person whom the Chief Commissioner, or any officer empowered by the Chief Commissioner in this behalf, may, from time to time, appoint by name, or as holding an office, to discharge the functions of a Forest-officer under such provision: "Forest-officer specially empowered:"

Ibid. "tree" includes bamboos, stumps and brushwood: "tree:"

Ibid. "timber" includes trees when they have fallen or have been felled, and all wood, whether cut up or fashioned or hollowed out for any purpose or not: "timber:"

Ibid. "forest-produce" includes the following when found in, or brought from, a forest (that is to say):— "forest-produce."

'Plants' and 'seeds' added, and the words 'honey', 'wax', 'grass-oil', 'silkworms' and 'cocoons', 'shells', 'skins', 'tusks', 'bones' and 'horns' omitted. minerals (including limestone and laterite), surface-soil, trees, timber, plants, grass, peat, canes, creepers, reeds, leaves, moss, flowers, fruits, seeds, roots, juice, catechu, bark, caoutchouc, gum, wood-oil, resin, varnish, lac and charcoal;

Act VII of 1878, s. 2. "forest-offence" means an offence punishable under this Act, or under any rule made under this Act: "forest-offence:"

Ibid. 'camels' omitted. "cattle" includes also elephants, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats and kids: "cattle:"

"river" includes also streams, canals, creeks and other channels, natural or artificial: "river:"

New. "Magistrate" means a Magistrate of the first or second class, or (when specially empowered by the Chief Commissioner to try forest-offences) a Magistrate of the third class. "Magistrate."

Cf. Act XV of 1877, s. 3, cl. 2. 4. Nothing in the Burma Land and Revenue Act, 1876, shall be deemed to affect or ever to have affected any right by which one person is entitled to remove and appropriate for his own profit any part of the soil belonging to another person or to the Government or anything growing in or attached to or subsisting upon the land of another person or of the Government; and Saving of rights of profit from the Burma Land and Revenue Act, 1876.

and of ss. 20 & 21 of that Act. nothing in this Act shall be deemed to affect the provisions of sections twenty and twenty-one of the Burma Land and Revenue Act, 1876.

CHAPTER II.

OF RESERVED FORESTS.

Cf. Act VII of 1878, s. 3. 5. The Chief Commissioner may from time to time constitute any land over which no person has a right created by any grant or lease made by or in behalf of the British Government or mentioned in section seven, eighteen, nineteen, twenty, twenty-one, forty or forty-eight of the Burma Land and Revenue Act, 1876, a reserved forest in manner hereinafter provided. Power to reserve forests.

Cf. Act VII of 1878, s. 4. 6. Whenever it is proposed to constitute any land a reserved forest, the Chief Commissioner may publish a notification in the local official Gazette— Notification by Chief Commissioner.

(*a*) specifying the limits of such land or describing it in such a manner that its limits shall be readily ascertainable;

(*b*) declaring that it is proposed to constitute such land a reserved forest;

(*c*) appointing an officer (hereinafter called "the Forest-Settlement-officer") to inquire into and determine the existence, nature and extent of any rights alleged to exist in favour of any person in or over any land comprised within such limits, and to deal with the same as provided in this chapter.

The officer appointed under clause (*c*) of this section shall ordinarily be a person not holding any forest-office except that of Forest-Settlement-officer; but a Forest-officer may be appointed in subordination to the Forest-Settlement-officer to assist him in the inquiry prescribed by this chapter. New.

Cf. Act VII of 1878, s. 6. 7. When a notification has been issued under section six, the Forest-Settlement-officer shall publish in the language of the country, at the head-quarters of each township in which any portion of the land comprised in such notification is situate, and in every town and village in the neighbourhood of such land, a proclamation— Proclamation by Forest-Settlement-officer.

(*a*) specifying the limits of the proposed forest, or describing it in such a manner that its limits shall be readily ascertainable;

(*b*) setting forth the provisions of section eight; New.

(*c*) explaining the consequences which, as hereinafter provided, will ensue on the reservation of such forest; and

(*d*) fixing a period of not less than three months from the date of publishing such proclamation, and requiring every person claiming any right mentioned in section six either to present to such officer within such period a written notice specifying, or to appear before him within such period and state, the nature of such right.

Cf. Act VII of 1878, s. 5. 8. During the interval between the publication of such proclamation and the date fixed by the notification under section eighteen, no right shall be acquired in or over the land comprised in such notification, except by succession or under a grant or contract in writing made or entered into by, or on behalf of, the Government or some person in whom such right was vested when the proclamation was published; and on such land, except as hereinafter provided, no new house shall be built or plantation formed, and no fresh clearings for cultivation or for any other purpose shall be made and no trees Bar of accrual of forest-rights. Prohibition of building, clearing, &c.

shall be cut for the purpose of trade or manufacture.

New. Nothing in this section shall be deemed to prohibit any act done with the permission in writing of the Forest-Settlement-officer, or any clearings made for toungya cultivation by tribes or families in the habit of practising such cultivation on such land: provided that such clearings are not in contravention of any rule made under section twenty-one of the Burma Land and Revenue Act, 1876, and for the time being in force.

Cf. Act VII of 1878, s. 7. The words 'at some convenient place' omitted.

Inquiry by Forest-Settlement-officer.

9. The Forest-Settlement-officer shall take down in writing all statements made under section seven, and shall inquire into all claims preferred under that section, and the existence of any rights mentioned in section six and not claimed under section seven.

New. The Forest-Settlement-officer shall at the same time consider and record any objection to any claim which the Forest-officer (if any), appointed to assist him under section six, may make.

Cf. Act VII of 1878, s. 8.

Powers of Forest-Settlement-officer.

10. For the purposes of such inquiry, the Forest-Settlement-officer may exercise the following powers (that is to say):—

Wording changed. (*a*) the powers of a Demarcation-officer under The Burma Boundaries Act, 1880; and

(*b*) the powers conferred on a Civil Court by the Code of Civil Procedure for compelling the attendance of witnesses and the production of documents.

Act VII of 1878, s. 9.

Extinction of rights not claimed.

11. Rights in respect of which no claim has been preferred under section seven, and of the existence of which no knowledge has been acquired by enquiry under section nine, shall be extinguished, unless, before the notification under section eighteen is published, the person claiming them satisfies the Forest-Settlement-officer that he had sufficient cause for not preferring such claim within the period fixed under section seven.

Cf. Act VII of 1878, s. 10.

Power to acquire land over which right is claimed.

12. In the case of a claim to a right in or over any land other than the following:—

(*a*) right of way,
(*b*) right to a water-course,
(*c*) right of pasture,
(*d*) right to forest-produce,

the Forest-Settlement-officer shall pass an order specifying the particulars of such claim and admitting or rejecting the same wholly or in part.

If such claim is admitted wholly or in part, the Forest-Settlement-officer may (1) come to an agreement with the claimant for the surrender of the right; (2) exclude the land from the limits of the proposed forest; or (3) proceed to acquire such land in the manner provided by the Land Acquisition Act, 1870.

For the purpose of so acquiring such land—

(i) the Forest-Settlement-officer shall be deemed to be a Collector proceeding under the Land Acquisition Act, 1870;

(ii) the claimant shall be deemed to be a person interested and appearing before him in pursuance of a notice given under section nine of that Act;

(iii) the provisions of the preceding sections of that Act shall be deemed to have been complied with; and

(iv) the Collector, with the consent of the claimant, or the Court, with the consent of both parties, may award compensation in land, or partly in land and partly in money.

Order on claims to rights of way, water-course, pasture or to forest-produce.

Cf. Act VII of 1878, ss. 11, 12 and 13. (That section relates only to the rights mentioned, *cls.* (*c*) and (*d*.)

13. In the case of a claim to rights of the kind specified in clauses (*a*), (*b*), (*c*) and (*d*) of section twelve, the Forest-Settlement-officer shall pass an order specifying the particulars of such claim and admitting or rejecting the same wholly or in part.

Provision for rights of pasture or to forest-produce admitted.

Cf. Act VII of 1878, ss. 14 and 15.

14. When the Forest-Settlement-officer admits wholly or in part any claim to a right of the kind specified in clauses (*c*) and (*d*) of section twelve, he shall, if practicable, by an order in writing, either continue such right to the claimant, or alter the limits of the proposed reserved forest, so as to exclude land of sufficient extent, of a suitable kind, and in a locality reasonably convenient, for the purposes of the claimant; and permit him to exercise his right on such land.

The order passed under this section shall record—

(*a*) the number and description of the cattle which the claimant is from time to time entitled to graze, the local limits within which, and the season during which, such pasture is permitted; or

(*b*) the quantity of timber and other forest-produce which the claimant is authorized to take or receive, the local limits within which, and the season during which, the taking of such timber or forest-produce is permitted; and

(*c*) when the exercise of such right is claimed in respect of any land or buildings, the designation, position and area of such land, and the designation and position of such buildings; and

New. (*d*) such other particulars as may be required in order to specify the nature of the right which is continued.

Commutation of such rights.

Cf. Act VII of 1878, ss. 12 and 13.

15. Whenever any right of the kind specified in section twelve, clauses (*c*) and (*d*), and admitted under section thirteen, is not provided for in one of the ways prescribed in section fourteen, the Forest-Settlement-officer shall, subject to such rules as the Chief Commissioner may from time to time prescribe in this behalf, commute such right, by paying a sum of money in lieu thereof, or with the consent of the claimant, by the grant of land or in such other manner as such officer thinks fit;

For the purpose of granting land under this section, the Forest-Settlement-officer shall be deemed to be an Assistant Commissioner in charge of a sub-division.

Appeal from order passed under foregoing sections.

Cf. Act VII of 1878, s. 16.

16. Any person who has made a claim under this chapter may, within three months from the date of any order passed on such claim by the Forest-Settlement-officer under section twelve, thirteen, fourteen or fifteen, present an appeal from such order to such officer of the Revenue Department, of rank not lower than that of a Deputy Commissioner, as the Chief Commissioner may from time to time, by notification in the local official Gazette, appoint by name, or as holding an office, to hear appeals from such orders.

Proviso omitted.

Act VII of 1878, s. 17.

Appeal under section 16.

17. Every appeal under section sixteen shall be made by petition in writing, and may be delivered to the Forest-Settlement-officer, who shall forward it without delay to the officer competent to hear the same.

Hearing of appeals.

Every such appeal shall be heard in the manner prescribed for the time being for the hearing of appeals in matters relating to land-revenue, and the order passed thereon by such officer shall be final:

Orders of Forest-Settlement-officer, and orders on appeal, subject to Chief Commissioner's confirmation.

Provided that every order of a Forest-Settlement-officer, and every order passed on appeal under this section, shall be subject to revision by the Chief Commissioner.

Act VII of 1878, s. 19.

Notification declaring forest reserved.

18. When the following events have occurred (namely)—

(*a*) the period fixed under section seven for preferring claims has elapsed, and all claims (if any) made within such period have been disposed of by the Forest-Settlement-officer; and

(*b*) if such claims have been made, the period limited by section sixteen for appealing from the orders passed on such claims has elapsed, and all appeals (if any) presented within such period have been disposed of by the appellate officer; and

(*c*) all lands (if any) to be included in the proposed forest, which the Forest-Settlement-officer has, under section twelve, elected to acquire under the Land Acquisition Act, 1870, have become vested in the Government under section sixteen of that Act,

the Chief Commissioner may publish a notification in the local official Gazette, specifying, according to boundary-marks erected or otherwise, the limits of the forest which it is intended to reserve, and declaring the same to be reserved from a date fixed by such notification.

From the date so fixed, such forest shall be deemed to be a reserved forest.

Cf. Act VII of 1878, s. 20.

Publication of translation of such notification in neighbourhood of forest.

19. The Deputy Commissioner of the district in which the forest is situate shall, before the date fixed by such notification, cause a translation thereof into the language of the country to be published in the manner prescribed for the proclamation under section seven.

Act VII of 1878, s. 22.

No right acquired over reserved forest except as here provided.

20. No right of any description shall be acquired in or over a reserved forest, except by succession, or under a grant or contract in writing made by, or on behalf of, the Government, or some person in whom such right was vested when the notification under section eighteen was published.

Cf. Act VII of 1878, s. 23.

Rights not to be alienated without sanction.

21. Notwithstanding anything herein contained, no right continued or created under section fourteen shall be alienated by way of grant, sale, lease, mortgage or otherwise, without the sanction of the Chief Commissioner: provided that, when any such right is appendant to any land or house, it may be sold or otherwise alienated with such land or house without such sanction.

No timber or other forest-produce obtained in exercise of any right so continued or created shall be sold or bartered except to such extent as may be permitted by the Chief Commissioner.

Cf. Act VII of 1878, s. 24.

Power to stop ways and water-courses in reserved forest.

22. A Forest-officer may from time to time, with the previous sanction of the Chief Commissioner or of any officer duly authorized in that behalf, stop any public or private way or water-course in a reserved forest: provided that a substitute for the way or water-course so stopped, which the Chief Commissioner deems to be reasonably convenient, already exists, or has been provided or constructed by such Forest-officer in lieu thereof.

Penalties for trespass or damage in reserved forests.

23. Any person who in a reserved forest—

Cf. Act VII of 1878, s. 25.

(*a*) trespasses, or pastures cattle, or permits cattle to trespass;

(*b*) causes any damage by negligence in felling any tree or cutting or dragging any timber;

(*c*) in contravention of any rules which the Chief Commissioner may from time to time make in this behalf, hunts, shoots, fishes, poisons water, or sets traps or snares,

shall be punished with fine which may extend to fifty rupees, or when the damage resulting from his offence amounts to more than twenty-five rupees to double the amount of such damage.

Acts prohibited in such forests.

Cf. Act VII of 1878, s. 25.

24. Any person who—

(*a*) makes any fresh clearing prohibited by section eight, or

(*b*) sets fire to a reserved forest, or kindles any fire in such manner as to endanger the same,

or who, in a reserved forest,

(*c*) kindles, keeps or carries any fire except at such seasons and in such manner as a Forest-officer specially empowered may from time to time notify in this behalf;

(*d*) fells, girdles, lops, taps or burns any tree, or strips off the bark or leaves from, or otherwise damages the same;

(*e*) quarries stone, burns lime or charcoal, or collects, subjects to any manufacturing process or removes any forest-produce;

(*f*) clears or breaks up any land for cultivation or any other purpose,

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 when the damage resulting from his offence amounts to more than two hundred and fifty rupees to double the amount of such damage.

Act VII of 1878, s. 25.

Acts excepted from prohibition contained in sections 23 and 24.

25. Nothing in section twenty-three or section twenty-four shall be deemed to prohibit (*a*) any act done by permission in writing of a Forest-officer, specially empowered or under any rule made by the Chief Commissioner in that behalf; or (*b*) the exercise of any right continued or created under section fourteen or created by grant or contract in the manner described in section twenty.

Cf. Act VII of 1878 s. 26.

Penalty for offences committed by persons having rights in reserved forests.

26. Whenever fire is caused wilfully or by gross negligence in a reserved forest, by any person having rights in such forest or by any person in his employ-

ment, or whenever any person having rights in such forest contravenes the provisions of section twenty-one, the Chief Commissioner may (notwithstanding that a penalty has been inflicted under section twenty-four) direct that in such forest or any portion thereof the exercise of all rights of pasture or to forest-produce shall be extinguished or suspended for such period as he thinks fit.

Act VII of 1878, s. 26.

27. The Chief Commissioner may, with the previous sanction of the Governor General in Council, by notification in the local official Gazette, direct that, from a date fixed by such notification, any forest or any portion thereof reserved under this Act shall cease to be a reserved forest.

Power to declare forest no longer reserved.

From the date so fixed, such forest or portion shall cease to be reserved; but the rights (if any) which have been extinguished therein shall not revive in consequence of such cessation.

New.

28. Any forest which has been declared a reserved forest under any rules in force previous to the passing of this Act shall be deemed to have been reserved under this Act, all questions decided, orders issued and records prepared in connection with the reservation of such forest shall be deemed to have been decided, issued and prepared under this Act, and all the provisions of this Act relating to reserved forests shall apply to such forest.

Forests reserved under former rules.

CHAPTER III.

OF VILLAGE-FORESTS.

New.

29. The Chief Commissioner may from time to time, by notification in the local official Gazette, constitute any land over which no person has a right created by any grant or lease made by or on behalf of the British Government or mentioned in section seven, eighteen, nineteen, twenty, twenty-one, forty or forty-eight of the Burma Land and Revenue Act, 1876, a village-forest for the benefit of any village community or group of village communities, and may by a like notification cancel any such notification:

Constitution of village-forests.

Provided that no such notification shall be deemed to affect any teak or other trees, which the Chief Commissioner may previous to the issue of such notification have declared to be reserved.

Every such notification shall specify definitely, according to boundary-marks erected or otherwise, the limits of such village-forest.

Cf. Act VII of 1878, s. 27, para. 2.

30. The Chief Commissioner may from time to time make rules for regulating the management of village-forests, prescribing the conditions under which the communities for the benefit of which such forests are constituted may be provided with timber or other forest-produce, or with pasture and their duties in respect of the protection and improvement of such forest.

Power to make rules for village-forests.

The Chief Commissioner may, by such rules, declare any of the provisions of this Act relating to the management, protection and improvement of reserved forests to be applicable to village-forests.

New.

31. Nothing in this chapter shall be deemed to affect any existing rights of individuals or communities in or over any land constituted a village-forest:

Saving of private rights.

Provided that the Chief Commissioner may in any case inquire into and determine the existence, nature and extent of any such rights and deal with the same in the manner provided in Chapter II of this Act for reserved forests.

Power to inquire into and deal with such rights.

CHAPTER IV.

OF THE PROTECTION OF FORESTS ON GOVERNMENT LANDS NOT INCLUDED IN RESERVED OR VILLAGE-FORESTS.

32. All teak trees standing on land to which the second part of the Burma Land and Revenue Act, 1876, applies, and over which no person has a right created by any grant or lease made by or on behalf of the British Government or mentioned in section seven, eighteen, nineteen, twenty, twenty-one, forty or forty-eight of that Act, shall be reserved, and the Chief Commissioner may from time to time, by notification in the local official Gazette, declare any other trees or class of trees standing on such land to be reserved from a date fixed by such notification, and may alter or cancel any such notification.

Reserved trees.

33. Except as provided by rules made by the Chief Commissioner in this behalf, or with the permission in writing of a Forest-officer specially empowered, no reserved tree may be cut, marked, lopped, girdled or injured by fire or otherwise.

Protection of reserved trees.

Whoever cuts, marks, lops, girdles or injures by fire or otherwise any reserved tree in contravention of this section, shall be punished with fine which may extend to twenty rupees, or when the damage resulting from his offence amounts to more than ten rupees to double the amount of such damage.

Cf. Act VII of 1878, s. 31.

34. The Chief Commissioner may from time to time make rules relating to the forest on the land referred to in section thirty-two.

Power to make rules generally.

Such rules may—

(*a*) prohibit the kindling of fires, and prescribe the precautions to be taken to prevent the spreading of fires;

(*b*) regulate or prohibit the cutting, sawing, conversion and removal of trees and timber, and the collection, manufacture and removal of forest-produce;

(*c*) regulate or prohibit the quarrying of stone or the burning of lime or charcoal;

(*d*) regulate or prohibit the cutting of grass and pasturing of cattle, and regulate the payments (if any) to be made for such pasturing;

(*e*) regulate or prohibit hunting, shooting, fishing, poisoning water and setting traps or snares; and

(*f*) regulate the sale or free grant of timber or other forest-produce.

The Chief Commissioner may, by such rules, prescribe, as penalties for the infringement thereof, imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both.

Penalties for acts in contravention of rules.

35. Nothing in this chapter or in any rule made under this chapter shall be deemed to prohibit any act done with the permission in writing of a Forest-officer specially empowered, or in the exercise of any right.

Nothing in this chapter to prohibit acts done in certain cases.

CHAPTER V.

OF THE DUTY ON TIMBER.

Cf. Act VII of 1878, s. 39.

36. The Chief Commissioner may levy a duty, in such manner, at such places, and at such rates as he may from time to time prescribe by notification in the local official Gazette, on all timber which is brought into British Burma from any place beyond the frontier of British Burma.

Power to impose duty on timber.

In every case in which such duty is directed to be levied *ad valorem*, the Chief Commissioner may, from time to time fix, by like notification, the value on which such duty shall be assessed.

Power to fix value for *ad valorem* duty.

37. On all logs cut within the limits of the Attaran and Pandau Forests and floated down the Attaran and Salween rivers, duty shall be levied at the following rates, that is to say—

Duty on certain timber floated down the Salween and Attaran.

On logs floated down the Attaran river:

	Rs.	A.	P.	
Above five feet in girth	4	0	0	per log.
Below „ „	2	0	0	„
Stem pieces	0	9	0	„
Ship crooks	0	4	0	„
Boat „	0	1	0	„
Small „	0	0	6	„
„ pieces	0	2	0	„

On logs floated down the Salween river:

	Rs.	A.	P.	
Above five feet in girth	2	12	0	per log.
Below „ „	1	6	0	„
Stem pieces	0	9	0	„
Ship crooks	0	4	0	„
Boat „	0	1	0	„
Small „	0	0	6	„
„ pieces	0	2	0	„

New.

38. The Chief Commissioner may exempt any timber from duty, and may revoke such exemption.

Power to exempt timber from duty.

CHAPTER VI.

OF THE CONTROL OF TIMBER IN TRANSIT.

Cf. Act VII of 1878, s. 41. 'Forest-produce' omitted.

39. The control of all rivers and their banks as regards the floating of timber, as well as the control of all timber in transit by land or water, is vested in the Chief Commissioner, and he may from time to time make rules to regulate the transit of all timber:

Power to make rules to regulate transit of timber.

Such rules may (among other matters)—

Cl. (*a*).

(*a*) prescribe the routes by which alone timber may be imported into, exported from, or moved within, British Burma;

Cl. (*b*).

(*b*) prohibit the import and export or moving of such timber without a pass from an officer duly authorized to issue the same, or otherwise than in accordance with the conditions of such pass;

Cl. (*c*).

(*c*) provide for the issue, production and return of such passes and for the payment of fees therefor;

Cl. (*d*).

(*d*) prohibit the loosening of timber formed into a raft or the setting adrift of any raft, by any person not the owner of such timber or raft, or not acting on behalf of the owner, or of Government;

(*e*) provide for the stoppage, reporting, examination and marking of timber in transit in respect of which there is reason to believe that any money is payable to Government on account of the price thereof, or on account of any duty, fee, royalty or charge due thereon, or to which it is desirable for the purposes of this Act to affix a mark;

Cl. (*d*).

Cl. (*e*). 'stations' substituted for 'depôt.'

(*f*) provide for the establishment and regulation of stations to which such timber shall be taken by those in charge of it for examination, or for the payment of such money, or in order that such mark may be affixed to it; and the conditions under which such timber shall be brought to, stored at, and removed from, such station;

New.

(*g*) authorize the transport of timber the property of Government across any land which is not the property of Government, and regulate the compensation to be paid for any damage done by the transport of such timber;

Cl.

(*h*) prohibit the closing up or obstructing of the channel or banks of any river used for the transit of timber, and the throwing of grass, brushwood, branches and leaves into any such river, or any act which may cause such river to be obstructed;

Cl. (*g*).

(*i*) provide for the prevention and removal of any obstruction in the channel or on the banks of any such river, and for recovering the cost of such prevention or removal from the person causing such obstruction.

Cl. (*h*).

(*j*) prohibit absolutely, or subject to conditions within specified local limits, the establishment of sawpits, the converting, cutting, burning, concealing, marking or supermarking of timber, the altering or effacing of any marks on the same, and possession or carrying of marking-hammers or other implements used for marking timber;

'supermarking' new.

Cl. (*i*).

(*k*) regulate the use of property-marks for timber, and the registration of such marks; lay down the rules under which the registration of any property-marks may be refused or cancelled; prescribe the time for which such registration shall hold good; limit the number of such marks that may be registered by any one person, and provide for the levy of fees for such registration.

With additions.

New.

Nothing in this section shall be held to affect any private rights in immoveable property situate on the banks of rivers.

Cf. Act VII of 1878, s. 42.

40. The Chief Commissioner may by such rules prescribe as penalties for the infringement thereof, imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both.

Penalties for breach of rules made under section 39.

In cases where the offence is committed after sunset and before sunrise, or after preparation for resistance to lawful authority, or if the offender has been previously convicted of a like offence, the convicting Magistrate may inflict double the penalties so prescribed.

Cf. Act VII of 1878, s. 43. 'station' substituted for 'depôt.'

41. The Government shall not be responsible for any loss or damage which may occur in respect of any timber while at a station established under a rule made under section thirty-nine, or while detained elsewhere for the purposes of this Act; and no Forest-

Government and Forest-officers not liable for damage to timber at station.

officer shall be responsible for any such loss or damage unless he causes such loss or damage negligently, maliciously or fraudulently.

Act VII of 1878, s. 44.

42. In case of any accident or emergency involving danger to any property at any such station, every person employed at such station, whether by the Government or by any private person, shall render assistance to any Forest-officer or Police-officer demanding his aid in averting such danger and securing such property from damage or loss.

All persons bound to aid in case of accident at station.

CHAPTER VII.

OF THE COLLECTION OF DRIFT AND STRANDED TIMBER.

Act VII of 1878, s. 45.

43. All timber found adrift, beached, stranded or sunk;

Certain kinds of timber to be deemed property of Government until title thereto proved, and may be collected accordingly.

all timber bearing marks which have not been registered under rules made under section thirty-nine, or on which the marks have been obliterated, altered or defaced by fire or otherwise, and,

in such areas as the Chief Commissioner directs, all unmarked timber,

shall be deemed to be the property of Government unless and until any person establishes his right thereto as provided in this chapter.

Such timber may be collected by any Forest-officer or other person entitled to collect the same by virtue of any rule made under section forty-nine, and may be brought to such stations as a Forest-officer specially empowered may from time to time notify as stations for the reception of drift-timber.

The words 'by Notification in local official Gazette' omitted.

The Chief Commissioner may exempt any class of timber from the provisions of this section, and withdraw such exemption.

Cf. Act VII of 1878, s. 46.

44. Public notice shall from time to time be given by a Forest-officer specially empowered, of timber collected under section forty-three. Such notice shall contain a description of the timber, and shall require any person claiming the same to present to such officer, within a period not less than one month from the date on which such notice is given, a written statement of such claim.

Notice to claimants of drift-timber.

'*One* month' substituted for '*two* months.'

Act VII of 1878, s. 47.

45. When any such statement is presented as aforesaid, the Forest-officer may, after making such inquiry as he thinks fit, either reject the claim after recording his reasons for so doing, or deliver the timber to the claimant.

Procedure on claim preferred to such timber.

If such timber is claimed by more than one person, the Forest-officer may either deliver the same to any of such persons whom he deems entitled thereto, or may refer the claimants to the Civil Court and retain the timber pending the receipt of an order from such Court for its disposal.

Any person whose claim has been rejected under this section may, within two months from the date of such rejection, institute a suit to recover possession of the timber claimed by him; but no person shall recover any compensation or costs against the Government or against any Forest-officer on account of such rejection, or the detention or removal of any timber, or the delivery thereof to any other person under this section.

On rejection of claim to such timber, claimant may institute suit.

No such timber shall be subject to process of any Civil Court until it has been delivered, or a suit brought under this section has been decided.

Words 'Criminal or Revenue' omitted before 'Court.'

Act VII of 1878, s. 48.

46. If no such statement is presented as aforesaid, or if the claimant omits to prefer his claim in the manner and within the period prescribed by the notice issued under section forty-four, or, on such claim having been so preferred by him and having been rejected, omits to institute a suit to recover possession of such timber within the further period limited by section forty-five, the ownership of such timber shall vest in the Government, or, when such timber has been delivered to another person under section forty-five, in such other person, free from all incumbrances.

Disposal of unclaimed timber.

Act VII of 1878, s. 49.

47. The Government shall not be responsible for any loss or damage which may occur in respect of any timber collected under section forty-three.

Government and its officers not liable for damage to such timber.

Act VII of 1878, s. 50.

48. No person shall be entitled to recover possession of any timber collected or delivered as aforesaid until he has paid to the Forest-officer or other person entitled to receive it such sum on account thereof as may be due under any rule made in pursuance of section forty-nine.

Payments to be made by claimant before timber is delivered to him.

Act VII of 1878, s. 51.

49. The Chief Commissioner may from time to time make rules to regulate the following matters (namely):—

Power to make rules and prescribe penalties.

(*a*) the salving, collection and disposal of all timber mentioned in section forty-three;

(*b*) the use and registration of boats used in salving and collecting timber;

(*c*) the amounts to be paid for salving, collecting, moving, storing and disposing of such timber;

(*d*) the use and registration of hammers and other instruments to be used for marking such timber.

The Chief Commissioner may from time to time prescribe, as penalties for the infringement of any rules made under this section, imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both.

CHAPTER VIII.

PENALTIES AND PROCEDURE.

Cf. Act VII of 1878, s. 52.

50. When there is reason to believe that a forest-offence has been committed in respect of any forest-produce, such produce, together with all tools, boats, carts and cattle used in committing any such offence, may be seized by any Forest-officer or Police-officer.

Seizure of property liable to confiscation.

Every officer seizing any property under this section shall place on such property a mark indicating that the same has been so seized, and shall, as soon as may be, make a report

Application for confiscation.

of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made:

Change.

Provided that when no property is seized except the forest-produce with respect to which such offence is believed to have been committed and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior.

Cf. Act VII of 1878, s. 53. Slight changes.

51. Upon the receipt of any such report, the Magistrate shall take such measures as may be necessary for the appearance and trial of the accused and the disposal of the property according to law.

Procedure thereupon.

Cf. Act VII of 1878, s. 54. Words 'which is not the property of Government' omitted. See sec. 56.

52. When any person is convicted of a forest-offence all timber or forest-produce in respect of which such offence has been committed, and all tools, boats, carts and cattle used in committing such offence, shall be liable, by order of the convicting Magistrate, to confiscation.

Forest-produce, tools, &c., when liable to confiscation.

Such confiscation may be in addition to any other punishment prescribed for such offence.

Act VII of 1878, s. 55.

53. When the trial of any forest-offence is concluded, any forest-produce in respect of which such offence has been committed shall, if it is the property of Government, or has been confiscated, be taken charge of by a Forest-officer specially empowered; and in any other case may be disposed of in such manner as the Court may order.

Disposal, on conclusion of trial for forest-offence, of produce in respect of which it was committed.

Cf. Act VII of 1878, s. 56. Slight changes.

54. When the offender is not known or cannot be found, the Magistrate may, on application in that behalf, if he finds that an offence has been committed, order the property in respect of which the offence has been committed to be confiscated and taken charge of by a Forest-officer specially empowered, or to be made over to such Forest-officer or to any other person whom he deems to be entitled to the same:

Procedure when offender not known or cannot be found.

Provided that no such order shall be made until the expiration of one month from the date of seizing such property, or without hearing the person (if any) claiming any right thereto, and the evidence (if any) which he may produce in support of his claim.

New.

The Magistrate may cause a notice of any application under this section to be served upon any person whom he has reason to believe is interested in the property seized, or he may publish such notice in any way which he thinks fit.

Act VII of 1878, s. 57.

55. The Magistrate may, notwithstanding anything hereinbefore contained, direct the sale of any property seized under section fifty and subject to speedy and natural decay, and may deal with the proceeds as he would have dealt with such property if it had not been sold.

Procedure as to perishable property seized under section 50.

Cf. Act VII of 1878, s. 58. Change; right of Forest-officer to appeal taken away.

56. Any person claiming to be interested in property seized under section fifty may, within one month from the date of any order passed under section fifty-two, fifty-three or fifty-four, present an appeal therefrom to the Court to which orders made by such Magistrate are ordinarily appealable, and the order passed on such appeal shall be final.

Appeal from orders under sections 52, 53 and 54.

Act VII of 1878, s. 59.

57. When an order for the confiscation of any property has been passed under section fifty-two or fifty-four, as the case may be, and the period limited by section fifty-six for presenting an appeal from such order has elapsed, and no such appeal has been preferred, or when, on such an appeal being preferred, the Appellate Court confirms such order in respect of the whole or a portion of such property, such property or such portion thereof, as the case may be, shall vest in the Government free from all incumbrances.

Property when to vest in Government.

Cf. Act VII of 1878, s. 60. The words 'and the withdrawal of any proceedings instituted' added.

58. Nothing hereinbefore contained shall be deemed to prevent any officer empowered in this behalf by the Chief Commissioner from directing at any time the immediate release of any property seized under section fifty and the withdrawal of any proceedings instituted in respect of such property.

Saving of power to release property seized.

Cf. Act VII of 1878, s. 61.

59. Any Forest-officer or Police-officer who vexatiously and unnecessarily seizes any property on pretence of seizing property liable to confiscation under this Act, 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.

Punishment for wrongful seizure.

Last sentence new.

Any fine so imposed, or any portion thereof, may be given as compensation to the person aggrieved.

Cf. Act VII of 1878, s. 62. Slight change.

60. Whoever, with intent to cause damage or injury to the public or to any person, or to cause wrongful gain as defined in the Indian Penal Code—

Penalty for counterfeiting or defacing marks in trees and timber and for altering boundary-marks.

(*a*) knowingly counterfeits upon any timber or standing tree a mark used by Forest-officers to indicate that such timber or tree is the property of the Government or of some person, or that it may lawfully be cut or removed by some person; or

New.

(*b*) unlawfully affixes a mark used by Forest-officers; or

(*c*) alters, defaces or obliterates any such mark placed on a tree or on timber by or under the authority of a Forest-officer; or

(*d*) alters, moves, destroys or defaces any boundary-mark of any forest or waste-land to which the provisions of this Act are applied,

shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both.

Cf. Act VII of 1878, s. 63.

61. Any Forest-officer or Police-officer may, without orders from a Magistrate and without a warrant, arrest any person against whom a reasonable suspicion exists of his having been concerned in any forest-offence punishable with imprisonment for one month or upwards.

Power to arrest without warrant.

Third para. of s. 63 of Indian Forest Act omitted.

Every officer making an arrest under this section shall, without unnecessary delay, take or send the person arrested before the Magistrate having jurisdiction in the case.

Act VII of 1878, s. 64.

62. Every Forest-officer and Police-officer shall prevent, and may interfere for the purpose of preventing, the commission of any forest-offence.

Power to prevent commission of offence.

Sec. 65 of Indian Forest Act omitted. Act VII of 1878, s. 66.

63. 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, or from being liable under such other law to any higher punishment or penalty than that provided by the rules made under this Act:

Operation of other laws not barred.

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

Cf. Act VII of 1878, s. 67. Slight change.

64. Any Forest-officer specially empowered may accept from any person against whom a reasonable suspicion exists that he has committed any forest-offence other than an offence under section fifty-nine or section sixty a sum of money by way of compensation for any damage which may have been committed, and may release any property which has been seized as liable to confiscation on payment of the value thereof as estimated by such officer.

Power to compound offences.

On the payment of such sum of money, or such value, or both, as the case may be, to such officer, the accused person, if in custody, shall be discharged, the property seized shall be released, and no further proceedings shall be taken under this Act against such person or property; but nothing herein contained shall exempt such person from prosecution on the same facts under any other law for the time being in force.

Act VII of 1878, s. 65.

65. When in any proceedings taken under this Act, or in consequence of anything done under this Act, a question arises as to whether any forest-produce is the property of the Government, such produce shall be presumed to be the property of the Government until the contrary is proved.

Presumption that forest-produce belongs to Government.

CHAPTER IX.

CATTLE-TRESPASS.

Act VII of 1878, s. 69.

66. Cattle trespassing in a reserved forest or a village-forest shall be deemed to be cattle doing damage to a public plantation within the meaning of the eleventh section of the Cattle-trespass Act, 1871, and may be seized and impounded as such by any Forest-officer or Police-officer.

Cattle-trespass Act, 1871, to apply.

Act VII of 1878, s. 70.

67. The Chief Commissioner may from time to time, by notification in the local official Gazette, direct that, in lieu of the fines fixed by the twelfth section of the Act last aforesaid, there shall be levied for each head of cattle impounded under section sixty-six of this Act, such fines as he thinks fit, but not exceeding the following (that is to say):—

Power to alter fines fixed by that Act.

	Rs.	A.
For each elephant... ...	10	0
For each buffalo	2	0
For each horse, mare, gelding, pony, colt, filly, mule, bull, bullock, cow or heifer ...	1	0
For each calf, ass, pig, ram, ewe, sheep, lamb, goat or kid ...	0	8

* Came. omitted.

CHAPTER X.

OF FOREST-OFFICERS.

Act VII of 1878, s. 71.

68. The Chief Commissioner may invest any Forest-officer by name, or as holding an office, with the following powers (that is to say):—

Chief Commissioner may invest Forest-officers with certain powers.

(*a*) the powers of a Demarcation-officer under the Burma Boundaries Act, 1880;

(*b*) the powers of a Civil Court to compel the attendance of witnesses and the production of documents;

(*c*) power to issue search-warrants under the Code of Criminal Procedure;

(*d*) power to hold enquiries into forest-offences, and in the course of such enquiries to receive and record evidence.

Any evidence recorded under clause (*d*) of this section shall be admissible in any subsequent trial before a Magistrate: provided that it has been taken in the presence of the accused person, and recorded in the manner provided by section 333 or section 334 of the Code of Criminal Procedure.

Last part of proviso new.

Act VII of 1878, s. 72.

69. All Forest-officers shall be deemed to be public servants within the meaning of the Indian Penal Code.

Forest-officers deemed public servants.

Cf. Act VII of 1878, s. 73. The words 'or criminal action' new.

70. No suit or criminal prosecution shall lie against any public servant for anything done by him in good faith under this Act.

Indemnity for acts done in good faith.

Act VII of 1878, s. 74.

71. Except with the permission in writing of the Chief Commissioner, no Forest-officer shall, as principal or agent, trade in timber or other forest-produce, or be or become interested in any lease of any forest or in any contract for working any forest, whether in British or foreign territory.

Forest-officers not to trade.

CHAPTER XI.

MISCELLANEOUS.

Cf. Act VII of 1878, s. 75.

72. The Chief Commissioner may from time to time make rules consistent with this Act—

Additional powers to make rules.

(*a*) to prescribe and limit the powers and duties of any Forest-officer;

(*b*) to regulate the powers and proceedings of Forest-Settlement-officers; *New.*

(*c*) to regulate the rewards to be paid to officers and informers out of the proceeds of fines and confiscations under this Act; and Cl. (*c*) of s. 75 of I. F. Act omitted.

(*d*) generally to carry out the provisions of this Act. Sec. 76 of I. F. Act omitted.

Cf. Act VII of 1878, s. 77.

73. All rules made by the Chief Commissioner under this Act shall be published in the local official Gazette, and shall thereupon have the force of law.

Rules when to have force of law.

Second para. omitted.

Act VII of 1878, s. 78.

74. Every person who exercises any right in a reserved forest or a village-forest, or who is permitted to take any forest-produce from, or to cut and remove timber or to pasture cattle in, such forest, and

Persons bound to assist Forest-officer and Police-officer.

every person who is employed by any such person in such forest, and

every person in any village contiguous to such forest who is employed by the Government, or who receives emoluments from the Government for services to be performed to the community,

shall be bound to furnish without unnecessary delay to the nearest Forest-officer or Police-officer any information he may possess respecting the commission of, or intention to commit, any forest-offence, and shall assist any Forest-officer or Police-officer demanding his aid

(*a*) in extinguishing any fire occurring in such forest;

(*b*) in preventing any fire which may occur in the vicinity of such forest from spreading to such forest;

(*c*) in preventing the commission in such forest of any forest-offence; and

(*d*) when there is reason to believe that any such offence has been committed in such forest, in discovering and arresting the offender.

Act VII of 1878, s. 81.

75. All money payable to the Government under this Act, or under any rule made hereunder, or on account of the price of any forest-produce, or of expenses incurred in the execution of this Act in respect of such produce, may, if not paid when due, be recovered under the law for the time being in force as if it were an arrear of land-revenue.

Recovery of money due to Government.

Act VII of 1878, s. 82.

76. When any such money is payable for, or in respect of, any forest-produce, the amount thereof shall be deemed to be a first charge on such produce, and such produce may be taken possession of by a Forest-officer specially empowered and retained by him until such amount has been paid.

Lien on forest-produce for such money.

If such amount is not paid when due, such Forest-officer may sell such produce by public auction, and the proceeds of the sale shall be applied first in discharging such amount.

Power to sell such produce.

The surplus (if any), if not claimed within two months from the date of the sale by the person entitled thereto, shall be forfeited to Her Majesty.

Act VII of 1878, s. 83.

77. Whenever it appears to the Chief Commissioner that any land is required for any of the purposes of this Act, such land shall be deemed to be needed for a public purpose within the meaning of the Land Acquisition Act, 1870, section four.

Land required under this Act to be deemed to be needed for a public purpose under Land Acquisition Act.

SCHEDULE.

(*See section 1.*)

ENACTMENTS REPEALED.

Number and year of Act or Regulation.	Title.	Extent of repeal.
Act VII of 1865 ...	An Act to give effect to rules for the management and preservation of Government forests.	So much as has not been repealed.
Act VII of 1869...	An Act to give validity to certain rules relating to forests in British Burma.	The whole.
Act XIII of 1873	An Act to amend the law relating to timber floated down the rivers of British Burma.	So much as has not been repealed.
Regulation IX of 1874.	The Arakan Hill District Laws Regulation, 1874.	So far as it relates to Acts VII of 1865 and VII of 1869.

STATEMENT OF OBJECTS AND REASONS.

1. The necessity for placing forest-legislation in British Burma upon a satisfactory footing has been felt for a considerable time. The present state of the law is as follows:—

The Government Forests Act (Act No. VII of 1865) is in force, but it does not provide for all requirements. That Act gave power to make rules, having the force of law, for the management and preservation of the Government forests and for the control of the timber floated down rivers. Accordingly in August, 1865, rules for the administration of forests in British Burma were promulgated. These rules, though purporting to have been made under the Government Forest Act, were not covered by its provisions, and accordingly they were legalized by Act No. VII of 1869.

In 1873 it was deemed advisable to amend and consolidate the law relating to timber floated down the rivers of Burma. Accordingly the Burma Timber Act (No. XIII of 1873) was passed. This Act repealed Act No. VII of 1869 and the rules legalized by that Act as far as they related to duty on timber floated down the rivers of British Burma.

The rules of August, 1865, related only to a portion of the Government forests, as defined in the rules, and it became necessary to provide by another set of rules for the administration of the forests thus excluded. This was done by rules made under Act No. VII of 1865, which were promulgated in Burma in March, 1876, together with a notification defining the areas to which they were applicable.

Thus the administration of the Government forests in Burma and the management of the timber floated down its rivers is governed by three different enactments and two sets of rules having the force of law. Yet these enactments and rules leave several of the most important matters unprovided for, and hence it is necessary both to consolidate and to complete them.

Experience has shown that the only practical method to ensure the objects aimed at by forest-administration is to set apart and demarcate selected areas of Government forests, to liberate these areas as far as possible from rights of private persons, and to guard against the growth by prescription of fresh rights in forests thus set apart and demarcated.

Forests thus set apart and demarcated are called reserved forests, and the formation of such reserved forests in British Burma has proceeded steadily during the last five years. The formation of such reserved forests is preceded by a thorough and complete enquiry by a settlement-officer into the rights and requirements of the people residing in and in the immediate vicinity of these areas. The guiding principle followed in this enquiry is that such arrangements are made as will enable the people to provide for their requirements in the matter of forest-produce, either outside the reserved forests, or, under suitable rules, within their boundaries. And in the case of the tribes whose custom it is to carry on the shifting kind of cultivation by cutting and burning the forest which is called *toungya* cultivation, defined areas are assigned to them where they may practise this kind of cultivation. Under these arrangements the formation of Government forest domains has been commenced, and their area aggregated, on 31st March last, 1,442 square miles.

The practical result of these proceedings is that the forests thus set apart and demarcated can be effectively protected and steadily improved, so that eventually a limited area will yield all the timber and other forest-produce required for home consumption and export, while the remainder can be thrown open for the use of the people and the extension of cultivation. The system here sketched enables Government to concentrate forest-conservancy upon limited areas, instead of attempting to enforce restrictions over the whole of the forests.

The procedure, however, hitherto followed in this respect in Burma, in some particulars, wants legal sanction, and hence the action of Government in setting apart reserved forests is not final, and may be called in question. The object of the present Bill is to legalize what has been done in this respect, and to lay down a procedure for the future.

3. The Indian Forest Act, which was passed in 1878, had the same object, and it must now be explained why it was not considered advisable to make the provisions of the Indian Forest Act applicable to Burma. One reason is that the procedure followed in the enquiry into, and the settlement of, forest-rights and in the demarcation of forests, as it has been developed by practical experience, is somewhat different from that prescribed by the Indian Forest Act. But this is a minor matter. The chief reason for special forest-legislation in Burma, consists in the provisions of the Burma Land and Revenue Act (Act No. II of 1876). Section 6 of that Act defines the rights in land subject to the second part of that Act, which are recognized by law, and clause (*b*) recognizes rights acquired under sections 27 and 28 of the Indian Limitation Act, 1871. The rights thus recognized are "easements" in the ordinary English acceptation of that term, including the use of light or air, way, watercourse, use of water, but not any prescriptive right by which one person is entitled to remove and appropriate, for his own profit, any part of the soil belonging to another, or anything growing in, or attached to, or subsisting upon, the land of another.

The Indian Limitation Act of 1877 extended the definition of the term "easement" including in it all rights of the latter class. But it has been held that this did not affect the construction of the Burma Land and Revenue Act, and consequently the practical effect of section 6 of that Act is to deny the existence of all prescriptive rights of user of forest-produce in the forests of Burma.

But as a matter of fact there is no doubt that such rights existed in the Burma forests before the Burma Land and Revenue Act was passed, and their existence has been recognized in the enquiries which have preceded the demarcation of the existing reserved forests.

No forest-legislation for Burma could ignore these rights, and in framing the present Bill it was necessary to save them.

4. Several other important subjects have also been treated differently from the Indian Forest Act.

Thus the penalties for offences committed in reserved forests are all uniform in the Indian Forest Act, while in the present Bill it has been thought better to classify offences into two classes, and to assign to each class separate limits of punishment.

5. Again, as regards reserved forests which have already been demarcated, it is proposed, having regard to the careful investigations made at the time they were reserved, that they should be placed by the direct operation of the Act in the position of reserved forests made under the Act, instead of leaving it to the local Government, as the Indian Forest Act does, to class them as such.

6. The provisions relating to village-forests differ from the corresponding provisions in the Indian Forest Act, in as far as they give power to constitute any forest which is at the disposal of Government, a village-forest, and not only such as have already been declared reserved forests.

7. A fundamental difference between the present Bill and the Indian Forest Act is in the chapter which deals with the protection of forests on Government lands not included in reserved or village-forests. The Indian Forest Act attempts to solve this question by authorizing the constitution of protected forests. These protected forests are intended to be defined areas in which the rights of Government and of private persons are enquired into and recorded.

In Burma, where a large portion (in many districts more than three-fourths of the area) is forest, this plan would be unnecessary. It would also be impracticable. Hence the present Bill only contemplates the formation of two classes of forests—reserved forests

and village-forests. The object of the former class is to furnish timber and other useful produce for the consumption of the Province and for export, while the object of the village-forests is to ensure a permanent supply of pasture and of wood and bamboos to the villages to which such forests are assigned. And while the first step is the formation of the State forest domains, which are styled reserved forests, it is intended that the formation of village-forests shall be taken in hand gradually as the growth of population and the clearing of the forests for cultivation may render necessary the setting apart of a certain area for the use of villages.

Outside these two classes of forests the great object in Burma must be to facilitate the extension of cultivation as much as possible. Hence it would not be expedient in any way to impede or limit the extension of cultivation by the establishment of a third class analogous to the protected forests of the Indian Forest Act. What is required is, outside the reserved forests and village-forests, to give a certain protection to the teak tree and to a few other reserved kinds, and to realize revenue from the timber, bamboos and other forest-produce used for purposes of trade.

These provisions must be maintained until the demarcation of the State (reserved) and village-forests has been completed, and until the forests of these two classes have been brought to such a condition by efficient protection and steadily-continued works of improvement, that they are capable of furnishing the timber and forest-produce required for the agricultural population, for the Province generally, and for export.

This aim cannot be expected to be accomplished for many years to come. But as it is accomplished in one district after another, the restrictions imposed upon the use of the forests outside the State and village-forests may be abolished in such districts.

8. That chapter of the Indian Forest Act which authorizes Government to exercise control in certain cases, for the public good, over forests which are not the property of Government is not required in Burma, and has therefore been omitted.

9. The power to impose a duty on foreign timber (section 36) is taken from the Indian Forest Act, and the duty imposed by section 37 on timber produced in certain forests in our own territory is one which has been levied for the last thirty years.

10. In the concluding chapters, which relate to the control of timber in transit, to the collection of drift or stranded timber, to penalties, cattle trespass, forest officers and to miscellaneous matters, the Bill follows generally the Indian Forest Act.

Briefly, it may be said that the Bill now published is the Indian Forest Act of 1878, with such changes as were necessary to adapt it to the peculiar circumstances of British Burma.

R. THOMPSON.

The 30th December, 1880.

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

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 14th January, 1881, and was referred to a Select Committee :—

No. 2 OF 1881.

A Bill to provide for the better government of Fort William.

WHEREAS it is expedient to empower the Local Government to make rules for the better government of Fort William in Bengal and to provide for the establishment of a Court within the said Fort for the trial of persons charged with breaches of such rules; It is hereby enacted as follows :—

Preamble.

Short title.

1. This Act may be called "The Fort William Act, 1881;"

Commencement.

and it shall come into force on the first day of April, 1881.

But nothing herein contained shall be deemed to confer jurisdiction over any persons to whom the Army Discipline and Regulation Act, 1879, or the Indian Articles of War, 1869, is or are applicable.

"The Fort."

2. The Local Government may from time to time, with the previous sanction of the Governor General in Council, by notification in the local official Gazette, define, for the purposes of this Act, the limits of Fort William in Bengal, and in this Act the expression "the Fort" means the area so defined.

Local Government may make rules.

3. The Local Government may from time to time, with the like sanction and in like manner, make rules, to provide, within the Fort, for the matters specified in the schedule hereto annexed, and may by such rules prescribe as penalties for the infringement thereof, fine, which may extend to fifty rupees, or imprisonment for a term which may extend to four days or both.

When a sentence of fine is passed under any such rule, the term, for which the Court directs the offender to be imprisoned in default of payment of such fine, may extend to, and shall not exceed, four days.

When any rule is made under this section, a copy thereof in English and such other languages as the Local Government may from time to time direct, shall be exhibited in such conspicuous places within the Fort as the officer commanding the Fort may from time to time direct.

Local Government may invest officer with power to try breaches of rules.

4. The Local Government may invest any commissioned officer in Her Majesty's Army, with power to try persons charged with any infringement of the rules made under section three.

The officer so invested is hereinafter called the Fort Magistrate.

Procedure to be followed.

5. In the case of all offences punishable under this Act, the Fort Magistrate shall, except as herein otherwise provided, exercise within the Fort the powers, and as nearly as may be follow the procedure, conferred on, and prescribed for, a Presidency Magistrate by the Presidency Magistrates Act, 1877; and subject to the power conferred by the High Courts Criminal Procedure Act, 1875, section 147, every finding, sentence or order of such Magistrate under this Act shall be final.

Power to arrest without warrant.

6. Any Police-officer, or any other person empowered in this behalf by the Local Government, by name or as a member of a specified class, may arrest without warrant any person who in his sight commits an offence punishable under this Act.

Power to Police-officer to release on bail.

Every person so arrested shall be taken to the Police-station within the Fort, and shall be detained there until he can be brought before the Fort Magistrate, or until he gives to the Police-officer in charge of such station a bond, with or without sureties, as such officer may require, for a sum not exceeding one hundred rupees, to appear before such Magistrate at a time to be specified in such bond.

Se IV ss.

Jurisdiction of Presidency Magistrates and prosecutions under other laws saved.

7. Nothing in this Act or in any rule made hereunder shall affect the jurisdiction of the Magistrates appointed under the Presidency Magistrates Act, 1877, or shall prevent any person from being prosecuted under any other law for any offence punishable under this Act, or from being liable to any other punishment than is provided for such offence by this Act: Provided that no person shall be punished twice for the same offence.

Limitation of time of prosecutions under Act.

8. No prosecution for any offence under this Act shall be commenced after the expiration of three months next after such offence has been committed.

9. All penalties heretofore imposed by the Garrison Quarter-master of the Fort for offences against garrison rules and regulations, shall be deemed to have been imposed in accordance with law.

Validation of penalties heretofore imposed by Garrison Quarter-master.

THE SCHEDULE.

(See section 3).

Cf. Act III of 1880, s. 27, cl. 6.

See sched. to Ben. draft, Nos. 1—8, 19, 24, 25, 39, 42.

1. The conservancy of the buildings, roads, drainage—channels and lands, the regulation and inspection of public and private necessaries, urinals, cess-pools, drains, and all places in which filth or rubbish is deposited, the prevention and cure of disease and the maintenance generally of the Fort in a proper sanitary condition.

2. The definition and prohibition of public nuisances and trespasses.

3. The regulation of public traffic and the picketing of animals. — See sched. to Ben. draft, Nos. 9—12, 34.

4. The regulation of the sale of goods and the removal of property. — *ib.*, Nos. 13, 31. *ib.*, No. 41.

5. The maintenance of public peace and quiet, and the prevention of disorderly conduct. — *ib.*, Nos. 14, 16, 28, 34—37.

6. The maintenance, in a neat and well-ordered state, of the buildings, roads, ramparts, parade-grounds and other parts of the Fort. — *ib.*, Nos. 15, 18—26, 29, 36.

7. The apprehension, custody and trial of persons who are drunk and incapable. — *ib.*, No. 27. *ib.*, No. 30.

8. The regulation of admission to, and residence in, the Fort. — *ib.*, Nos. 32, 33, 48.

9. The precautions to be taken against fire. — *ib.*, Nos. 39, 40.

10. The keeping of animals. — *ib.*, Nos. 42, 44, 45.

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to provide for the punishment of certain petty offences when committed within the limits of Fort William. At present the Garrison Quarter-master of the Fort is in the habit of punishing camp-followers and other Natives connected with the Fort who are guilty of certain offences against the garrison rules; but the jurisdiction of this officer, though it has been long exercised, has recently been called in question. As it is necessary, on sanitary grounds and for the maintenance of order, that there should be some officer within the Fort legally empowered to punish persons guilty of acts or omissions of the nature of those now punished by the Garrison Quarter-master, the present Bill has been prepared. It is based on a draft submitted by the Government of Bengal, and comprises two main provisions: *first*, it empowers the Local Government to lay down rules with light penalties attached in respect of certain matters which correspond generally with the matters to which the present garrison rules relate; *secondly*, it provides for the appointment of a commissioned officer (to be called the Fort Magistrate) with power to try persons guilty of breaches of these rules. The other provisions of the Bill are subsidiary to these. Those that appear to call for notice here are section 7, under which the present jurisdiction of the Presidency Magistrates is saved, and section 9, which validates all punishments which may have been heretofore inflicted by the Garrison Quarter-master. Lastly, the Bill exempts from its operation all persons subject to military law as it is thought that such persons can be more fittingly punished under such law.

H. J. REYNOLDS.

The 8th January, 1881.

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

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First Publication.]

The following 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 14th January, 1881:—

WE, the undersigned Members of the Select Committee to which the Bill to regulate the importation, possession and transport of petroleum and other substances of a like nature was referred, have the honour to report that we have considered the Bill and the papers noted in the margin.

From Officiating Secretary to Government, Bengal, to Secretary to Government of India, Home, Revenue and Agricultural Department, No. 901, dated 15th November, 1879, and enclosures [Papers No. 1].
„ Acting Secretary to Government, Bombay, to ditto, No. 820, dated 19th March, 1880, and enclosure [Papers No. 2].
„ Officiating Secretary to Chief Commissioner, Assam, No. 1701, dated 2nd September, 1880 [Paper No. 3].
„ Secretary to Chief Commissioner, Mysore and Coorg, No. 696-3, dated 31st August, 1880 [Paper No. 4.].
„ Chief Commissioner, Ajmer-Merwára, No. 647, dated 17th September, 1880 [Paper No. 5].
„ Secretary for Birár to Resident, Haidarábád, No. 278, dated 22nd September, 1880 [Paper No. 6].
„ Secretary to Government, North-Western Provinces and Oudh, No. 1148, dated 29th September, 1880, and enclosure. [Papers No. 7].
„ Chief Secretary to Government, Madras, No. 2341, dated 28th September, 1880, and enclosure [Papers No. 8].
„ Secretary to Government, Panjáb, No. 3239, dated 9th October, 1880, and enclosures [Papers No. 9].
„ Acting Secretary to Government, Bombay, No. 3041, dated 8th October, 1880, and enclosures [Papers No. 10].
„ Secretary for Birár to Resident, Haidarábád, No. 300, dated 6th October, 1880, and enclosures [Papers No. 11].
„ Officiating Secretary to Government, Bengal, No. 4637, dated 23rd October, 1880, and enclosures [Papers No. 12].
„ Officiating Secretary to Chief Commissioner, British Burma, No. 7571-15-5, dated 29th October, 1880, and enclosures [Papers No. 13].
„ Secretary, Chamber of Commerce, Bombay, dated 14th August, 1880, and enclosure [Papers No. 14].
Telegram from Government of Bombay, dated 7th December, 1880 [Papers No. 14].

2. We propose, in accordance with the opinion now expressed by the Government of Bengal, to do away with the distinction between first and second class petroleum introduced by the Bengal Committee. This distinction appears to us unnecessary, and its abolition will much simplify the measure by reducing the classes of petroleum to be dealt with to two, as in England, namely, dangerous petroleum and ordinary petroleum.

3. The flashing point of dangerous petroleum, as originally fixed in accordance with the recommendation of the Bengal Committee at 83° F. by Abel's test, has been objected to in many quarters as unnecessarily and inconveniently high. The Lieutenant-Governor of Bengal now proposes to reduce it to 78°; and on fully considering the papers submitted to us, we are prepared to reduce it even lower. There can be no doubt that the circumstance that the temperature of the air in most parts of India is throughout a great portion of the year higher than that which prevails in England, would, all other things being equal, make a petroleum flashing at a temperature between 70° and 80° F. more dangerous here than in England; but against this must be set off the greater openness and airiness of Indian buildings and the comparative absence of carpets, curtains and other such articles likely to catch fire; and, though at times serious accidents have occurred in this country, it can hardly be said that there is evidence to show that the danger is so serious as to warrant our extending the severe restrictions which the Bill imposes on dangerous petroleum to any petroleum flashing above the point, which has, after full consideration, been fixed upon in England and which has hitherto been adopted in Bengal. We have accordingly fixed the flashing point of dangerous petroleum at 73° F. by Abel's test equal to 100° F. by the old test.

4. We have made some other amendments in the Bill, with a view to relaxing in certain particulars the restrictions it imposes; thus, in order to avoid the delay, to which ships bringing petroleum to our ports might have been subjected if the samples furnished had to be tested before the petroleum was landed, we have altered the wording of the Bill so as to allow of the petroleum being landed directly the samples are delivered. We think that the control which the Bill gives over the petroleum when landed will be amply sufficient to secure the object in view.

5. Again, we have confined the provision of the Bill which requires petroleum to be kept in indelibly marked vessels, to *dangerous* petroleum, and we have reduced the maximum penalty

for illegally importing, possessing or transporting petroleum from three months' imprisonment and one thousand rupees fine, to one month's imprisonment and five hundred rupees fine.

6. The power given by the Bill to extend the Act to other inflammable substances appears to be unnecessarily large, and we have therefore confined it to cases in which those substances are fluid.

7. The only other alterations we have made which are of sufficient importance to call for notice here are the insertion of a provision in section 7 of the Bill as now amended, empowering the Government to fix ports at which only petroleum may be imported, the addition of a clause to section 12 entitling a dealer, whose petroleum is tested under the Act, to a copy of the certificate of the result of the testing, free of charge, the insertion in section 16 of words providing that the tins or other vessels in which confiscated petroleum is contained may be confiscated with it, and the addition of a provision in section 18 requiring all rules made under the Act to be published for a month before they take effect.

8. The Bill, with its Statement of Objects and Reasons, has been published in English, in the local official Gazettes, except those of the Central Provinces and Assam. Its publication in the vernacular Gazettes has been reported by the Governments of Bengal and the North-Western Provinces and Oudh, and the Chief Commissioner of Mysore. It has met with considerable opposition on account of its stringency, but, if the important mitigations of its provisions which we now recommend are approved by the Council, we think it may safely be passed without being again re-published. The measure having been now before the public for six months, it can hardly be said that timely notice of it has not been given to all concerned; but in order to guard against the possibility of hardship to holders or consignees of dangerous petroleum, we propose that it should not come into force till the 1st of July.

WHITLEY STOKES.
J. GIBBS.
B. W. COLVIN.
G. F. MEWBURN.

The 14th January, 1881.

No. II.

THE PETROLEUM BILL, 1881.

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No. II.

A Bill to regulate the importation, possession and transport of Petroleum and other fluids of a like nature.

WHEREAS it is expedient to regulate the importation, possession and transport of petroleum and other fluids of a like nature; It is hereby enacted as follows:—

Preliminary.

Short title. Commencement. 1. This Act may be called "The Petroleum Act, 1881"; and it shall come into force on the first day of July, 1881. Committee's recommendations, para. 1.

Local extent. The provisions of this Act relating to dangerous petroleum, and the importation of petroleum, extend to the whole of British India. The rest of this Act extends only to such local areas as the Local Government may, from time to time, by notification in the official Gazette, direct.

Repeal of enactments. 2. The Indian Ports Act, 1875, section thirty-seven, and Bengal Act No. III of 1865 (*to make better provision for the prevention of injury from fire in Ports, and to provide for the safe keeping of Inflammable Oils in Ports and places within the Provinces under the control of the Lieutenant-Governor of Bengal*) are hereby repealed.

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

34 & 35 Vic., c. 105, s. 3, with additions from Committee's report. "Petroleum." "Petroleum" includes also the liquids commonly known by the names of rock oil, Rangoon oil, Burma oil, kerosine, paraffine oil, mineral oil, petroline, gasoline, benzol, benzoline, benzine and any inflammable liquid that is made from petroleum, coal, schist, shale, peat or any other bituminous substance, or from any products of petroleum,

Committee's recommendations, para. 3. but it does not include any oil ordinarily used for lubricating purposes, and having its flashing point at or above two hundred and fifty degrees of Fahrenheit's thermometer.

Committee's recommendations, para. 4. *Explanation.*—The flashing point of petroleum means the lowest temperature at which the petroleum yields a vapour which will furnish a momentary flash or flame when tested with the apparatus and in the manner described in the Schedule hereto annexed.

"Dangerous petroleum." "Dangerous petroleum" means petroleum having its flashing point below seventy-three degrees of Fahrenheit's thermometer:

"Import." "Import" means to bring into British India by sea or land:

and "importation" means the bringing into British India as aforesaid.

"Transport." "Transport" means to remove from one place to another within British India:

Dangerous Petroleum.

Dangerous petroleum in quantities exceeding 40 gallons. 4. No quantity of dangerous petroleum exceeding forty gallons shall be imported or transported, or kept by any one person or on the same premises, except under, and in accordance with the conditions of, a license from the Local Government granted as next hereinafter provided.

Application for license to import, transport or possess such petroleum. Every application for such a license shall be in writing, and shall declare—

(*a*) the quantity of such petroleum which it is desired to import, transport or possess, as the case may be;

(*b*) the purpose for which the applicant believes that such petroleum will be used; and

(*c*) that petroleum other than dangerous petroleum cannot be used for such purpose.

Power to grant license. If the Local Government sees reason to believe that such petroleum will be used for such purpose, and that no petroleum other than dangerous petroleum can be used for such purpose, it may grant such license for the importation, transport or possession (as the case may be) of such petroleum, absolutely or subject to such conditions as it thinks fit.

Dangerous petroleum in quantities not exceeding 40 gallons. 5. No quantity of dangerous petroleum equal to or less than forty gallons shall be kept or transported without a license:

Provided that nothing in this section shall apply in any case when the quantity of such petroleum kept by any one person or on the same premises, or transported, does not exceed three gallons, and such petroleum is placed in separate glass, earthenware or metal vessels, each of which contains not more than a pint and is securely stopped. 34 & 35 Vic., c. 105, s. 7.

Vessels containing dangerous petroleum to be marked. 6. All dangerous petroleum— 34 & 35 Vic., c. 105, s. 6.

(*a*) which is kept at any place after seven days from the date on which it is imported, or

(*b*) which is transported, or

(*c*) which is sold or exposed for sale,

shall be contained in vessels which shall bear an indelible mark or a label in conspicuous characters, stating the nature of the contents thereof. Cf. Act I of 1878, s. 9.

Petroleum generally.

Power to make rules as to the importation of petroleum. 7. The Local Government may, from time to time, make rules consistent with this Act to regulate the importation of petroleum and in particular— Committee's recommendations, paras. 12 to 20.

(*a*) for ascertaining the quantity and description of any petroleum on board a ship;

(*b*) to provide for the delivery, by the master of a ship or the consignees of the cargo, of samples of petroleum before such petroleum is landed from such ship, and for the testing thereof;

(*c*) to determine the ports at which only petroleum may be imported; and

(*d*) to regulate the time and mode of, and the precautions to be taken on, landing or transhipping any petroleum.

In this section—

"Ship." "Ship" includes anything made for the conveyance by water of human beings or property:

"Master." "Master" includes every person (except a Pilot or Harbour Master) having for the time being the charge or control of a ship.

Possession and transport of petroleum. 8. No quantity of petroleum exceeding five hundred gallons, shall be kept by any one person or on the same premises or shall be transported except under and in accordance with the conditions of a license granted under this Act.

Power to make rules as to such possession and transport. 9. The Local Government may from time to time make rules consistent with this Act as to the granting of licenses to possess or transport petroleum in cases where such licenses are by law required.

Such rules may provide for the following among other matters, that is to say—

in the case of licenses to possess petroleum—

(*a*) the nature and situation of the premises for which they may be granted, and

(*b*) the inspection of such premises and the testing of petroleum found thereon;

in the case of licenses to transport petroleum—

(*c*) the manner in which the petroleum shall be packed, the mode of transit, and the route by which it is to be taken, and

(*d*) the stoppage and inspection of it during transit;

in the case of both such licenses—

(*e*) the authority by which the license may be granted;

(*f*) the fee to be charged for it;

(*g*) the quantity of petroleum it is to cover;

(*h*) the conditions which may be inserted in it;

(*i*) the time during which it is to continue in force; and

(*k*) the renewal of the license.

10. Any officer specially authorized by name or by virtue of his office in this behalf by the Local Government may require any dealer in petroleum to show him any place, and any of the vessels, in which any petroleum in his possession is stored or contained, to give him such assistance as he may require for examining the same, and to deliver to him samples of such petroleum on payment of the value of such samples.

Power to inspect and require dealer to sell samples.

11. When any such officer has, in exercise of the powers conferred by section ten, or by purchase, obtained a sample of petroleum in the possession of a dealer, he may give a notice in writing to such dealer informing him that he is about to test such sample or cause the same to be tested with the apparatus and in the manner described in the schedule hereto annexed, at a time and place to be fixed in such notice, and that such person or his Agent may be present at such testing.

Notice to be given when officer proposes to test samples.

12. On any such testing if it appears to the officer or other person so testing that the petroleum from which such sample has been taken is or is not dangerous petroleum, such officer or other person may certify such fact, and the certificate so given shall be receivable as evidence in any proceedings which may be taken under this Act against the dealer in whose possession such petroleum was found, and shall, until the contrary is proved, be evidence of the fact stated therein; and a certified copy of such certificate shall be given gratis to the dealer at his request.

Certificate as to result of such testing.

Penalties.

13. Any person who, in contravention of this Act or of any rules made hereunder, imports, possesses or transports any petroleum; and any person who otherwise contravenes any such rules or any condition contained in a license granted hereunder, shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Penalty for illegal importation, &c., of petroleum.

14. Any person keeping, transporting, selling or exposing for sale petroleum in vessels not marked or labelled as prescribed by section six, shall be punished with fine which may extend to fifty rupees.

34 & 35 Vic., c. 63.

Penalty for keeping, transporting or exposing for sale petroleum in contravention of section 6.

15. Any dealer in petroleum who refuses or neglects to show to any officer authorized under section ten any place, or any of the vessels, in which petroleum in his possession is stored or contained, or to give him such assistance as he may require for examining the same, or to give him samples of such petroleum on payment of the value of such samples, shall be punished with fine which may extend to two hundred rupees.

34 & 35 Vic., c. 105, s. 12.

Penalty for refusing to comply with section 10.

16. In any case in which an offence under section thirteen or section fourteen has been committed, the convicting Magistrate may direct that,—

Cf. Act I of 1878, s. 11.

Confiscation of petroleum.

(*a*) the petroleum in respect of which the offence has been committed, or

(*b*) where the offender is importing or transporting or is in possession of any petroleum exceeding the quantity (if any) which he is permitted to import, transport or possess, as the case may be, the whole of the petroleum which he is importing, or transporting, or is in possession of,

shall, together with the tins or other vessels in which it is contained, be confiscated.

17. The criminal jurisdiction under this Act shall, in the towns of Calcutta, Madras and Bombay, be exercised by a Presidency Magistrate and elsewhere by a Magistrate of the first class or (where specially empowered by the Local Government to try cases under this Act) a Magistrate of the second class.

Jurisdiction.

Miscellaneous.

18. All rules made by the Local Government under this Act shall be published in the official Gazette, and shall, on the expiry of one month from the date of such publication, have the force of law:

Rules when to have force of law.

Provided that no such rule shall be so published without the previous sanction of the Governor General in Council.

19. The Governor General in Council may, from time to time, by notification in the *Gazette of India*, apply the whole or any portion of this Act to any inflammable fluid other than petroleum, and may by such notification fix, in substitution for the quantities of petroleum fixed by sections four, five and eight, the quantities of such fluid to which these sections shall apply.

34 & 35 Vic., c. 105, s. 14.

Power to apply this Act to other fluids.

The Governor General in Council may by a like notification cancel any notification issued under this section.

THE SCHEDULE.

Specification explanatory of the Test Apparatus.

Committee's recommendations, para. 5, and 42 & 43 Vic., c. 47.

The following is a description of the details of the apparatus:—

The oil-cup consists of a cylindrical vessel 2″ diameter, $2\frac{2}{10}$″ height (internal), with outward projecting rim $\frac{5}{10}$″ wide, $\frac{3}{8}$″ from the top and $1\frac{1}{8}$″ from the bottom of the cup. It is made of gun metal or brass (17 B. W. G.), tinned inside. A bracket, consisting of a short stout piece of wire, bent upwards and terminating in a point, is fixed to the inside of the cup to serve as a gauge. The distance of the point from the bottom of the cup is $1\frac{1}{2}$″. The cup is provided with a close-fitting overlapping cover made of brass (22 B. W. G.) which carries the thermometer and test lamp. The latter is suspended from two supports from the side by means of trunnions, upon which it may be made to oscillate: it is provided with a spout the mouth of which is $\frac{1}{10}$″ in diameter. The socket which is to hold the thermometer is fixed at such an angle, and its length is so adjusted that the bulb of the thermometer, when inserted to its full depth, shall be $1\frac{1}{2}$″ below the centre of the lid.

The cover is provided with three square holes, one in the centre $\frac{6}{10}$″ by $\frac{4}{10}$″, and two smaller ones, $\frac{3}{10}$″ by $\frac{2}{10}$″, close to the sides and opposite each other. These three holes may be closed and uncovered by means of a slide moving in grooves, and having perforations corresponding to those on the lid.

In moving the slide so as to uncover the holes, the oscillating lamp is caught by a pin fixed in the slide, and tilted in such a way as to bring the end of the spout just below the surface of the lid. Upon the slide being pushed back so as to cover the holes, the lamp returns to its original position.

Upon the cover, in front of, and in line with, the mouth of the lamp, is fixed a white bead the dimensions of which represent the size of the test flame to be used.

The bath or heated vessel consists of two flat-bottomed copper cylinders (24 B. W. G.), an inner one of 3″ diameter and $2\frac{1}{2}$″ height, and an outer one of $5\frac{1}{2}$″ diameter and $5\frac{3}{4}$″ height; they are soldered to a circular copper plate (20 B. W. G.) perforated in the centre, which forms the top of the bath, in such a manner as to enclose the space between the two cylinders, but leaving access to the inner cylinder. The top of the bath projects both outwards and inwards about $\frac{3}{8}$″, that is, its diameter is about $\frac{3}{8}$″ greater than that of the body of the bath, while the diameter of the circular opening in the centre is about the same amount less than that of the inner copper cylinder. To the inner projection of the top is fastened by six small screws, a flat ring of ebonite, the screws being sunk below the surface of the ebonite to avoid metallic contact between the bath and the oil cup. The exact distance between the sides and bottom of the bath of the oil lamp is $1\frac{1}{2}$″. A split socket similar to that on the cover of the oil cup, but set at a right angle, allows a thermometer to be inserted into the space between the two cylinders. The bath is further provided with a funnel, an overflow pipe, and two loop handles.

The bath rests upon a cast-iron tripod stand, to the ring of which is attached a copper cylinder or jacket (24 B. W. G.), flanged at the top, and of such dimensions that the bath, while firmly resting on the iron ring, just touches with its projecting top the inward-turned flange. The diameter of this outer jacket is $6\frac{1}{2}$″. One of the three legs of the stand serves as support for the spirit lamp, attached to it by means of a small swing bracket. The distance of the wick holder from the bottom of the bath is 1″.

Two thermometers are provided with the apparatus, the one for ascertaining the temperature of the bath, the other for determining the flashing point. The thermometer for ascertaining the temperature of the water has a long bulb and a space at the top. Its range is from about 90° to 190° Fahrenheit. The scale (in degrees of Fahrenheit) is marked on an ivory back fastened to the tube in the usual way; it is fitted with a metal collar fitting the socket, and the part of the tube below the scale should have a length of about $3\frac{1}{2}$″ measured from the lower end of the scale to the end of the bulb. The thermometer for ascertaining the temperature of the oil is fitted with collar and ivory scale in a similar manner to the one described. It has a round bulb, a space at the top, and ranges from about 55° F. to 150° F.; it measures from end of ivory back to bulb $2\frac{1}{4}$″.

NOTE.—A model apparatus is deposited at the office of the Chemical Examiner to Government at Calcutta.

Directions for applying the Test.

1. The test apparatus is to be placed for use in a position where it is not exposed to currents of air or draughts.

2. The heating vessel or water-bath is filled by pouring water into the funnel until it begins to flow out at the spout of the vessel. The temperature of the water at the commencement of the test is to be 130° Fahrenheit, and this is attained in the first instance either by mixing hot and cold water in the bath, or in a vessel from which the bath is filled, until the thermometer which is provided for testing the temperature of the water gives the proper indication; or by heating the water with the spirit lamp (which is attached to the stand of the apparatus) until the required temperature is indicated.

If the water has been heated too highly, it is easily reduced to 130° by pouring in cold water little by little (to replace a portion of the warm water) until the thermometer gives the proper reading.

When a test has been completed, this water-bath is again raised to 130° by placing the lamp underneath, and the result is readily obtained while the petroleum cup is being emptied, cooled, and refilled with a fresh sample to be tested. The lamp is then turned on its swivel from under the apparatus, and the next test is proceeded with.

3. The test lamp is prepared for use by fitting it with a piece of flat plaited candlewick, and filling it with colza or rape oil up to the lower edge of the opening of the spout or wick tube. The lamp is trimmed so that when lighted it gives a flame of about 0·15 of an inch diameter, and this size of flame which is represented by the projecting white bead on the cover of the oil cup is readily maintained by simple manipulation from time to time with a small wire trimmer.

When gas is available it may be conveniently used in place of the little oil lamp, and for this purpose a test flame arrangement for use with gas may be substituted for the lamp.

4. The bath having been raised to the proper temperature, the oil to be tested is introduced into the petroleum cup, being poured in slowly until the level of the liquid just reaches the point of the gauge which is fixed in the cup. In warm weather the temperature of the room in which the samples to be tested have been kept should be observed in the first instance, and if it exceeds 65°, the samples to be tested should be cooled down (to about 60°) by immersing the bottle containing them in cold water, or by any other convenient method. The lid of the cup, with the slide closed, is then put on, and the cup is put into the bath or heating vessel. The thermometer in the lid of the cup has been adjusted so as to have its bulb just immersed in the liquid, and its position is not under any circumstances to be altered. When the cup has been placed in the proper position, the scale of the thermometer faces the operator.

5. The test lamp is then placed in position upon the lid of the cup, the lead line or pendulum,* which has been fixed in a convenient position in front of the operator, is set in motion, and the rise of the thermometer in the petroleum cup is watched. When the temperature has reached about 66°, the operation of testing is to be commenced, the test flame being applied once for every rise of one degree in the following manner:—

The slide is slowly drawn open while the pendulum performs three oscillations, and is closed during the fourth oscillation.

NOTE.—If it is desired to employ the test apparatus to determine the flashing points of oils of very low volatility, the mode of proceeding is to be modified as follows:—

The air chamber which surrounds the cup is filled with cold water, to a depth of 1½ inches, and the heating vessel or water-bath is filled as usual, but also with cold water. The lamp is then placed under the apparatus and kept there during the entire operation. If a very heavy oil is being dealt with, the operation may be commenced with water previously heated to 120°, instead of with cold water.

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

* This pendulum is two (2) feet in length from the point of suspension to the centre of gravity of the weight.

The Gazette of India.

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CALCUTTA, SATURDAY, JANUARY 22, 1881.

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 6th January, 1881, and was referred to a Select Committee:—

No. 1 OF 1881.

THE BURMA FOREST BILL, 1881.

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SCHEDULE.—ENACTMENTS REPEALED.

A Bill to amend the law relating to Forests, Forest-produce, and the duty leviable on Timber in British Burma.

WHEREAS it is expedient to amend the law relating to forests, forest-produce, and the duty leviable on timber in British Burma; It is hereby enacted as follows:— Preamble.

CHAPTER I.

PRELIMINARY.

1. This Act may be called "The Burma Forest Act, 1881:" Short-title.

It extends to all the territories for the time being administered by the Chief Commissioner of British Burma, provided that the Chief Commissioner may, from time to time, by notification in the local official Gazette, exempt any place from its operation; but not so as to affect anything done, or any offence committed, or any fine or penalty incurred, or any proceedings commenced in such place before such exemption; and Local extent.

it shall come into force on the first day of May, 1881. Commencement.

2. On and from that day the enactments mentioned in the schedule hereto annexed shall be repealed to the extent mentioned in the third column of the same schedule. Repeal of enactments.

"and in all rules made hereunder" new.

3. In this Act, and in all rules made hereunder, unless there is something repugnant in the subject or context,— Interpretation-clause.

"Forest-officer" means all persons appointed by name or as holding an office by or under the orders of the Chief Commissioner to be— "Forest-officer:"

New. Conservators, Deputy Conservators, Assistant Conservators, Sub-Assistant Conservators, Forest Rangers, Foresters, Forest Guards or Forest-officers, or to discharge any function of a Forest-officer under this Act or the rules made hereunder:

Act VII of 1878, s. 2. "Forest-officer specially empowered" means in any provision of this Act any person whom the Chief Commissioner, or any officer empowered by the Chief Commissioner in this behalf, may, from time to time, appoint by name, or as holding an office, to discharge the functions of a Forest-officer under such provision: "Forest-officer specially empowered:"

Ibid. "tree:" "tree" includes bamboos, stumps and brushwood:

Ibid. "timber" includes trees when they have fallen or have been felled, and all wood, whether cut up or fashioned or hollowed out for any purpose or not: "timber:"

Ibid. "forest-produce" includes the following when found in, or brought from, a forest (that is to say):— "forest-produce."

'Plants' and 'seeds' added, and the words 'honey', 'wax', 'grass-oil', 'silkworms' and 'cocoons', [illegible] 'tusk', 'bone', 'horn' omitted. minerals (including limestone and laterite), surface-soil, trees, timber, plants, grass, peat, canes, creepers, reeds, leaves, moss, flowers, fruits, seeds, roots, juice, catechu, bark, caoutchouc, gum, wood-oil, resin, varnish, lac and charcoal;

Act [illegible] of 18[illegible] "forest-offence" means an offence punishable under this Act, or under any rule made under this Act: "forest-offence:"

Ibid. "cattle" includes also elephants, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats and kids: "cattle:"

'camels' omitted. "river" includes also streams, canals, creeks and other channels, natural or artificial: "river:"

New. "Magistrate" means a Magistrate of the first or second class, or (when specially empowered by the Chief Commissioner to try forest-offences) a Magistrate of the third class. "Magistrate."

Cf. Act XV of 1877, s. 8, cl. 2; 4. Nothing in the Burma Land and Revenue Act, 1876, shall be deemed to affect or ever to have affected any right by which one person is entitled to remove and appropriate for his own profit any part of the soil belonging to another person or to the Government or anything growing in or attached to or subsisting upon the land of another person or of the Government; and Saving of rights of profit from the Burma Land and Revenue Act, 1876.

and of ss. 20 & 21 of that Act. nothing in this Act shall be deemed to affect the provisions of sections twenty and twenty-one of the Burma Land and Revenue Act, 1876.

CHAPTER II.

OF RESERVED FORESTS.

Cf. Act VII of 1878, s. 3. 5. The Chief Commissioner may from time to time constitute any land over which no person has a right created by any grant or lease made by or in behalf of the British Government or mentioned in section seven, eighteen, nineteen, twenty, twenty-one, forty or forty-eight of the Burma Land and Revenue Act, 1876, a reserved forest in manner hereinafter provided. Power to reserve forests.

Cf. Act VII of 1878, s. 4. 6. Whenever it is proposed to constitute any land a reserved forest, the Chief Commissioner may publish a notification in the local official Gazette— Notification by Chief Commissioner.

(*a*) specifying the limits of such land or describing it in such a manner that its limits shall be readily ascertainable;

(*b*) declaring that it is proposed to constitute such land a reserved forest;

(*c*) appointing an officer (hereinafter called "the Forest-Settlement-officer") to inquire into and determine the existence, nature and extent of any rights alleged to exist in favour of any person in or over any land comprised within such limits, and to deal with the same as provided in this chapter.

The officer appointed under clause (*c*) of this section shall ordinarily be a person not holding any forest-office except that of Forest-Settlement-officer; but a Forest-officer may be appointed in subordination to the Forest-Settlement-officer to assist him in the inquiry prescribed by this chapter.

7. When a notification has been issued under section six, the Forest-Settlement-officer shall publish in the language of the country, at the head-quarters of each township in which any portion of the land comprised in such notification is situate, and in every town and village in the neighbourhood of such land, a proclamation— Proclamation by Forest-Settlement-officer.

(*a*) specifying the limits of the proposed forest, or describing it in such a manner that its limits shall be readily ascertainable;

(*b*) setting forth the provisions of section eight; Not

(*c*) explaining the consequences which, as hereinafter provided, will ensue on the reservation of such forest; and

(*d*) fixing a period of not less than three months from the date of publishing such proclamation, and requiring every person claiming any right mentioned in section six either to present to such officer within such period a written notice specifying, or to appear before him within such period and state, the nature of such right.

Cf. Act VII of 1878, s. 5. 8. During the interval between the publication of such proclamation and the date fixed by the notification under section eighteen, no right shall be acquired in or over the land comprised in such notification, except by succession or under a grant or contract in writing made or entered into by, or on behalf of, the Government or some person in whom such right was vested when the proclamation was published; and on such land, except as hereinafter provided, no new house shall be built or plantation formed, and no fresh clearings for cultivation or for any other purpose shall be made and no trees Bar of accrual of forest-rights. Prohibition of building, clearing, &c.

shall be cut for the purpose of trade or manufacture.

New. Nothing in this section shall be deemed to prohibit any act done with the permission in writing of the Forest-Settlement-officer, or any clearings made for toungya cultivation by tribes or families in the habit of practising such cultivation on such land: provided that such clearings are not in contravention of any rule made under section twenty-one of the Burma Land and Revenue Act, 1876, and for the time being in force.

Cf. Act VII of 1878, s. 7. The words 'at some convenient place' omitted. New.

Inquiry by Forest-Settlement-officer.

9. The Forest-Settlement-officer shall take down in writing all statements made under section seven, and shall inquire into all claims preferred under that section, and the existence of any rights mentioned in section six and not claimed under section seven. The Forest-Settlement-officer shall at the same time consider and record any objection to any claim which the Forest-officer (if any), appointed to assist him under section six, may make.

Cf. Act VII of 1878, s. 8. Wording changed.

Powers of Forest-Settlement-officer.

10. For the purposes of such inquiry, the Forest-Settlement-officer may exercise the following powers (that is to say):—

(*a*) the powers of a Demarcation-officer under The Burma Boundaries Act, 1880; and

(*b*) the powers conferred on a Civil Court by the Code of Civil Procedure for compelling the attendance of witnesses and the production of documents.

Act VII of 1878, s. 9.

Extinction of rights not claimed.

11. Rights in respect of which no claim has been preferred under section seven, and of the existence of which no knowledge has been acquired by enquiry under section nine, shall be extinguished, unless, before the notification under section eighteen is published, the person claiming them satisfies the Forest-Settlement-officer that he had sufficient cause for not preferring such claim within the period fixed under section seven.

Cf. Act VII of 1878, s. 10.

Power to acquire land over which right is claimed.

12. In the case of a claim to a right in or over any land other than the following:—

(*a*) right of way,
(*b*) right to a water-course,
(*c*) right of pasture,
(*d*) right to forest-produce,

the Forest-Settlement-officer shall pass an order specifying the particulars of such claim and admitting or rejecting the same wholly or in part.

If such claim is admitted wholly or in part, the Forest-Settlement-officer may (1) come to an agreement with the claimant for the surrender of the right; (2) exclude the land from the limits of the proposed forest; or (3) proceed to acquire such land in the manner provided by the Land Acquisition Act, 1870.

For the purpose of so acquiring such land—

(i) the Forest-Settlement-officer shall be deemed to be a Collector proceeding under the Land Acquisition Act, 1870;

(ii) the claimant shall be deemed to be a person interested and appearing before him in pursuance of a notice given under section nine of that Act;

(iii) the provisions of the preceding sections of that Act shall be deemed to have been complied with; and

(iv) the Collector, with the consent of the claimant, or the Court, with the consent of both parties, may award compensation in land, or partly in land and partly in money.

Order on claims to rights of way, water-course, pasture or to forest-produce.

Cf. Act VII of 1878, ss. 11, 12 and 13. (That section relates only to the rights mentioned, cls. (*c*) and (*d*.)

13. In the case of a claim to rights of the kind specified in clauses (*a*), (*b*), (*c*) and (*d*) of section twelve, the Forest-Settlement-officer shall pass an order specifying the particulars of such claim and admitting or rejecting the same wholly or in part.

Provision for rights of pasture or to forest-produce admitted.

Cf. Act VII of 1878, ss. 14 and 15.

14. When the Forest-Settlement-officer admits wholly or in part any claim to a right of the kind specified in clauses (*c*) and (*d*) of section twelve, he shall, if practicable, by an order in writing, either continue such right to the claimant, or alter the limits of the proposed reserved forest, so as to exclude land of sufficient extent, of a suitable kind, and in a locality reasonably convenient, for the purposes of the claimant; and permit him to exercise his right on such land.

The order passed under this section shall record—

(*a*) the number and description of the cattle which the claimant is from time to time entitled to graze, the local limits within which, and the season during which, such pasture is permitted; or

(*b*) the quantity of timber and other forest-produce which the claimant is authorized to take or receive, the local limits within which, and the season during which, the taking of such timber or forest-produce is permitted; and

(*c*) when the exercise of such right is claimed in respect of any land or buildings, the designation, position and area of such land, and the designation and position of such buildings; and

(*d*) such other particulars as may be required in order to specify the nature of the right which is continued. New.

Commutation of such rights.

Cf. Act VII of 1878, ss. 14 and 15.

15. Whenever any right of the kind specified in section twelve, clauses (*c*) and (*d*), and admitted under section thirteen, is not provided for in one of the ways prescribed in section fourteen, the Forest-Settlement-officer shall, subject to such rules as the Chief Commissioner may from time to time prescribe in this behalf, commute such right, by paying a sum of money in lieu thereof, or with the consent of the claimant, by the grant of land or in such other manner as such officer thinks fit;

For the purpose of granting land under this section, the Forest-Settlement-officer shall be deemed to be an Assistant Commissioner in charge of a sub-division.

Appeal from order passed under foregoing sections.

Cf. Act VII of 1878, s. 16.

16. Any person who has made a claim under this chapter may, within three months from the date of any order passed on such claim by the Forest-Settlement-officer under section twelve, thirteen, fourteen or fifteen, present an appeal from such order to such officer of the Revenue Department, of rank not lower than that of a Deputy Commissioner, as the Chief Commissioner may from time to time, by notification in the local official Gazette, appoint by name, or as holding an office, to hear appeals from such orders.

Proviso omitted.

Act VII of 1878, s. 17.

Appeal under section 16.

17. Every appeal under section sixteen shall be made by petition in writing, and may be delivered to the Forest-Settlement-officer, who shall forward it without delay to the officer competent to hear the same.

Hearing of appeals.

Every such appeal shall be heard in the manner prescribed for the time being for the hearing of appeals in matters relating to land-revenue, and the order passed thereon by such officer shall be final:

Orders of Forest-Settlement-officer, and orders on appeal, subject to Chief Commissioner's confirmation.

Provided that every order of a Forest-Settlement-officer, and every order passed on appeal under this section, shall be subject to revision by the Chief Commissioner.

Act VII of 1878, s. 19.

Notification declaring forest reserved.

18. When the following events have occurred (namely)—

(*a*) the period fixed under section seven for preferring claims has elapsed, and all claims (if any) made within such period have been disposed of by the Forest-Settlement-officer; and

(*b*) if such claims have been made, the period limited by section sixteen for appealing from the orders passed on such claims has elapsed, and all appeals (if any) presented within such period have been disposed of by the appellate officer; and

(*c*) all lands (if any) to be included in the proposed forest, which the Forest-Settlement-officer has, under section twelve, elected to acquire under the Land Acquisition Act, 1870, have become vested in the Government under section sixteen of that Act,

the Chief Commissioner may publish a notification in the local official Gazette, specifying, according to boundary-marks erected or otherwise, the limits of the forest which it is intended to reserve, and declaring the same to be reserved from a date fixed by such notification.

From the date so fixed, such forest shall be deemed to be a reserved forest.

Cf. Act VII of 1878, s. 20.

Publication of translation of such notification in neighbourhood of forest.

19. The Deputy Commissioner of the district in which the forest is situate shall, before the date fixed by such notification, cause a translation thereof into the language of the country to be published in the manner prescribed for the proclamation under section seven.

Act VII of 1878, s. 28.

No right acquired over reserved forest except as here provided.

20. No right of any description shall be acquired in or over a reserved forest, except by succession, or under a grant or contract in writing made by, or on behalf of, the Government, or some person in whom such right was vested when the notification under section eighteen was published.

Cf. Act VII of 1878, s. 28.

Rights not to be alienated without sanction.

21. Notwithstanding anything herein contained, no right continued or created under section fourteen shall be alienated by way of grant, sale, lease, mortgage or otherwise, without the sanction of the Chief Commissioner: provided that, when any such right is appendant to any land or house, it may be sold or otherwise alienated with such land or house without such sanction.

No timber or other forest-produce obtained in exercise of any right so continued or created shall be sold or bartered except to such extent as may be permitted by the Chief Commissioner.

Power to stop ways and water-courses in reserved forest.

Cf. Act VII of 1878, s. 24.

22. A Forest-officer may from time to time, with the previous sanction of the Chief Commissioner or of any officer duly authorized in that behalf, stop any public or private way or water-course in a reserved forest: provided that a substitute for the way or water-course so stopped, which the Chief Commissioner deems to be reasonably convenient, already exists, or has been provided or constructed by such Forest-officer in lieu thereof.

Penalties for trespass or damage in reserved forests.

23. Any person who in a reserved forest—

(*a*) trespasses, or pastures cattle, or permits cattle to trespass; Cf. Act VII of 1878, s. 25.

(*b*) causes any damage by negligence in felling any tree or cutting or dragging any timber;

(*c*) in contravention of any rules which the Chief Commissioner may from time to time make in this behalf, hunts, shoots, fishes, poisons water, or sets traps or snares,

shall be punished with fine which may extend to fifty rupees, or when the damage resulting from his offence amounts to more than twenty-five rupees to double the amount of such damage.

Acts prohibited in such forests.

Cf. Act VII of 1878, s. 25.

24. Any person who—

(*a*) makes any fresh clearing prohibited by section eight, or

(*b*) sets fire to a reserved forest, or kindles any fire in such manner as to endanger the same,

or who, in a reserved forest,

(*c*) kindles, keeps or carries any fire except at such seasons and in such manner as a Forest-officer specially empowered may from time to time notify in this behalf;

(*d*) fells, girdles, lops, taps or burns any tree, or strips off the bark or leaves from, or otherwise damages the same;

(*e*) quarries stone, burns lime or charcoal, or collects, subjects to any manufacturing process or removes any forest-produce;

(*f*) clears or breaks up any land for cultivation or any other purpose,

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 when the damage resulting from his offence amounts to more than two hundred and fifty rupees to double the amount of such damage.

Acts excepted from prohibition contained in sections 23 and 24.

Act [illegible] 1878, s. 26.

25. Nothing in section twenty-three or section twenty-four shall be deemed to prohibit (*a*) any act done by permission in writing of a Forest-officer, specially empowered or under any rule made by the Chief Commissioner in that behalf; or (*b*) the exercise of any right continued or created under section fourteen or created by grant or contract in the manner described in section twenty.

Penalty for offences committed by persons having rights in reserved forests.

Cf. Act VII of 1878 s. 25.

26. Whenever fire is caused wilfully or by negligence in a reserved forest, by any person having rights in such forest or by any person in his employ-

ment, or whenever any person having rights in such forest contravenes the provisions of section twenty-one, the Chief Commissioner may (notwithstanding that a penalty has been inflicted under section twenty-four) direct that in such forest or any portion thereof the exercise of all rights of pasture or to forest-produce shall be extinguished or suspended for such period as he thinks fit.

Act VII of 1878, s. 26.

27. The Chief Commissioner may, with the previous sanction of the Governor General in Council, by notification in the local official Gazette, direct that, from a date fixed by such notification, any forest or any portion thereof reserved under this Act shall cease to be a reserved forest.

Power to declare forest no longer reserved.

From the date so fixed, such forest or portion shall cease to be reserved; but the rights (if any) which have been extinguished therein shall not revive in consequence of such cessation.

New.

28. Any forest which has been declared a reserved forest under any rules in force previous to the passing of this Act shall be deemed to have been reserved under this Act, all questions decided, orders issued and records prepared in connection with the reservation of such forest shall be deemed to have been decided, issued and prepared under this Act, and all the provisions of this Act relating to reserved forests shall apply to such forest.

Forests reserved under former rules.

CHAPTER III.

OF VILLAGE-FORESTS.

New.

29. The Chief Commissioner may from time to time, by notification in the local official Gazette, constitute any land over which no person has a right created by any grant or lease made by or on behalf of the British Government or mentioned in section seven, eighteen, nineteen, twenty, twenty-one, forty or forty-eight of the Burma Land and Revenue Act, 1876, a village-forest for the benefit of any village community or group of village communities, and may by a like notification cancel any such notification:

Constitution of village-forests.

Provided that no such notification shall be deemed to affect any teak or other trees, which the Chief Commissioner may previous to the issue of such notification have declared to be reserved.

Every such notification shall specify definitely, according to boundary-marks erected or otherwise, the limits of such village-forest.

Cf. Act VII of 1878, s. 27, para. 2.

30. The Chief Commissioner may from time to time make rules for regulating the management of village-forests, prescribing the conditions under which the communities for the benefit of which such forests are constituted may be provided with timber or other forest-produce, or with pasture and their duties in respect of the protection and improvement of such forest.

Power to make rules for village-forests.

The Chief Commissioner may, by such rules, declare any of the provisions of this Act relating to the management, protection and improvement of reserved forests to be applicable to village-forests.

New.

31. Nothing in this chapter shall be deemed to affect any existing rights of individuals or communities in or over any land constituted a village-forest:

Saving of private rights.

Provided that the Chief Commissioner may in any case inquire into and determine the existence, nature and extent of any such rights and deal with the same in the manner provided in Chapter II of this Act for reserved forests.

Power to inquire into and deal with such rights.

CHAPTER IV.

OF THE PROTECTION OF FORESTS ON GOVERNMENT LANDS NOT INCLUDED IN RESERVED OR VILLAGE-FORESTS.

32. All teak trees standing on land to which the second part of the Burma Land and Revenue Act, 1876, applies, and over which no person has a right created by any grant or lease made by or on behalf of the British Government or mentioned in section seven, eighteen, nineteen, twenty, twenty-one, forty or forty-eight of that Act, shall be reserved, and the Chief Commissioner may from time to time, by notification in the local official Gazette, declare any other trees or class of trees standing on such land to be reserved from a date fixed by such notification, and may alter or cancel any such notification.

Reserved trees.

33. Except as provided by rules made by the Chief Commissioner in this behalf, or with the permission in writing of a Forest-officer specially empowered, no reserved tree may be cut, marked, lopped, girdled or injured by fire or otherwise.

Protection of reserved trees.

Whoever cuts, marks, lops, girdles or injures by fire or otherwise any reserved tree in contravention of this section, shall be punished with fine which may extend to twenty rupees, or when the damage resulting from his offence amounts to more than ten rupees to double the amount of such damage.

Cf. Act VII of 1878, s. 31.

34. The Chief Commissioner may from time to time make rules relating to the forest on the land referred to in section thirty-two.

Power to make rules generally.

Such rules may—

(*a*) prohibit the kindling of fires, and prescribe the precautions to be taken to prevent the spreading of fires;

(*b*) regulate or prohibit the cutting, sawing, conversion and removal of trees and timber, and the collection, manufacture and removal of forest-produce;

(*c*) regulate or prohibit the quarrying of stone or the burning of lime or charcoal;

(*d*) regulate or prohibit the cutting of grass and pasturing of cattle, and regulate the payments (if any) to be made for such pasturing;

(*e*) regulate or prohibit hunting, shooting, fishing, poisoning water and setting traps or snares; and

(*f*) regulate the sale or free grant of timber or other forest-produce.

The Chief Commissioner may, by such rules, prescribe, as penalties for the infringement thereof, imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both.

Penalties for acts in contravention of rules.

35. Nothing in this chapter or in any rule made under this chapter shall be deemed to prohibit any act done with the permission in writing of a Forest-officer specially empowered, or in the exercise of any right.

Nothing in this chapter to prohibit acts done in certain cases.

CHAPTER V.

OF THE DUTY ON TIMBER.

Cf. Act VII of 1878, s. 39.

36. The Chief Commissioner may levy a duty, in such manner, at such places, and at such rates as he may from time to time prescribe by notification in the local official Gazette, on all timber which is brought into British Burma from any place beyond the frontier of British Burma.

Power to impose duty on timber.

In every case in which such duty is directed to be levied *ad valorem*, the Chief Commissioner may, from time to time fix, by like notification, the value on which such duty shall be assessed.

Power to fix value for *ad valorem* duty.

37. On all logs cut within the limits of the Attaran and Pandau Forests and floated down the Attaran and Salween rivers, duty shall be levied at the following rates, that is to say—

Duty on certain timber floated down the Salween and Attaran.

On logs floated down the Attaran river:

			Rs.	A.	P.	
Above five feet in girth	...	...	4	0	0	per log.
Below „ „	...	...	2	0	0	„
Stem pieces	...	...	0	9	0	„
Ship crooks	...	...	0	4	0	„
Boat „	...	...	0	1	0	„
Small „	...	...	0	0	6	„
„ pieces	...	...	0	2	0	„

On logs floated down the Salween river:

			Rs.	A.	P.	
Above five feet in girth	...	...	2	12	0	per log.
Below „ „	...	...	1	6	0	„
Stem pieces	...	...	0	9	0	„
Ship crooks	...	...	0	4	0	„
Boat „	...	...	0	1	0	„
Small „	...	...	0	0	6	„
„ pieces	...	...	0	2	0	„

38. The Chief Commissioner may exempt any timber from duty, and may revoke such exemption.

Power to exempt timber from duty.

CHAPTER VI.

OF THE CONTROL OF TIMBER IN TRANSIT.

Cf. Act VII of 1878, s. 41. 'Forest-produce' omitted.

39. The control of all rivers and their banks as regards the floating of timber, as well as the control of all timber in transit by land or water, is vested in the Chief Commissioner, and he may from time to time make rules to regulate the transit of all timber:

Power to make rules to regulate transit of timber.

Such rules may (among other matters)—

(*a*).

(*a*) prescribe the routes by which alone timber may be imported into, exported from, or moved within, British Burma;

(*b*).

(*b*) prohibit the import and export or moving of such timber without a pass from an officer duly authorized to issue the same, or otherwise than in accordance with the conditions of such pass;

(*c*).

(*c*) provide for the issue, production and return of such passes and for the payment of fees therefor;

(*d*) prohibit the loosening of timber formed into a raft or the setting adrift of any raft, by any person not the owner of such timber or raft, or not acting on behalf of the owner, or of Government;

(*e*) provide for the stoppage, reporting, examination and marking of timber in transit in respect of which there is reason to believe that any money is payable to Government on account of the price thereof, or on account of any duty, fee, royalty or charge due thereon, or to which it is desirable for the purposes of this Act to affix a mark;

Cl. (*d*).

(*f*) provide for the establishment and regulation of stations to which such timber shall be taken by those in charge of it for examination, or for the payment of such money, or in order that such mark may be affixed to it; and the conditions under which such timber shall be brought to, stored at, and removed from, such station;

Cl. (*e*). 'stations' substituted for 'depôt.'

(*g*) authorize the transport of timber the property of Government across any land which is not the property of Government, and regulate the compensation to be paid for any damage done by the transport of such timber;

New.

(*h*) prohibit the closing up or obstructing of the channel or banks of any river used for the transit of timber, and the throwing of grass, brushwood, branches and leaves into any such river, or any act which may cause such river to be obstructed;

Cl. (*f*).

(*i*) provide for the prevention and removal of any obstruction in the channel or on the banks of any such river, and for recovering the cost of such prevention or removal from the person causing such obstruction.

Cl. (*g*).

(*j*) prohibit absolutely, or subject to conditions within specified local limits, the establishment of sawpits, the converting, cutting, burning, concealing, marking or supermarking of timber, the altering or effacing of any marks on the same, and possession or carrying of marking-hammers or other implements used for marking timber;

Cl. (*h*). 'supermarking of timber.' New.

(*k*) regulate the use of property-marks for timber, and the registration of such marks; lay down the rules under which the registration of any property-marks may be refused or cancelled; prescribe the time for which such registration shall hold good; limit the number of such marks that may be registered by any one person, and provide for the levy of fees for such registration.

Cl. (*i*). With additions.

Nothing in this section shall be held to affect any private rights in immoveable property situate on the banks of rivers.

New.

40. The Chief Commissioner may by such rules prescribe as penalties for the infringement thereof, imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both.

Cf. Act VII of 1878, s. 42.

Penalties for breach of rules made under section 39.

In cases where the offence is committed after sunset and before sunrise, or after preparation for resistance to lawful authority, or if the offender has been previously convicted of a like offence, the convicting Magistrate may inflict double the penalties so prescribed.

41. The Government shall not be responsible for any loss or damage which may occur in respect of any timber while at a station established under a rule made under section thirty-nine, or while detained elsewhere for the purposes of this Act; and no Forest-

Cf. Act VII of 1878, s. 43. 'station' substituted for 'depôt.'

Government and Forest-officers not liable for damage to timber at station.

officer shall be responsible for any such loss or damage unless he causes such loss or damage negligently, maliciously or fraudulently.

Act VII of 1878, s. 44.

42. In case of any accident or emergency involving danger to any property at any such station, every person employed at such station, whether by the Government or by any private person, shall render assistance to any Forest-officer or Police-officer demanding his aid in averting such danger and securing such property from damage or loss.

All persons bound to aid in case of accident at station.

CHAPTER VII.

OF THE COLLECTION OF DRIFT AND STRANDED TIMBER.

Act VII of 1878, s. 45.

43. All timber found adrift, beached, stranded or sunk;

all timber bearing marks which have not been registered under rules made under section thirty-nine, or on which the marks have been obliterated, altered or defaced by fire or otherwise, and,

in such areas as the Chief Commissioner directs, all unmarked timber,

shall be deemed to be the property of Government unless and until any person establishes his right thereto as provided in this chapter.

Certain kinds of timber to be deemed property of Government until title thereto proved, and may be collected accordingly.

Such timber may be collected by any Forest-officer or other person entitled to collect the same by virtue of any rule made under section forty-nine, and may be brought to such stations as a Forest-officer specially empowered may from time to time notify as stations for the reception of drift-timber.

The words 'by Notification in local official Gazette' omitted.

The Chief Commissioner may exempt any class of timber from the provisions of this section, and withdraw such exemption.

Cf. Act VII of 1878, s. 46.

44. Public notice shall from time to time be given by a Forest-officer specially empowered, of timber collected under section forty-three. Such notice shall contain a description of the timber, and shall require any person claiming the same to present to such officer, within a period not less than one month from the date on which such notice is given, a written statement of such claim.

Notice to claimants of drift-timber.

'One month' substituted for 'two months.'

Act VII of 1878, s. 47.

45. When any such statement is presented as aforesaid, the Forest-officer may, after making such inquiry as he thinks fit, either reject the claim after recording his reasons for so doing, or deliver the timber to the claimant.

Procedure on claim preferred to such timber.

If such timber is claimed by more than one person, the Forest-officer may either deliver the same to any of such persons whom he deems entitled thereto, or may refer the claimants to the Civil Court and retain the timber pending the receipt of an order from such Court for its disposal.

Any person whose claim has been rejected under this section may, within two months from the date of such rejection, institute a suit to recover possession of the timber claimed by him; but no person shall recover any compensation or costs against the Government or against any Forest-officer on account of such rejection, or the detention or removal of any timber, or the delivery thereof to any other person under this section.

On rejection of claim to such timber, claimant may institute suit.

No such timber shall be subject to process of any Civil Court until it has been delivered, or a suit brought under this section has been decided.

Words 'Criminal or Revenue' omitted before 'Court.'

Act VII of 1878, s. 48.

46. If no such statement is presented as aforesaid, or if the claimant omits to prefer his claim in the manner and within the period prescribed by the notice issued under section forty-four, or, on such claim having been so preferred by him and having been rejected, omits to institute a suit to recover possession of such timber within the further period limited by section forty-five, the ownership of such timber shall vest in the Government, or, when such timber has been delivered to another person under section forty-five, in such other person, free from all incumbrances.

Disposal of unclaimed timber.

Act VII of 1878, s. 49.

47. The Government shall not be responsible for any loss or damage which may occur in respect of any timber collected under section forty-three.

Government and its officers not liable for damage to such timber.

Act VII of 1878, s. 50.

48. No person shall be entitled to recover possession of any timber collected or delivered as aforesaid until he has paid to the Forest-officer or other person entitled to receive it such sum on account thereof as may be due under any rule made in pursuance of section forty-nine.

Payments to be made by claimant before timber is delivered to him.

Act VII of 1878, s. 51.

49. The Chief Commissioner may from time to time make rules to regulate the following matters (namely):—

Power to make rules and prescribe penalties.

(*a*) the salving, collection and disposal of all timber mentioned in section forty-three;

(*b*) the use and registration of boats used in salving and collecting timber;

(*c*) the amounts to be paid for salving, collecting, moving, storing and disposing of such timber;

(*d*) the use and registration of hammers and other instruments to be used for marking such timber.

The Chief Commissioner may from time to time prescribe, as penalties for the infringement of any rules made under this section, imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both.

CHAPTER VIII.

PENALTIES AND PROCEDURE.

50. When there is reason to believe that a forest-offence has been committed in respect of any forest-produce, such produce, together with all tools, boats, carts and cattle used in committing any such offence, may be seized by any Forest-officer or Police-officer.

Seizure of property liable to confiscation.

Every officer seizing any property under this section shall place on such property a mark indicating that the same has been so seized, and shall, as soon as may be, make a report

Application for confiscation.

of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made:

Change.

Provided that when no property is seized except the forest-produce with respect to which such offence is believed to have been committed and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior.

Cf. Act VII of 1878, s. 53. Slight changes.

51. Upon the receipt of any such report, the Magistrate shall take such measures as may be necessary for the appearance and trial of the accused and the disposal of the property according to law.

Procedure thereupon.

Cf. Act VII of 1878, s. 54. Words 'which is not the property of Government' omitted. See sec. 56.

52. When any person is convicted of a forest-offence all timber or forest-produce in respect of which such offence has been committed, and all tools, boats, carts and cattle used in committing such offence, shall be liable, by order of the convicting Magistrate, to confiscation.

Forest-produce, tools, &c., when liable to confiscation.

Such confiscation may be in addition to any other punishment prescribed for such offence.

Act VII of 1878, s. 55.

53. When the trial of any forest-offence is concluded, any forest-produce in respect of which such offence has been committed shall, if it is the property of Government, or has been confiscated, be taken charge of by a Forest-officer specially empowered; and in any other case may be disposed of in such manner as the Court may order.

Disposal, on conclusion of trial for forest-offence, of produce in respect of which it was committed.

Cf. Act VII of 1878, s. 56. Slight changes.

54. When the offender is not known or cannot be found, the Magistrate may, on application in that behalf, if he finds that an offence has been committed, order the property in respect of which the offence has been committed to be confiscated and taken charge of by a Forest-officer specially empowered, or to be made over to such Forest-officer or to any other person whom he deems to be entitled to the same:

Procedure when offender not known or cannot be found.

Provided that no such order shall be made until the expiration of one month from the date of seizing such property, or without hearing the person (if any) claiming any right thereto, and the evidence (if any) which he may produce in support of his claim.

The Magistrate may cause a notice of any application under this section to be served upon any person whom he has reason to believe is interested in the property seized, or he may publish such notice in any way which he thinks fit.

55. The Magistrate may, notwithstanding anything hereinbefore contained, direct the sale of any property seized under section fifty and subject to speedy and natural decay, and may deal with the proceeds as he would have dealt with such property if it had not been sold.

Procedure as to perishable property seized under section 50.

56. Any person claiming to be interested in property seized under section fifty may, within one month from the date of any order passed under section fifty-two, fifty-three or fifty-four, present an appeal therefrom to the Court to which orders made by such Magistrate are ordinarily appealable, and the order passed on such appeal shall be final.

Appeal from orders under sections 52, 53 and 54.

Act VII of 1878, s. 59.

57. When an order for the confiscation of any property has been passed under section fifty-two or fifty-four, as the case may be, and the period limited by section fifty-six for presenting an appeal from such order has elapsed, and no such appeal has been preferred, or when, on such an appeal being preferred, the Appellate Court confirms such order in respect of the whole or a portion of such property, such property or such portion thereof, as the case may be, shall vest in the Government free from all incumbrances.

Property when to vest in Government.

Cf. Act VII of 1878, s. 60. The words 'and the withdrawal of any proceedings instituted' added.

58. Nothing hereinbefore contained shall be deemed to prevent any officer empowered in this behalf by the Chief Commissioner from directing at any time the immediate release of any property seized under section fifty and the withdrawal of any proceedings instituted in respect of such property.

Saving of power to release property seized.

Cf. Act VII of 1878, s. 61.

59. Any Forest-officer or Police-officer who vexatiously and unnecessarily seizes any property on pretence of seizing property liable to confiscation under this Act, 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.

Punishment for wrongful seizure.

Last sentence new.

Any fine so imposed, or any portion thereof, may be given as compensation to the person aggrieved.

Cf. Act VII of 1878, s. 62. Slight change.

60. Whoever, with intent to cause damage or injury to the public or to any person, or to cause wrongful gain as defined in the Indian Penal Code—

Penalty for counterfeiting or defacing marks in trees and timber and for altering boundary-marks.

(*a*) knowingly counterfeits upon any timber or standing tree a mark used by Forest-officers to indicate that such timber or tree is the property of the Government or of some person, or that it may lawfully be cut or removed by some person; or

New.

(*b*) unlawfully affixes a mark used by Forest-officers; or

(*c*) alters, defaces or obliterates any such mark placed on a tree or on timber by or under the authority of a Forest-officer; or

(*d*) alters, moves, destroys or defaces any boundary-mark of any forest or waste-land to which the provisions of this Act are applied,

shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both.

Cf. Act VII of 1878, s. 63.

61. Any Forest-officer or Police-officer may, without orders from a Magistrate and without a warrant, arrest any person against whom a reasonable suspicion exists of his having been concerned in any forest-offence punishable with imprisonment for one month or upwards.

Power to arrest without warrant.

Third para. of s. 63 of Indian Forest Act omitted.

Every officer making an arrest under this section shall, without unnecessary delay, take or send the person arrested before the Magistrate having jurisdiction in the case.

Act VII of 1878, s. 64.

62. Every Forest-officer and Police-officer shall prevent, and may interfere for the purpose of preventing, the commission of any forest-offence.

Power to prevent commission of offence.

Sec. 65 of Indian Forest Act omitted. Act VII of 1878, s. 66.

63. 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, or from being liable under such other law to any higher punishment or penalty than that provided by the rules made under this Act:

Operation of other laws not barred.

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

Cf. Act VII of 1878, s. 67. Slight change.

64. Any Forest-officer specially empowered may accept from any person against whom a reasonable suspicion exists that he has committed any forest-offence other than an offence under section fifty-nine or section sixty a sum of money by way of compensation for any damage which may have been committed, and may release any property which has been seized as liable to confiscation on payment of the value thereof as estimated by such officer.

Power to compound offences.

On the payment of such sum of money, or such value, or both, as the case may be, to such officer, the accused person, if in custody, shall be discharged, the property seized shall be released, and no further proceedings shall be taken under this Act against such person or property; but nothing herein contained shall exempt such person from prosecution on the same facts under any other law for the time being in force.

Act VII of 1878, s. 65.

65. When in any proceedings taken under this Act, or in consequence of anything done under this Act, a question arises as to whether any forest-produce is the property of the Government, such produce shall be presumed to be the property of the Government until the contrary is proved.

Presumption that forest-produce belongs to Government.

CHAPTER IX.

CATTLE-TRESPASS.

Act VII of 1878, s. 69.

66. Cattle trespassing in a reserved forest or a village-forest shall be deemed to be cattle doing damage to a public plantation within the meaning of the eleventh section of the Cattle-trespass Act, 1871, and may be seized and impounded as such by any Forest-officer or Police-officer.

Cattle-trespass Act, 1871, to apply.

Act VII of 1878, s. 70.

67. The Chief Commissioner may from time to time, by notification in the local official Gazette, direct that, in lieu of the fines fixed by the twelfth section of the Act last aforesaid, there shall be levied for each head of cattle impounded under section sixty-six of this Act, such fines as he thinks fit, but not exceeding the following (that is to say):—

Power to alter fines fixed by that Act.

Came. omitted.

	Rs.	A.
For each elephant... ...	10	0
For each buffalo	2	0
For each horse, mare, gelding, pony, colt, filly, mule, bull, bullock, cow or heifer ...	1	0
For each calf, ass, pig, ram, ewe, sheep, lamb, goat or kid ...	0	8

CHAPTER X.

OF FOREST-OFFICERS.

Act VII of 1878, s. 71.

68. The Chief Commissioner may invest any Forest-officer by name, or as holding an office, with the following powers (that is to say):—

Chief Commissioner may invest Forest-officers with certain powers.

(*a*) the powers of a Demarcation-officer under the Burma Boundaries Act, 1880;

(*b*) the powers of a Civil Court to compel the attendance of witnesses and the production of documents;

(*c*) power to issue search-warrants under the Code of Criminal Procedure;

(*d*) power to hold enquiries into forest-offences, and in the course of such enquiries to receive and record evidence.

Any evidence recorded under clause (*d*) of this section shall be admissible in any subsequent trial before a Magistrate: provided that it has been taken in the presence of the accused person, and recorded in the manner provided by section 333 or section 334 of the Code of Criminal Procedure.

Last part of proviso new.

Act VII of 1878, s. 72.

69. All Forest-officers shall be deemed to be public servants within the meaning of the Indian Penal Code.

Forest-officers deemed public servants.

Cf. Act VII of 1878, s. 73. The words 'or criminal action' new.

70. No suit or criminal prosecution shall lie against any public servant for anything done by him in good faith under this Act.

Indemnity for acts done in good faith.

Act VII of 1878, s. 74.

71. Except with the permission in writing of the Chief Commissioner, no Forest-officer shall, as principal or agent, trade in timber or other forest-produce, or be or become interested in any lease of any forest or in any contract for working any forest, whether in British or foreign territory.

Forest-officers not to trade.

CHAPTER XI.

MISCELLANEOUS.

Cf. Act VII of 1878, s. 75.

72. The Chief Commissioner may from time to time make rules consistent with this Act—

Additional powers to make rules.

(*a*) to prescribe and limit the powers and duties of any Forest-officer;

(*b*) to regulate the powers and proceedings of Forest-Settlement-officers; New.

(*c*) to regulate the rewards to be paid to officers and informers out of the proceeds of fines and confiscations under this Act; and Cl. (c) of s. 75 of I. F. Act omitted.

(*d*) generally to carry out the provisions of this Act. Sec. 76 of I. F. Act omitted.

Cf. Act VII of 1878, s. 77.

73. All rules made by the Chief Commissioner under this Act shall be published in the local official Gazette, and shall thereupon have the force of law.

Rules when to have force of law.

Second para. omitted.

Act VII of 1878, s. 76.

74. Every person who exercises any right in a reserved forest or a village-forest, or who is permitted to take any forest-produce from, or to cut and remove timber or to pasture cattle in, such forest, and

Persons bound to assist Forest-officer and Police-officer.

every person who is employed by any such person in such forest, and

every person in any village contiguous to such forest who is employed by the Government, or who receives emoluments from the Government for services to be performed to the community,

shall be bound to furnish without unnecessary delay to the nearest Forest-officer or Police-officer any information he may possess respecting the commission of, or intention to commit, any forest-offence, and shall assist any Forest-officer or Police-officer demanding his aid

(*a*) in extinguishing any fire occurring in such forest;

(*b*) in preventing any fire which may occur in the vicinity of such forest from spreading to such forest;

(*c*) in preventing the commission in such forest of any forest-offence; and

(*d*) when there is reason to believe that any such offence has been committed in such forest, in discovering and arresting the offender.

Act VII of 1878, s. 81.

75. All money payable to the Government under this Act, or under any rule made hereunder, or on account of the price of any forest-produce, or of expenses incurred in the execution of this Act in respect of such produce, may, if not paid when due, be recovered under the law for the time being in force as if it were an arrear of land-revenue.

Recovery of money due to Government.

Act VII of 1878, s. 82.

76. When any such money is payable for, or in respect of, any forest-produce, the amount thereof shall be deemed to be a first charge on such produce, and such produce may be taken possession of by a Forest-officer specially empowered and retained by him until such amount has been paid.

Lien on forest-produce for such money.

If such amount is not paid when due, such Forest-officer may sell such produce by public auction, and the proceeds of the sale shall be applied first in discharging such amount.

Power to sell such produce.

The surplus (if any), if not claimed within two months from the date of the sale by the person entitled thereto, shall be forfeited to Her Majesty.

Act VII of 1878, s. 83.

77. Whenever it appears to the Chief Commissioner that any land is required for any of the purposes of this Act, such land shall be deemed to be needed for a public purpose within the meaning of the Land Acquisition Act, 1870, section four.

Land required under this Act to be deemed to be needed for a public purpose under Land Acquisition Act.

SCHEDULE.

(*See section 1.*)

ENACTMENTS REPEALED.

Number and year of Act or Regulation.	Title.	Extent of repeal.
Act VII of 1865...	An Act to give effect to rules for the management and preservation of Government forests.	So much as has not been repealed.
Act VII of 1869...	An Act to give validity to certain rules relating to forests in British Burma.	The whole.
Act XIII of 1873	An Act to amend the law relating to timber floated down the rivers of British Burma.	So much as has not been repealed.
Regulation IX of 1874.	The Arakan Hill District Laws Regulation, 1874.	So far as it relates to Acts VII of 1865 and VII of 1869.

STATEMENT OF OBJECTS AND REASONS.

1. The necessity for placing forest-legislation in British Burma upon a satisfactory footing has been felt for a considerable time. The present state of the law is as follows:—

The Government Forests Act (Act No. VII of 1865) is in force, but it does not provide for all requirements. That Act gave power to make rules, having the force of law, for the management and preservation of the Government forests and for the control of the timber floated down rivers. Accordingly in August, 1865, rules for the administration of forests in British Burma were promulgated. These rules, though purporting to have been made under the Government Forest Act, were not covered by its provisions, and accordingly they were legalized by Act No. VII of 1869.

In 1873 it was deemed advisable to amend and consolidate the law relating to timber floated down the rivers of Burma. Accordingly the Burma Timber Act (No. XIII of 1873) was passed. This Act repealed Act No. VII of 1869 and the rules legalized by that Act as far as they related to duty on timber floated down the rivers of British Burma.

The rules of August, 1865, related only to a portion of the Government forests, as defined in the rules, and it became necessary to provide by another set of rules for the administration of the forests thus excluded. This was done by rules made under Act No. VII of 1865, which were promulgated in Burma in March, 1876, together with a notification defining the areas to which they were applicable.

Thus the administration of the Government forests in Burma and the management of the timber floated down its rivers is governed by three different enactments and two sets of rules having the force of law. Yet these enactments and rules leave several of the most important matters unprovided for, and hence it is necessary both to consolidate and to complete them.

Experience has shown that the only practical method to ensure the objects aimed at by forest-administration is to set apart and demarcate selected areas of Government forests, to liberate these areas as far as possible from rights of private persons, and to guard against the growth by prescription of fresh rights in forests thus set apart and demarcated.

Forests thus set apart and demarcated are called reserved forests, and the formation of such reserved forests in British Burma has proceeded steadily during the last five years. The formation of such reserved forests is preceded by a thorough and complete enquiry by a settlement-officer into the rights and requirements of the people residing in and in the immediate vicinity of these areas. The guiding principle followed in this enquiry is that such arrangements are made as will enable the people to provide for their requirements in the matter of forest-produce, either outside the reserved forests, or, under suitable rules, within their boundaries. And in the case of the tribes whose custom it is to carry on the shifting kind of cultivation by cutting and burning the forest which is called *toungya* cultivation, defined areas are assigned to them where they may practise this kind of cultivation. Under these arrangements the formation of Government forest domains has been commenced, and their area aggregated, on 31st March last, 1,442 square miles.

The practical result of these proceedings is that the forests thus set apart and demarcated can be effectively protected and steadily improved, so that eventually a limited area will yield all the timber and other forest-produce required for home consumption and export, while the remainder can be thrown open for the use of the people and the extension of cultivation. The system here sketched enables Government to concentrate forest-conservancy upon limited areas, instead of attempting to enforce restrictions over the whole of the forests.

The procedure, however, hitherto followed in this respect in Burma, in some particulars, wants legal sanction, and hence the action of Government in setting apart reserved forests is not final, and may be called in question. The object of the present Bill is to legalize what has been done in this respect, and to lay down a procedure for the future.

3. The Indian Forest Act, which was passed in 1878, had the same object, and it must now be explained why it was not considered advisable to make the provisions of the Indian Forest Act applicable to Burma. One reason is that the procedure followed in the enquiry into, and the settlement of, forest-rights and in the demarcation of forests, as it has been developed by practical experience, is somewhat different from that prescribed by the Indian Forest Act. But this is a minor matter. The chief reason for special forest-legislation in Burma, consists in the provisions of the Burma Land and Revenue Act (Act No. II of 1876). Section 6 of that Act defines the rights in land subject to the second part of that Act, which are recognized by law, and clause (*b*) recognizes rights acquired under sections 27 and 28 of the Indian Limitation Act, 1871. The rights thus recognized are "easements" in the ordinary English acceptation of that term, including the use of light or air, way, watercourse, use of water, but not any prescriptive right by which one person is entitled to remove and appropriate, for his own profit, any part of the soil belonging to another, or anything growing in, or attached to, or subsisting upon, the land of another.

The Indian Limitation Act of 1877 extended the definition of the term "easement" including in it all rights of the latter class. But it has been held that this did not affect the construction of the Burma Land and Revenue Act, and consequently the practical effect of section 6 of that Act is to deny the existence of all prescriptive rights of user of forest-produce in the forests of Burma.

But as a matter of fact there is no doubt that such rights existed in the Burma forests before the Burma Land and Revenue Act was passed, and their existence has been recognized in the enquiries which have preceded the demarcation of the existing reserved forests.

No forest-legislation for Burma could ignore these rights, and in framing the present Bill it was necessary to save them.

4. Several other important subjects have also been treated differently from the Indian Forest Act.

Thus the penalties for offences committed in reserved forests are all uniform in the Indian Forest Act, while in the present Bill it has been thought better to classify offences into two classes, and to assign to each class separate limits of punishment.

5. Again, as regards reserved forests which have already been demarcated, it is proposed, having regard to the careful investigations made at the time they were reserved, that they should be placed by the direct operation of the Act in the position of reserved forests made under the Act, instead of leaving it to the local Government, as the Indian Forest Act does, to class them as such.

6. The provisions relating to village-forests differ from the corresponding provisions in the Indian Forest Act, in as far as they give power to constitute any forest which is at the disposal of Government, a village-forest, and not only such as have already been declared reserved forests.

7. A fundamental difference between the present Bill and the Indian Forest Act is in the chapter which deals with the protection of forests on Government lands not included in reserved or village-forests. The Indian Forest Act attempts to solve this question by authorizing the constitution of protected forests. These protected forests are intended to be defined areas in which the rights of Government and of private persons are enquired into and recorded.

In Burma, where a large portion (in many districts more than three-fourths of the area) is forest, this plan would be unnecessary. It would also be impracticable. Hence the present Bill only contemplates the formation of two classes of forests—reserved forests

and village-forests. The object of the former class is to furnish timber and other useful produce for the consumption of the Province and for export, while the object of the village-forests is to ensure a permanent supply of pasture and of wood and bamboos to the villages to which such forests are assigned. And while the first step is the formation of the State forest domains, which are styled reserved forests, it is intended that the formation of village-forests shall be taken in hand gradually as the growth of population and the clearing of the forests for cultivation may render necessary the setting apart of a certain area for the use of villages.

Outside these two classes of forests the great object in Burma must be to facilitate the extension of cultivation as much as possible. Hence it would not be expedient in any way to impede or limit the extension of cultivation by the establishment of a third class analogous to the protected forests of the Indian Forest Act. What is required is, outside the reserved forests and village-forests, to give a certain protection to the teak tree and to a few other reserved kinds, and to realize revenue from the timber, bamboos and other forest-produce used for purposes of trade.

These provisions must be maintained until the demarcation of the State (reserved) and village-forests has been completed, and until the forests of these two classes have been brought to such a condition by efficient protection and steadily-continued works of improvement, that they are capable of furnishing the timber and forest-produce required for the agricultural population, for the Province generally, and for export.

This aim cannot be expected to be accomplished for many years to come. But as it is accomplished in one district after another, the restrictions imposed upon the use of the forests outside the State and village-forests may be abolished in such districts.

8. That chapter of the Indian Forest Act which authorizes Government to exercise control in certain cases, for the public good, over forests which are not the property of Government is not required in Burma, and has therefore been omitted.

9. The power to impose a duty on foreign timber (section 36) is taken from the Indian Forest Act, and the duty imposed by section 37 on timber produced in certain forests in our own territory is one which has been levied for the last thirty years.

10. In the concluding chapters, which relate to the control of timber in transit, to the collection of drift or stranded timber, to penalties, cattle trespass, forest officers and to miscellaneous matters, the Bill follows generally the Indian Forest Act.

Briefly, it may be said that the Bill now published is the Indian Forest Act of 1878, with such changes as were necessary to adapt it to the peculiar circumstances of British Burma.

R. THOMPSON.

The 30th December, 1880.

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

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 14th January, 1881, and was referred to a Select Committee :—

No. 2 OF 1881.

A Bill to provide for the better government of Fort William.

Preamble.

WHEREAS it is expedient to empower the Local Government to make rules for the better government of Fort William in Bengal and to provide for the establishment of a Court within the said Fort for the trial of persons charged with breaches of such rules; It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Fort William Act, 1881;"

Commencement.

and it shall come into force on the first day of April, 1881.

But nothing herein contained shall be deemed to confer jurisdiction over any persons to whom the Army Discipline and Regulation Act, 1879, or the Indian Articles of War, 1869, is or are applicable.

"The Fort."

2. The Local Government may from time to time, with the previous sanction of the Governor General in Council, by notification in the local official Gazette, define, for the purposes of this Act, the limits of Fort William in Bengal, and in this Act the expression "the Fort" means the area so defined.

Local Government may make rules.

3. The Local Government may from time to time, with the like sanction and in like manner, make rules, to provide, within the Fort, for the matters specified in the schedule hereto annexed, and may by such rules prescribe as penalties for the infringement thereof, fine, which may extend to fifty rupees, or imprisonment for a term which may extend to four days or both.

When a sentence of fine is passed under any such rule, the term, for which the Court directs the offender to be imprisoned in default of payment of such fine, may extend to, and shall not exceed, four days.

When any rule is made under this section, a copy thereof in English and such other languages as the Local Government may from time to time direct, shall be exhibited in such conspicuous places within the Fort as the officer commanding the Fort may from time to time direct.

Local Government may invest officer with power to try breaches of rules.

4. The Local Government may invest any commissioned officer in Her Majesty's Army, with power to try persons charged with any infringement of the rules made under section three.

The officer so invested is hereinafter called the Fort Magistrate.

Procedure to be followed.

5. In the case of all offences punishable under this Act, the Fort Magistrate shall, except as herein otherwise provided, exercise within the Fort the powers, and as nearly as may be follow the procedure, conferred on, and prescribed for, a Presidency Magistrate by the Presidency Magistrates Act, 1877; and subject to the power conferred by the High Courts Criminal Procedure Act, 1875, section 147, every finding, sentence or order of such Magistrate under this Act shall be final.

Power to arrest without warrant.

6. Any Police-officer, or any other person empowered in this behalf by the Local Government, by name or as a member of a specified class, may arrest without warrant any person who in his sight commits an offence punishable under this Act.

Power to Police-officer to release on bail.

Every person so arrested shall be taken to the Police-station within the Fort, and shall be detained there until he can be brought before the Fort Magistrate, or until he gives to the Police-officer in charge of such station a bond, with or without sureties, as such officer may require, for a sum not exceeding one hundred rupees, to appear before such Magistrate at a time to be specified in such bond.

See Ben. Act IV of 1866, ss. 76—78.

Jurisdiction of Presidency Magistrates and prosecutions under other laws saved.

7. Nothing in this Act or in any rule made hereunder shall affect the jurisdiction of the Magistrates appointed under the Presidency Magistrates Act, 1877, or shall prevent any person from being prosecuted under any other law for any offence punishable under this Act, or from being liable to any other punishment than is provided for such offence by this Act: Provided that no person shall be punished twice for the same offence.

Limitation of time of prosecutions under Act.

8. No prosecution for any offence under this Act shall be commenced after the expiration of three months next after such offence has been committed.

9. All penalties heretofore imposed by the Garrison Quarter-master of the Fort for offences against garrison rules and regulations, shall be deemed to have been imposed in accordance with law.

Validation of penalties heretofore imposed by Garrison Quarter-master.

THE SCHEDULE.

(*See section 3*).

Cf. Act III of 1880, s. 27, cl. 6.

See sched. to Ben. draft, Nos. 1—8, 19, 24, 25, 39, 43.

1. The conservancy of the buildings, roads, drainage—channels and lands, the regulation and inspection of public and private necessaries, urinals, cess-pools, drains, and all places in which filth or rubbish is deposited, the prevention and cure of disease and the maintenance generally of the Fort in a proper sanitary condition.

2. The definition and prohibition of public nuisances and trespasses.

3. The regulation of public traffic and the picketing of animals. — See sched. to Ben. draft, Nos. 9—12, 34.

4. The regulation of the sale of goods and the removal of property. — *ib.*, Nos. 13, 31. *ib.*, No. 41.

5. The maintenance of public peace and quiet, and the prevention of disorderly conduct. — *ib.*, Nos. 14, 16, 28, 34—37.

6. The maintenance, in a neat and well-ordered state, of the buildings, roads, ramparts, parade-grounds and other parts of the Fort. — *ib.*, Nos. 15, 18—26, 29, 36.

7. The apprehension, custody and trial of persons who are drunk and incapable. — *ib.*, No. 27. *ib.*, No. 30.

8. The regulation of admission to, and residence in, the Fort. — *ib.*, Nos. 32, 33, 48.

9. The precautions to be taken against fire. — *ib.*, Nos. 39, 40.

10. The keeping of animals. — *ib.*, Nos. 42, 44, 45.

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to provide for the punishment of certain petty offences when committed within the limits of Fort William. At present the Garrison Quarter-master of the Fort is in the habit of punishing camp-followers and other Natives connected with the Fort who are guilty of certain offences against the garrison rules; but the jurisdiction of this officer, though it has been long exercised, has recently been called in question. As it is necessary, on sanitary grounds and for the maintenance of order, that there should be some officer within the Fort legally empowered to punish persons guilty of acts or omissions of the nature of those now punished by the Garrison Quarter-master, the present Bill has been prepared. It is based on a draft submitted by the Government of Bengal, and comprises two main provisions: *first*, it empowers the Local Government to lay down rules with light penalties attached in respect of certain matters which correspond generally with the matters to which the present garrison rules relate; *secondly*, it provides for the appointment of a commissioned officer (to be called the Fort Magistrate) with power to try persons guilty of breaches of these rules. The other provisions of the Bill are subsidiary to these. Those that appear to call for notice here are section 7, under which the present jurisdiction of the Presidency Magistrates is saved, and section 9, which validates all punishments which may have been heretofore inflicted by the Garrison Quarter-master. Lastly, the Bill exempts from its operation all persons subject to military law as it is thought that such persons can be more fittingly punished under such law.

H. J. REYNOLDS.

The 8th January, 1881.

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

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second Publication.]

The following 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 14th January, 1881:—

WE, the undersigned Members of the Select Committee to which the Bill to regulate the importation, possession and transport of petroleum and other substances of a like nature was referred, have the honour to report that we have considered the Bill and the papers noted in the margin.

From Officiating Secretary to Government, Bengal, to Secretary to Government of India, Home, Revenue and Agricultural Department, No. 901, dated 15th November, 1879, and enclosures [Papers No. 1].
„ Acting Secretary to Government, Bombay, to ditto, No. 820, dated 19th March, 1880, and enclosure [Papers No. 2].
„ Officiating Secretary to Chief Commissioner, Assam, No. 1701, dated 2nd September, 1880 [Paper No. 3].
„ Secretary to Chief Commissioner, Mysore and Coorg, No. 696-3, dated 31st August, 1880 [Paper No. 4].
„ Chief Commissioner, Ajmer-Merwára, No. 647, dated 17th September, 1880 [Paper No. 5].
„ Secretary for Birár to Resident, Haidarábád, No. 278, dated 22nd September, 1880 [Paper No. 6].
„ Secretary to Government, North-Western Provinces and Oudh, No. 1148, dated 29th September, 1880, and enclosure [Papers No. 7].
„ Chief Secretary to Government, Madras, No. 2341, dated 28th September, 1880, and enclosure [Papers No. 8].
„ Secretary to Government, Panjáb, No. 3239, dated 9th October, 1880, and enclosures [Papers No. 9].
„ Acting Secretary to Government, Bombay, No. 3041, dated 8th October, 1880, and enclosures [Papers No. 10].
„ Secretary for Birár to Resident, Haidarábád, No. 300, dated 6th October, 1880, and enclosures [Papers No. 11].
„ Officiating Secretary to Government, Bengal, No. 463T, dated 23rd October, 1880, and enclosures [Papers No. 12].
„ Officiating Secretary to Chief Commissioner, British Burma, No. 7571-15-5, dated 29th October, 1880, and enclosures [Papers No. 13].
„ Secretary, Chamber of Commerce, Bombay, dated 14th August, 1880, and enclosure [Papers No. 14].
Telegram from Government of Bombay, dated 7th December, 1880 [Papers No. 14].

2. We propose, in accordance with the opinion now expressed by the Government of Bengal, to do away with the distinction between first and second class petroleum introduced by the Bengal Committee. This distinction appears to us unnecessary, and its abolition will much simplify the measure by reducing the classes of petroleum to be dealt with to two, as in England, namely, dangerous petroleum and ordinary petroleum.

3. The flashing point of dangerous petroleum, as originally fixed in accordance with the recommendation of the Bengal Committee at 83° F. by Abel's test, has been objected to in many quarters as unnecessarily and inconveniently high. The Lieutenant-Governor of Bengal now proposes to reduce it to 78°; and on fully considering the papers submitted to us, we are prepared to reduce it even lower. There can be no doubt that the circumstance that the temperature of the air in most parts of India is throughout a great portion of the year higher than that which prevails in England, would, all other things being equal, make a petroleum flashing at a temperature between 70° and 80° F. more dangerous here than in England; but against this must be set off the greater openness and airiness of Indian buildings and the comparative absence of carpets, curtains and other such articles likely to catch fire; and, though at times serious accidents have occurred in this country, it can hardly be said that there is evidence to show that the danger is so serious as to warrant our extending the severe restrictions which the Bill imposes on dangerous petroleum to any petroleum flashing above the point, which has, after full consideration, been fixed upon in England and which has hitherto been adopted in Bengal. We have accordingly fixed the flashing point of dangerous petroleum at 73° F. by Abel's test equal to 100° F. by the old test.

4. We have made some other amendments in the Bill, with a view to relaxing in certain particulars the restrictions it imposes; thus, in order to avoid the delay, to which ships bringing petroleum to our ports might have been subjected if the samples furnished had to be tested before the petroleum was landed, we have altered the wording of the Bill so as to allow of the petroleum being landed directly the samples are delivered. We think that the control which the Bill gives over the petroleum when landed will be amply sufficient to secure the object in view.

5. Again, we have confined the provision of the Bill which requires petroleum to be kept in indelibly marked vessels, to *dangerous* petroleum, and we have reduced the maximum penalty

for illegally importing, possessing or transporting petroleum from three months' imprisonment and one thousand rupees fine, to one month's imprisonment and five hundred rupees fine.

6. The power given by the Bill to extend the Act to other inflammable substances appears to be unnecessarily large, and we have therefore confined it to cases in which those substances are fluid.

7. The only other alterations we have made which are of sufficient importance to call for notice here are the insertion of a provision in section 7 of the Bill as now amended, empowering the Government to fix ports at which only petroleum may be imported, the addition of a clause to section 12 entitling a dealer, whose petroleum is tested under the Act, to a copy of the certificate of the result of the testing, free of charge, the insertion in section 16 of words providing that the tins or other vessels in which confiscated petroleum is contained may be confiscated with it, and the addition of a provision in section 18 requiring all rules made under the Act to be published for a month before they take effect.

8. The Bill, with its Statement of Objects and Reasons, has been published in English, in the local official Gazettes, except those of the Central Provinces and Assam. Its publication in the vernacular Gazettes has been reported by the Governments of Bengal and the North-Western Provinces and Oudh, and the Chief Commissioner of Mysore. It has met with considerable opposition on account of its stringency, but, if the important mitigations of its provisions which we now recommend are approved by the Council, we think it may safely be passed without being again re-published. The measure having been now before the public for six months, it can hardly be said that timely notice of it has not been given to all concerned; but in order to guard against the possibility of hardship to holders or consignees of dangerous petroleum, we propose that it should not come into force till the 1st of July.

WHITLEY STOKES.
J. GIBBS.
B. W. COLVIN.
G. F. MEWBURN.

The 14th January, 1881.

No. II.

THE PETROLEUM BILL, 1881.

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THE SCHEDULE.

No. II.

A Bill to regulate the importation, possession and transport of Petroleum and other fluids of a like nature.

Preamble. WHEREAS it is expedient to regulate the importation, possession and transport of petroleum and other fluids of a like nature; It is hereby enacted as follows:—

Preliminary.

Short title. 1. This Act may be called "The Petroleum Act, 1881"; Committee's recommendations, para. 1.

Commencement. and it shall come into force on the first day of July, 1881.

Local extent. The provisions of this Act relating to dangerous petroleum, and the importation of petroleum, extend to the whole of British India. The rest of this Act extends only to such local areas as the Local Government may, from time to time, by notification in the official Gazette, direct.

Repeal of enactments. 2. The Indian Ports Act, 1875, section thirty-seven, and Bengal Act No. III of 1865 (*to make better provision for the prevention of injury from fire in Ports, and to provide for the safe keeping of Inflammable Oils in Ports and places within the Provinces under the control of the Lieutenant-Governor of Bengal*) are hereby repealed.

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

34 & 35 Vic., c. 105, s. 3, with additions from Committee's report. "Petroleum." "Petroleum" includes also the liquids commonly known by the names of rock oil, Rangoon oil, Burma oil, kerosine, paraffine oil, mineral oil, petroline, gasoline, benzol, benzoline, benzine and any inflammable liquid that is made from petroleum, coal, schist, shale, peat or any other bituminous substance, or from any products of petroleum,

Committee's recommendations, para. 3. but it does not include any oil ordinarily used for lubricating purposes, and having its flashing point at or above two hundred and fifty degrees of Fahrenheit's thermometer.

Committee's recommendations, para. 4. *Explanation.*—The flashing point of petroleum means the lowest temperature at which the petroleum yields a vapour which will furnish a momentary flash or flame when tested with the apparatus and in the manner described in the Schedule hereto annexed.

"Dangerous petroleum." "Dangerous petroleum" means petroleum having its flashing point below seventy-three degrees of Fahrenheit's thermometer:

"Import." "Import" means to bring into British India by sea or land:

and "importation" means the bringing into British India as aforesaid.

"Transport." "Transport" means to remove from one place to another within British India:

Dangerous Petroleum.

Dangerous petroleum in quantities exceeding 40 gallons. 4. No quantity of dangerous petroleum exceeding forty gallons shall be imported or transported, or kept by any one person or on the same premises, except under, and in accordance with the conditions of, a license from the Local Government granted as next hereinafter provided.

Application for license to import, transport or possess such petroleum. Every application for such a license shall be in writing, and shall declare—

(*a*) the quantity of such petroleum which it is desired to import, transport or possess, as the case may be;

(*b*) the purpose for which the applicant believes that such petroleum will be used; and

(*c*) that petroleum other than dangerous petroleum cannot be used for such purpose.

If the Local Government sees reason to believe that such petroleum will be used for such purpose, and that no petroleum other than dangerous petroleum can be used for such purpose, it may grant such license for the importation, transport or possession (as the case may be) of such petroleum, absolutely or subject to such conditions as it thinks fit.

Power to grant license.

Dangerous petroleum in quantities not exceeding 40 gallons. 5. No quantity of dangerous petroleum equal to or less than forty gallons shall be kept or transported without a license:

Provided that nothing in this section shall apply in any case when the quantity of such petroleum kept by any one person or on the same premises, or transported, does not exceed three gallons, and such petroleum is placed in separate glass, earthenware or metal vessels, each of which contains not more than a pint and is securely stopped. 34 & 35 Vic., c. 105, s. 7.

Vessels containing dangerous petroleum to be marked. 6. All dangerous petroleum— 34 & 35 Vic., c. 105, s. 6.

(*a*) which is kept at any place after seven days from the date on which it is imported, or

(*b*) which is transported, or

(*c*) which is sold or exposed for sale,

shall be contained in vessels which shall bear an indelible mark or a label in conspicuous characters, stating the nature of the contents thereof. Cf. Act I of 1878, s. 9.

Petroleum generally.

Committee's recommendations, paras. 12 to 20. 7. The Local Government may, from time to time, make rules consistent with this Act to regulate the importation of petroleum and in particular—

Power to make rules as to the importation of petroleum.

(*a*) for ascertaining the quantity and description of any petroleum on board a ship;

(*b*) to provide for the delivery, by the master of a ship or the consignees of the cargo, of samples of petroleum before such petroleum is landed from such ship, and for the testing thereof;

(*c*) to determine the ports at which only petroleum may be imported; and

(*d*) to regulate the time and mode of, and the precautions to be taken on, landing or transhipping any petroleum.

In this section—

"Ship." "Ship" includes anything made for the conveyance by water of human beings or property:

"Master." "Master" includes every person (except a Pilot or Harbour Master) having for the time being the charge or control of a ship.

Possession and transport of petroleum. 8. No quantity of petroleum exceeding five hundred gallons, shall be kept by any one person or on the same premises or shall be transported except under and in accordance with the conditions of a license granted under this Act.

Power to make rules as to such possession and transport. 9. The Local Government may from time to time make rules consistent with this Act as to the granting of licenses to possess or transport petroleum in cases where such licenses are by law required.

Such rules may provide for the following among other matters, that is to say—

in the case of licenses to possess petroleum—

(*a*) the nature and situation of the premises for which they may be granted, and

(*b*) the inspection of such premises and the testing of petroleum found thereon;

in the case of licenses to transport petroleum—

(*c*) the manner in which the petroleum shall be packed, the mode of transit, and the route by which it is to be taken, and

(*d*) the stoppage and inspection of it during transit;

in the case of both such licenses—

(*e*) the authority by which the license may be granted;

(*f*) the fee to be charged for it;

(*g*) the quantity of petroleum it is to cover;

(*h*) the conditions which may be inserted in it;

(*i*) the time during which it is to continue in force; and

(*k*) the renewal of the license.

Power to inspect and require dealer to sell samples.

10. Any officer specially authorized by name or by virtue of his office in this behalf by the Local Government may require any dealer in petroleum to show him any place, and any of the vessels, in which any petroleum in his possession is stored or contained, to give him such assistance as he may require for examining the same, and to deliver to him samples of such petroleum on payment of the value of such samples.

Notice to be given when officer proposes to test samples

11. When any such officer has, in exercise of the powers conferred by section ten, or by purchase, obtained a sample of petroleum in the possession of a dealer, he may give a notice in writing to such dealer informing him that he is about to test such sample or cause the same to be tested with the apparatus and in the manner described in the schedule hereto annexed, at a time and place to be fixed in such notice, and that such person or his Agent may be present at such testing.

Certificate as to result of such testing.

12. On any such testing if it appears to the officer or other person so testing that the petroleum from which such sample has been taken is or is not dangerous petroleum, such officer or other person may certify such fact, and the certificate so given shall be receivable as evidence in any proceedings which may be taken under this Act against the dealer in whose possession such petroleum was found, and shall, until the contrary is proved, be evidence of the fact stated therein; and a certified copy of such certificate shall be given gratis to the dealer at his request.

Penalties.

Penalty for illegal importation, &c., of petroleum.

13. Any person who, in contravention of this Act or of any rules made hereunder, imports, possesses or transports any petroleum; and any person who otherwise contravenes any such rules or any condition contained in a license granted hereunder, shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Penalty for keeping, transporting or exposing for sale petroleum in contravention of section 6.

34 & 35 Vic., s. 63.

14. Any person keeping, transporting, selling or exposing for sale petroleum in vessels not marked or labelled as prescribed by section six, shall be punished with fine which may extend to fifty rupees.

Penalty for refusing to comply with section 10.

34 & 35 Vic., c. 105, s. 12.

15. Any dealer in petroleum who refuses or neglects to show to any officer authorized under section ten any place, or any of the vessels, in which petroleum in his possession is stored or contained, or to give him such assistance as he may require for examining the same, or to give him samples of such petroleum on payment of the value of such samples, shall be punished with fine which may extend to two hundred rupees.

Confiscation of petroleum.

Cf. Act I of 1878, s. 11.

16. In any case in which an offence under section thirteen or section fourteen has been committed, the convicting Magistrate may direct that,—

(*a*) the petroleum in respect of which the offence has been committed, or

(*b*) where the offender is importing or transporting or is in possession of any petroleum exceeding the quantity (if any) which he is permitted to import, transport or possess, as the case may be, the whole of the petroleum which he is importing, or transporting, or is in possession of,

shall, together with the tins or other vessels in which it is contained, be confiscated.

Jurisdiction.

17. The criminal jurisdiction under this Act shall, in the towns of Calcutta, Madras and Bombay, be exercised by a Presidency Magistrate and elsewhere by a Magistrate of the first class or (where specially empowered by the Local Government to try cases under this Act) a Magistrate of the second class.

Miscellaneous.

Rules when to have force of law.

18. All rules made by the Local Government under this Act shall be published in the official Gazette, and shall, on the expiry of one month from the date of such publication, have the force of law:

Provided that no such rule shall be so published without the previous sanction of the Governor General in Council.

Power to apply this Act to other fluids.

34 & 35 Vic., c. 105, s. 14.

19. The Governor General in Council may, from time to time, by notification in the *Gazette of India*, apply the whole or any portion of this Act to any inflammable fluid other than petroleum, and may by such notification fix, in substitution for the quantities of petroleum fixed by sections four, five and eight, the quantities of such fluid to which these sections shall apply.

The Governor General in Council may by a like notification cancel any notification issued under this section.

THE SCHEDULE.

Specification explanatory of the Test Apparatus.

Committee's recommendations, para. 5, and 42 & 43 Vic., c. 47.

The following is a description of the details of the apparatus:—

The oil-cup consists of a cylindrical vessel 2″ diameter, $2\frac{2}{10}$″ height (internal), with outward projecting rim $\frac{5}{10}$″ wide, $\frac{3}{8}$″ from the top and $1\frac{7}{8}$″ from the bottom of the cup. It is made of gun metal or brass (17 B. W. G.), tinned inside. A bracket, consisting of a short stout piece of wire, bent upwards and terminating in a point, is fixed to the inside of the cup to serve as a gauge. The distance of the point from the bottom of the cup is $1\frac{1}{2}$″. The cup is provided with a close-fitting overlapping cover made of brass (22 B. W. G.) which carries the thermometer and test lamp. The latter is suspended from two supports from the side by means of trunnions, upon which it may be made to oscillate: it is provided with a spout the mouth of which is $\frac{1}{16}$″ in diameter. The socket which is to hold the thermometer is fixed at such an angle, and its length is so adjusted that the bulb of the thermometer, when inserted to its full depth, shall be $1\frac{1}{2}$″ below the centre of the lid.

The cover is provided with three square holes, one in the centre $\frac{5}{10}$″ by $\frac{4}{10}$″, and two smaller ones, $\frac{3}{10}$″ by $\frac{2}{10}$″, close to the sides and opposite each other. These three holes may be closed and uncovered by means of a slide moving in grooves, and having perforations corresponding to those on the lid.

In moving the slide so as to uncover the holes, the oscillating lamp is caught by a pin fixed in the slide, and tilted in such a way as to bring the end of the spout just below the surface of the lid. Upon the slide being pushed back so as to cover the holes, the lamp returns to its original position.

Upon the cover, in front of, and in line with, the mouth of the lamp, is fixed a white bead the dimensions of which represent the size of the test flame to be used.

The bath or heated vessel consists of two flat-bottomed copper cylinders (24 B. W. G.), an inner one of 3″ diameter and $2\frac{1}{2}$″ height, and an outer one of $5\frac{1}{4}$″ diameter and $5\frac{3}{4}$″ height; they are soldered to a circular copper plate (20 B. W. G.) perforated in the centre, which forms the top of the bath, in such a manner as to enclose the space between the two cylinders, but leaving access to the inner cylinder. The top of the bath projects both outwards and inwards about $\frac{3}{8}$″, that is, its diameter is about $\frac{6}{8}$″ greater than that of the body of the bath, while the diameter of the circular opening in the centre is about the same amount less than that of the inner copper cylinder. To the inner projection of the top is fastened by six small screws, a flat ring of ebonite, the screws being sunk below the surface of the ebonite to avoid metallic contact between the bath and the oil cup. The exact distance between the sides and bottom of the bath of the oil lamp is $1\frac{1}{2}$″. A split socket similar to that on the cover of the oil cup, but set at a right angle, allows a thermometer to be inserted into the space between the two cylinders. The bath is further provided with a funnel, an overflow pipe, and two loop handles.

The bath rests upon a cast-iron tripod stand, to the ring of which is attached a copper cylinder or jacket (24 B. W. G.), flanged at the top, and of such dimensions that the bath, while firmly resting on the iron ring, just touches with its projecting top the inward-turned flange. The diameter of this outer jacket is $6\frac{1}{2}$″. One of the three legs of the stand serves as support for the spirit lamp, attached to it by means of a small swing bracket. The distance of the wick holder from the bottom of the bath is 1″.

Two thermometers are provided with the apparatus, the one for ascertaining the temperature of the bath, the other for determining the flashing point. The thermometer for ascertaining the temperature of the water has a long bulb and a space at the top. Its range is from about 90° to 190° Fahrenheit. The scale (in degrees of Fahrenheit) is marked on an ivory back fastened to the tube in the usual way; it is fitted with a metal collar fitting the socket, and the part of the tube below the scale should have a length of about $3\frac{1}{2}$″ measured from the lower end of the scale to the end of the bulb. The thermometer for ascertaining the temperature of the oil is fitted with collar and ivory scale in a similar manner to the one described. It has a round bulb, a space at the top, and ranges from about 55° F. to 150° F.; it measures from end of ivory back to bulb $2\frac{1}{4}$″.

NOTE.—A model apparatus is deposited at the office of the Chemical Examiner to Government at Calcutta.

Directions for applying the Test.

1. The test apparatus is to be placed for use in a position where it is not exposed to currents of air or draughts.

2. The heating vessel or water-bath is filled by pouring water into the funnel until it begins to flow out at the spout of the vessel. The temperature of the water at the commencement of the test is to be 130° Fahrenheit, and this is attained in the first instance either by mixing hot and cold water in the bath, or in a vessel from which the bath is filled, until the thermometer which is provided for testing the temperature of the water gives the proper indication; or by heating the water with the spirit lamp (which is attached to the stand of the apparatus) until the required temperature is indicated.

If the water has been heated too highly, it is easily reduced to 130° by pouring in cold water little by little (to replace a portion of the warm water) until the thermometer gives the proper reading.

When a test has been completed, this water-bath is again raised to 130° by placing the lamp underneath, and the result is readily obtained while the petroleum cup is being emptied, cooled, and refilled with a fresh sample to be tested. The lamp is then turned on its swivel from under the apparatus, and the next test is proceeded with.

3. The test lamp is prepared for use by fitting it with a piece of flat plaited candlewick, and filling it with colza or rape oil up to the lower edge of the opening of the spout or wick tube. The lamp is trimmed so that when lighted it gives a flame of about 0·15 of an inch diameter, and this size of flame which is represented by the projecting white bead on the cover of the oil cup is readily maintained by simple manipulation from time to time with a small wire trimmer.

When gas is available it may be conveniently used in place of the little oil lamp, and for this purpose a test flame arrangement for use with gas may be substituted for the lamp.

4. The bath having been raised to the proper temperature, the oil to be tested is introduced into the petroleum cup, being poured in slowly until the level of the liquid just reaches the point of the gauge which is fixed in the cup. In warm weather the temperature of the room in which the samples to be tested have been kept should be observed in the first instance, and if it exceeds 65°, the samples to be tested should be cooled down (to about 60°) by immersing the bottle containing them in cold water, or by any other convenient method. The lid of the cup, with the slide closed, is then put on, and the cup is put into the bath or heating vessel. The thermometer in the lid of the cup has been adjusted so as to have its bulb just immersed in the liquid, and its position is not under any circumstances to be altered. When the cup has been placed in the proper position, the scale of the thermometer faces the operator.

5. The test lamp is then placed in position upon the lid of the cup, the lead line or pendulum,* which has been fixed in a convenient position in front of the operator, is set in motion, and the rise of the thermometer in the petroleum cup is watched. When the temperature has reached about 66°, the operation of testing is to be commenced, the test flame being applied once for every rise of one degree in the following manner:—

The slide is slowly drawn open while the pendulum performs three oscillations, and is closed during the fourth oscillation.

NOTE.—If it is desired to employ the test apparatus to determine the flashing points of oils of very low volatility, the mode of proceeding is to be modified as follows:—

The air chamber which surrounds the cup is filled with cold water, to a depth of 1½ inches, and the heating vessel or water-bath is filled as usual, but also with cold water. The lamp is then placed under the apparatus and kept there during the entire operation. If a very heavy oil is being dealt with, the operation may be commenced with water previously heated to 120°, instead of with cold water.

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

* This pendulum is two (2) feet in length from the point of suspension to the centre of gravity of the weight.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, JANUARY 29, 1881.

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 14th January, 1881, and was referred to a Select Committee:—

No. 2 OF 1881.

A Bill to provide for the better government of Fort William.

WHEREAS it is expedient to empower the Local Government to make rules for the better government of Fort William in Bengal and to provide for the establishment of a Court within the said Fort for the trial of persons charged with breaches of such rules; It is hereby enacted as follows:—

Preamble.

Short title. Commencement. 1. This Act may be called "The Fort William Act, 1881;" and it shall come into force on the first day of April, 1881.

But nothing herein contained shall be deemed to confer jurisdiction over any persons to whom the Army Discipline and Regulation Act, 1879, or the Indian Articles of War, 1869, is or are applicable.

"The Fort." 2. The Local Government may from time to time, with the previous sanction of the Governor General in Council, by notification in the local official Gazette, define, for the purposes of this Act, the limits of Fort William in Bengal, and in this Act the expression "the Fort" means the area so defined.

Local Government may make rules. 3. The Local Government may from time to time, with the like sanction and in like manner, make rules, to provide, within the Fort, for the matters specified in the schedule hereto annexed, and may by such rules prescribe as penalties for the infringement thereof, fine, which may extend to fifty rupees, or imprisonment for a term which may extend to four days or both.

When a sentence of fine is passed under any such rule, the term, for which the Court directs the offender to be imprisoned in default of payment of such fine, may extend to, and shall not exceed, four days.

When any rule is made under this section, a copy thereof in English and such other languages as the Local Government may from time to time direct, shall be exhibited in such conspicuous places within the Fort as the officer commanding the Fort may from time to time direct.

Local Government may invest officer with power to try breaches of rules. 4. The Local Government may invest any commissioned officer in Her Majesty's Army, with power to try persons charged with any infringement of the rules made under section three.

The officer so invested is hereinafter called the Fort Magistrate.

Procedure to be followed. 5. In the case of all offences punishable under this Act, the Fort Magistrate shall, except as herein otherwise provided, exercise within the Fort the powers, and as nearly as may be follow the procedure, conferred on, and prescribed for, a Presidency Magistrate by the Presidency Magistrates Act, 1877; and subject to the power conferred by the High Courts Criminal Procedure Act, 1875, section 147, every finding, sentence or order of such Magistrate under this Act shall be final.

Power to arrest without warrant. 6. Any Police-officer, or any other person empowered in this behalf by the Local Government, by name or as a member of a specified class, may arrest without warrant any person who in his sight commits an offence punishable under this Act.

Every person so arrested shall be taken to the Police-station within the Fort, and shall be detained there until he can be brought before the Fort Magistrate, or until he gives to the Police-officer in charge of such station a bond, with or without sureties, as such officer may require, for a sum not exceeding one hundred rupees, to appear before such Magistrate at a time to be specified in such bond.

Power to Police-officer to release on bail.

7. Nothing in this Act or in any rule made hereunder shall affect the jurisdiction of the Magistrates appointed under the Presidency Magistrates Act, 1877, or shall prevent any person from being prosecuted under any other law for any offence punishable under this Act, or from being liable to any other punishment than is provided for such offence by this Act: Provided that no person shall be punished twice for the same offence.

Jurisdiction of Presidency Magistrates and prosecutions under other laws saved.

8. No prosecution for any offence under this Act shall be commenced after the expiration of three months next after such offence has been committed.

Limitation of time of prosecutions under Act.

9. All penalties heretofore imposed by the Garrison Quarter-master of the Fort for offences against garrison rules and regulations, shall be deemed to have been imposed in accordance with law.

Validation of penalties heretofore imposed by Garrison Quarter-master.

THE SCHEDULE.

(*See section 3*).

1. The conservancy of the buildings, roads, drainage—channels and lands, the regulation and inspection of public and private necessaries, urinals, cess-pools, drains, and all places in which filth or rubbish is deposited, the prevention and cure of disease and the maintenance generally of the Fort in a proper sanitary condition.	Cf. Act III of 1880, s. 27, cl. 6. See sched. to Ben. draft, Nos. 1—8, 19, 24, 25, 39, 43.
2 The definition and prohibition of public nuisances and trespasses.	
3. The regulation of public traffic and the picketing of animals.	See sched. to Ben. draft, Nos. 9—12, 34.
4. The regulation of the sale of goods and the removal of property.	*ib.*, Nos. 13, 31. *ib.*, No. 41.
5. The maintenance of public peace and quiet, and the prevention of disorderly conduct.	*ib.*, Nos. 14, 16, 28, 34—37.
6. The maintenance, in a neat and well-ordered state, of the buildings, roads, ramparts, parade-grounds and other parts of the Fort.	*ib.*, Nos. 15, 18—26, 29, 35.
7. The apprehension, custody and trial of persons who are drunk and incapable.	*ib.*, No. 27. *ib.*, No. 30.
8. The regulation of admission to, and residence in, the Fort.	*ib.*, Nos. 32, 33, 48.
9. The precautions to be taken against fire.	*ib.*, Nos. 39, 40.
10. The keeping of animals.	*ib.*, Nos. 42, 44, 45.

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to provide for the punishment of certain petty offences when committed within the limits of Fort William. At present the Garrison Quarter-master of the Fort is in the habit of punishing camp-followers and other Natives connected with the Fort who are guilty of certain offences against the garrison rules; but the jurisdiction of this officer, though it has been long exercised, has recently been called in question. As it is necessary, on sanitary grounds and for the maintenance of order, that there should be some officer within the Fort legally empowered to punish persons guilty of acts or omissions of the nature of those now punished by the Garrison Quarter-master, the present Bill has been prepared. It is based on a draft submitted by the Government of Bengal, and comprises two main provisions: *first*, it empowers the Local Government to lay down rules with light penalties attached in respect of certain matters which correspond generally with the matters to which the present garrison rules relate; *secondly*, it provides for the appointment of a commissioned officer (to be called the Fort Magistrate) with power to try persons guilty of breaches of these rules. The other provisions of the Bill are subsidiary to these. Those that appear to call for notice here are section 7, under which the present jurisdiction of the Presidency Magistrates is saved, and section 9, which validates all punishments which may have been heretofore inflicted by the Garrison Quarter-master. Lastly, the Bill exempts from its operation all persons subject to military law as it is thought that such persons can be more fittingly punished under such law.

H. J. REYNOLDS.

The 8th January, 1881.

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

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third Publication.]

The following 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 14th January, 1881:—

WE, the undersigned Members of the Select Committee to which the Bill to regulate the importation, possession and transport of petroleum and other substances of a like nature was referred, have the honour to report that we have considered the Bill and the papers noted in the margin.

From Officiating Secretary to Government, Bengal, to Secretary to Government of India, Home, Revenue and Agricultural Department, No. 901, dated 15th November, 1879, and enclosures [Papers No. 1].
„ Acting Secretary to Government, Bombay, to ditto, No. 820, dated 19th March, 1880, and enclosure [Papers No. 2].
„ Officiating Secretary to Chief Commissioner, Assam, No. 1701, dated 2nd September, 1880 [Paper No. 3].
„ Secretary to Chief Commissioner, Mysore and Coorg, No. 696-3, dated 31st August, 1880 [Paper No. 4].
„ Chief Commissioner, Ajmer-Merwára, No. 647, dated 17th September, 1880 [Paper No. 5].
„ Secretary for Birár to Resident, Haidarábád, No. 278, dated 22nd September, 1880 [Paper No. 6].
„ Secretary to Government, North-Western Provinces and Oudh, No. 1148, dated 29th September, 1880, and enclosure [Papers No. 7].
„ Chief Secretary to Government, Madras, No. 2341, dated 28th September, 1880, and enclosure [Papers No. 8].
„ Secretary to Government, Panjáb, No. 3239, dated 9th October, 1880, and enclosures [Papers No. 9].
„ Acting Secretary to Government, Bombay, No. 3041, dated 8th October, 1880, and enclosures [Papers No. 10].
„ Secretary for Birár to Resident, Haidarábád, No. 300, dated 6th October, 1880, and enclosures [Papers No. 11].
„ Officiating Secretary to Government, Bengal, No. 463T, dated 23rd October, 1880, and enclosures [Papers No. 12].
„ Officiating Secretary to Chief Commissioner, British Burma, No. 7571-15-5, dated 29th October, 1880, and enclosures [Papers No. 13].
„ Secretary, Chamber of Commerce, Bombay, dated 14th August, 1880, and enclosure [Papers No. 14].
Telegram from Government of Bombay, dated 7th December, 1880 [Papers No. 14].

2. We propose, in accordance with the opinion now expressed by the Government of Bengal, to do away with the distinction between first and second class petroleum introduced by the Bengal Committee. This distinction appears to us unnecessary, and its abolition will much simplify the measure by reducing the classes of petroleum to be dealt with to two, as in England, namely, dangerous petroleum and ordinary petroleum.

3. The flashing point of dangerous petroleum, as originally fixed in accordance with the recommendation of the Bengal Committee at 83° F. by Abel's test, has been objected to in many quarters as unnecessarily and inconveniently high. The Lieutenant-Governor of Bengal now proposes to reduce it to 78°; and on fully considering the papers submitted to us, we are prepared to reduce it even lower. There can be no doubt that the circumstance that the temperature of the air in most parts of India is throughout a great portion of the year higher than that which prevails in England, would, all other things being equal, make a petroleum flashing at a temperature between 70° and 80° F. more dangerous here than in England; but against this must be set off the greater openness and airiness of Indian buildings and the comparative absence of carpets, curtains and other such articles likely to catch fire; and, though at times serious accidents have occurred in this country, it can hardly be said that there is evidence to show that the danger is so serious as to warrant our extending the severe restrictions which the Bill imposes on dangerous petroleum to any petroleum flashing above the point which has, after full consideration, been fixed upon in England, and which has hitherto been adopted in Bengal. We have accordingly fixed the flashing point of dangerous petroleum at 73° F. by Abel's test equal to 100° F. by the old test.

4. We have made some other amendments in the Bill, with a view to relaxing in certain particulars the restrictions it imposes; thus, in order to avoid the delay to which ships bringing petroleum to our ports might have been subjected if the samples furnished had to be tested before the petroleum was landed, we have altered the wording of the Bill so as to allow of the petroleum being landed directly the samples are delivered. We think that the control which the Bill gives over the petroleum when landed will be amply sufficient to secure the object in view.

5. Again, we have confined the provision of the Bill which requires petroleum to be kept in indelibly marked vessels, to *dangerous* petroleum, and we have reduced the maximum penalty

for illegally importing, possessing or transporting petroleum from three months' imprisonment and one thousand rupees fine, to one month's imprisonment and five hundred rupees fine.

6. The power given by the Bill to extend the Act to other inflammable substances appears to be unnecessarily large, and we have therefore confined it to cases in which those substances are fluid.

7. The only other alterations we have made which are of sufficient importance to call for notice here are the insertion of a provision in section 7 of the Bill as now amended, empowering the Government to fix ports at which only petroleum may be imported, the addition of a clause to section 12 entitling a dealer, whose petroleum is tested under the Act, to a copy of the certificate of the result of the testing, free of charge, the insertion in section 16 of words providing that the tins or other vessels in which confiscated petroleum is contained may be confiscated with it, and the addition of a provision in section 18 requiring all rules made under the Act to be published for a month before they take effect.

8. The Bill, with its Statement of Objects and Reasons, has been published in English, in the local official Gazettes, except those of the Central Provinces and Assam. Its publication in the vernacular Gazettes has been reported by the Governments of Bengal and the North-Western Provinces and Oudh, and the Chief Commissioner of Mysore. It has met with considerable opposition on account of its stringency, but, if the important mitigations of its provisions which we now recommend are approved by the Council, we think it may safely be passed without being again re-published. The measure having been now before the public for six months, it can hardly be said that timely notice of it has not been given to all concerned; but in order to guard against the possibility of hardship to holders or consignees of dangerous petroleum, we propose that it should not come into force till the 1st of July.

WHITLEY STOKES.
J. GIBBS.
B. W. COLVIN.
G. F. MEWBURN.

The 14th January, 1881.

No. II.

THE PETROLEUM BILL, 1881.

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THE SCHEDULE.

No. II.

A Bill to regulate the importation, possession and transport of Petroleum and other fluids of a like nature.

WHEREAS it is expedient to regulate the importation, possession and transport of petroleum and other fluids of a like nature; It is hereby enacted as follows:—

Preliminary.

Short title. Commencement. **1.** This Act may be called "The Petroleum Act, 1881"; and it shall come into force on the first day of July, 1881.

Committee's recommendations, para. 1.

Local extent. The provisions of this Act relating to dangerous petroleum, and the importation of petroleum, extend to the whole of British India. The rest of this Act extends only to such local areas as the Local Government may, from time to time, by notification in the official Gazette, direct.

Repeal of enactments. **2.** The Indian Ports Act, 1875, section thirty-seven, and Bengal Act No. III of 1865 (*to make better provision for the prevention of injury from fire in Ports, and to provide for the safe keeping of Inflammable Oils in Ports and places within the Provinces under the control of the Lieutenant-Governor of Bengal*) are hereby repealed.

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

"Petroleum" includes also the liquids commonly known by the names of rock oil, Rangoon oil, Burma oil, kerosine, paraffine oil, mineral oil, petroline, gasoline, benzol, benzoline, benzine and any inflammable liquid that is made from petroleum, coal, schist, shale, peat or any other bituminous substance, or from any products of petroleum,

"Petroleum." 34 & 35 Vic., c. 105, s. 3, with additions from Committee's report.

but it does not include any oil ordinarily used for lubricating purposes, and having its flashing point at or above two hundred and fifty degrees of Fahrenheit's thermometer. Committee's recommendations, para. 3.

Explanation.—The flashing point of petroleum means the lowest temperature at which the petroleum yields a vapour which will furnish a momentary flash or flame when tested with the apparatus and in the manner described in the Schedule hereto annexed. Committee's recommendations, para. 4.

"Dangerous petroleum" means petroleum having its flashing point below seventy-three degrees of Fahrenheit's thermometer:

"Dangerous petroleum."

"Import" means to bring into British India by sea or land:

"Import."

and "importation" means the bringing into British India as aforesaid.

"Transport" means to remove from one place to another within British India.

"Transport."

Dangerous Petroleum.

Dangerous petroleum in quantities exceeding 40 gallons. **4.** No quantity of dangerous petroleum exceeding forty gallons shall be imported or transported, or kept by any one person or on the same premises, except under, and in accordance with the conditions of, a license from the Local Government granted as next hereinafter provided.

Application for license to import, transport or possess such petroleum. Every application for such a license shall be in writing, and shall declare—

(*a*) the quantity of such petroleum which it is desired to import, transport or possess, as the case may be;

(*b*) the purpose for which the applicant believes that such petroleum will be used; and

(*c*) that petroleum other than dangerous petroleum cannot be used for such purpose.

Power to grant license. If the Local Government see reason to believe that such petroleum will be used for such purpose, and that no petroleum other than dangerous petroleum can be used for such purpose, it may grant such license for the importation, transport or possession (as the case may be) of such petroleum, absolutely or subject to such conditions as it thinks fit.

Dangerous petroleum in quantities not exceeding 40 gallons. **5.** No quantity of dangerous petroleum equal to or less than forty gallons shall be kept or transported without a license:

Provided that nothing in this section shall apply in any case when the quantity of such petroleum kept by any one person or on the same premises, or transported, does not exceed three gallons, and such petroleum is placed in separate glass, earthenware or metal vessels, each of which contains not more than a pint and is securely stopped. 34 & 35 Vic., c. 105, s. 7.

Vessels containing dangerous petroleum to be marked. **6.** All dangerous petroleum— 34 & 35 Vic., c. 105, s. 6.

(*a*) which is kept at any place after seven days from the date on which it is imported, or

(*b*) which is transported, or

(*c*) which is sold or exposed for sale,

shall be contained in vessels which shall bear an indelible mark or a label in conspicuous characters, stating the nature of the contents thereof. Cf. Act I of 1878, s. 9.

Petroleum generally.

Power to make rules as to the importation of petroleum. **7.** The Local Government may, from time to time, make rules consistent with this Act to regulate the importation of petroleum and in particular— Committee's recommendations, paras. 12 to 20.

(*a*) for ascertaining the quantity and description of any petroleum on board a ship;

(*b*) to provide for the delivery, by the master of a ship or the consignees of the cargo, of samples of petroleum before such petroleum is landed from such ship, and for the testing thereof;

(*c*) to determine the ports at which only petroleum may be imported; and

(*d*) to regulate the time and mode of, and the precautions to be taken on, landing or transhipping any petroleum.

In this section—

"Ship" includes anything made for the conveyance by water of human beings or property:

"Ship."

"Master" includes every person (except a Pilot or Harbour Master) having for the time being the charge or control of a ship.

"Master."

Possession and transport of petroleum. **8.** No quantity of petroleum exceeding five hundred gallons, shall be kept by any one person or on the same premises or shall be transported except under and in accordance with the conditions of a license granted under this Act.

Power to make rules as to such possession and transport. **9.** The Local Government may from time to time make rules consistent with this Act as to the granting of licenses to possess or transport petroleum in cases where such licenses are by law required.

Such rules may provide for the following among other matters, that is to say—

in the case of licenses to possess petroleum—

(*a*) the nature and situation of the premises for which they may be granted, and

(*b*) the inspection of such premises and the testing of petroleum found thereon;

in the case of licenses to transport petroleum—

(*c*) the manner in which the petroleum shall be packed, the mode of transit, and the route by which it is to be taken, and

(*d*) the stoppage and inspection of it during transit;

in the case of both such licenses—

(*e*) the authority by which the license may be granted;

(*f*) the fee to be charged for it;

(*g*) the quantity of petroleum it is to cover;

(*h*) the conditions which may be inserted in it;

(*i*) the time during which it is to continue in force; and

(*k*) the renewal of the license.

34 & 35 Vic., c. 105, s. 11.

10. Any officer specially authorized by name or by virtue of his office in this behalf by the Local Government may require any dealer in petroleum to show him any place, and any of the vessels, in which any petroleum in his possession is stored or contained, to give him such assistance as he may require for examining the same, and to deliver to him samples of such petroleum on payment of the value of such samples.

Power to inspect and require dealer to sell samples.

Ibid.

11. When any such officer has, in exercise of the powers conferred by section ten, or by purchase, obtained a sample of petroleum in the possession of a dealer, he may give a notice in writing to such dealer informing him that he is about to test such sample or cause the same to be tested with the apparatus and in the manner described in the schedule hereto annexed, at a time and place to be fixed in such notice, and that such person or his Agent may be present at such testing.

Notice to be given when officer proposes to test samples.

Ibid.

12. On any such testing if it appears to the officer or other person so testing that the petroleum from which such sample has been taken is or is not dangerous petroleum, such officer or other person may certify such fact, and the certificate so given shall be receivable as evidence in any proceedings which may be taken under this Act against the dealer in whose possession such petroleum was found, and shall, until the contrary is proved, be evidence of the fact stated therein; and a certified copy of such certificate shall be given gratis to the dealer at his request.

Certificate as to result of such testing.

Penalties.

13. Any person who, in contravention of this Act or of any rules made hereunder, imports, possesses or transports any petroleum; and any person who otherwise contravenes any such rules or any condition contained in a license granted hereunder, shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Penalty for illegal importation, &c., of petroleum.

34 & 35 Vic., s. 63.

14. Any person keeping, transporting, selling or exposing for sale petroleum in vessels not marked or labelled as prescribed by section six, shall be punished with fine which may extend to fifty rupees.

Penalty for keeping, transporting or exposing for sale petroleum in contravention of section 6.

34 & 35 Vic., c. 105, s. 12.

15. Any dealer in petroleum who refuses or neglects to show to any officer authorized under section ten any place, or any of the vessels, in which petroleum in his possession is stored or contained, or to give him such assistance as he may require for examining the same, or to give him samples of such petroleum on payment of the value of such samples, shall be punished with fine which may extend to two hundred rupees.

Penalty for refusing to comply with section 10.

Cf. Act I of 1878, s. 11.

16. In any case in which an offence under section thirteen or section fourteen has been committed, the convicting Magistrate may direct that,—

Confiscation of petroleum.

(*a*) the petroleum in respect of which the offence has been committed, or

(*b*) where the offender is importing or transporting or is in possession of any petroleum exceeding the quantity (if any) which he is permitted to import, transport or possess, as the case may be, the whole of the petroleum which he is importing, or transporting, or is in possession of,

shall, together with the tins or other vessels in which it is contained, be confiscated.

17. The criminal jurisdiction under this Act shall, in the towns of Calcutta, Madras and Bombay, be exercised by a Presidency Magistrate and elsewhere by a Magistrate of the first class or (where specially empowered by the Local Government to try cases under this Act) a Magistrate of the second class.

Jurisdiction.

Miscellaneous.

18. All rules made by the Local Government under this Act shall be published in the official Gazette, and shall, on the expiry of one month from the date of such publication, have the force of law:

Rules when to have force of law.

Provided that no such rule shall be so published without the previous sanction of the Governor General in Council.

34 & 35 Vic., c. 105, s. 14.

19. The Governor General in Council may, from time to time, by notification in the *Gazette of India*, apply the whole or any portion of this Act to any inflammable fluid other than petroleum, and may by such notification fix, in substitution for the quantities of petroleum fixed by sections four, five and eight, the quantities of such fluid to which these sections shall apply.

Power to apply this Act to other fluids.

The Governor General in Council may by a like notification cancel any notification issued under this section.

THE SCHEDULE.

Specification explanatory of the Test Apparatus.

Committee's recommendations, para. 5, and 42 & 43 Vic., c. 47.

The following is a description of the details of the apparatus:—

The oil-cup consists of a cylindrical vessel 2″ diameter, $2\frac{2}{10}$″ height (internal), with outward projecting rim $\frac{5}{10}$″ wide, $\frac{3}{8}$″ from the top and $1\frac{7}{8}$″ from the bottom of the cup. It is made of gun metal or brass (17 B. W. G.), tinned inside. A bracket, consisting of a short stout piece of wire, bent upwards and terminating in a point, is fixed to the inside of the cup to serve as a gauge. The distance of the point from the bottom of the cup is $1\frac{1}{2}$″. The cup is provided with a close-fitting overlapping cover made of brass (22 B. W. G.) which carries the thermometer and test lamp. The latter is suspended from two supports from the side by means of trunnions, upon which it may be made to oscillate: it is provided with a spout the mouth of which is $\frac{1}{16}$″ in diameter. The socket which is to hold the thermometer is fixed at such an angle, and its length is so adjusted that the bulb of the thermometer, when inserted to its full depth, shall be $1\frac{1}{2}$″ below the centre of the lid.

The cover is provided with three square holes, one in the centre $\frac{5}{10}$″ by $\frac{4}{10}$″, and two smaller ones, $\frac{3}{10}$″ by $\frac{2}{10}$″, close to the sides and opposite each other. These three holes may be closed and uncovered by means of a slide moving in grooves, and having perforations corresponding to those on the lid.

In moving the slide so as to uncover the holes, the oscillating lamp is caught by a pin fixed in the slide, and tilted in such a way as to bring the end of the spout just below the surface of the lid. Upon the slide being pushed back so as to cover the holes, the lamp returns to its original position.

Upon the cover, in front of, and in line with, the mouth of the lamp, is fixed a white bead the dimensions of which represent the size of the test flame to be used.

The bath or heated vessel consists of two flat-bottomed copper cylinders (24 B. W. G.), an inner one of 3″ diameter and $2\frac{1}{2}$″ height, and an outer one of $5\frac{1}{2}$″ diameter and $5\frac{3}{4}$″ height; they are soldered to a circular copper plate (20 B. W. G.) perforated in the centre, which forms the top of the bath, in such a manner as to enclose the space between the two cylinders, but leaving access to the inner cylinder. The top of the bath projects both outwards and inwards about $\frac{3}{8}$″, that is, its diameter is about $\frac{3}{8}$″ greater than that of the body of the bath, while the diameter of the circular opening in the centre is about the same amount less than that of the inner copper cylinder. To the inner projection of the top is fastened by six small screws, a flat ring of ebonite, the screws being sunk below the surface of the ebonite to avoid metallic contact between the bath and the oil cup. The exact distance between the sides and bottom of the bath of the oil lamp is $1\frac{1}{2}$″. A split socket similar to that on the cover of the oil cup, but set at a right angle, allows a thermometer to be inserted into the space between the two cylinders. The bath is further provided with a funnel, an overflow pipe, and two loop handles.

The bath rests upon a cast-iron tripod stand, to the ring of which is attached a copper cylinder or jacket (24 B. W. G.), flanged at the top, and of such dimensions that the bath, while firmly resting on the iron ring, just touches with its projecting top the inward-turned flange. The diameter of this outer jacket is $6\frac{1}{2}$″. One of the three legs of the stand serves as support for the spirit lamp, attached to it by means of a small swing bracket. The distance of the wick holder from the bottom of the bath is 1″.

Two thermometers are provided with the apparatus, the one for ascertaining the temperature of the bath, the other for determining the flashing point. The thermometer for ascertaining the temperature of the water has a long bulb and a space at the top. Its range is from about 90° to 190° Fahrenheit. The scale (in degrees of Fahrenheit) is marked on an ivory back fastened to the tube in the usual way; it is fitted with a metal collar fitting the socket, and the part of the tube below the scale should have a length of about $3\frac{1}{2}$″ measured from the lower end of the scale to the end of the bulb. The thermometer for ascertaining the temperature of the oil is fitted with collar and ivory scale in a similar manner to the one described. It has a round bulb, a space at the top, and ranges from about 55° F. to 150° F.; it measures from end of ivory back to bulb $2\frac{1}{4}$″.

NOTE.—A model apparatus is deposited at the office of the Chemical Examiner to Government at Calcutta.

Directions for applying the Test.

1. The test apparatus is to be placed for use in a position where it is not exposed to currents of air or draughts.

2. The heating vessel or water-bath is filled by pouring water into the funnel until it begins to flow out at the spout of the vessel. The temperature of the water at the commencement of the test is to be 130° Fahrenheit, and this is attained in the first instance either by mixing hot and cold water in the bath, or in a vessel from which the bath is filled, until the thermometer which is provided for testing the temperature of the water gives the proper indication; or by heating the water with the spirit lamp (which is attached to the stand of the apparatus) until the required temperature is indicated.

If the water has been heated too highly, it is easily reduced to 130° by pouring in cold water little by little (to replace a portion of the warm water) until the thermometer gives the proper reading.

When a test has been completed, this water-bath is again raised to 130° by placing the lamp underneath, and the result is readily obtained while the petroleum cup is being emptied, cooled, and refilled with a fresh sample to be tested. The lamp is then turned on its swivel from under the apparatus, and the next test is proceeded with.

3. The test lamp is prepared for use by fitting it with a piece of flat plaited candlewick, and filling it with colza or rape oil up to the lower edge of the opening of the spout or wick tube. The lamp is trimmed so that when lighted it gives a flame of about 0·15 of an inch diameter, and this size of flame which is represented by the projecting white bead on the cover of the oil cup is readily maintained by simple manipulation from time to time with a small wire trimmer.

When gas is available it may be conveniently used in place of the little oil lamp, and for this purpose a test flame arrangement for use with gas may be substituted for the lamp.

4. The bath having been raised to the proper temperature, the oil to be tested is introduced into the petroleum cup, being poured in slowly until the level of the liquid just reaches the point of the gauge which is fixed in the cup. In warm weather the temperature of the room in which the samples to be tested have been kept should be observed in the first instance, and if it exceeds 65°, the samples to be tested should be cooled down (to about 60°) by immersing the bottle containing them in cold water, or by any other convenient method. The lid of the cup, with the slide closed, is then put on, and the cup is put into the bath or heating vessel. The thermometer in the lid of the cup has been adjusted so as to have its bulb just immersed in the liquid, and its position is not under any circumstances to be altered. When the cup has been placed in the proper position, the scale of the thermometer faces the operator.

5. The test lamp is then placed in position upon the lid of the cup, the lead line or pendulum,* which has been fixed in a convenient position in front of the operator, is set in motion, and the rise of the thermometer in the petroleum cup is watched. When the temperature has reached about 66°, the operation of testing is to be commenced, the test flame being applied once for every rise of one degree in the following manner:—

The slide is slowly drawn open while the pendulum performs three oscillations, and is closed during the fourth oscillation.

NOTE.—If it is desired to employ the test apparatus to determine the flashing points of oils of very low volatility, the mode of proceeding is to be modified as follows:—

The air chamber which surrounds the cup is filled with cold water, to a depth of 1½ inches, and the heating vessel or water-bath is filled as usual, but also with cold water. The lamp is then placed under the apparatus and kept there during the entire operation. If a very heavy oil is being dealt with, the operation may be commenced with water previously heated to 120°, instead of with cold water.

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

* This pendulum is two (2) feet in length from the point of suspension to the centre of gravity of the weight.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First Publication.]

The following 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 21st January, 1881:—

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 had the report of the Indian Law Commissioners, 1879, duly communicated to us. We have carefully considered so much of it as relates to the present Bill, as well as the papers noted in the margin, and, in compliance with the wish of the Secretary of State for India, as expressed in his despatch (Legislative), No. 37, dated 7th October, 1880, we have the honour to submit this our fourth report.

From Secretary, Chamber of Commerce, Madras, dated 1st August, 1878, and enclosure [Papers No. 56]
„ Acting Chief Secretary to Government, Madras, No. 299, dated 14th February, 1879, and enclosures [Papers No. 58].
„ Ditto, ditto, ditto, No. 1343, dated 7th June, 1879, and enclosures [Papers No. 59].
„ J. Crawfurd, Esq., Registrar, High Court, Calcutta, No. 1123, dated 27th June, 1879 [Paper No. 60].
Note by Sir Charles Turner, Chief Justice, Madras, dated 22nd January, 1880 [Paper No. 61].
From Seth Lachman Dás, Muttra, dated 1st January, 1881 [Paper No. 62].

2. We agree with the Commissioners that uniformity of practice is particularly desirable in matters relating to negotiable paper, and, to facilitate the assimilation of the practice of shroffs to that of European merchants, we have declared (section 1) that local usages may be excluded by any words in the body of the instrument which indicate an intention that the legal relations of the parties thereto shall be governed by the proposed Act.

3. We have inserted explanations calculated to prevent doubts as to when a promise or order to pay is "conditional," when the sum payable is "certain," and when the person to whom the direction is given or payment is to be made is "a certain person," within the meaning of sections 4 and 5.

4. We have re-drawn section 20 as to inchoate stamped instruments, so as to make it express more accurately what we conceive to be the law on this subject.

5. We have also re-drawn sections 47 and 48 (as follows):—

Negotiable instrument made, &c., without consideration.

"43. A negotiable instrument made, drawn, accepted, endorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or without endorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

"*Exception I.*—No party for whose accommodation a negotiable instrument has been made, drawn, accepted or indorsed, can, if he have paid the amount thereof, recover thereon such amount from any person who became a party to such instrument for his accommodation.

"*Exception II.*—No party to the instrument who has induced any other party to make, draw, accept, indorse or transfer the same to him for a consideration which he has failed to pay or perform in full, shall recover thereon an amount exceeding the value of the consideration (if any) which he has actually paid or performed."

6. We have prefixed to the sections relating to negotiation clauses (section 46) relating to delivery generally, and to the effect recommended by the Commissioners.

7. We think the section (67, now 63) relating to the drawee's time for deliberation should provide that the holder of a bill "must, if so required by the drawee," allow him twenty-four hours (exclusive of public holidays) to consider whether he will accept, and we have amended this section accordingly.

8. We have made (section 76) presentment for payment unnecessary as against any party sought to be charged, if he has engaged to pay notwithstanding non-presentment.

9. We have in section 90 (now 86) substituted "qualified" for "conditional" and added a paragraph shewing when an acceptance is qualified.

10. We have provided (section 90) for the extinguishment of rights of action on a negotiated bill held, at or after maturity, by the acceptor in his own right.

11. We agree with Sir C. Turner that section 108 of the Bill in its fourth form—as to reasonable time for presentment—should be omitted. It seems inconsistent with section 107 (now 105), and declares a rule which is not only stricter than the existing law, but would, in our opinion, be highly inconvenient.

12. We have inserted a statement of the procedure in the case of an acceptance *supra protest*, and to section 112 (now 109) we have prefixed a clause shewing how acceptance for honour must be made.

13. We have declared (section 116) that a drawee in case of need may accept and pay the bill without previous protest.

14. We have made it appear that inland (as well as foreign) bills may be drawn in sets, and altered Chapter XIV (now XV) accordingly. We have made the exception to section 126 (now 132) run thus:—

"*Exception.*—When a person accepts or indorses different parts of the bill in favour of different persons, he *and the subsequent indorser of each part* are liable on such part as if it were a separate bill."

15. We have amended the second clause of section 125 (now 130, 131) (as to the non-liability of a banker who has received payment for a customer of a crossed cheque) in accordance with *Matthiessen* v. *London and County Banking Company*, 48 L. J. C. P. 529.

16. We have made most of the changes in arrangement and wording advised by the Commissioners, and recommend that the Bill as now revised be passed. It has now been more than thirteen years before the Council of the Governor General; it has been redrawn, copiously criticised and repeatedly revised; and without the experience derived from its actual operation, it is not likely to be further improved. But it should be published in the Gazettes, and, according to the orders of the Secretary of State, it must, before being passed, be sent to the Local Governments, translated into the vernaculars and submitted to him with this report.

WHITLEY STOKES.
B. W. COLVIN.
J. PITT KENNEDY.
G. C. PAUL.

The 20th January, 1881.

No. V.

THE NEGOTIABLE INSTRUMENTS BILL, 1881.

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SCHEDULE.

No. V.

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, 1881:" Short title. Bill II, s. 1: Bill III, s. 2.

It extends to the whole of British India; but nothing herein contained affects the Indian Paper Currency Act, 1871, section twenty-one, or affects any local usage relating to any instrument in an oriental language: Provided that such usages may be excluded by any words in the body of the instrument which indicate an intention that the legal relations of the parties thereto shall be governed by this Act; Local extent. Saving of usages relating to hundis, &c.

and it shall come into force on the first day of January, 1882. 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. Bill II, s. 2: Bill III, s. 2.

3. In this Act— Interpretation-clause.

"Banker" includes also persons or a corporation or company acting as bankers; and "Banker." Bill II, s. 3: Bill III, s. 2. 39 & 40 Vic., c. 81, s. 3.

"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. Bill II, s. 4: Bill III, s. 4. Byles on Bills (12th edition), pp. 5, 94. 3 & 4 Anne, c. 9 (Byles 481). Byles 5, 102: Byles 10: Byles 99: Byles 6.

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 II, s. 5: Bill III, s. 5: Byles 1, 75: 81, 94, 97: Byles 93, 94, 96: Byles 75, 81.

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.

A promise or order to pay is not "conditional," within the meaning of this section and section four, by reason of the time for payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain.

The sum payable may be "certain," within the meaning of this section and section four, although it includes future interest or is payable at an indicated rate of exchange, or is according to the course of exchange, and although the instrument provides that, on default of payment of an instalment, the balance unpaid shall become due.

The person to whom it is clear that the direction is given or that payment is to be made may be a "certain person," within the meaning of this section and section four, although he is mis-named or designated by description only.

Bill II, s. 6: Bill III, s. 5: Byles 18.

6. A cheque is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand. Cheque.

Draft, s. 6: Bill II, s. 7: Bill III, s. 7.

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 in the bill or in any indorsement thereon the name of any person is given 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."

Draft, ss. 6, 87. Byles 196: Act VI of 1870, s. 2: Act V of 1866, s. 21: 39 & 40 Vic., c. 81.

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." Draft, s. 6: Bill II, s. 8: Bill III, s. 8: Byles 2.

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 for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer, "Holder in due course." Draft, s. 12: Bill II, s. 9: Bill III, s. 9: 1 Parsons 255: Byles 164.

or the payee or indorsee thereof, if payable to, or to the order of, a payee,

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.

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." Draft, ss. 86, 115: Bill II, s. 10: Bill III, s. 10: Byles on Bills (12th edition), 221: 39 & 40 Vic., c. 81, s. 11.

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. Bill II, s. 11: Bill III, s. 11: Act V of 1866, s. 12.

12. Any such instrument not so drawn, made or made payable shall be deemed to be a foreign instrument. Foreign instrument. Bill II, s. 12: Bill III, s. 12.

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." Draft, s. 8: Bill II, s. 13: Bill III, s. 13.

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. Draft, s. 7: Bill II, s. 14: Bill III, s. 14.

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. Draft, s. 20: Bill II, s. 15: Bill III, s. 15: *Denton* v. *Peters*, L. R. 5 Q. B. 475: *Ex parte Cote* L. R. 9 Ch. App. 27: Byles 165: Byles 150.

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." Bill II, s. 16: Bill III, s. 16.

Bill II, s. 17: Bill III, s. 17: Byles 91: Bayley (6th edition) 8.

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.

Draft, s. 2: Bill II, s. 18: Bill III, s. 18: Byles 84: Bayley 12 (*Saunderson v. Piper*).

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.

Bill II, s. 19: Bill III, s. 19: 1 Parsons 271: Byles 13, 212: *Aldous v. Cornwell*, L. R. 3 Q. B. 573.

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.

Bill II, s. 20: Bill III, s. 20: Byles 88, 165, 188: *Foster v. Mackinnon*, L. R. 4 C. P. 704: Byles 84.

20. Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in British India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives *primâ facie* authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount: provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.

Inchoate stamped instruments.

Bill II, s. 23: Bill III, s. 22: Byles 80, 180, 206, 209, 528: 24 & 35 Vic., c. 74, s. 2.

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 noting for non-acceptance, or protest for non-acceptance.

"At sight."
"On presentment."
"After sight."

Draft, s. 78: Bill II, s. 22: Bill III, s. 23. New.

22. The maturity of a promissory note or bill of exchange is the date at which it falls due.

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.

"Maturity."

Days of grace.

Draft, s. 79: Bill II, s. 24: Bill III, s. 24: Byles 206.

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 noted for non-acceptance, 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.

Draft, s. 80: Bill II, s. 25: Bill III, s. 25: Byles 206.

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.

Draft, s. 80: Bill II, s. 26: Bill III, s. 26: Byles 208.

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.

CHAPTER III.

PARTIES TO NOTES, BILLS AND CHEQUES.

Bill II, s. 28: Bill III, s. 28: See 37 & 38 Vic., c. 62, s. 1 (Byles 529). Byles 59.

26. 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.

Byles 61.

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.

Bill II, s. 29: Bill III, s. 29: Byles 33.

27. Every person capable of binding himself or of being bound, as mentioned in section twenty-six, may so bind himself or be bound by a duly authorized agent acting in his name.

Agency.

Byles 33.

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.

Byles 33.

An authority to draw bills of exchange does not of itself import an authority to indorse.

Draft, s. 15: Bill II, s. 30: Bill III, s. 30.

28. 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

Liability of agent signing.

Act IX of 1872, s. 234.

instrument, except to those who induced him to sign upon the belief that the principal only would be held liable.

Byles 57: Bill III, s. 31.

29. 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.

Draft, ss. 17, 78: Bill II, s. 44: Bill III, s. 34: Byles 8, 245: Bayley 43: Byles 290.

30. 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 under Chapter XII, provided due notice of dishonour has been given to, or received by, the drawer as hereinafter provided.

Liability of drawer.

Bill II, s. 45: Bill III, s. 35: Byles 18, 19, 185: Chitty 56: Grant on Bankers, 51: *Gray v. Johnston*, L. R. 3 E. and I. App. 1.

31. 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.

Draft, ss. 60, 65: Bill II, s. 46: Bill III, s. 36: Byles 190, 193: Draft, s. 60: Bayley 44: Byles 910.

32. 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.

Draft, s. 61: Bill II, s. 47: Bill III, s. 37: Byles 187, 189.

33. No person except the drawee of a bill of exchange, or all or some of several 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.

Draft, s. 59: Bill II, s. 41: Bill III, s. 32.

34. 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.

Draft, ss. 38, 64 (para. 2), 64, 65, 66: Bill II, s. 48: Bill III, s. 38: Byles 158, 206: Robinson v. Kensington, 4 Taunt. 30: Byles 152, 155: Snee v. Prescott, 1 Atk. 245: Thompson v. Dashwood, 11 Q. B. D. 43: Imperial Bank v. London and St. Katherine Docks Co., 5 C. P. Div. 195: Draft, s. 44.

35. 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.

Draft, ss. 69, 71: Bill II, s. 49: Bill III, s. 39: Byles 166: *O'Keefe v. Dunn*, 6 Taunt. 305: 5 M. & S. 282.

36. 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.

Bill II, s. 50: Bill III, s. 40: Byles 245.

37. 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.

Bill II, s. 51: Bill III, s. 41: Byles 245.

38. 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.

Bill II, s. 52: Bill III, s. 42: *Owen v. Homan*, 4 H. L. Cas. 997: *Muir v. Crawford*, L. R. 2 Sc. App. 456.

39. 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.

Draft, s. 70: Bill II, s. 53: Bill III, s. 43: cf. Act IX of 1872, s. 134.

40. 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.

Draft, s. 72: Bill II, s. 54: Bill III, s. 44: Byles 201.

41. 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.

Bill II, s. 55: Bill III, s. 45: Byles 201: *Cooper v. Meyer*, 10 B. & C. 468: Act I of 1872, s. 117.

42. 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.

New.

43. A negotiable instrument made, drawn, accepted, endorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or without endorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

Negotiable instrument made, &c., without consideration.

Exception I.—No party for whose accommodation a negotiable instrument has been made, drawn, accepted or indorsed, can, if he have paid the amount thereof, recover thereon such amount from any person who became a party to such instrument for his accommodation.

Exception II.—No party to the instrument who has induced any other party to make, draw, accept, indorse or transfer the same to him for a consideration which he has failed to pay or perform in full, shall recover thereon an amount exceeding the value of the consideration (if any) which he has actually paid or performed.

Draft, s. 54: Bill II, s. 62: Bill III, s. 51: Byles 130.

44. 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.

Draft, s. 55: Bill II, s. 63: Bill III, s. 52.

45. 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.

46. The making, acceptance or indorsement of a promissory note, bill of exchange or cheque is completed by delivery, actual or constructive.

Delivery.

As between parties standing in immediate relation, delivery to be effectual must be made by the party making, accepting or indorsing the instrument, or by a person authorized by him in that behalf.

As between such parties and any holder of the instrument other than a holder in due course, it may be shown that the instrument was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein.

A promissory note, bill of exchange or cheque payable to bearer is negotiable by the delivery thereof.

A promissory note, bill of exchange or cheque payable to order is negotiable by the holder by indorsement and delivery thereof.

Draft, s. 18: Bill II, s. 64: Bill III, s. 53: Byles 148.

47. Subject to the provisions of section fifty-eight, 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.

Byles 148, note (i).

(*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.

Draft, s. 19: Bill II, s. 65: Bill III, s. 54: *Denton* v. *Peters*, L.R. 5 Q. B. 475: *Exparte Cote*, L. R. 9 Ch. App. 27.

48. Subject to the provisions of section fifty-eight, 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.

Draft, s. 31: Bill II, s. 68: Bill III, s. 57: Byles 150, 151.

49. 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.

Draft, ss. 29, 30: Bill II, ss. 69, 70: Bill III, ss. 58, 59: Byles 153.

50. 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.

Draft, ss. 20, 24, 27: Bill II, s. 71: Bill III, s. 60.

51. 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 fifty 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.

Draft, ss. 32, 34: Bill II, s. 72: Bill III, s. 61: Byles 153, 157.

52. 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.

Draft, s. 45.

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.

Draft, s. 49: Bill II, s. 78: Bill III, s. 64.

53. 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.

Draft, s 25: Bill II, s. 74: Bill III, s. 63.

54. Subject to the provisions hereinafter contained as to crossed cheques, a negotiable instrument indorsed in blank is payable to the bearer thereof even although originally payable to order.

Instrument indorsed in blank.

Draft, s. 39: Bill II, s. 75: Bill III, s. 64.

55. 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.

Draft, s. 23: Bill II, s. 76: Bill III, s. 65: Byles 172.

56. 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 appearing to be due on the instrument; but where such amount has been partly paid, a note to that effect may be endorsed on the instrument, which may then be negotiated for the balance.

Indorsement for part of sum due.

Draft, s. 22: Bill II, s. 78: Bill III, s. 67: Byles 174.

57. 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.

Draft, ss. 52, 53: Bill II, s. 79 Bill III, s. 68: Byles 122, 164.

58. 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.

Draft, s. 43, and part of s. 52: Bill II, s. 80: Bill III, s. 69: Byles 166, 168.

59. 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.

Draft, ss. 41, 84: Bill II, s. 81: Bill III, s. 70: Byles 170.

60. 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.

Draft, s. 56: Bill II, s. 82: Bill III, s. 71.

61. 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.

Walker v. *McDonald*, 2 Ex. 532: *Leonard* v. *Wilson*, 2 Cr. & M. 592: Byles 180 to 183.

If the drawee cannot, after reasonable search, be found, the bill is dishonoured. Byles 184.

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. Byles 183, 184.

Bill II, s. 83: Bill III, s. 7.

62. A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight (if he can

Presentment of promissory note for sight.

after reasonable search be found) 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.

Draft, s. 56: Bill II, s. 84: Bill III, s. 73: Byles 183.

63. The holder must, if so required by the drawee of a bill of exchange presented to him for acceptance, allow the drawee twenty-four hours (exclusive of public holidays) to consider whether he will accept it.

Drawee's time for deliberation.

Draft, s. 133: Bill II, s. 85: Bill III, s. 74.

64. 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.

Byles 216.

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.

Bill II, s. 86: Bill III, s. 75: Draft, s. 137: Byles 213.

65. Presentment for payment must be made during the usual hours of business, and, if at a banker's, within banking hours.

Hours for presentment.

Draft, s. 133: Bill II, s. 87: Bill III, s. 76. Byles 208, 213.

66. 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.

Bill II, s. 88: Bill III, s. 77: Byles 7.

67. 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.

Draft, s. 138: Bill II, s. 89: Bill III, s. 78: Act VI of 1840, s. 1: 1 & 2 Geo. IV, c. 78 (Byles 490).

68. 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.

Draft, ss. 139, 140: Bill II, s. 90: Bill III, s. 79: Byles 214.

69. 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.

Draft, ss. 139, 140, 142: Bill II, s. 91: Bill III, s. 80. Byles 214, 215.

70. A promissory note or bill of exchange, not made payable as mentioned in sections sixty-eight and sixty-nine, must be presented for payment 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.

Draft, s. 141: Bill II, s. 92: Bill III, s. 81.

71. 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.

Bill II, s. 93: Bill III, s. 82: Byles 21, 210.

72. 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.

Byles 20.

Bill II, s. 94: Bill III, s. 83: Byles [illegible].

73. 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.

Draft, s. 134: Bill II, s. 95: Bill III, s. 84: Byles 211.

74. Subject to the provisions of section thirty-one, 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.

Bill II, s. 96: Bill III, s. 85: Parsons 500.

75. 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.

Draft, ss. 89, 91: Bill II, s. 98: Bill III, s. 86: Byles 218.

76. 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 sought to be charged therewith, if he has engaged to pay notwithstanding non-presentment;

(*c*) 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;

(*d*) as against the drawer, if the drawer could not suffer damage from the want of such presentment.

Terry v. *Parker*, 6 Ad. & E. 502: *Wirth* v. *Austin*, L. R. 10 C. P. 689.

Draft, s. 88: Bill II, s. 99: Bill III, s. 87: Byles 197.

77. 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.

Bill II, s. 100: Bill III, s. 88: Byles 220.

78. Subject to the provisions of section eighty-two, 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.

Bill II, s. 101: Bill III, s. 89: Byles 306 307.

79. 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 of the principal money due thereon, from the date of the instrument, until tender or realization of such amount, or until such date after the institution of a suit to recover such amount as the Court directs.

Interest when rate specified.

Draft, s. 65: Bill II, s. 102: Bill III, s. 90: Byles 306, 307, 308.

80. When no rate of interest is specified in the instrument, interest on the amount due thereon shall, except in cases provided for by the Code of Civil Procedure, section 532, be calculated at the rate of six percentum 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.

'ten,' Bank of Bengal.

Byles 308.

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.

Draft, s. 82: Bill II, s. 103: Bill III, s. 91: Byles 373: See Pro. Code, s. 61.

81. 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.

Draft, s. 85: Bill II, s. 104: Bill III, s. 92. Or Byles 154, 199: Draft, s. 88.

82. 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;

Byles 198, 240.

(*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;

Draft, ss. 87, 88: Byles 221.

(*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.

Draft, s. 70 Bill II, s. 105 Bill III, s. 93.

83. If the holder of a bill of exchange allows the drawee more than twenty-four hours, exclusive of public holidays, 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.

Draft, s. 101: Bill II, s. 106: Bill III, s. 94: Byles 20.

84. When the holder of a cheque fails to present it for payment within a reasonable time, 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.

Bill II, s. 107: Bill III, s. 95: 16 & 17 Vic., c. 59, s. 19: Byles 27, 506: *Charles* v. *Blackwell*, 1 C. P. Div. 548.

85. 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.

Draft, s. 69: Bill II, s. 108: Bill III, s 96: Byles 193, 194.

86. If the holder of a bill of exchange acquiesces in a qualified 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 drawees 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, unless on notice given by the holder, they assent to such acceptance.

Parties not consenting discharged by qualified or limited acceptance.

Explanation.—An acceptance is qualified—

(*a*) where it is conditional, declaring the payment to be dependent on the happening of an event therein stated;

(*b*) where it undertakes the payment of part only of the sum ordered to be paid;

(*c*) where, no place of payment being specified on the order, it undertakes the payment at a specified place and not otherwise or elsewhere; or where, a place of payment being specified in the order, it undertakes the payment at some other place and not otherwise or elsewhere;

(*d*) where it undertakes the payment at a time other than that at which under the order it would be legally due.

Draft, ss. 109, 110: Bill II, s. 110: Bill III, s. 97: Byles 324.

87. Save as provided in sections twenty, forty-nine, eighty-six and one hundred and twenty-five, 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.

Bill II, s. 111: Bill III, s. 98: Byles 326.

The provisions of this section are subject to those of sections twenty, forty-nine, eighty-six and one hundred and twenty-five.

Draft, ss. 112 to 114: Act I of 1872, s. 112: Bill II, s. 112: Bill III, s. 99.

88. 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.

Draft, s. 115: Bill II, s. 113: Bill III, s. 100: 39 & 40 Vic., c. 81, s. 11.

89. 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.

90. If a bill of exchange which has been negotiated is, at or after maturity, held by the acceptor in his own right, all rights of action thereon are extinguished.

Extinguishment of rights of action on bill in acceptor's hands.

CHAPTER VIII.

OF NOTICE OF DISHONOUR.

Draft, s. 38: [illegible] s. [illegible] III, s. [illegible] Byles 187.

91. 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, or where presentment is excused and the bill is not accepted.

Dishonour by non-acceptance.

Where the drawee is incompetent to contract, or the acceptance is qualified, the bill may be treated as dishonoured.

[illegible] II, s. [illegible] III, s. [illegible]

92. 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.

Dishonour by non-payment.

[illegible] ss. 125, [illegible] 131: [illegible] II, s. [illegible] III, s. [illegible] 275. [illegible] 295. [illegible] 300. [illegible] 177; [illegible] 190; [illegible] III, s. [illegible] 274, 275. [illegible] 280. [illegible] notice must be [illegible] 198. [illegible] 195. [illegible] 126

93. 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.

By and to whom notice should be given.

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.

94. Notice of dishonour may be given to a duly authorized 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, 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.

Mode in which notice may be given.

If the notice is duly directed and sent by post and miscarries, such miscarriage does not render the notice invalid.

Draft, s. 131: Bill II, s. 118: Bill III, s. 105.

95. Any party receiving notice of dishonour must, in order to render any prior party liable to himself, give notice of dishonour to such party within a reasonable time, unless such party otherwise receives due notice as provided by section ninety-three.

Party receiving must transmit notice of dishonour.

Draft, s. 132: Bill II, s. 119: Bill III, s. 106: Byles 286.

96. 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.

Agent for presentment.

Draft, s. 130: Druse 2: Bill II, s. 120: Bill III, s. 107.

97. 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 party to whom notice given is dead.

Draft, s. 92 Bill II, s. 121: Bill III, s. 108: Byles 296.

98. No notice of dishonour is necessary—

When notice of dishonour is unnecessary.

(*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;

Draft, ss. 67, 68, 93: Byles 301.

(*f*) in the case of a promissory note which is not negotiable;

Byles 302.

(*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.

Draft, s. 119: Bill II, 122: Bill III, s. 109.

99. 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.

Noting.

Draft, s. 119: Byles 261.

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.

Draft, s. 130: Bill II, s. 124: Bill III, s. 110: Byles 260.

100. 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.

Protest.

Byles 261.

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.

Draft, s. 122: Bill II, s. 124: Bill III, s. 111: Byles 261.

Contents of protest.

101. A protest under section one hundred 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.

Draft, s. 124: Bill II, s. 125: Bill III, s. 112: Byles 262.

Notice of protest.

102. 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.

Bill II. s. 126: Bill III, s. 113: Act VI, 1840, s. 4: 2 & 3 Wm. IV, c. 98.

Protest for non-payment after dishonour by non-acceptance.

103. 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.

Draft, s. 108: Bill II, s. 189: Bill III, s. 128.

Protest of foreign bills.

104. 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 X.

OF REASONABLE TIME.

Draft, s. 56, Explu. 1: Bill II, s. 127: Bill III, s. 114: Byles 182, 210, 287.

Reasonable time.

105. 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.

Draft, s. 129: Bill II, s. 129 Bill III, s. 116: Byles 284.

Reasonable time of giving notice of dishonour.

106. 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.

Byles 285.

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.

Draft, s. 131: Bill II, s. 130: Bill III, s. 117.

Reasonable time for transmitting such notice.

107. 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 AND REFERENCE IN CASE OF NEED.

Draft, ss. 74, 76: Bill II, s. 131: Bill III, s. 118: Byles 265, 266.

Acceptance for honour.

108. When a bill of exchange has been noted or protested for non-acceptance or for better security, any person not being a party already liable thereon may, with the consent of the holder, by writing on the bill, accept the same for the honour of any party thereto.

An acceptor *supra protest* must personally appear before a notary public with two or more witnesses, and declare that he accepts, under protest, the protested bill for the honour of the drawer or of a particular indorser whom he names, or generally for honour, and that he will satisfy the same at the appointed time; and then must subscribe the bill with his own hand.

Unless the person who intends to accept *supra protest* first declares, in the presence of a notary, that he does it for honour, and has such declaration duly recorded in the notarial register at the time, his acceptance shall be a nullity.

New.

How acceptance for honour must be made.

109. A person desiring to accept for honour must, in the presence of a notary public, subscribe the bill with his own hand, and declare that he accepts under protest the protested bill for the honour of the drawer or of a particular indorser whom he names, or generally for honour; and such declaration must be recorded by the notary in his register.

Draft, s. 75 Bill II, s. 132: Bill III, s. 119: Byles 265, 266.

Acceptance not specifying for whose honour it is made.

110. 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.

Draft, s. 77: Bill II, s. 133: Bill III, s. 120: Byles 267.

Liability of acceptor for honour.

111. 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.

Byles 268.

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

Draft, s. 845 Byles 266: Act VI of 1840, s. 3.

is made payable) forwarded for presentment, not later than the day next after the day of its maturity.

Draft, s. 95: Bill II, s. 134: Bill III, s. 121.

112. 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.

When acceptor for honour may be charged.

Draft, s. 96: Bill II, s. 135: Bill III, s. 122: Byles 270.

113. 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.

Payment for honour.

Draft, s. 97: Bill II, s. 136: Bill III, s. 123: Byles 271. *In re Overend, Gurney & Co.*, L. R. 6, Eq. 344.

114. 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.

Right of payer for honour.

Draft, s. 73: Bill II, s. 138: Bill III, s. 127: Byles 266.

115. Where a drawee in case of need is named in a bill of exchange, or in any endorsement thereon, the bill is not dishonoured until it has been dishonoured by such drawee.

Drawee in case of need.

116. A drawee in case of need may accept and pay the bill of exchange without previous protest.

Acceptance and payment without protest.

CHAPTER XII.

OF COMPENSATION.

Bill II, s. 137: Bill III, s. 124.

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.

Draft, s. 65: Byles 415.

(*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.

SPECIAL RULES OF EVIDENCE.

Draft, s. 12: Bill II, s. [illegible]: Bill III, s. 26: Byles 3, 119.

118. 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:

as to consideration;

(*b*) that every negotiable instrument bearing a date was made or drawn on such date:

as to date;

Byles 190.

(*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;

Byles 170.

(*d*) that every transfer of a negotiable instrument was made before its maturity:

as to time of transfer;

Draft, s. 87.

(*e*) that the endorsements appearing upon a negotiable instrument were made in the order in which they appear thereon:

as to order of endorsements;

Byles 117, 382.

(*f*) that a lost promissory note, bill of exchange or cheque was duly stamped:

as to stamp;

Draft, s. 12: Byles 122.

(*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.

Draft, ss. 121, 123: Act V of 1866, s. 13.

119. In a suit upon an instrument, which has been dishonoured, the Court shall, on proof of the protest, presume the fact of dishonour, unless and until such fact is disproved.

Presumption on proof of protest.

Bill II, s. 54: Bill III, s. 44: *Phillips* v. *Im Thurn*, 18 C. B., N. S. 694.

120. 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.

Bill II, s. 56: Bill III, s. 45: Byles 200.

121. 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.

Draft, s. 35: Bill II, s. 57: Bill III, s. 46: Byles 153. See Byles 222, n. (i).

122. 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.

CHAPTER XIV.

OF CROSSED CHEQUES.

Bill II, s. 30: Bill III, s. 129: 39 & 40 Vic., c. 81, s. 4.

123. 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.

Bill II, s. 31: Bill III, s. 130: 39 & 40 Vic., c. 81, s. 4.

124. 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.

Bill II, s. 32: Bill III, s. 131: 39 & 40 Vic., c. 81, s. 5.

125. 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.

Draft, ss. 102, 103: Bill II, s. 33: Bill III, s. 132: 39 & 40 Vic., c. 81, s. 7.

126. 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.

Bill II, s. 34: Bill III, s. 133: S. 8.

127. 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.

Bill II, s. 35: Bill III, s. 134: S. 9.

128. 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.

Bill II, s. 36: Bill III, s. 135: S. 10.

129. 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.

Bill II, s. 37: Bill III, s. 136: S. 12.

130. 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."

48 L. J. C. P. 529.

131. A banker who has in good faith and without negligence received payment for 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.

Non-liability of banker receiving payment of cheque.

CHAPTER XV.

OF BILLS IN SETS.

Draft, ss. 11, 116: Bill II, s. 28: Bill III, s. 125: Byles 390, 391.

132. 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.

Byles 92: *Holdsworth* v. *Hunter*, 10 B. & C. 449.

Exception.—When a person accepts or indorses different parts of the bill in favour of different persons, he and the subsequent indorsers of each part are liable on such part as if it were a separate bill.

Bill II, s. 29 Bill III, s. 126: Byles 391: Bayley 30, 171.

133. 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.

CHAPTER XVI.

OF INTERNATIONAL LAW.

Draft, s. 104: Bill II, s. 140: Bill III, s. 137: Byles 399: *Rouquette* v. *Overmann*, L. R. 10 Q. B. 525: Byles 390, *Horne* v. *Rouquette*, 3 Q. B. Div. 514.

134. 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.

Illustration.

Byles 402. 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.

Draft, s. 105: Bill II, s. 141: Bill III, s. 138. **135.** 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.

Draft, s. 106: Bill II, s. 142: Bill III, s. 139. **136.** 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.

Draft, s. 107: Bill II, s. 143: Bill III, s. 140: Act I of 1872, s. 4. **137.** 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.

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 28th January, 1881, and was referred to a Select Committee :—

No. 3 OF 1881.

A Bill for the amendment of the law relating to Insolvent Debtors in India.

WHEREAS it is expedient to amend the law relating to Insolvent Debtors in India; It is enacted as follows :— Preamble.

1. This Act may be called "The Insolvent Law Amendment Act, 1881." Short title.
it extends to the whole of British India; and Local extent.
it shall come into force on the first day of April 1881. Commencement.

2. In this Act, unless there be something repugnant in the subject or context,— Interpretation-clause.

the word "Insolvent" means a person of whose property a receiver has been appointed under the Code of Civil Procedure, section 351, a person upon whose petition a vesting order has been made under the seventh section of the eleventh and twelfth of Victoria, Chapter XXI, entitled an Act to consolidate and amend the laws relating to Insolvent Debtors in India, and a person who has been adjudged to have committed an act of insolvency under the provisions of section eight or under the provisions of the ninth section of the same Act : "Insolvent."

the word "adjudication" means the order under the said section 351 of the said Code appointing a receiver, a vesting order under the said seventh section of the said Act, and an order under the said eighth section or under the said ninth section of the said Act adjudging any person to have committed an act of insolvency; and "Adjudication."

the word "assignee" means the person in whom the property of any Insolvent has been vested by the adjudication of such Insolvent. "Assignee."

3. If, at the time of the adjudication of any insolvent, any of his property has been attached in execution of any decree or under any order for attachment before judgment, the Court, under whose order such property has been attached, shall withdraw the attachment and permit his assignee to take possession of the same. Attached property of insolvent.

If, before the Court has had notice of such insolvency, the attached property has been sold, the proceeds of the sale, after deducting the costs of the attachment and sale and all other necessary costs incurred in and about the realization of such proceeds, shall be paid to the assignee of such insolvent :

Provided, that in case the Court has not had notice of the adjudication of such insolvent, before such proceeds are distributed, the same shall not, merely on account of such adjudication be recalled from the persons to whom they have been paid.

When the Court withdraws the attachment, it may, if it think fit, direct that the proper and necessary costs of the attachment and of the preservation of the property attached shall be charged upon the proceeds of such property; and if such order be made, the assignee shall apply the proceeds of such sale in payment of such costs after payment of the costs of such sale, but in priority to payment of all debts of the insolvent payable out of such proceeds.

4. No property which, under the provisions of the twenty-third section of the said Act would be deemed to be the property of such insolvent, shall be held to have been taken out of his order and disposition by reason only that such property has, before the adjudication of such insolvent, been attached in execution of a decree or under any order for an attachment before judgment. Order and disposition. Attachment not to alter.

5. Whenever any persons trading in partnership together have, by the consent and permission of the true owner thereof, in their possession, order or disposition, goods or chattels whereof such persons are reputed owners, or whereof they have taken upon them the sale, alteration or disposition as owner, and while they have such possession, order or disposition, any of such persons is, under the provisions of the said Act, adjudicated an insolvent, or obtains a vesting order on his petition, such goods and chattels shall be deemed to be the property of such partnership so as to become vested in the Official Assignee of the Insolvent Court by the order made in pursuance of the said Act for the purpose only, and so far as may be required, for the purpose of paying the joint creditors of the said partnership. Order and disposition of Firms whose owner becomes Insolvent.

6. Whenever any person who carries on trade within the local limits of the Ordinary Original Civil Jurisdiction of any of the Transfer of insolvencies from Mufassal Courts.

High Courts at Calcutta, Madras or Bombay is, under the provisions of section 351 of the Code of Civil Procedure, declared to be an insolvent, the Insolvent Court in any of the said towns in which he may carry on business at the time he is so declared to be an insolvent, may, if it think fit, on the application of any creditor of such trader, adjudge him to have committed an act of insolvency:

such adjudication shall have the same force and effect as if he had, under the provisions of the eighth section of the said Act, been adjudicated an insolvent by such Court, at the time when he was declared to be an insolvent under the provisions of the said Code;

and all the estate and effects of such insolvent shall, unless the said Court otherwise directs, vest in the Official Assignee of such Court,

and any person appointed receiver under the provisions of the said Code shall, unless such Court otherwise directs, thereupon make over to the Official Assignee all the property of the insolvent which may have come to his hands as such receiver:

Provided that no such adjudication shall avoid, or in any way affect, any dealing of such receiver with any of such property before he has notice of such adjudication.

Distribution of unclaimed dividends.

7. The assignee of each insolvent estate shall, on the expiration of six months from the declaration of any dividend, file in Court an account upon oath of every dividend remaining in his hands unclaimed, specifying the name of each creditor to whom each such dividend is due, as well as the amount of the debt due to each such creditor, and shall publish the same in the numbers of the local Gazette as are first and second successively printed next after such six months, and all dividends remaining unclaimed for a period of six years shall, after the second of such advertisements, revert to the general fund of each respective estate for re-distribution by the Official Assignee among the remaining creditors of such estate.

All such unclaimed dividends shall remain under the control and management of the Official Assignee pending payment and distribution in such manner as shall be prescribed and furnished by any rules to be made under the powers conferred by section seventy-six of the said Act.

STATEMENT OF OBJECTS AND REASONS.

THE Indian Insolvent Acts, following the analogy of the law of Bankruptcy in England at the time of the first of these Acts being passed, contained no provision for compelling the property of an insolvent, which had been attached in execution before his adjudication, to be distributed among the general body of his creditors. The later English Bankrupt Acts, however, provide for the distribution amongst the bankruptcy creditors of the proceeds of the execution if a petition be filed within fourteen days after the sale; thus securing, as far as possible, equality among creditors, a purpose which the Civil Procedure Code has generally in view; and one of the objects of this Bill is to give that equality of distribution, wherever the property attached has not actually been distributed among the attaching creditors.

The only power which the Insolvent Court now has to stay proceedings in execution does not arise till the Insolvent's schedule has been filed, and in the cases where the insolvent, is friendly to the execution creditor the filing of the schedule is invariably delayed for the purpose of giving him an advantage.

Further, the Code empowers Courts to attach the property of a defendant in cases where there is reason to believe that he is likely to make away with that property in fraud of the plaintiff. Under the language of the old Civil Procedure Code it was held that property so attached before judgment vested in the Official Assignee of the defendant, and was assets of his estate giving no preferential claim to the attaching creditor, but it has been successfully contended that the effect of the new Code, section 490, is to give to a creditor attaching before judgment priority over the assignee, even though the adjudication were before judgment obtained by the attaching creditor.

The third section of the Bill is intended to provide for the rateable distribution of the insolvent's property amongst his creditors in cases where the modern English law would so distribute it, instead of allowing one creditor to sweep away the whole or a large portion of the assets.

From a very early period the Bankruptcy law of England provided that persons who, by leaving goods in the hands of traders, enabled them to maintain a false appearance of wealth and thus obtain credit could not claim such goods from the assignee of the bankrupt, and this provision was introduced into this country by the Insolvent Act. There was nothing however to give similar rights to execution-creditors, and therefore this anomaly occurred that, where an attachment was laid on goods in the hands of a person who became insolvent, the custody of the law took the goods out of the order and disposition of the bankrupt so that a subsequent adjudication did not vest the goods in the assignee, but the attaching creditor was not able to treat the ostensible ownership of the judgment-debtor as giving him any claims. It is not easy to see any sound basis for this distinction, the injurious influence of which is, to some extent, obviated in England by the Bills of Sale Act. The fourth section is intended to avoid this anomaly.

Down to a very recent period it was generally supposed that where moveable property was in the possession and ostensible ownership of a partnership a member of which became bankrupt, the provisions of the Bankrupt Law vested such property in the assignee; it was however decided in *ex parte* Dorman L. R. 8 Ch. App. 51, that such was not the effect of the language

of the Acts upon the ground that it could not be the intention of the Statute to give such rights where the other partners were solvent. The Appellate Court however was of opinion that where the firm is in fact insolvent the case comes within the mischief against which the order and disposition clause is intended to provide, and in this country it has been decided that the existence of an absent partner does not prevent the provisions of that clause attaching. The fifth section is intended to apply the order and disposition-clause to such cases as fall within the mischief which it is intended to prevent.

Much of the trade of the Presidency-towns is carried on by Gumáshtas on behalf of persons residing in remote parts of the Mufassal, and in many cases if such traders became insolvent they might be able, by taking advantage of the insolvency proceedings in the Procedure Code,* to embarass their general trade-creditors who would have much difficulty in supervising the proceedings in a Mufassal Court. The sixth section is intended to enable the creditors of such persons to have the liquidation of their affairs transferred to a Court with machinery better organised for the administration of bankrupt estates in cases where such a course is deemed by the Court to be expedient.

Sums in the aggregate considerable, though, in general, individually small, are from time to time left unclaimed in the hands of the official assignee, and so long ago as 1841 an Act was passed empowering the official assignee after the lapse of six years to distribute the amount of such unclaimed dividends rateably among the creditors who had proved the claims.

The language of this Act however was so singularly framed that it seems impossible that there ever could be a distribution made of such unclaimed dividends. The seventh section is intended to correct this.

* It was found some years ago in England that similar powers given to Scotch Courts were applied to the detriment of English creditors, and a modification of the Scotch Law was enacted to prevent its application to persons whose creditors were principally in another part of the United Kingdom, see 23 & 24 Vic., c. 33.

J. PITT KENNEDY.

The 23rd January, 1881.

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

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, FEBRUARY 5, 1881.

☞ 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 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 21st January, 1881:—

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 had the report of the Indian Law Commissioners, 1879, duly communicated to us. We have carefully considered so much of it as relates to the present Bill, as well as the papers noted in the margin, and, in compliance with the wish of the Secretary of State for India, as expressed in his despatch (Legislative), No. 37, dated 7th October, 1880, we have the honour to submit this our fourth report.

From Secretary, Chamber of Commerce, Madras, dated 1st August, 1878, and enclosure [Papers No. 56].
„ Acting Chief Secretary to Government, Madras, No. 299, dated 14th February, 1879, and enclosures [Papers No. 58].
„ Ditto, ditto, ditto, No. 1343, dated 7th June, 1879, and enclosures [Papers No. 59].
„ J. Crawfurd, Esq., Registrar, High Court, Calcutta, No. 1123, dated 27th June, 1879 [Paper No. 60].
Note by Sir Charles Turner, Chief Justice, Madras, dated 22nd January, 1880 [Paper No. 61].
From Seth Lachman Dás, Muttra, dated 1st January, 1881 [Paper No. 62].

2. We agree with the Commissioners that uniformity of practice is particularly desirable in matters relating to negotiable paper, and, to facilitate the assimilation of the practice of shroffs to that of European merchants, we have declared (section 1) that local usages may be excluded by any words in the body of the instrument which indicate an intention that the legal relations of the parties thereto shall be governed by the proposed Act.

3. We have inserted explanations calculated to prevent doubts as to when a promise or order to pay is "conditional," when the sum payable is "certain," and when the person to whom the direction is given or payment is to be made is "a certain person," within the meaning of sections 4 and 5.

4. We have re-drawn section 20 as to inchoate stamped instruments, so as to make it express more accurately what we conceive to be the law on this subject.

5. We have also re-drawn sections 47 and 48 (as follows):—

"43. A negotiable instrument made, drawn, accepted, endorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or without endorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

Negotiable instrument made, &c., without consideration.

"*Exception I.*—No party for whose accommodation a negotiable instrument has been made, drawn, accepted or indorsed, can, if he have paid the amount thereof, recover thereon such amount from any person who became a party to such instrument for his accommodation.

"*Exception II.*—No party to the instrument who has induced any other party to make, draw, accept, indorse or transfer the same to him for a consideration which he has failed to pay or perform in full, shall recover thereon an amount exceeding the value of the consideration (if any) which he has actually paid or performed."

6. We have prefixed to the sections relating to negotiation clauses (section 46) relating to delivery generally, and to the effect recommended by the Commissioners.

7. We think the section (67, now 63) relating to the drawee's time for deliberation should provide that the holder of a bill "must, if so required by the drawee," allow him twenty-four hours (exclusive of public holidays) to consider whether he will accept, and we have amended this section accordingly.

8. We have made (section 76) presentment for payment unnecessary as against any party sought to be charged, if he has engaged to pay notwithstanding non-presentment.

9. We have in section 90 (now 86) substituted "qualified" for "conditional" and added a paragraph shewing when an acceptance is qualified.

10. We have provided (section 90) for the extinguishment of rights of action on a negotiated bill held, at or after maturity, by the acceptor in his own right.

11. We agree with Sir C. Turner that section 108 of the Bill in its fourth form—as to reasonable time for presentment—should be omitted. It seems inconsistent with section 107 (now 105), and declares a rule which is not only stricter than the existing law, but would, in our opinion, be highly inconvenient.

12. We have inserted a statement of the procedure in the case of an acceptance *supra protest*, and to section 112 (now 109) we have prefixed a clause shewing how acceptance for honour must be made.

13. We have declared (section 116) that a drawee in case of need may accept and pay the bill without previous protest.

14. We have made it appear that inland (as well as foreign) bills may be drawn in sets, and altered Chapter XIV (now XV) accordingly. We have made the exception to section 126 (now 132) run thus:—

"*Exception.*—When a person accepts or indorses different parts of the bill in favour of different persons, he *and the subsequent indorser of each part* are liable on such part as if it were a separate bill."

15. We have amended the second clause of section 125 (now 130, 131) (as to the non-liability of a banker who has received payment for a customer of a crossed cheque) in accordance with *Matthiessen* v. *London and County Banking Company*, 48 L. J. C. P. 529.

16. We have made most of the changes in arrangement and wording advised by the Commissioners, and recommend that the Bill as now revised be passed. It has now been more than thirteen years before the Council of the Governor General; it has been redrawn, copiously criticised and repeatedly revised; and without the experience derived from its actual operation, it is not likely to be further improved. But it should be published in the Gazettes, and, according to the orders of the Secretary of State, it must, before being passed, be sent to the Local Governments, translated into the vernaculars and submitted to him with this report.

WHITLEY STOKES.
B. W. COLVIN.
J. PITT KENNEDY.
G. C. PAUL.

The 20th January, 1881.

No. V.

THE NEGOTIABLE INSTRUMENTS BILL, 1881.

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SCHEDULE.

No. V.

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, 1881:" Short title. Bill II, s. 1: Bill III, s. 2.

It extends to the whole of British India; but nothing herein contained affects the Indian Paper Currency Act, 1871, section twenty-one, or affects any local usage relating to any instrument in an oriental language: Provided that such usages may be excluded by any words in the body of the instrument which indicate an intention that the legal relations of the parties thereto shall be governed by this Act; and it shall come into force on the first day of January, 1882. Local extent. Saving of usages relating to hundis, &c. 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. Bill II, s. 2: Bill III, s. 2.

3. In this Act— Interpretation-clause.

"Banker" includes also persons or a corporation or company acting as bankers; and "Banker." Bill II, s. 3: Bill III, s. 2: 39 & 40 Vic., c. 81, s. 3.

"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. Bill II, s. 4: Bill III, s. 4. Byles on Bills, (12th edition), pp. 5, 94. 3 & 4 Anne, c. 9 (Byles 481). Byles 5, 102: Byles 10: Byles 93: Byles 6.

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. Bill II, s. 5: Bill III, s. 5: Byles 1, 75: 81, 94, 97: Byles 93, 94, 96: Byles 75, 81.

A promise or order to pay is not "conditional," within the meaning of this section and section four, by reason of the time for payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain.

The sum payable may be "certain," within the meaning of this section and section four, although it includes future interest or is payable at an indicated rate of exchange, or is according to the course of exchange, and although the instrument provides that, on default of payment of an instalment, the balance unpaid shall become due.

The person to whom it is clear that the direction is given or that payment is to be made may be a "certain person," within the meaning of this section and section four, although he is mis-named or designated by description only.

6. A cheque is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand. Cheque. Bill II, s. 6: Bill III, s. 5: Byles 13.

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." Draft, s. 6: Bill II, s. 7: Bill III, s. 7.

When in the bill or in any indorsement thereon the name of any person is given 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." Draft, ss. 6, 67: Byles 196: Act VI of 1840, s. 2: Act [illegible], s. 11: Act 46 Vic., c. 18.

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." Draft, s. 6: Bill II, s. 8: Bill III, s. 8: Byles 2.

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 for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer, "Holder in due course." Draft, s. 12: Bill II, s. 9: Bill III, s. 9: 1 Parsons 255: Byles 164.

or the payee or indorsee thereof, if payable to, or to the order of, a payee,

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.

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." Draft, ss. 86, 115: Bill II, s. 10: Bill III, s. 10: Byles on Bills (12th edition), 221: 39 & 40 Vic., c. 81, s. 11.

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. Bill II, s. 11: Bill III, s. 11: Act V of 1866, s. 12.

12. Any such instrument not so drawn, made or made payable shall be deemed to be a foreign instrument. Foreign instrument. Bill II, s. 12: Bill III, s. 12.

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." Draft, s. 5: Bill II, s. 13: Bill III, s. 13.

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. Draft, s. 7: Bill II, s. 14: Bill III, s. 14.

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. Draft, s. 20: Bill II, s. 15: Bill III, s. 15: *Denton* v. *Peters*, L. R. 5 Q. B. 475: *Ex parte Cote* L. R. 9 Ch. App. 27: Byles 165: Byles 150.

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." Bill II, s. 16: Bill III, s. 16.

Bill II, s. 17: Bill III, s. 17: Byles 91: Bayley (6th edition) 8.

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.

Draft, s. 2: Bill II, s. 18: Bill III, s. 18: Byles 84: Bayley 12 (*Saunderson* v. *Piper*).

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.

Bill II, s. 19: Bill III, s. 19: 1 Parsons 271: Byles 13, 212: *Aldous* v. *Cornwell*, L. R. 3 Q. B. 573.

Instruments payable on demand.

19. A promissory note or bill of exchange, in which no time for payment is specified, and a cheque are payable on demand.

Bill II, s. 20: Bill III, s. 20: Byles 88, 165, 188: *Foster* v. *Mackinnon*, L. R. 4 C. P. 704: Byles 84.

Inchoate stamped instruments.

20. Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in British India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives *primâ facie* authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount: provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.

Bill II, s. 23: Bill III, s. 22: Byles 80, 180, 206, 209, 528: 34 & 35 Vic., c. 74, s. 2.

"At sight." "On presentment." "After sight."

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 noting for non-acceptance, or protest for non-acceptance.

Draft, s. 78: Bill II, s. 22: Bill III, s. 23.

"Maturity."

22. The maturity of a promissory note or bill of exchange is the date at which it falls due.

New.

Days of grace.

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.

Draft, s. 79: Bill II, s. 24: Bill III, s. 24: Byles 206.

Calculating maturity of bill or note payable so many months after date or sight.

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 noted for non-acceptance, 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.

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.

Draft, s. 80: Bill II, s. 25 Bill III, s. 25 Byles 206.

Calculating maturity of bill or note payable so many days after date or sight.

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.

Draft, s. 80: Bill II, s. 26 Bill III, s. 26 Byles 208.

When day of maturity is a holiday.

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.

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.

CHAPTER III.

PARTIES TO NOTES, BILLS AND CHEQUES.

Bill II, s. 38: Bill III, s. 28: See 37 & 38 Vic., c. 62, s. 1 (Byles 529): Byles 59.

Capacity to make, &c., promissory notes, &c.

26. 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.

Byles 61.

Minor.

A minor may draw, indorse, deliver and negotiate such instruments so as to bind all parties except himself.

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.

Bill II, s. 39: Bill III, s. 29: Byles 31.

Agency.

27. Every person capable of binding himself or of being bound, as mentioned in section twenty-six, may so bind himself or be bound by a duly authorized agent acting in his name.

Byles 32.

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.

Byles 32.

An authority to draw bills of exchange does not of itself import an authority to indorse.

Draft, s. 15: Bill II, s. 40: Bill III, s. 30.

Liability of agent signing.

28. 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.

Act IX of 1872, s. 234.

Byles 57: Bill III, s. 31.

Liability of legal representative signing.

29. 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.

Draft, ss. 17, 73: Bill II, s. 44: Bill III, s. 34: Byles 3, 245: Bayley 43: Byles 290.

Liability of drawer.

30. 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 under Chapter XII, provided due notice of dishonour has been given to, or received by, the drawer as hereinafter provided.

Bill II, s. 45: Bill III, s. 35: Byles 18, 19, 155: Chitty 56: Grant on Bankers, 51: *Gray* v. *Johnston*, L. R. 3 E. and I. App. 1.

Liability of drawee of cheque.

31. 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.

Draft, ss. 60, 65: Bill II, s. 46: Bill III, s. 36: Byles 190, 193: Draft, s. 60: Bayley 44: Byles 910.

Liability of maker of note and acceptor of bill.

32. 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.

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.

Draft, s. 61: Bill II, s. 47: Bill III, s. 37: Byles 187, 188.

Only drawee can be acceptor except in need or for honour.

33. No person except the drawee of a bill of exchange, or all or some of several drawees, or a person named therein as a drawee in case of need, or an acceptor for honour, can bind himself by an acceptance.

Draft, s. 59: Bill II, s. 41: Bill III, s. 32.

Acceptance by several drawees not partners.

34. 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.

Draft, ss. 28, 32, 37 (para. 2), 46, 64, 65, 90 and 98: Bill II, s. 48: Bill III, s. 38: Byles 153, 245, 295: *Robertson* v. *Kensington*, 4 Taunt. 30: Byles 152, 159: *Suse* v. *Pompe*, 30 L. J., C. P. 75: *Horne* v. *Rouquette*, 3 E. Div. 9.

Liability of indorser.

35. 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.

Draft, s. 44.

Every indorser after dishonour is liable as upon an instrument payable on demand.

Draft, ss. 63, 71: Bill II, s. 49: Bill III, s. 39: Byles 166: *O'Keefe* v. *Dunn*, 6 Taunt. 305: 5 M. & S. 282.

Liability of prior parties to holder in due course.

36. Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied.

Bill II, s. 50: Bill III, s. 40: Byles 245.

Maker, drawer and acceptor principals.

37. 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.

Bill II, s. 51: Bill III, s. 41: Byles 245.

Prior party a principal in respect of each subsequent party.

38. 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.

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.

Bill II, s. 52: Bill III, s. 42: *Owen* v. *Homan*, 4 H. L. Cas. 997: *Muir* v. *Crawford*, L. R. 2 Sc. App. 456.

Suretyship.

39. 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.

Draft, s. 100: Bill II, s. 53: Bill III, s. 43: cf. Act IX of 1872, s. 137.

Discharge of indorser's liability.

40. 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.

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.

Draft, s. 36: Bill II, s. 58: Bill III, s. 47: Byles 200, 201.

Acceptor bound, although indorsement forged.

41. 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.

Bill II, s. 59: Bill III, s. 48: Byles 201: *Cooper* v. *Meyer*, 10 B. & C. 468: Act I of 1872, s. 117.

Acceptance of bill drawn in fictitious name.

42. 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.

New.

Negotiable instrument made, &c., without consideration.

43. A negotiable instrument made, drawn, accepted, endorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or without endorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

Exception I.—No party for whose accommodation a negotiable instrument has been made, drawn, accepted or indorsed, can, if he have paid the amount thereof, recover thereon such amount from any person who became a party to such instrument for his accommodation.

Exception II.—No party to the instrument who has induced any other party to make, draw, accept, indorse or transfer the same to him for a consideration which he has failed to pay or perform in full, shall recover thereon an amount exceeding the value of the consideration (if any) which he has actually paid or performed.

Draft, s. 54: Bill II, s. 62: Bill III, s. 51: Byles 130.

Partial absence or failure of money-consideration.

44. 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.

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.

Draft, s. 55: Bill II, s. 63: Bill III, s. 52.

Partial failure of consideration not consisting of money.

45. 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.

CHAPTER IV.

OF NEGOTIATION.

Delivery.

46. The making, acceptance or indorsement of a promissory note, bill of exchange or cheque is completed by delivery, actual or constructive.

As between parties standing in immediate relation, delivery to be effectual must be made by the party making, accepting or indorsing the instrument, or by a person authorized by him in that behalf.

As between such parties and any holder of the instrument other than a holder in due course, it may be shown that the instrument was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein.

A promissory note, bill of exchange or cheque payable to bearer is negotiable by the delivery thereof.

A promissory note, bill of exchange or cheque payable to order is negotiable by the holder by indorsement and delivery thereof.

Draft, s. 18: Bill II, s. 64: Bill III, s. 53: Byles 148.

Negotiation by delivery.

47. Subject to the provisions of section fifty-eight, a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof.

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.

Byles 148, note (i).

(*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.

Draft, s. 19: Bill II, s. 65: Bill III, s. 54: *Denton* v. *Peters*, L.R. 5 Q. B. 475: *Exparte Cote*, L. R. 9 Ch. App. 27.

Negotiation by indorsement.

48. Subject to the provisions of section fifty-eight, 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.

Draft, s. 31: Bill II, s. 68: Bill III, s. 57: Byles 150, 151.

Conversion of indorsement in blank into indorsement in full.

49. 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.

Draft, ss. 29, 30: Bill II, ss. 69, 70: Bill III, ss. 58, 59: Byles 153.

Effect of indorsement.

50. 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.

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.

Draft, ss. 20, 24, 27 Bill II, s. 71: Bill III, s. 60.

51. 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 fifty, 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.

Draft, ss. 32, 34: Bill II, s. 72: Bill III, s. 61: Byles 153, 157.

52. 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.

Draft, s. 45.

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.

Draft, s. 40: Bill II, s. 73: Bill III, s. 62.

53. 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.

Draft, s. 25: Bill II, s. 74: Bill III, s. 63.

54. Subject to the provisions hereinafter contained as to crossed cheques, a negotiable instrument indorsed in blank is payable to the bearer thereof even although originally payable to order.

Instrument indorsed in blank.

Draft, s. 39: Bill II, s. 75: Bill III, s. 64.

55. 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.

Draft, s. 33: Bill II, s. 76: Bill III, s. 65: Byles 172.

56. 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 appearing to be due on the instrument; but where such amount has been partly paid, a note to that effect may be endorsed on the instrument, which may then be negotiated for the balance.

Indorsement for part of sum due.

Draft, s. 22: Bill II, s. 78: Bill III, s. 67: Byles 174.

57. 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.

Draft, ss. 61, 63: Bill II, s. 79: Bill III, s. 68: Byles 163, 164.

58. 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.

Draft, s. 42, and part of s. 52: Bill II, s. 80: Bill III, s. 69: Byles 166, 168.

59. 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.

Draft, s. 46: Bill II, s. 81: Bill III, s. 70: Byles 165.

60. 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.

Draft, s. 48: Bill II, s. 82: Bill III, s. 71:

61. 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.

Walker v. *McDonald*, 2 Ex. 532: *Leonard* v. *Wilson*, 2 Cr. & M. 592: Byles 180, 182.

If the drawee cannot, after reasonable search, be found, the bill is dishonoured.

Byles 180, 182.

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.

Byles 180, 182.

Bill II, s. 83: Bill III, s. 72.

62. A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight (if he can

Presentment of promissory note for sight.

after reasonable search be found) 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.

Draft, s. 56: Bill II, s. 84: Bill III, s. 73: Byles 183.

Drawee's time for deliberation.

63. The holder must, if so required by the drawee of a bill of exchange presented to him for acceptance, allow the drawee twenty-four hours (exclusive of public holidays) to consider whether he will accept it.

Draft, s. 133: Bill II, s. 85: Bill III, s. 74.

Presentment for payment.

64. 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.

Byles 216.

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.

Bill II, s. 86: Bill III, s. 75: Draft, s. 137: Byles 213.

Hours for presentment.

65. Presentment for payment must be made during the usual hours of business, and, if at a banker's, within banking hours.

Draft, s. 138: Bill II, s. 87: Bill III, s. 76. Byles 208.

Presentment for payment of instrument payable after date or sight.

66. 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.

Bill II, s. 88: Bill III, s. 77: Byles 7.

Presentment for payment of promissory note payable by instalments.

67. 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.

Draft, s. 138: Bill II, s. 89: Bill III, s. 78: Act VI of 1840, s. 1: 7 & 8 Geo. IV, c. 78 (Byles 490).

Presentment for payment of instrument payable at specified place and not elsewhere.

68. 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.

Draft, ss. 139, 140. Bill II, s. 90: Bill III, s. 79: Byles 214.

Instrument payable at specified place.

69. 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.

Draft, ss. 139, 140, 142: Bill II, s. 91: Bill III, s. 80.

Presentment where no exclusive place specified.

70. A promissory note or bill of exchange, not made payable as mentioned in sections sixty-eight and sixty-nine, must be presented for payment at the place of business (if any), or at the usual residence, of the maker, drawee or acceptor thereof, as the case may be.

Byles 214, 215.

Draft, s. 141: Bill II, s. 92: Bill III, s. 81.

Presentment when maker, &c., has no known place of business or residence.

71. 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.

Bill II, s. 93: Bill III, s. 82: Byles 21, 210.

Presentment of cheque to charge drawer.

72. 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.

Byles 20.

Bill II, s. 94: Bill III, s. 83: Byles 21.

Presentment of cheque to charge any other person.

73. A cheque must, in order to charge any person except the drawer, be presented within a reasonable time after delivery thereof by such person.

Draft, s. 134: Bill II, s. 95: Bill III, s. 84: Byles 211.

Presentment of instrument payable on demand.

74. Subject to the provisions of section thirty-one, a negotiable instrument payable on demand must be presented for payment within a reasonable time after it is received by the holder.

Bill II, s. [illegible] Bill III, s. [illegible] Parsons 508.

Presentment by or to agent, representative of deceased, or assignee of insolvent.

75. 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.

Draft, s. [illegible] 91: Bill II, s. [illegible] Bill III, s. [illegible] Byles 213.

When presentment unnecessary.

76. 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 sought to be charged therewith, if he has engaged to pay notwithstanding non-presentment;

(*c*) 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;

(*d*) as against the drawer, if the drawer could not suffer damage from the want of such presentment.

Terry v. Parker, 6 Ad. & E. 502: *Wirth v. Austin*, L. R. 10 C. P. 689.

Draft, s. 88: Bill II, s. 96: Bill III, s. 85: Byles 198.

Liability of banker for negligently dealing with bill presented for payment.

77. 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.

Bill II, s. 100: Bill III, s. 88: Byles 220.

To whom payment should be made.

78. Subject to the provisions of section eighty-two, 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.

Bill II, s. 101: Bill III, s. 89: Byles 206, [illegible]

Interest when rate specified.

79. 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 of the principal money due thereon, from the date of the instrument, until tender or realization of such amount, or until such date after the institution of a suit to recover such amount as the Court directs.

Draft, s. 65: Bill II, s. 102: Bill III, s. 90: Byles 206, 207, 208.

Interest when no rate specified.

80. When no rate of interest is specified in the instrument, interest on the amount due thereon shall, except in cases provided for by the Code of Civil Procedure, section 532, be calculated at the rate of six percentum 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.

'Jam,' Bank of Bengal.

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.

[illegible] s. 88: [illegible] s. 106: [illegible] s. 91: Byles 207.

Delivery of instrument on payment, or indemnity in case of loss.

81. 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.

[illegible] s. 94: [illegible] s. 104: [illegible] s. 92.

Discharge from liability—

by cancellation;

82. The maker, acceptor or indorser respectively of a negotiable instrument is discharged from liability thereon—

(*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.

Draft, s. [illegible] Bill II, s. [illegible] Bill III, s. [illegible]

Discharge by allowing drawee more than twenty-four hours to accept.

83. If the holder of a bill of exchange allows the drawee more than twenty-four hours, exclusive of public holidays, to consider whether he will accept the same, all previous parties not consenting to such allowance are thereby discharged from liability to such holder.

Draft, s. 101: Bill II, s. 100: Bill III, s. 94: Byles 20.

When cheque not duly presented and drawer damaged thereby.

84. When the holder of a cheque fails to present it for payment within a reasonable time, and the drawer thereof sustains loss or damage from such failure, he is discharged from liability to the holder.

Bill II, s. 107: Bill III, s. 95: 16 & 17 Vic., c. 59, s. 19: Byles 27, 208. *Charles v. Blackwell*, 1 C. P. D. 548.

Cheque payable to order.

85. 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.

Draft, s. [illegible] Bill II, s. [illegible] Bill III, s. [illegible] Byles 193, 194.

Parties not consenting discharged by qualified or limited acceptance.

86. If the holder of a bill of exchange acquiesces in a qualified 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 drawees 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, unless on notice given by the holder, they assent to such acceptance.

Explanation.—An acceptance is qualified—

(*a*) where it is conditional, declaring the payment to be dependent on the happening of an event therein stated;

(*b*) where it undertakes the payment of part only of the sum ordered to be paid;

(*c*) where, no place of payment being specified on the order, it undertakes the payment at a specified place and not otherwise or elsewhere; or where, a place of payment being specified in the order, it undertakes the payment at some other place and not otherwise or elsewhere;

(*d*) where it undertakes the payment at a time other than that at which under the order it would be legally due.

Draft, ss. 109, 110: Bill II, s. 110: Bill III, s. 97: Byles 324.

Effect of material alteration.

Alteration by indorsee.

87. Save as provided in sections twenty, forty-nine, eighty-six and one hundred and twenty-five, 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;

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 twenty, forty-nine, eighty-six and one hundred and twenty-five.

Bill II, s. 111: Bill III, s. 98: Byles [illegible]

Acceptor or indorser bound notwithstanding previous alteration.

88. An acceptor or indorser of a negotiable instrument is bound by his acceptance or indorsement notwithstanding any previous alteration of the instrument.

Draft, ss. 112, 113: Act I of 1872, s. 112: Bill II, s. 112: Bill III, s. 99.

89. 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.

90. If a bill of exchange which has been negotiated is, at or after maturity, held by the acceptor in his own right, all rights of action thereon are extinguished.

Extinguishment of rights of action on bill in acceptor's hands.

CHAPTER VIII.

OF NOTICE OF DISHONOUR.

91. 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, or where presentment is excused and the bill is not accepted.

Dishonour by non-acceptance.

Where the drawee is incompetent to contract, or the acceptance is qualified, the bill may be treated as dishonoured.

92. 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.

Dishonour by non-payment.

93. 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.

By and to whom notice should be given.

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.

94. Notice of dishonour may be given to a duly authorized 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.

Mode in which notice may be given.

If the notice is duly directed and sent by post and miscarries, such miscarriage does not render the notice invalid.

95. Any party receiving notice of dishonour must, in order to render any prior party liable to himself, give notice of dishonour to such party within a reasonable time, unless such party otherwise receives due notice as provided by section ninety-three.

Party receiving must transmit notice of dishonour.

96. 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.

Agent for presentment.

97. 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 party to whom notice given is dead.

98. No notice of dishonour is necessary—

When notice of dishonour is unnecessary.

(*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.

99. 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.

Noting.

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.

100. 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.

Protest.

Byles 261.

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.

Protest for better security.

Draft, s. 122: Bill II, s. 124: Bill III, s. 111: Byles 261.

101. A protest under section one hundred must contain—

Contents of protest.

(*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.

Draft, s. 124: Bill II, s. 125: Bill III, s. 112: Byles 262.

102. 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.

Notice of protest.

Bill II, s. 126: Bill III, s. 113: Act VI, 1840, s. 4: 2 & 3 Wm. IV, c. 98.

103. 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.

Protest for non-payment after dishonour by non-acceptance.

Draft, s. 108: Bill II, s. 139: Bill III, s. 128.

104. 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 X.

OF REASONABLE TIME.

Draft, s. 56, Expln. 1: Bill II, s. 127: Bill III, s. 114: Byles 182, 210, 287.

105. 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.

Draft, s. 129: Bill II, s. 129: Bill III, s. 116: Byles 284.

106. 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.

Reasonable time of giving notice of dishonour.

Byles 285.

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.

Draft, s. 131: Bill II, s. 130: Bill III, s. 117.

107. 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.

Reasonable time for transmitting such notice.

CHAPTER XI.

OF ACCEPTANCE AND PAYMENT FOR HONOUR AND REFERENCE IN CASE OF NEED.

Draft, ss. 74, 76: Bill II, s. 131: Bill III, s. 118: Byles 265, 266.

108. When a bill of exchange has been noted or protested for non-acceptance or for better security, any person not being a party already liable thereon may, with the consent of the holder, by writing on the bill, accept the same for the honour of any party thereto.

Acceptance for honour.

An acceptor *supra protest* must personally appear before a notary public with two or more witnesses, and declare that he accepts, under protest, the protested bill for the honour of the drawer or of a particular indorser whom he names, or generally for honour, and that he will satisfy the same at the appointed time; and then must subscribe the bill with his own hand.

Unless the person who intends to accept *supra protest* first declares, in the presence of a notary, that he does it for honour, and has such declaration duly recorded in the notarial register at the time, his acceptance shall be a nullity.

Now.

109. A person desiring to accept for honour must, in the presence of a notary public, subscribe the bill with his own hand, and declare that he accepts under protest the protested bill for the honour of the drawer or of a particular indorser whom he names, or generally for honour; and such declaration must be recorded by the notary in his register.

How acceptance for honour must be made.

Draft, s. 75: Bill II, s. 132: Bill III, s. 119: Byles 265, 266.

110. 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.

Acceptance not specifying for whose honour it is made.

Draft, s. 77: Bill II, s. 133: Bill III, s. 120: Byles 267.

111. 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.

Liability of acceptor for honour.

Byles 266.

Draft, s. 845: Byles 266: Act VI of 1840, s. 3.

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.

Draft, s. 95: Bill II, s. 134: Bill III, s. 121.

When acceptor for honour may be charged.

112. 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.

Draft, s. 96: Bill II, s. 135: Bill III, s. 122: Byles 270.

Payment for honour.

113. 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.

Draft, s. 97: Bill II, s. 136: Bill III, s. 123: Byles 271. *In re Overend, Harney & Co.*, L. R. 6, Eq. 344.

Right of payer for honour.

114. 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.

Draft, s. 73: Bill II, s. 138: Bill III, s. [illegible] Byles 265.

Drawee in case of need.

115. Where a drawee in case of need is named in a bill of exchange, or in any endorsement thereon, the bill is not dishonoured until it has been dishonoured by such drawee.

Acceptance and payment without protest.

116. A drawee in case of need may accept and pay the bill of exchange without previous protest.

CHAPTER XII.

OF COMPENSATION.

Bill II, s. 137: Bill III, s. 124.

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:—

Draft, s. 65: Byles 415.

(*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.

SPECIAL RULES OF EVIDENCE.

Presumptions as to negotiable instruments

118. Until the contrary is proved, the following presumptions shall be made:— Draft, s. 12: Bill II, s. 27: Bill III, s. 26: Byles 3, 119.

as to consideration;

(*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:

as to date;

(*b*) that every negotiable instrument bearing a date was made or drawn on such date:

as to time of acceptance;

(*c*) that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity: Byles 190.

as to time of transfer;

(*d*) that every transfer of a negotiable instrument was made before its maturity: Byles 170.

as to order of endorsements;

(*e*) that the endorsements appearing upon a negotiable instrument were made in the order in which they appear thereon: Draft, s. 87.

as to stamp;

(*f*) that a lost promissory note, bill of exchange or cheque was duly stamped: Byles 117, 382.

that holder is a holder in due course.

(*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. Draft, s. 12: Byles 122.

Presumption on proof of protest.

119. In a suit upon an instrument, which has been dishonoured, the Court shall, on proof of the protest, presume the fact of dishonour, unless and until such fact is disproved. Draft, ss. 121, 123: Act V of 1866, s. 13.

Estoppel against denying original validity of instrument.

120. 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. Bill II, s. 54: Bill III, s. 44: *Phillips* v. *Im Thurn* 18, C. B., N. S. 694.

Estoppel against denying capacity of payee to indorse.

121. 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. Bill II, s. 55: Bill III, s. [illegible] Byles 206.

Draft, s. 35: Bill II, s. 57: Bill III, s. 46: Byles 153. See Byles 222, n. (*i*).

Estoppel against denying signature or capacity of prior party.

122. 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.

CHAPTER XIV.

OF CROSSED CHEQUES.

Bill II, s. 30: Bill III, s. 129: 39 & 40 Vic., c. 81, s. 4.

Cheque crossed generally.

123. 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.

Bill II, s. 31: Bill III, s. 130: 39 & 40 Vic., c. 81, s. 4.

Cheque crossed specially.

124. 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.

Bill II, s. 32: Bill III, s. 131: 39 & 40 Vic., c. 81, s. 5.

Crossing after issue.

125. 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.

Draft, ss. 102, 103: Bill II, s. 33: Bill III, s. 132: 39 & 40 Vic., c. 81, s. 7.

Payment of cheque crossed generally.

126. Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker.

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.

Bill II, s. 34: Bill III, s. 133: [illegible]

Payment of cheque crossed specially more than once.

127. 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.

Bill II, s. 35: Bill III, s. 134: [illegible]

Payment in due course of crossed cheque.

128. 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.

Bill II. s. 36: Bill III, s. 135: S. 10.

Payment of crossed cheque out of due course.

129. 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.

Bill II, s. 37: Bill III, s. 136: S. 12.

Cheque bearing "not negotiable."

130. 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.

48 L. J. C. P. 529.

Non-liability of banker receiving payment of cheque.

131. A banker who has in good faith and without negligence received payment for 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 XV.

OF BILLS IN SETS.

Draft, ss. 11, 116: Bill II, s. 28: Bill III, s. 125: [illegible]

Set of bills.

132. 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 and the subsequent indorsers of each part are liable on such part as if it were a separate bill. Byles 391: Haskins 10 M. & C. 449.

Bill II, s. 29: Bill III, s. 126: Byles 391: Bayley 30, 171.

Holder of first acquired part entitled to all.

133. 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.

CHAPTER XVI.

OF INTERNATIONAL LAW.

Draft, s. [illegible] Bill II, s. [illegible] Bill III, s. 128: [illegible] Byles 202: *Rouquette*, Ouvrigue, L. R. 10 Q. B. 525; *Horne* v. *Rouquette*, 3 Q. B. Div. 514.

Law governing liability of maker, acceptor or indorser of foreign instrument.

134. 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.

Illustration.

Byles 402. 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.

Draft, s. 105: Bill II, s. 141: Bill III, s. 138.

135. 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.

Draft, s. 106: Bill II, s. 142: Bill III, s. 139.

136. 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.

Draft, s. 107: Bill II, s. 143: Bill III, s. 140: Act I of 1872, s. 4.

137. 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.

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 28th January, 1881, and was referred to a Select Committee :—

No. 3 OF 1881.

A Bill for the amendment of the law relating to Insolvent Debtors in India.

WHEREAS it is expedient to amend the law relating to Insolvent Debtors in India; It is enacted as follows :— Preamble.

1. This Act may be called "The Insolvent Law Amendment Act, 1881 :" Short title.

it extends to the whole of British India; and Local extent.

it shall come into force on the first day of April 1881. Commencement.

2. In this Act, unless there be something repugnant in the subject or context,— Interpretation-clause.

the word "Insolvent" means a person of whose property a receiver has been appointed under the Code of Civil Procedure, section 351, a person upon whose petition a vesting order has been made under the seventh section of the eleventh and twelfth of Victoria, Chapter XXI, entitled an Act to consolidate and amend the laws relating to Insolvent Debtors in India, and a person who has been adjudged to have committed an act of insolvency under the provisions of section eight or under the provisions of the ninth section of the same Act : "Insolvent."

the word "adjudication" means the order under the said section 351 of the said Code appointing a receiver, a vesting order under the said seventh section of the said Act, and an order under the said eighth section or under the said ninth section of the said Act adjudging any person to have committed an act of insolvency; and "Adjudication."

the word "assignee" means the person in whom the property of any Insolvent has been vested by the adjudication of such Insolvent. "Assignee."

3. If, at the time of the adjudication of any insolvent, any of his property has been attached in execution of any decree or under any order for attachment before judgment, Attached property of insolvent.

the Court, under whose order such property has been attached, shall withdraw the attachment and permit his assignee to take possession of the same.

If, before the Court has had notice of such insolvency, the attached property has been sold, the proceeds of the sale, after deducting the costs of the attachment and sale and all other necessary costs incurred in and about the realization of such proceeds, shall be paid to the assignee of such insolvent :

Provided, that in case the Court has not had notice of the adjudication of such insolvent, before such proceeds are distributed, the same shall not, merely on account of such adjudication, be recalled from the persons to whom they have been paid.

When the Court withdraws the attachment, it may, if it think fit, direct that the proper and necessary costs of the attachment and of the preservation of the property attached shall be charged upon the proceeds of such property; and if such order be made, the assignee shall apply the proceeds of such sale in payment of such costs after payment of the costs of such sale, but in priority to payment of all debts of the insolvent payable out of such proceeds.

4. No property which, under the provisions of the twenty-third section of the said Act would be deemed to be the property of such insolvent, shall be held to have been taken out of his order and disposition by reason only that such property has, before the adjudication of such insolvent, been attached in execution of a decree or under any order for an attachment before judgment. Order and disposition. Attachment not to alter.

5. Whenever any persons trading in partnership together have, by the consent and permission of the true owner thereof, in their possession, order or disposition, goods or chattels whereof such persons are reputed owners, or whereof they have taken upon them the sale, alteration or disposition as owner, and while they have such possession, order or disposition, any of such persons is, under the provisions of the said Act, adjudicated an insolvent, or obtains a vesting order on his petition, such goods and chattels shall be deemed to be the property of such partnership so as to become vested in the Official Assignee of the Insolvent Court by the order made in pursuance of the said Act for the purpose only, and so far as may be required, for the purpose of paying the joint creditors of the said partnership. Order and disposition of Firms whose owner becomes Insolvent.

6. Whenever any person who carries on trade within the local limits of the Ordinary Original Civil Jurisdiction of any of the Transfer of insolvencies from Mufassal Courts.

High Courts at Calcutta, Madras or Bombay is, under the provisions of section 351 of the Code of Civil Procedure, declared to be an insolvent, the Insolvent Court in any of the said towns in which he may carry on business at the time he is so declared to be an insolvent, may, if it think fit, on the application of any creditor of such trader, adjudge him to have committed an act of insolvency:

such adjudication shall have the same force and effect as if he had, under the provisions of the eighth section of the said Act, been adjudicated an insolvent by such Court, at the time when he was declared to be an insolvent under the provisions of the said Code;

and all the estate and effects of such insolvent shall, unless the said Court otherwise directs, vest in the Official Assignee of such Court,

and any person appointed receiver under the provisions of the said Code shall, unless such Court otherwise directs, thereupon make over to the Official Assignee all the property of the insolvent which may have come to his hands as such receiver:

Provided that no such adjudication shall avoid, or in any way affect, any dealing of such receiver with any of such property before he has notice of such adjudication.

Distribution of unclaimed dividends.

7. The assignee of each insolvent estate shall, on the expiration of six months from the declaration of any dividend, file in Court an account upon oath of every dividend remaining in his hands unclaimed, specifying the name of each creditor to whom each such dividend is due, as well as the amount of the debt due to each such creditor, and shall publish the same in the numbers of the local Gazette as are first and second successively printed next after such six months, and all dividends remaining unclaimed for a period of six years shall, after the second of such advertisements, revert to the general fund of each respective estate for re-distribution by the Official Assignee among the remaining creditors of such estate.

All such unclaimed dividends shall remain under the control and management of the Official Assignee pending payment and distribution in such manner as shall be prescribed and furnished by any rules to be made under the powers conferred by section seventy-six of the said Act.

STATEMENT OF OBJECTS AND REASONS.

THE Indian Insolvent Acts, following the analogy of the law of Bankruptcy in England at the time of the first of these Acts being passed, contained no provision for compelling the property of an insolvent, which had been attached in execution before his adjudication, to be distributed among the general body of his creditors. The later English Bankrupt Acts, however, provide for the distribution amongst the bankruptcy creditors of the proceeds of the execution if a petition be filed within fourteen days after the sale; thus securing, as far as possible, equality among creditors, a purpose which the Civil Procedure Code has generally in view; and one of the objects of this Bill is to give that equality of distribution, wherever the property attached has not actually been distributed among the attaching creditors.

The only power which the Insolvent Court now has to stay proceedings in execution does not arise till the Insolvent's schedule has been filed, and in the cases where the insolvent is friendly to the execution creditor, the filing of the schedule is invariably delayed for the purpose of giving him an advantage.

Further, the Code empowers Courts to attach the property of a defendant in cases where there is reason to believe that he is likely to make away with that property in fraud of the plaintiff. Under the language of the old Civil Procedure Code it was held that property so attached before judgment vested in the Official Assignee of the defendant, and was assets of his estate giving no preferential claim to the attaching creditor, but it has been successfully contended that the effect of the new Code, section 490, is to give to a creditor attaching before judgment priority over the assignee, even though the adjudication were before judgment obtained by the attaching creditor.

The third section of the Bill is intended to provide for the rateable distribution of the insolvent's property amongst his creditors in cases where the modern English law would so distribute it, instead of allowing one creditor to sweep away the whole or a large portion of the assets.

From a very early period the Bankruptcy law of England provided that persons who, by leaving goods in the hands of traders, enabled them to maintain a false appearance of wealth and thus obtain credit, could not claim such goods from the assignee of the bankrupt, and this provision was introduced into this country by the Insolvent Act. There was nothing, however, to give similar rights to execution-creditors, and therefore this anomaly occurred that, where an attachment was laid on goods in the hands of a person who became insolvent, the custody of the law took the goods out of the order and disposition of the bankrupt, so that a subsequent adjudication did not vest the goods in the assignee, but the attaching creditor was not able to treat the ostensible ownership of the judgment-debtor as giving him any claims. It is not easy to see any sound basis for this distinction, the injurious influence of which is, to some extent, obviated in England by the Bills of Sale Act. The fourth section is intended to avoid this anomaly.

Down to a very recent period it was generally supposed that where moveable property was in the possession and ostensible ownership of a partnership a member of which became bankrupt, the provisions of the Bankrupt Law vested such property in the assignee; it was however decided in *ex parte* Dorman L. R. 8 Ch., App. 51, that such was not the effect of the language

of the Acts upon the ground that it could not be the intention of the Statute to give such rights where the other partners were solvent. The Appellate Court however was of opinion that where the firm is in fact insolvent, the case comes within the mischief against which the order and disposition clause is intended to provide, and in this country it has been decided that the existence of an absent partner does not prevent the provisions of that clause attaching. The fifth section is intended to apply the order and disposition-clause to such cases as fall within the mischief which it is intended to prevent.

Much of the trade of the Presidency-towns is carried on by Gumáshtas on behalf of persons residing in remote parts of the Mufassal, and in many cases, if such traders became insolvent, they might be able, by taking advantage of the insolvency proceedings in the Procedure Code,* to embarrass their general trade-creditors who would have much difficulty in supervising the proceedings in a Mufassal Court. The sixth section is intended to enable the creditors of such persons to have the liquidation of their affairs transferred to a Court with machinery better organised for the administration of bankrupt estates in cases where such a course is deemed by the Court to be expedient.

Sums in the aggregate considerable, though, in general, individually small, are from time to time left unclaimed in the hands of the official assignee, and so long ago as 1841 an Act was passed empowering the official assignee after the lapse of six years to distribute the amount of such unclaimed dividends rateably among the creditors who had proved the claims.

The language of this Act, however, was so singularly framed that it seems impossible that there ever could be a distribution made of such unclaimed dividends. The seventh section is intended to correct this.

* It was found some years ago in England that similar powers given to Scotch Courts were applied to the detriment of English creditors, and a modification of the Scotch Law was enacted to prevent its application to persons whose creditors were principally in another part of the United Kingdom, see 23 & 24 Vic., c. 33.

J. PITT KENNEDY.

The 23rd January, 1881.

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

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, FEBRUARY 12, 1881.

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 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 21st January, 1881:—

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 had the report of the Indian Law Commissioners, 1879, duly communicated to us. We have carefully considered so much of it as relates to the present Bill, as well as the papers noted in the margin, and, in compliance with the wish of the Secretary of State for India, as expressed in his despatch (Legislative), No. 37, dated 7th October, 1880, we have the honour to submit this our fourth report.

From Secretary, Chamber of Commerce, Madras, dated 1st August, 1878, and enclosure [Papers No. 56].
„ Acting Chief Secretary to Government, Madras, No. 299, dated 14th February, 1879, and enclosures [Papers No. 58].
„ Ditto, ditto, ditto, No. 1343, dated 7th June, 1879, and enclosures [Papers No. 59].
„ J. Crawfurd, Esq., Registrar, High Court, Calcutta, No. 1123, dated 27th June, 1879 [Paper No. 60].
Note by Sir Charles Turner, Chief Justice, Madras, dated 22nd January, 1880 [Paper No. 61].
From Seth Lachman Dás, Muttra, dated 1st January, 1881 [Paper No. 62].

2. We agree with the Commissioners that uniformity of practice is particularly desirable in matters relating to negotiable paper, and, to facilitate the assimilation of the practice of shroffs to that of European merchants, we have declared (section 1) that local usages may be excluded by any words in the body of the instrument which indicate an intention that the legal relations of the parties thereto shall be governed by the proposed Act.

3. We have inserted explanations calculated to prevent doubts as to when a promise or order to pay is "conditional," when the sum payable is "certain," and when the person to whom the direction is given or payment is to be made is "a certain person," within the meaning of sections 4 and 5.

4. We have re-drawn section 20 as to inchoate stamped instruments, so as to make it express more accurately what we conceive to be the law on this subject.

5. We have also re-drawn sections 47 and 48 (as follows):—

Negotiable instrument made, &c., without consideration.

"43. A negotiable instrument made, drawn, accepted, endorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or without endorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

"*Exception I.*—No party for whose accommodation a negotiable instrument has been made, drawn, accepted or indorsed, can, if he have paid the amount thereof, recover thereon such amount from any person who became a party to such instrument for his accommodation.

"*Exception II.*—No party to the instrument who has induced any other party to make, draw, accept, indorse or transfer the same to him for a consideration which he has failed to pay or perform in full, shall recover thereon an amount exceeding the value of the consideration (if any) which he has actually paid or performed."

6. We have prefixed to the sections relating to negotiation clauses (section 46) relating to delivery generally, and to the effect recommended by the Commissioners.

7. We think the section (67, now 63) relating to the drawee's time for deliberation should provide that the holder of a bill "must, if so required by the drawee," allow him twenty-four hours (exclusive of public holidays) to consider whether he will accept, and we have amended this section accordingly.

8. We have made (section 76) presentment for payment unnecessary as against any party sought to be charged, if he has engaged to pay notwithstanding non-presentment.

9. We have in section 90 (now 86) substituted "qualified" for "conditional" and added a paragraph shewing when an acceptance is qualified.

10. We have provided (section 90) for the extinguishment of rights of action on a negotiated bill held, at or after maturity, by the acceptor in his own right.

11. We agree with Sir C. Turner that section 108 of the Bill in its fourth form—as to reasonable time for presentment—should be omitted. It seems inconsistent with section 107 (now 105), and declares a rule which is not only stricter than the existing law, but would, in our opinion, be highly inconvenient.

12. We have inserted a statement of the procedure in the case of an acceptance *supra protest*, and to section 112 (now 109) we have prefixed a clause shewing how acceptance for honour must be made.

13. We have declared (section 116) that a drawee in case of need may accept and pay the bill without previous protest.

14. We have made it appear that inland (as well as foreign) bills may be drawn in sets, and altered Chapter XIV (now XV) accordingly. We have made the exception to section 126 (now 132) run thus:—

"*Exception.*—When a person accepts or indorses different parts of the bill in favour of different persons, he *and the subsequent indorser of each part* are liable on such part as if it were a separate bill."

15. We have amended the second clause of section 125 (now 130, 131) (as to the non-liability of a banker who has received payment for a customer of a crossed cheque) in accordance with *Matthiessen* v. *London and County Banking Company*, 48 L. J. C. P. 529.

16. We have made most of the changes in arrangement and wording advised by the Commissioners, and recommend that the Bill as now revised be passed. It has now been more than thirteen years before the Council of the Governor General; it has been redrawn, copiously criticised and repeatedly revised; and without the experience derived from its actual operation, it is not likely to be further improved. But it should be published in the Gazettes, and, according to the orders of the Secretary of State, it must, before being passed, be sent to the Local Governments, translated into the vernaculars and submitted to him with this report.

WHITLEY STOKES.
B. W. COLVIN.
J. PITT KENNEDY.
G. C. PAUL.

The 20th January, 1881.

No. V.

THE NEGOTIABLE INSTRUMENTS BILL, 1881.

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SCHEDULE.

No. V.

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.

Bill II, s. 1: Bill III, s. 2.

1. This Act may be called "The Negotiable Instruments Act, 1881." Short title.

It extends to the whole of British India; but nothing herein contained affects the Indian Paper Currency Act, 1871, section twenty-one, or affects any local usage relating to any instrument in an oriental language: Provided that such usages may be excluded by any words in the body of the instrument which indicate an intention that the legal relations of the parties thereto shall be governed by this Act; and it shall come into force on the first day of January, 1882. Local extent. Saving of usages relating to hundís, &c. Commencement.

Bill II, s. 2: Bill III, s. 2.

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.

Bill II, s. 3: Bill III, s. 2: 39 & 40 Vic., c. 81, s. 3.

3. In this Act— Interpretation-clause.

"Banker" includes also persons or a corporation or company acting as bankers; and "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.

Bill II, s. 4: Bill III, s. 4. Byles on Bills, (12th edition), pp. 5, 94. 3 & 4 Anne, c. 9 (Byles 481). Byles 5, 102: Byles 10: Byles 93. Byles 6.

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.

Bill II, s. 5: Bill III, s. 5: Byles 1, 75: 81, 94, 97: Byles 93, 94, 96: Byles 75, 81.

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.

A promise or order to pay is not "conditional," within the meaning of this section and section four, by reason of the time for payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain.

The sum payable may be "certain," within the meaning of this section and section four, although it includes future interest or is payable at an indicated rate of exchange, or is according to the course of exchange, and although the instrument provides that, on default of payment of an instalment, the balance unpaid shall become due.

The person to whom it is clear that the direction is given or that payment is to be made may be a "certain person," within the meaning of this section and section four, although he is mis-named or designated by description only.

Bill II, s. 6: Bill III, s. 5: Byles 13.

6. A cheque is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand. Cheque.

Draft, s. 6: Bill II, s. 7: Bill III, s. 7.

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 in the bill or in any indorsement thereon the name of any person is given 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."

Draft, ss. 6, 57: Byles 196: Act VI of 1840, s. 2: Act V of 1866, s. 11: See 41 Vic., c. 13.

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."

Draft, s. 6: Bill II, s. 8: Bill III, s. 8: Byles 2.

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.

Draft, s. 12: Bill II, s. 9: Bill III, s. 9: 1 Parsons 255: Byles 164.

9. "Holder in due course" means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer, "Holder in due course."

or the payee or indorsee thereof, if payable to, or to the order of, a payee,

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.

Draft, ss. 86, 115: Bill II, s. 10: Bill III, s. 10: Byles on Bills (12th edition), 221: 39 & 40 Vic., c. 81, s. 11.

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."

Bill II, s. 11: Bill III, s. 11: Act V of 1866, s. 12.

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.

Bill II, s. 12: Bill III, s. 12.

12. Any such instrument not so drawn, made or made payable shall be deemed to be a foreign instrument. Foreign instrument.

Draft, s. 5: Bill II, s. 13: Bill III, s. 13.

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."

Draft, s. 7: Bill II, s. 14: Bill III, s. 14.

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.

Draft, s. 20: Bill II, s. 15: Bill III, s. 15: *Denton* v. *Peters*, L. R. 5 Q. B. 475: *Ex parte Cole* L. R. 9 Ch. App. 27: Byles 165: Byles 160.

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. "Indorser."

Bill II, s. 16: Bill III, s. 16.

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."

Bill II, s. 17: Bill III, s. 17: Byles 91: Bayley (6th edition) 8.

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.

Draft, s. 2: Bill II, s. 18: Bill III, s. 18: Byles 84: Bayley 12 (*Saunderson* v. *Piper*).

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.

Bill II, s. 19: Bill III, s. 19: 1 Parsons 271: Byles 13, 212: *Aldous* v. *Cornwell*, L. R. 3 Q. B. 573.

Instruments payable on demand.

19. A promissory note or bill of exchange, in which no time for payment is specified, and a cheque are payable on demand.

Bill II, s. 20: Bill III, s. 20: Byles 88, 165, 188: *Foster* v. *Mackinnon*, L. R. 4 C. P. 704: Byles 84.

Inchoate stamped instruments.

20. Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in British India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives *primâ facie* authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount: provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.

Bill II, s. 23: Bill III, s. 22: Byles 80, 180, 206, 209, 528: 34 & 35 Vic., c. 74, s. 2.

"At sight." "On presentment." "After sight."

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 noting for non-acceptance, or protest for non-acceptance.

Draft, s. 78: Bill II, s. 22: Bill III, s. 23.

"Maturity."

22. The maturity of a promissory note or bill of exchange is the date at which it falls due.

New.

Days of grace.

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.

Draft, s. 79: Bill II, s. 24: Bill III, s. 24: Byles 206.

Calculating maturity of bill or note payable so many months after date or sight.

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 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 noted for non-acceptance, 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.

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.

Draft, s. 80: Bill II, s. 25: Bill III, s. 25: Byles 206.

Calculating maturity of bill or note payable so many days after date or sight.

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.

Draft, s. 80: Bill II, s. 26: Bill III, s. 26: Byles 208.

When day of maturity is a holiday.

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.

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.

CHAPTER III.

PARTIES TO NOTES, BILLS AND CHEQUES.

Bill II, s. 38: Bill III, s. 28: See 37 & 38 Vic., c. 62, s. 1 (Byles 529): Byles 59.

Capacity to make, &c., promissory notes, &c.

26. 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.

Byles 61.

Minor.

A minor may draw, indorse, deliver and negotiate such instruments so as to bind all parties except himself.

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.

Bill II, s. 39: Bill III, s. 29: Byles 31.

Agency.

27. Every person capable of binding himself or of being bound, as mentioned in section twenty-six, may so bind himself or be bound by a duly authorized agent acting in his name.

Byles 32.

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.

Byles 33.

An authority to draw bills of exchange does not of itself import an authority to indorse.

Draft, s. 15: Bill II, s. 40: Bill III, s. 30.

Liability of agent signing.

28. 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

Act IX of 1872, s. 234.

instrument, except to those who induced him to sign upon the belief that the principal only would be held liable.

Byles 57: Bill III, s. 31.

Liability of legal representative signing.

29. 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.

Draft, ss. 17, 73: Bill II, s. 44: Bill III, s. 34: Byles 3, 245: Bayley 43: Byles 290.

Liability of drawer.

30. 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 under Chapter XII, provided due notice of dishonour has been given to, or received by, the drawer as hereinafter provided.

Bill II, s. 45: Bill III, s. 35: Byles 18, 19, 185: Chitty 56: Grant on Bankers, 51: *Gray* v. *Johnston*, L. R. 3 E. and I. App. 1.

Liability of drawee of cheque.

31. 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.

Draft, ss. 60, 65: Bill II, s. 46: Bill III, s. 36: Byles 190, 193: Draft, s. 60: Bayley 44: Byles 910.

Liability of maker of note and acceptor of bill.

32. 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.

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.

Draft, s. 61: Bill II, s. 47: Bill III, s. 37: Byles 187, 188.

Only drawee can be acceptor except in need or for honour.

33. No person except the drawee of a bill of exchange, or all or some of several drawees, or a person named therein as a drawee in case of need, or an acceptor for honour, can bind himself by an acceptance.

Draft, s. 59: Bill II, s. 41: Bill III, s. 32.

Acceptance by several drawees not partners.

34. 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.

Draft, ss. 28, 32, 37 (para. 2), 46, 64, 65, 90 and 98: Bill II, s. 48: Bill III, s. 38: Byles 153, 245, 295: *Robertson* v. *Kensington*, 4 Taunt. 30: Byles 152, 155: *Suse* v. *Pompe*, 30 L. J., C. P. 75: *Horne* v. *Rouquette*, 3 Q. B. Div. 519.

Liability of indorser.

35. 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.

Draft, s. 44.

Every indorser after dishonour is liable as upon an instrument payable on demand.

Draft, ss. 63, 71: Bill II, s. 49: Bill III, s. 39: Byles 166: *O'Keefe* v. *Dunn*, 6 Taunt. 305: 5 M. & S. 282.

Liability of prior parties to holder in due course.

36. Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied.

Bill II, s. 50: Bill III, s. 40: Byles 245.

Maker, drawer and acceptor principals.

37. 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.

Bill II, s. 51: Bill III, s. 41: Byles 245.

Prior party a principal in respect of each subsequent party.

38. 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.

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.

Bill II, s. 52: Bill III, s. 42: *Owen* v. *Homan*, 4 H. L. Cas. 997: *Muir* v. *Crawford*, L. R. 2 Sc. App. 456.

Suretyship.

39. 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.

Draft, s. 100: Bill II, s. 53: Bill III, s. 43: cf. Act IX of 1872, s. 137.

Discharge of indorser's liability.

40. 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.

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.

Draft, s. 36: Bill II, s. 54: Bill III, s. 47: Byles 200, 201.

Acceptor bound, although indorsement forged.

41. 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.

Bill II, s. 59: Bill III, s. 48: Byles 201: *Cooper* v. *Meyer*, 10 B. & C. 468: Act I of 1872, s. 117.

Acceptance of bill drawn in fictitious name.

42. 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.

New.

Negotiable instrument made, &c., without consideration.

43. A negotiable instrument made, drawn, accepted, endorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or without endorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

Exception I.—No party for whose accommodation a negotiable instrument has been made, drawn, accepted or indorsed, can, if he have paid the amount thereof, recover thereon such amount from any person who became a party to such instrument for his accommodation.

Exception II.—No party to the instrument who has induced any other party to make, draw, accept, indorse or transfer the same to him for a consideration which he has failed to pay or perform in full, shall recover thereon an amount exceeding the value of the consideration (if any) which he has actually paid or performed.

Draft, s. 54: Bill II, s. 62: Bill III, s. 51: Byles 130.

Partial absence or failure of money-consideration.

44. 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.

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.

Draft, s. 55: Bill II, s. 63: Bill III, s. 52.

Partial failure of consideration not consisting of money.

45. 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.

CHAPTER IV.

OF NEGOTIATION.

Delivery.

46. The making, acceptance or indorsement of a promissory note, bill of exchange or cheque is completed by delivery, actual or constructive.

As between parties standing in immediate relation, delivery to be effectual must be made by the party making, accepting or indorsing the instrument, or by a person authorized by him in that behalf.

As between such parties and any holder of the instrument other than a holder in due course, it may be shown that the instrument was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein.

A promissory note, bill of exchange or cheque payable to bearer is negotiable by the delivery thereof.

A promissory note, bill of exchange or cheque payable to order is negotiable by the holder by indorsement and delivery thereof.

Draft, s. 18: Bill II, s. 64: Bill III, s. 53: Byles 148.

Negotiation by delivery.

47. Subject to the provisions of section fifty-eight, a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof.

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. Byles 148, note (*i*).

(*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.

Draft, s. 19: Bill II, s. 65: Bill III, s 54: *Denton* v. *Peters*, L.R. 5 Q. B. 475: *Exparte Cote*, L. R. 9 Ch. App. 27.

Negotiation by indorsement.

48. Subject to the provisions of section fifty-eight, 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.

Draft, s. 31: Bill II, s. 68: Bill III, s. 57: Byles 150, 151.

Conversion of indorsement in blank into indorsement in full.

49. 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.

Draft, ss. 29, 30: Bill II, ss. 69, 70: Bill III, ss. 58, 59: Byles 152.

Effect of indorsement.

50. 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.

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.

Draft, ss. 20, 24. 27
Bill II, s. 71:
Bill III, s. 60.

51. 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 fifty, 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.

Draft, ss. 32, 34:
Bill II, s. 72:
Bill III, s. 61:
Byles 153, 157.

52. 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.

Draft, s. 45.

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.

Draft, s. 40:
Bill II, s. 73:
Bill III, s. 64.

53. 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.

Draft, s. 25:
Bill II, s. 74:
Bill III, s. 63.

54. Subject to the provisions hereinafter contained as to crossed cheques, a negotiable instrument indorsed in blank is payable to the bearer thereof even although originally payable to order.

Instrument indorsed in blank.

Draft, s. 39:
Bill II, s. 75:
Bill III, s. 64.

55. 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.

Draft, s. 23:
Bill II, s. 76:
Bill III, s. 65:
Byles 172.

56. 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 appearing to be due on the instrument; but where such amount has been partly paid, a note to that effect may be endorsed on the instrument, which may then be negotiated for the balance.

Indorsement for part of sum due.

Draft, s. 22:
Bill II, s. 78:
Bill III, s. 67:
Byles 174.

57. 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.

Draft, ss. 52, 53:
Bill II, s. 77:
Bill III, s. 66:
Byles 122, 164.

58. 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.

Draft, s. 48, and part of s. 52:
Bill II, s. 80:
Bill III, s. 69:
Byles 166, 168.

59. 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.

Draft, s. [illegible]:
Bill II, s. [illegible]:
Bill III, s. [illegible]:
Byles [illegible].

60. 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.

Draft, s. [illegible]:
Bill II, s. [illegible]:
Bill III, s. 71.

61. 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.

Walker v. *McDonald*, 2 Ex. 532; *Leonard* v. *Wilson*, 2 Cr. & M. 592; Byles [illegible] 163.

If the drawee cannot, after reasonable search, be found, the bill is disbonoured.

Byles [illegible].

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.

Byles [illegible].

Bill II, s. [illegible]:
Bill III, s. 72.

62. A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight (if he can

Presentment of promissory note for sight.

after reasonable search be found) 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.

Draft, s. 56: Bill II, s. 84: Bill III, s. 73: Byles 183.

Drawee's time for deliberation.

63. The holder must, if so required by the drawee of a bill of exchange presented to him for acceptance, allow the drawee twenty-four hours (exclusive of public holidays) to consider whether he will accept it.

Draft, s. 133: Bill II, s. 85: Bill III, s. 74.

Presentment for payment.

64. 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.

Byles 216.

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.

Bill II, s. 86: Bill III, s. 75: Draft, s. 137: Byles 213.

Hours for presentment.

65. Presentment for payment must be made during the usual hours of business, and, if at a banker's, within banking hours.

Draft, s. 133: Bill II, s. 87: Bill III, s. 76. Byles 208, 213.

Presentment for payment of instrument payable after date or sight.

66. 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.

Bill II, s. 88: Bill III, s. 77: Byles 7.

Presentment for payment of promissory note payable by instalments.

67. 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.

Draft, s. 138: Bill II, s. 89: Bill III, s. 78: Act VI of 1840, s. 1: 1 & 2 Geo. IV, c. 78 (Byles 490).

Presentment for payment of instrument payable at specified place and not elsewhere.

68. 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.

Draft, ss. 139, 140: Bill II, s. 90: Bill III, s. 79: Byles 214.

Instrument payable at specified place.

69. 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.

Draft, ss. 139, 140, 142: Bill II, s. 91: Bill III, s. 80. Byles 214, 215.

Presentment where no exclusive place specified.

70. A promissory note or bill of exchange, not made payable as mentioned in sections sixty-eight and sixty-nine, must be presented for payment at the place of business (if any), or at the usual residence, of the maker, drawee or acceptor thereof, as the case may be.

Draft, s. 141: Bill II, s. 92: Bill III, s. 81.

Presentment when maker, &c., has no known place of business or residence.

71. 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.

Bill II, s. 93: Bill III, s. 82: Byles 21, 210.

Presentment of cheque to charge drawer.

72. 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.

Byles 20.

Bill II, s. 94: Bill III, s. 83: Byles 21.

Presentment of cheque to charge any other person.

73. A cheque must, in order to charge any person except the drawer, be presented within a reasonable time after delivery thereof by such person.

Draft, s. 134: Bill II, s. 95: Bill III, s. 84: Byles 211.

Presentment of instrument payable on demand.

74. Subject to the provisions of section thirty-one, a negotiable instrument payable on demand must be presented for payment within a reasonable time after it is received by the holder.

Bill II, s. 96: Bill III, s. 85: Parsons 500.

Presentment by or to agent, representative of deceased, or assignee of insolvent.

75. 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.

Draft, ss. 89, 91: Bill II, s. 98: Bill III, s. 86: Byles 218.

When presentment unnecessary.

76. 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 sought to be charged therewith, if he has engaged to pay notwithstanding non-presentment;

(*c*) 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;

(*d*) as against the drawer, if the drawer could not suffer damage from the want of such presentment.

Terry v. *Parker*, 6 Ad. & E. 502: *Wirth* v. *Austin*, L. R. 10 C. P. 689.

Draft, s. 83: Bill II, s. 99: Bill III, s. 87: Byles 197.

Liability of banker for negligently dealing with bill presented for payment.

77. 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.

Bill II, s. 100: Bill III, s. 88: Byles 220.

To whom payment should be made.

78. Subject to the provisions of section eighty-two, 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.

Bill II, s. 101: Bill III, s. 89: Byles 306, 307.

Interest when rate specified.

79. 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 of the principal money due thereon, from the date of the instrument, until tender or realization of such amount, or until such date after the institution of a suit to recover such amount as the Court directs.

Draft, s. 65: Bill II, s. 102: Bill III, s. 90: Byles 306, 307, 308.

Interest when no rate specified.

80. When no rate of interest is specified in the instrument, interest on the amount due thereon shall, except in cases provided for by the Code of Civil Procedure, section 532, be calculated at the rate of six percentum 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.

'ten,' Bank of Bengal.

Byles 308.

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.

Draft, s. 82: Bill II, s. 103: Bill III, s. 91: Byles 373: See Pro. Code, s. 61.

Delivery of instrument on payment, or indemnity in case of loss.

81. 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.

Draft, s. 85: Bill II, s. 104: Bill III, s. 92.

Discharge from liability—

82. The maker, acceptor or indorser respectively of a negotiable instrument is discharged from liability thereon—

Byles 154, 190: Draft, s. 88.

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;

Byles 198, 240.

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;

Draft, ss. 87, 88: Byles 221.

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.

Draft, s. 70: Bill II, s. 105: Bill III, s. 93.

Discharge by allowing drawee more than twenty-four hours to accept.

83. If the holder of a bill of exchange allows the drawee more than twenty-four hours, exclusive of public holidays, to consider whether he will accept the same, all previous parties not consenting to such allowance are thereby discharged from liability to such holder.

Draft, s. 101: Bill II, s. 106: Bill III, s. 94: Byles 20.

When cheque not duly presented and drawer damaged thereby.

84. When the holder of a cheque fails to present it for payment within a reasonable time, and the drawer thereof sustains loss or damage from such failure, he is discharged from liability to the holder.

Bill II, s. 107: Bill III, s. 95: 16 & 17 Vic., c. 59, s. 19: Byles 27, 505: *Charles* v. *Blackwell*, 1 C. P. Div. 548.

Cheque payable to order.

85. 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.

Draft, s. 69: Bill II, s. 108: Bill III, s. 96: Byles 193, 194.

Parties not consenting discharged by qualified or limited acceptance.

86. If the holder of a bill of exchange acquiesces in a qualified 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 drawees 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, unless on notice given by the holder, they assent to such acceptance.

Explanation.—An acceptance is qualified—

(*a*) where it is conditional, declaring the payment to be dependent on the happening of an event therein stated;

(*b*) where it undertakes the payment of part only of the sum ordered to be paid;

(*c*) where, no place of payment being specified on the order, it undertakes the payment at a specified place and not otherwise or elsewhere; or where, a place of payment being specified in the order, it undertakes the payment at some other place and not otherwise or elsewhere;

(*d*) where it undertakes the payment at a time other than that at which under the order it would be legally due.

Draft, ss. 109, 110: Bill II, s. 110: Bill III, s. 97: Byles 324.

Effect of material alteration.

87. Save as provided in sections twenty, forty-nine, eighty-six and one hundred and twenty-five, 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;

Bill II, s. 111: Bill III, s. 98: Byles 326.

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 twenty, forty-nine, eighty-six and one hundred and twenty-five.

Draft, ss. 112 to 114: Act I of 1872, s. 112: Bill II, s. 112: Bill III, s. 99.

Acceptor or indorser bound notwithstanding previous alteration.

88. An acceptor or indorser of a negotiable instrument is bound by his acceptance or indorsement notwithstanding any previous alteration of the instrument.

Draft, s. 115: Bill II, s. 113: Bill III, s. 100: 39 & 40 Vic., c. 81, s. 11.

89. 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.

90. If a bill of exchange which has been negotiated is, at or after maturity, held by the acceptor in his own right, all rights of action thereon are extinguished.

Extinguishment of rights of action on bill in acceptor's hands.

CHAPTER VIII.

OF NOTICE OF DISHONOUR.

Draft, s. 33: Bill II, s. 114: Bill III, s. 101: Byles 187.

91. 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, or where presentment is excused and the bill is not accepted.

Dishonour by non-acceptance.

Where the drawee is incompetent to contract, or the acceptance is qualified, the bill may be treated as dishonoured.

Bill II, s. 115: Bill III, s. 102.

92. 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.

Dishonour by non-payment.

Draft, ss. 125, 127, 131: Bill II, s. 116: Bill III, s. 103: Byles 273. Byles 288. Byles 293. Byles 290.

93. 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.

By and to whom notice should be given.

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.

Draft, ss. 126, 127, 128, 130: Bill II, s. 117: Bill III, s. 104: Byles 274, 275. Byles 280. Held in America notice must be signed. 1 Parsons 506. Re Bellman, L. R. 4 Ch. Div. 795. Draft, s. 126. Byles 282.

94. Notice of dishonour may be given to a duly authorized 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.

Mode in which notice may be given.

If the notice is duly directed and sent by post and miscarries, such miscarriage does not render the notice invalid.

Draft, s. 131: Bill II, s. 118: Bill III, s. 105.

95. Any party receiving notice of dishonour must, in order to render any prior party liable to himself, give notice of dishonour to such party within a reasonable time, unless such party otherwise receives due notice as provided by section ninety-three.

Party receiving must transmit notice of dishonour.

Draft, s. 132: Bill II, s. 119: Bill III, s. 106: Byles 286.

96. 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.

Agent for presentment.

Draft, s. 130: Druse 2: Bill II, s. 120: Bill III, s. 107.

97. 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 party to whom notice given is dead.

Draft, s. 92: Bill II, s. 121: Bill III, s. 108: Byles 296.

98. No notice of dishonour is necessary—

When notice of dishonour is unnecessary.

(*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;

Draft, ss. 67, 68, 93: Byles 301.

(*f*) in the case of a promissory note which is not negotiable;

Byles 302.

(*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.

Draft, s. 112: Bill II, 122: Bill III, s. 109.

99. 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.

Noting.

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.

Draft, s. 11[illegible] Byles 261.

Draft, s. 56, Expln. 1: Bill II, s. 127: Bill III, s. 114: Byles 182, 210, 287.

100. 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.

Protest.

Draft, s. [illegible] Bill II, s. [illegible] Bill III, s. [illegible] Byles 300.

Byles 261.

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.

Protest for better security.

Draft, s. 122: Bill II, s. 124: Bill III, s. 111: Byles 261.

101. A protest under section one hundred must contain—

Contents of protest.

(*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.

Draft, s. 124: Bill II, s. 125: Bill III, s. 112: Byles 262.

102. 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.

Notice of protest.

Bill II, s. 126: Bill III, s. 113: Act VI, 1840, s. 4: 2 & 3 Wm. IV, c. 98.

103. 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.

Protest for non-payment after dishonour by non-acceptance.

Draft, s. 108: Bill II, s. 139: Bill III, s. 128.

104. 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 X.

OF REASONABLE TIME.

Draft, s. 56, Expln. 1: Bill II, s. 127: Bill III, s. 114: Byles 182, 210, 287.

105. 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.

Draft, s. 129: Bill II, s. 129: Bill III, s. 116: Byles 284.

106. 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.

Reasonable time of giving notice of dishonour.

Byles 285.

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.

Draft, s. 131: Bill II, s. 130: Bill III, s. 117.

107. 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.

Reasonable time for transmitting such notice.

CHAPTER XI.

OF ACCEPTANCE AND PAYMENT FOR HONOUR AND REFERENCE IN CASE OF NEED.

Draft, ss. 74, 76: Bill II, s. 131: Bill III, s. 118: Byles 265, 266.

108. When a bill of exchange has been noted or protested for non-acceptance or for better security, any person not being a party already liable thereon may, with the consent of the holder, by writing on the bill, accept the same for the honour of any party thereto.

Acceptance for honour.

An acceptor *supra protest* must personally appear before a notary public with two or more witnesses, and declare that he accepts, under protest, the protested bill for the honour of the drawer or of a particular indorser whom he names, or generally for honour, and that he will satisfy the same at the appointed time; and then must subscribe the bill with his own hand.

Unless the person who intends to accept *supra protest* first declares, in the presence of a notary, that he does it for honour, and has such declaration duly recorded in the notarial register at the time, his acceptance shall be a nullity.

New.

109. A person desiring to accept for honour must, in the presence of a notary public, subscribe the bill with his own hand, and declare that he accepts under protest the protested bill for the honour of the drawer or of a particular indorser whom he names, or generally for honour; and such declaration must be recorded by the notary in his register.

How acceptance for honour must be made.

Draft, s. 75: Bill II, s. 132: Bill III, s. 119: Byles 263, 266.

110. 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.

Acceptance not specifying for whose honour it is made.

Draft, s. 77: Bill II, s. 133: Bill III, s. 120: Byles 267.

111. 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.

Liability of acceptor for honour.

Byles 268.

Draft, s. 845: Byles 266: Act VI of 1840, s. 3.

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.

Draft, s. 95: Bill II, s. 134: Bill III, s. 121.

112. When acceptor for honour may be charged. 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.

Draft, s. 96: Bill II, s. 135: Bill III, s. 122: Byles 270.

113. Payment for honour. 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.

Draft, s. 97: Bill II, s. 136: Bill III, s. 123: Byles 271. *In re Overend, Gurney & Co.*, L. R. 6, Eq. 344.

114. Right of payer for honour. 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.

Draft, s. 73: Bill II, s. 138: Bill III, s. 127: Byles 266.

115. Drawee in case of need. Where a drawee in case of need is named in a bill of exchange, or in any endorsement thereon, the bill is not dishonoured until it has been dishonoured by such drawee.

116. Acceptance and payment without protest. A drawee in case of need may accept and pay the bill of exchange without previous protest.

CHAPTER XII.

OF COMPENSATION.

Bill II, s. 137: Bill III, s. 124.

117. Rules as to compensation. 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:—

Draft, s. 65: Byles 415.

(*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.

SPECIAL RULES OF EVIDENCE.

Draft, s. 12: Bill II, s. 27. Bill III, s. 26: Byles 3, 119.

118. Presumptions as to negotiable instruments. Until the contrary is proved, the following presumptions shall be made:—

(*a*) of consideration; 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:

(*b*) as to date; that every negotiable instrument bearing a date was made or drawn on such date:

Byles 190.

(*c*) as to time of acceptance; that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity:

Byles 170.

(*d*) as to time of transfer; that every transfer of a negotiable instrument was made before its maturity:

Draft, s. 37.

(*e*) as to order of endorsements; that the endorsements appearing upon a negotiable instrument were made in the order in which they appear thereon:

Byles 117, 382.

(*f*) as to stamp; that a lost promissory note, bill of exchange or cheque was duly stamped:

Draft, s. 12: Byles 122.

(*g*) that holder is a holder in due course; 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.

Draft, ss. 121, 123: Act V of 1866, s. 13.

119. Presumption on proof of protest. In a suit upon an instrument, which has been dishonoured, the Court shall, on proof of the protest, presume the fact of dishonour, unless and until such fact is disproved.

Bill II, s. 54: Bill III, s. 44: *Phillips* v. *Im Thurn* 18, C. B., N. S. 694.

120. Estoppel against denying original validity of instrument. 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

Bill II, s. 56: Bill III, s. 45: Byles 200.

121. Estoppel against denying capacity of payee to indorse. 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.

Draft, s. 35: Bill II, s. 57: Bill III, s. 46: Byles 153. See Byles 222, n. (*i*).

122. Estoppel against denying signature or capacity of prior party. 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.

CHAPTER XIV.

OF CROSSED CHEQUES.

Bill II, s. 30: Bill III, s. 129: 39 & 40 Vic., c. 81, s. 4.

123. Cheque crossed generally. 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.

Bill II, s. 31: Bill III, s. 130: 39 & 40 Vic., c. 81, s. 4.

124. Cheque crossed specially. 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.

Bill II, s. 32: Bill III, s. 131: 39 & 40 Vic., c. 81, s. 5.

125. Crossing after issue. 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.

Draft, ss. 102, 103: Bill II, s. 33: Bill III, s. 132: 39 & 40 Vic., c. 81, s. 7.

126. Payment of cheque crossed generally. 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.

Bill II, s. 34: Bill III, s. 133: S. 8.

127. Payment of cheque crossed specially more than once. 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.

Bill II, s. 35: Bill III, s. 134: S. 9.

128. Payment in due course of crossed cheque. 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.

Bill II, s. 36: Bill III, s. 135: S. 5.

129. Payment of crossed cheque out of due course. 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.

Bill II, s. 37. Bill III, s. 136: S. 12.

130. Cheque bearing "not negotiable." 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.

48 L. J. C. P. 529.

131. Non-liability of banker receiving payment of cheque. A banker who has in good faith and without negligence received payment for 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 XV.

OF BILLS IN SETS.

Draft, ss. 11, 116: Bill II, s. 28: Bill III, s. 125: S. 5.

132. Set of bills. 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.

Byles 92: Hall v. Cockrill, 1 Moo. P. C. C. 329.

Exception.—When a person accepts or indorses different parts of the bill in favour of different persons, he and the subsequent indorsers of each part are liable on such part as if it were a separate bill.

Bill II, s. 29: Bill III, s. 126: Byles 391: Bayley 30, 171.

133. Holder of first acquired part entitled to all. 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.

CHAPTER XVI.

OF INTERNATIONAL LAW.

Draft, s. 104: Bill II, s. 140 Bill III, s. 137: Byles 399: *Ecuquette* v. *Overmann*, L. R. 10 Q. B. 525: *Horne* v. *Rouquette*, 3 Q. B. Div. 514.

134. Law governing liability of maker, acceptor or indorser of foreign instrument. 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.

Illustration.

Byles 402. 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.

Draft, s. 105: Bill II, s. 141: Bill III, s. 138.

135. 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.

Draft, s. 106: Bill II, s. 142: Bill III, s. 139.

136. 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.

Draft, s. 107: Bill II, s. 143: Bill III, s. 140: Act I of 1872, s. 4.

137. 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.

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 28th January, 1881, and was referred to a Select Committee :—

No. 3 OF 1881.

A Bill for the amendment of the law relating to Insolvent Debtors in India.

WHEREAS it is expedient to amend the law relating to Insolvent Debtors in India; It is enacted as follows :— Preamble.

1. This Act may be called "The Insolvent Law Amendment Act, 1881:" Short title.

it extends to the whole of British India; and Local extent.

it shall come into force on the first day of April 1881. Commencement.

2. In this Act, unless there be something repugnant in the subject or context,— Interpretation-clause.

the word "Insolvent" means a person of whose property a receiver has been appointed under the Code of Civil Procedure, section 351, a person upon whose petition a vesting order has been made under the seventh section of the eleventh and twelfth of Victoria, Chapter XXI, entitled an Act to consolidate and amend the laws relating to Insolvent Debtors in India, and a person who has been adjudged to have committed an act of insolvency under the provisions of section eight or under the provisions of the ninth section of the same Act: "Insolvent."

the word "adjudication" means the order under the said section 351 of the said Code appointing a receiver, a vesting order under the said seventh section of the said Act, and an order under the said eighth section or under the said ninth section of the said Act adjudging any person to have committed an act of insolvency; and "Adjudication."

the word "assignee" means the person in whom the property of any Insolvent has been vested by the adjudication of such Insolvent. "Assignee."

3. If, at the time of the adjudication of any insolvent, any of his property has been attached in execution of any decree or under any order for attachment before judgment, the Court, under whose order such property has been attached, shall withdraw the attachment and permit his assignee to take possession of the same. Attached property of insolvent.

If, before the Court has had notice of such insolvency, the attached property has been sold, the proceeds of the sale, after deducting the costs of the attachment and sale and all other necessary costs incurred in and about the realization of such proceeds, shall be paid to the assignee of such insolvent:

Provided, that in case the Court has not had notice of the adjudication of such insolvent, before such proceeds are distributed, the same shall not, merely on account of such adjudication, be recalled from the persons to whom they have been paid.

When the Court withdraws the attachment, it may, if it think fit, direct that the proper and necessary costs of the attachment and of the preservation of the property attached shall be charged upon the proceeds of such property; and if such order be made, the assignee shall apply the proceeds of such sale in payment of such costs after payment of the costs of such sale, but in priority to payment of all debts of the insolvent payable out of such proceeds.

4. No property which, under the provisions of the twenty-third section of the said Act would be deemed to be the property of such insolvent, shall be held to have been taken out of his order and disposition by reason only that such property has, before the adjudication of such insolvent, been attached in execution of a decree or under any order for an attachment before judgment. Order and disposition. Attachment not to alter.

5. Whenever any persons trading in partnership together have, by the consent and permission of the true owner thereof, in their possession, order or disposition, goods or chattels whereof such persons are reputed owners, or whereof they have taken upon them the sale, alteration or disposition as owner, and while they have such possession, order or disposition, any of such persons is, under the provisions of the said Act, adjudicated an insolvent, or obtains a vesting order on his petition, such goods and chattels shall be deemed to be the property of such partnership so as to become vested in the Official Assignee of the Insolvent Court by the order made in pursuance of the said Act for the purpose only, and so far as may be required, for the purpose of paying the joint creditors of the said partnership. Order and disposition of Firms whose owner becomes Insolvent.

6. Whenever any person who carries on trade within the local limits of the Ordinary Original Civil Jurisdiction of any of the Transfer of insolvencies from Mufassal Courts.

High Courts at Calcutta, Madras or Bombay is, under the provisions of section 351 of the Code of Civil Procedure, declared to be an insolvent, the Insolvent Court in any of the said towns in which he may carry on business at the time he is so declared to be an insolvent, may, if it think fit, on the application of any creditor of such trader, adjudge him to have committed an act of insolvency:

such adjudication shall have the same force and effect as if he had, under the provisions of the eighth section of the said Act, been adjudicated an insolvent by such Court, at the time when he was declared to be an insolvent under the provisions of the said Code;

and all the estate and effects of such insolvent shall, unless the said Court otherwise directs, vest in the Official Assignee of such Court,

and any person appointed receiver under the provisions of the said Code shall, unless such Court otherwise directs, thereupon make over to the Official Assignee all the property of the insolvent which may have come to his hands as such receiver:

Provided that no such adjudication shall avoid, or in any way affect, any dealing of such receiver with any of such property before he has notice of such adjudication.

Distribution of unclaimed dividends.

7. The assignee of each insolvent estate shall, on the expiration of six months from the declaration of any dividend, file in Court an account upon oath of every dividend remaining in his hands unclaimed, specifying the name of each creditor to whom each such dividend is due, as well as the amount of the debt due to each such creditor, and shall publish the same in the numbers of the local Gazette as are first and second successively printed next after such six months, and all dividends remaining unclaimed for a period of six years shall, after the second of such advertisements, revert to the general fund of each respective estate for re-distribution by the Official Assignee among the remaining creditors of such estate.

All such unclaimed dividends shall remain under the control and management of the Official Assignee pending payment and distribution in such manner as shall be prescribed and furnished by any rules to be made under the powers conferred by section seventy-six of the said Act.

STATEMENT OF OBJECTS AND REASONS.

THE Indian Insolvent Acts, following the analogy of the law of Bankruptcy in England at the time of the first of these Acts being passed, contained no provision for compelling the property of an insolvent, which had been attached in execution before his adjudication, to be distributed among the general body of his creditors. The later English Bankrupt Acts, however, provide for the distribution amongst the bankruptcy creditors of the proceeds of the execution if a petition be filed within fourteen days after the sale; thus securing, as far as possible, equality among creditors, a purpose which the Civil Procedure Code has generally in view; and one of the objects of this Bill is to give that equality of distribution, wherever the property attached has not actually been distributed among the attaching creditors.

The only power which the Insolvent Court now has to stay proceedings in execution does not arise till the Insolvent's schedule has been filed, and in the cases where the insolvent is friendly to the execution creditor, the filing of the schedule is invariably delayed for the purpose of giving him an advantage.

Further, the Code empowers Courts to attach the property of a defendant in cases where there is reason to believe that he is likely to make away with that property in fraud of the plaintiff. Under the language of the old Civil Procedure Code it was held that property so attached before judgment vested in the Official Assignee of the defendant, and was assets of his estate giving no preferential claim to the attaching creditor, but it has been successfully contended that the effect of the new Code, section 490, is to give to a creditor attaching before judgment priority over the assignee, even though the adjudication were before judgment obtained by the attaching creditor.

The third section of the Bill is intended to provide for the rateable distribution of the insolvent's property amongst his creditors in cases where the modern English law would so distribute it, instead of allowing one creditor to sweep away the whole or a large portion of the assets.

From a very early period the Bankruptcy law of England provided that persons who, by leaving goods in the hands of traders, enabled them to maintain a false appearance of wealth and thus obtain credit, could not claim such goods from the assignee of the bankrupt, and this provision was introduced into this country by the Insolvent Act. There was nothing, however, to give similar rights to execution-creditors, and therefore this anomaly occurred that, where an attachment was laid on goods in the hands of a person who became insolvent, the custody of the law took the goods out of the order and disposition of the bankrupt, so that a subsequent adjudication did not vest the goods in the assignee, but the attaching creditor was not able to treat the ostensible ownership of the judgment-debtor as giving him any claims. It is not easy to see any sound basis for this distinction, the injurious influence of which is, to some extent, obviated in England by the Bills of Sale Act. The fourth section is intended to avoid this anomaly.

Down to a very recent period it was generally supposed that where moveable property was in the possession and ostensible ownership of a partnership a member of which became bankrupt, the provisions of the Bankrupt Law vested such property in the assignee; it was however decided in *ex parte* Dorman L. R. 8 Ch., App. 51, that such was not the effect of the language

of the Acts upon the ground that it could not be the intention of the Statute to give such rights where the other partners were solvent. The Appellate Court however was of opinion that where the firm is in fact insolvent, the case comes within the mischief against which the order and disposition clause is intended to provide, and in this country it has been decided that the existence of an absent partner does not prevent the provisions of that clause attaching. The fifth section is intended to apply the order and disposition-clause to such cases as fall within the mischief which it is intended to prevent.

Much of the trade of the Presidency-towns is carried on by Gumáshtas on behalf of persons residing in remote parts of the Mufassal, and in many cases, if such traders became insolvent, they might be able, by taking advantage of the insolvency proceedings in the Procedure Code,* to embarrass their general trade-creditors who would have much difficulty in supervising the proceedings in a Mufassal Court. The sixth section is intended to enable the creditors of such persons to have the liquidation of their affairs transferred to a Court with machinery better organised for the administration of bankrupt estates in cases where such a course is deemed by the Court to be expedient.

Sums in the aggregate considerable, though, in general, individually small, are from time to time left unclaimed in the hands of the official assignee, and so long ago as 1841 an Act was passed empowering the official assignee after the lapse of six years to distribute the amount of such unclaimed dividends rateably among the creditors who had proved the claims.

The language of this Act, however, was so singularly framed that it seems impossible that there ever could be a distribution made of such unclaimed dividends. The seventh section is intended to correct this.

* It was found some years ago in England that similar powers given to Scotch Courts were applied to the detriment of English creditors, and a modification of the Scotch Law was enacted to prevent its application to persons whose creditors were principally in another part of the United Kingdom, see 23 & 24 Vic., c. 33.

J. PITT-KENNEDY.

The 23rd January, 1881.

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

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, FEBRUARY 19, 1881.

☞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 18th February, 1881, and was referred to a Select Committee :—

No. 4 OF 1881.

A Bill to provide for recording evidence taken by the High Courts in the exercise of their original civil jurisdiction.

WHEREAS it is expedient to provide for the due record of evidence taken by the High Courts in the exercise of their original civil jurisdiction; It is enacted that the Chief Justice of each of the High Courts shall, from time to time, until rules for taking evidence in such Court shall have been made under section 633 of the Civil Procedure Code, appoint some person in each division of the Court exercising original civil jurisdiction to record the evidence taken in such division; and the person so to be appointed shall take down the evidence of each witness in English in the words in which the same is delivered, or, if it be not delivered in English, as interpreted, not ordinarily in the form of question and answer, but in that of a narrative; and when such record is completed the same shall be read over to the witness, and, if necessary, interpreted to him; and the witness may correct his deposition and shall sign it.

The Judge may make a memorandum of such parts of the evidence as he thinks material, and such memorandum may, if the Judge thinks fit, be annexed to and form part of the record.

STATEMENT OF OBJECTS AND REASONS.

IN the High Court in Calcutta no rules for taking evidence have been framed under the provisions of section 633 of the Civil Procedure Code, but in that Court, as well as in the High Court at Madras, the practice has been to have the evidence recorded in the manner provided in this Bill. As, however, this practice was not sanctioned by any express rule or enactment, one or two Judges have thought themselves justified in disregarding it. This has been found inconvenient, tending to cause great delay in the trial of causes, creating difficulty in proof of perjury and depriving the appellate Court of a complete report of the evidence given in the original Court.

The object of the Bill is to give a legal sanction to the practice heretofore prevailing, until the Judges shall see fit to make rules providing some other mode of recording the evidence.

J. PITT KENNEDY.

The 14th February, 1881.

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

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, FEBRUARY 26, 1881.

☞ 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 14th February, 1881, and was referred to a Select Committee :—

No. 4 OF 1881.

A Bill to provide for recording evidence taken by the High Courts in the exercise of their original civil jurisdiction.

WHEREAS it is expedient to provide for the due record of evidence taken by the High Courts in the exercise of their original civil jurisdiction; It is enacted that the Chief Justice of each of the High Courts shall, from time to time, until rules for taking evidence in such Court shall have been made under section 633 of the Civil Procedure Code, appoint some person in each division of the Court exercising original civil jurisdiction to record the evidence taken in such division; and the person so to be appointed shall take down the evidence of each witness in English in the words in which the same is delivered, or, if it be not delivered in English, as interpreted, not ordinarily in the form of question and answer, but in that of a narrative; and when such record is completed the same shall be read over to the witness, and, if necessary, interpreted to him; and the witness may correct his deposition and shall sign it.

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The object of the Bill is to give a legal sanction to the practice heretofore prevailing, until the Judges shall see fit to make rules providing some other mode of recording the evidence.

J. PITT KENNEDY.

The 14th February, 1881.

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

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, MARCH 5, 1881.

☞ 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 18th February, 1881, and was referred to a Select Committee :—

No. 4 OF 1881.

A Bill to provide for recording evidence taken by the High Courts in the exercise of their original civil jurisdiction.

WHEREAS it is expedient to provide for the due record of evidence taken by the High Courts in the exercise of their original civil jurisdiction; It is enacted that the Chief Justice of each of the High Courts shall, from time to time, until rules for taking evidence in such Court shall have been made under section 633 of the Civil Procedure Code, appoint some person in each division of the Court exercising original civil jurisdiction to record the evidence taken in such division; and the person so to be appointed shall take down the evidence of each witness in English in the words in which the same is delivered, or, if it be not delivered in English, as interpreted, not ordinarily in the form of question and answer, but in that of a narrative; and when such record is completed the same shall be read over to the witness, and, if necessary, interpreted to him; and the witness may correct his deposition and shall sign it.

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The object of the Bill is to give a legal sanction to the practice heretofore prevailing, until the Judges shall see fit to make rules providing some other mode of recording the evidence.

J. PITT KENNEDY.

The 14th February, 1881.

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

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 4th March, 1881, and was referred to a Select Committee :—

No. 5 OF 1881.

A Bill to amend the Indian Penal Code.

FOR the purpose of amending the Indian Penal Code; It is hereby enacted as follows :—

Preamble.

1. In the second clause of section 40 of the said Code, before the figure "109," the figures "65, 66, 71" shall be inserted.

Amendment of section 40, clause 2, of Indian Penal Code.

2. In section 64 of the said Code, for the first twelve words, the following shall be substituted, namely :—

Amendment of section 64 of same Code.

"In every case punishable under any law in force for the time being, with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment,

and in every case punishable under this Code with fine only, in which the offender is sentenced to a fine,"

3. In section 67, after the words "fine only," the words "the imprisonment which the Court imposes in default of payment of the fine shall be simple, and" shall be inserted.

Amendment of section 67 of same Code.

4. To section 71 of the said Code, the following clause shall be added :—

Addition to section 71 of same Code.

"Where anything is 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 offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences."

5. In section 214 of the said Code, for the Exception, the following shall be substituted, namely :—

New Exception to section 214 of same Code.

"*Exception.*—The provisions of sections 213 and 214 do not extend to any case in which the offence may lawfully be compounded."

6. In section 435 of the said Code, after the words "or upwards" the following words shall be inserted, namely :—

Addition to section 435 of same Code.

"or (where the property is agricultural produce) ten rupees or upwards."

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to make six amendments of the Indian Penal Code.

The first is to render the word "offence," as used in sections 65, 66 and 71 (as amended by this Bill), applicable to things punishable under the Code or any special or local law.

The second is to render section 64 (as to sentence of imprisonment on default of payment of fine) applicable to convictions under special and local laws in case of offences punishable both with imprisonment and fine. It corresponds with the first clause of section 309 of Act X of 1872, which will be repealed by the new Code of Criminal Procedure.

The third is to declare that, when an offence is punishable with fine only, the imprisonment in default of payment of the fine shall be simple: this is in accordance with a decision of the Bombay High Court (5 Bom. C. C. 55).

The fourth is to declare, by an addition to section 71, that, when anything is an offence falling within two or more separate definitions, the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences. This corresponds with the latter part of the second clause of section 454 of the present Code of Criminal Procedure; but it is clearly matter of substantive law, and should therefore be placed in the Penal Code.

The fifth is to replace the obscure Exception which now stands in section 214 by the following :—

"*Exception.*—The provisions of sections 213 and 214 do not extend to any case in which the offence may lawfully be compounded."

This will be read with section 345 of the new Code of Criminal Procedure, which declares that certain specified offences, and no others, may be compounded.

The sixth is to render the offence of committing mischief by fire, intending to cause damage to agricultural produce worth ten rupees or upwards, cognizable by the police and punishable with the severer penalty provided by section 435 of the Code. As the law stands, mischief by fire is cognizable only when committed with intent to cause damage to the amount of Rs. 100 or upwards. But agricultural holdings are generally so small that the total produce of a holding is often less than Rs. 100. The result is that a raiyat may have garnered his crop and lose the whole of it through the act of an incendiary, and yet the offence is only punishable with three months' imprisonment and fine, and may not be investigated by the police without the special order of a Magistrate.

WHITLEY STOKES.

The 20th February, 1881.

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

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 4th March, 1881, and was referred to a Select Committee :—

No. 6 OF 1881.

MERCHANT SHIPPING BILL, 1881.

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A Bill for the further amendment of the law relating to Merchant Shipping.

WHEREAS it is expedient to amend the law relating to investigations into casualties affecting ships and charges against masters, mates and engineers; Preamble.

and whereas it is also expedient to provide, in other respects hereinafter appearing, for the regulation and control of merchant shipping;

It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title. **1.** This Act may be called "The Indian Merchant Shipping Act, 1881;"

Extent. It extends to the whole of British India;

Commencement. and it shall come into force at once.

Repeal of enactments. **2.** The Indian Merchant Shipping Act, 1875, and Act No. XIII of 1878 (*An Act to provide for the recovery in British India of wages due to, and expenses incurred in respect of, certain seamen and apprentices, and to amend the Indian Merchant Shipping Act, 1875, and the Indian Ports Act, 1875*), are hereby repealed.

But all proceedings commenced, officers appointed, powers conferred, investigations held, certificates cancelled or suspended, agreements made and persons authorized under the said Acts or either of them, shall be deemed to have been respectively commenced, appointed, conferred, held, cancelled or suspended, made and authorized under this Act.

Interpretation-clause. **3.** In this Act

Definition of ship: "ship" includes every description of vessel used in navigation not propelled by oars; and

"master." "master" means any person (except a pilot or harbour-master) having for the time being control or charge of a ship.

Cf. Act IV of 1875, s. 23: Act XV of 1868, s. 10: Act XXVIII of 1861, s. 3. Saving of powers of certain Admiralty Courts. **4.** Nothing in this Act affects the powers conferred by section two hundred and forty of the Merchant Shipping Act, 1854, or by section eighty of Act No. I of 1859 (*for the amendment of the law relating to Merchant Shipping*), on Courts having admiralty jurisdiction in India.

Exercise of such powers by principal criminal Courts. The powers conferred by the last-mentioned enactment may, at any port in British India where there is no Court having admiralty jurisdiction, be exercised by the principal Court of ordinary criminal jurisdiction.

CHAPTER II.

INVESTIGATIONS INTO CASUALTIES AFFECTING SHIPS, AND CHARGES AGAINST MASTERS, MATES OR ENGINEERS.

See Act XIII of 1878, s. 4. Chapter not to apply to certain ships. **5.** Nothing in this chapter shall be deemed to apply to any ship belonging to, or in the service of, Her Majesty or belonging to any foreign Prince or State.

Report of casualties to be made to Local Government. **6.** Whenever any Magistrate, or any officer appointed by the Local Government in this behalf, receives credible information that— See Act IV of 1875, s. 3, and section 81 of the Bill which afterwards became Act VII of 1880.

(*a*) any ship has been lost, abandoned, stranded or damaged on or near the coasts of British India; or

(*b*) by reason of any casualty happening to or on board of any ship on or near such coasts, loss of life has ensued; or

(*c*) any ship has caused loss or damage to any other ship on or near such coasts; or

(*d*) any such loss, abandonment, stranding, damage or casualty has happened elsewhere, and any competent witnesses thereof have arrived or are to be found at any place in British India; or

(*e*) any ship is supposed to have been lost, and any evidence can be obtained in British India as to the circumstances under which she proceeded to sea or was last heard of;

he shall forthwith report in writing such information to the Local Government.

In the cases mentioned in clauses (*a*), (*b*) and (*c*), the master, pilot, harbour-master or other person in charge of the ship or (where two ships are concerned) in charge of each ship, at the time of such loss, abandonment, stranding, damage or casualty, and

in cases under clause (*d*), where the ship concerned proceeds direct from the place where such loss, abandonment, stranding, damage or casualty has occurred to any place in British India, the master of such ship at the time she arrives at such place,

shall, on arriving in British India, give immediate notice of such loss, abandonment, stranding, damage or casualty to the nearest Magistrate, or, when he arrives at a port, to the officer appointed at such port as aforesaid.

Any person bound to give notice under this section and wilfully failing to give the same shall be punished with fine which may extend to five hundred rupees, and, in default of payment, to simple imprisonment for a term which may extend to three months.

Power to appoint special Court of Enquiry. **7.** If in any such case a formal investigation into the facts mentioned in section six, clause (*a*), (*b*), (*c*), (*d*) or (*e*), appears to the Local Government to be requisite or expedient, the Local Government (whether such notice be given or not) may appoint a special Court, consisting of not less than two nor more than four persons, and direct such Court to make such investigation, and may fix the place for making the same. See Act IV of 1875, s. 4.

One of such persons shall be a Magistrate acting in or near the place where the investigation is made; another shall be some person conversant with maritime affairs. The other or others (if any) shall be conversant with either maritime or mercantile affairs.

Other Courts authorized to investigate casualties. **8.** Every Court having admiralty jurisdiction in British India, and the principal Court of ordinary criminal jurisdiction at every port of British India where there is no Court having admiralty jurisdiction, is hereby authorized, when so directed by the Local Government, to make the investigations referred to in section seven. See Act IV of 1875, s. 5.

Power to inquire into charges against masters, mates and engineers. **9.** Any Court making an investigation under section seven or section eight may inquire into any charge of incompetency or misconduct arising, in the course of such investigation, against any master, mate or engineer holding a certificate granted, under any enactment for the time being in force, by the Board of Trade or a Local Government, as well as into any charge of a wrongful act or default on his part causing any such loss, abandonment, stranding, damage or casualty as aforesaid.

Act XIII of 1878, s. 3.

In every case in which there is reason to believe that any such charge, whether of incompetency or misconduct, or of a wrongful act or default, as aforesaid, will arise against any such master, mate or engineer in the course of an investigation, the Court shall, if practicable, before the commencement of such investigation, cause to be furnished to him a copy of the report upon which such investigation has been directed.

Cf. s. 6 of Act IV of 1875. Also s. 241 of 17 & 18 Vic., c. 104. Local Government may direct investigation in cases of incompetency or misconduct. **10.** If the Local Government has reason to believe that there are grounds for charging any such master, mate or engineer with incompetency or misconduct, otherwise than in the course of an investigation under section seven or section eight, it may transmit a statement of the case to any Court mentioned in section eight, at or nearest to the place at which it may be convenient for the parties and witnesses to attend, and may direct such Court to make an investigation into such charge.

Cf. Act IV of 1875, s. 7. Before commencing such investigation, the Court shall cause the master, mate or engineer so charged to be furnished with a copy of the statement so transmitted by the Local Government.

Act IV of 1875, s. 10. Person accused to be heard. **11.** For the purpose of an investigation under this chapter into any charge against a master, mate or engineer, the Court may summon him to appear, and shall give him full opportunity of making a defence either in person or otherwise.

Cf. Act IV of 1875, s. 8. Powers of Courts as to evidence and regulating proceedings. **12.** For the purpose of any investigation under this chapter, the Court making the investigation, so far as relates to compelling the attendance and examination of witnesses and the production of documents and the regulation of the proceedings, shall have—

(*a*) if such Court is a special Court—the same powers as are exerciseable by the principal Court of ordinary criminal jurisdiction for the place at which the investigation is made;

(*b*) if such Court is a Court having admiralty jurisdiction or a principal Court of ordinary criminal jurisdiction—the same powers as are exerciseable by such Court in the exercise of such admiralty or criminal jurisdiction (as the case may be).

Assessors. And every Court making any such investigation, other than a special Court, may, if it think fit, constitute as its assessor, for the purposes of the investigation, any person conversant with maritime affairs and willing to act as such assessor.

Such person shall attend during the investigation and deliver his opinion in writing, to be recorded on the proceedings. But the exercise of all powers conferred on the Court by this Act or any other enactment for the time being in force shall rest with the Court.

Act IV of 1875, s. 15. Power to arrest witnesses and cause entry and detention of vessels. **13.** If any Court making an investigation under this chapter thinks it necessary for obtaining evidence that any person should be arrested, it may issue a warrant for his arrest, and may, for the purpose of effecting such arrest, authorize any officer (subject, nevertheless, to any general or special instructions from the Local Government) to enter any vessel.

Any officer so authorized may, for the purpose of enforcing such entry, call to his aid any officers of police or customs, or any other persons, and may seize and detain the vessel for such time as is reasonably necessary to effect the arrest; and every such officer or other person shall be deemed to be a public servant within the meaning of the Indian Penal Code, section 186.

No person shall be detained by virtue of this section for more than forty-eight hours.

Act IV of 1875, s. 1. Power to commit for trial. **14.** Whenever, in the course of any such investigation, it appears that any person has committed an offence punishable under any law in force in British India, the Court making the investigation may (subject to such rules consistent with this Act as the High Court may from time to time prescribe) cause him to be arrested, or commit him or hold him to bail to take his trial before the proper Court; and may bind over

Power to bind over persons to give evidence. any person to give evidence at such trial, and may, for the purposes of this section, exercise all the powers of a Magistrate of the first class or of a Presidency Magistrate:

Depositions. And whenever in the course of such trial the testimony of any witness is required in relation to the subject-matter, any deposition previously made by him in relation to the same subject-matter before any Court making an investigation under this chapter shall, if authenticated by the signature of the Magistrate or presiding Judge, be admissible in evidence on proof—

(*a*) that the witness cannot be found within the jurisdiction of the Court before which the trial is held; and

(*b*) that it was made in the presence of the person accused.

A certificate by the Magistrate or presiding Judge that the deposition was made in the presence of the accused shall, unless the contrary be proved, be sufficient evidence that it was so made.

Cf. Act IV of 1875, ss. 11 and 12. Report by Court to Local Government. **15.** The Court shall, in the case of all investigations under this chapter, transmit to the Local Government a full report of the conclusions at which it has arrived, together with the evidence.

In cases in which, under the Merchant Shipping Acts, 1854 to 1880, the Court is required to send a report to the Board of Trade, such report shall be sent through the Local Government, and the

submission of such report to the Local Government shall be a sufficient compliance with this section.

CHAPTER III.

SUSPENSION AND CANCELLATION OF CERTIFICATES AND GRANT OF FRESH CERTIFICATES.

16. Nothing herein contained shall affect the powers conferred by the Merchant Shipping Acts, 1854 to 1880, on the Courts conducting investigations under sections seven, eight, nine and ten of this Act, to cancel or suspend certificates granted under any of the said Merchant Shipping Acts, or certificates to which the provisions of any such Act have been made applicable under the Merchant Shipping (Colonial) Act, 1869.

Saving of power to cancel and suspend certificates under English Acts.

When any such Court cancels or suspends any such certificate, it may, in its report to the Local Government, advise such Government to grant, without examination, to the holder of such certificate, when such certificate is a certificate as master, a certificate as master or mate; and, when such certificate is a certificate as mate or engineer, a certificate as mate or engineer, as the case may be; and such Local Government, if it thinks fit, and if it is empowered by any enactment of a British Indian legislature for the time being in force to grant such certificate, may grant it under such enactment, but without examination. A certificate so granted shall, except for the purposes of the said Merchant Shipping (Colonial) Act, 1869, have the same effect as if it had been granted after examination.

Power to issue local certificates in lieu of such certificates.

See Act IV of 1875, s. 18.

17. Any certificate (whether of competency or service) which has been granted by any Local Government, to any master, mate or engineer, and to which the provisions of the Merchant Shipping (Colonial) Act, 1869, do not apply, may be suspended or cancelled, by that or any other Local Government, in the following cases, that is to say:—

Local Government may suspend or cancel certain certificates—

(*a*) if, upon any investigation made under this Act, the Court reports that the loss, stranding or abandonment of, or damage to, any ship, or loss of life, has been caused by his wrongful act or default, or that he is incompetent, or has been guilty of any gross act of drunkenness, tyranny or other misconduct;

after investigation under this Act:

(*b*) if, upon any investigation made under the provisions of the Merchant Shipping Acts, 1854 to 1880, or upon any investigation made by any Court or tribunal for the time being authorized by the legislative authority in any British possession to make enquiry into charges of incompetency or misconduct on the part of masters, mates or engineers of ships, or as to shipwrecks or other casualties affecting ships, the Court or tribunal reports that such master, mate or engineer is incompetent, or has been guilty of any gross act of misconduct, drunkenness or tyranny, or that the loss, stranding or abandonment of, or damage to, any ship, or loss of life, has been caused by his wrongful act or default;

after investigation under other Acts:

(*c*) if he is proved to have been convicted of any offence which, if committed in British India, would be non-bailable, or, if committed in England, would be a felony: and

after conviction of any offence: Act IV of 1875, s. 18, cl. (*d*).

(*d*) if (in the case of a master) he has been superseded by the order of any Admiralty Court, or of any Naval Court constituted as provided by the Merchant Shipping Act, 1854, or by any other law for the time being in force:

after supersession.

Provided that, in any case in which an investigation has been made into a charge against any master, mate or engineer, no certificate shall be suspended or cancelled under clause (*a*) unless the Local Government is satisfied that the holder of the certificate has been furnished before the commencement of the investigation with the copy of the report or statement required by section nine or section ten, as the case may be.

See Act IV of 1875, s. 18.

18. Every master, mate or engineer whose certificate is cancelled or suspended under section seventeen shall deliver it to the Shipping Master, or to such other person as the Local Government which cancelled or suspended the certificate directs, and in default of such delivery shall, for each offence, be punished with fine which may extend to five hundred rupees.

Master, &c., to deliver up certificate.

See Act IV of 1875, s. 20.

19. If the Local Government which cancels or suspends, under section seventeen, a certificate of a master, mate or engineer is not the Local Government that granted the same, the Local Government so cancelling or suspending the certificate shall report the proceedings, and the fact of cancelment or suspension, to the Local Government which granted such certificate.

Report to other Local Governments.

See Act IV of 1875, s. 21.

20. Every Local Government cancelling or suspending under section seventeen the certificate of a master, mate or engineer shall, as soon as may be practicable, report to the Board of Trade the fact of such cancellation or suspension.

Report to Board of Trade.

See Act IV of 1875, s. 22.

21. Any Local Government may at any time revoke any order of cancelment or suspension which it may have made under section seventeen, or grant, without examination, to any person, whose certificate it has so cancelled, a new certificate of the same or of any lower grade.

Power to revoke cancellation or suspension.

Power to grant new certificate.

A certificate so granted shall, except for the purposes of the said Merchant Shipping (Colonial) Act, 1869, have the same effect as if it had been granted after examination.

A certificate of competency for a Home-trade ship under the said Act No. I of 1859 shall be deemed, for the purposes of this section, to be of a lower grade than a certificate of competency for a foreign-going ship under the same Act.

Every revocation and every grant under this section shall, as soon as may be practicable, be reported to the Board of Trade.

CHAPTER IV.

AGREEMENTS WITH SEAMEN.

Act IV of 1875, s. 28.

22. This chapter shall be read with, and taken as part of, the said Act No. I of 1859.

Chapter to be read with Act I of 1859.

See Act IV of 1875, s. 24.

23. The master of every ship, except ships of a burden not exceeding three hundred tons employed only in the Home-trade, shall enter into an agreement with every seaman whom he carries to sea from any port in British India as one of his crew, in the manner hereinafter mentioned.

Masters to enter into agreements with seamen.

See Act IV of 1875, s. 25.

24. Every such agreement shall be in a form sanctioned by the Governor General in Council, and shall be dated at the time of the first signature thereof, and shall be signed by the master before any seaman signs the same, and shall contain the following particulars as terms thereof, that is to say:—

Form and contents of agreement.

(*a*) either the nature and, as far as practicable, the duration of the intended voyage or engagement, or the maximum period of the voyage or engagement, and the places or parts of the world, if any, to which the voyage or engagement is not to extend;

(*b*) the number and description of the crew, specifying how many are engaged as sailors;

(*c*) the time at which each seaman is to be on board or to begin work;

(*d*) the capacity in which each seaman is to serve;

(*e*) the amount of wages which each seaman is to receive;

(*f*) a scale of the provisions which are to be furnished to each seaman; and

(*g*) any regulations as to conduct on board, and as to fines, short allowance of provisions or other lawful punishments for misconduct, which have been sanctioned by the Governor General in Council as regulations proper to be adopted, and which the parties agree to adopt.

And every such agreement shall be so framed as to admit of stipulations to be adopted at the will of the master and seaman in each case (not being inconsistent with the provisions of any enactment for the time being in force relating to Merchant Shipping), as to advance of wages and supply of warm clothing, and may contain any other stipulations which are not contrary to law.

See sec. 62 of the Bill which became Act VII of 1880.

25. In the case of such agreements with lascars or other Native seamen, the scale of the provisions agreed to be furnished to each of such seamen shall not be less than a scale to be from time to time fixed and published by the Local Government with the previous sanction of the Governor General in Council.

Scale of provisions to be furnished to lascars.

Any master entering into an agreement with any lascar or other Native seaman for a scale of provisions less than the scale so fixed and published shall be punished with fine which may extend to two hundred rupees.

Act IV of 1875, s. 26.

26. Whenever it is agreed that the service of any lascar or other Native seaman shall end at any port not in British India, the agreement shall, in addition to the particulars specified in section twenty-four, contain a stipulation that fit employment shall be provided for him on board some other ship bound to the port at which he was shipped, or such other port in British India as may be agreed on; or

Stipulation where lascars are shipped.

that a passage shall be provided for him to some port in British India free of charge, or on such other terms as may be agreed on;

and every such stipulation shall be signed by the owner of the ship, or by the master on his behalf.

EXPLANATION.—In this section the word "seaman" includes also a Native of British India carried to sea from any port in British India as one of the crew of a ship.

Act IV of 1875, s. 27.

27. If the master of any ship belonging to the United Kingdom or any British possession has an agreement with his crew, made in due form according to the law of the place to which such ship belongs, or in which her crew were engaged, and engages a single seaman, not being a lascar or other Native seaman, in any port in British India, such seaman may sign the agreement so made, and it shall not be necessary for him to sign an agreement under this Act.

Forms for British or Colonial ships.

CHAPTER V.

PORT-INSPECTORS.

See sec. 80 of the Bill which became Act VII of 1880.

28. In the Indian Ports Act, 1875, after section eighteen, the following sections shall be inserted, that is to say:—

Addition to Act XII of 1875.

"18A. The Local Government may, from time to time, appoint in any port subject to this Act an officer to be called the Port-inspector, and suspend or remove such officer.

Appointment and powers of Port-inspectors.

"Every officer so appointed shall, subject to the control of the Local Government, have the following powers within the limits of the port for which he is appointed, that is to say:—

"(*a*) he may at any time enter any vessel, and may inspect the same and every part thereof, and the provisions and water provided for the use of the persons on board such vessel, and the medicines and appliances and the accommodation for the seamen;

"(*b*) he may medically examine all or any of the persons on board such vessel;

"(*c*) he may require and enforce the production of the log and any other books, papers or documents which he thinks necessary for the purpose of enquiring into the health and medical condition of the persons on board such vessel;

"(*d*) he may call before him and examine for such purpose all or any of such persons, and may require answers to any inquiries he thinks fit to make;

"(*e*) he may require any persons so examined by him to make and subscribe a declaration of the truth of the statements made by such person.

"18B. The Port-inspector shall, on first entering any vessel after its arrival, inquire whether any lascar or other Native seaman on board such vessel desires to make any complaint against the master or any of the crew thereof.

Port-inspector to inquire into complaints;

"In the event of any such seaman so desiring, the Port-inspector shall hear such complaint and record the particulars thereof in writing, and may, for the purpose of ascertaining the truth of the same, exercise any of the powers mentioned in section 18A.

"The Port-inspector shall forthwith report in writing to the Shipping Master the particulars of any complaint made to him under this section, together with his opinion thereon."

and report the same to Shipping Master.

CHAPTER VI.

MISCELLANEOUS.

29. In cases where any wages or expenses recoverable under section 213 of the Merchant Shipping Act, 1854, or under section 16 of the Merchant Shipping Act Amendment Act, 1855, are, under the same sections, a charge upon any ship, or recoverable from any master, owner or other person, within the jurisdiction of any Court in British India, the Governor General in Council may, from time to time, by notification in the *Gazette of India*, authorize, either generally or specially, such persons as he thinks fit to sue for and recover, in manner in the Merchant Shipping Act, 1854, section 213, provided, such wages or expenses.

Power to appoint persons to sue.

Every person so authorized shall be entitled to sue and recover accordingly in any such Court, and shall be deemed to be a person filling a public office within the meaning of the Indian Evidence Act, 1872, section 57, clause 7.

All suits and proceedings under this section shall be instituted and carried on in the name of the Secretary of State for India in Council.

See Act XIII of 1878, s. 2.

Suits, &c., to be instituted in name of Secretary of State for India in Council.

30. Sections 9 to 16 (both inclusive) of the said Act No. I of 1859 shall not apply to ships registered under Act No. X of 1841 and trading between ports in India and the coasts of Arabia, when such ships are navigated and manned exclusively by Arabs, lascars, or other Asiatic masters and seamen.

See Act IV of 1875, s. 29.

Provisions as to examinations, &c., of masters not to apply to certain ships.

31. In sections 2, 15, 17 and 23 of the said Act No. X of 1841, for the words "on information in any Court of Her Majesty or the East India Company by the Advocates General of the respective Presidencies," "by information as aforesaid," "on information as aforesaid," "upon information as aforesaid," in each of the places where they occur, the following words shall be substituted, namely:—"on conviction before a Presidency Magistrate or a Magistrate of the first class."

See Act IV of 1875, s. 30.

Amendment of Act X of 1841, secs. 2, 15, 17 and 23.

STATEMENT OF OBJECTS AND REASONS.

PARAGRAPH 8 of the Report, dated the 20th February, 1880, of the Select Committee on the Bill relating to Merchant Shipping, which afterwards became the Indian Merchant Shipping Act, 1880, ran as follows :—

"8. We have omitted chapters VII and VIII of the Bill as introduced, as we consider that the matters to which they relate would be more fitly dealt with in a Bill to consolidate Act No. IV of 1875 and the sections of Act No. XIII of 1878 by which it is amended."

2. The nature of the contents of these omitted chapters will be learnt from the following paragraphs of the Statement of Objects and Reasons, dated the 29th August, 1879, appended to that Bill :—

"21. Chapter VII, by an addition to the Ports Act, 1875, provides for the appointment of an officer called a 'Port-inspector.' This officer, in addition to performing the duties at present performed by the Health-officer (for the performance of which duties he is by the Bill invested with certain legal powers), is intrusted with the duty of inquiring into any complaints which may be made on the arrival of a ship in port by any of the crew against the master or any others of the crew. This latter provision has been inserted, in compliance with the desire of the Secretary of State, for the protection of lascars or other Oriental seamen when serving on board a European ship.

"22. Chapter VIII makes two amendments of the Indian Merchant Shipping Act, 1875. The one extends the provisions of section 3 of that Act so as to give power to hold Marine Courts of Enquiry in certain cases which are at present unprovided for. This change has been introduced at the request of the local Marine authorities, and is in accordance with the provisions of the English law as recently amended. The other amendment gives the Local Government power to fix a scale of provisions, for less than which it will be penal for a master to contract with any lascar or Native seaman—a provision which has been found to be essential for the protection of such seamen."

3. It is with a view to carry out the suggestion of the Select Committee above quoted that the present Bill has been prepared.

The Bill, however, does more than merely consolidate the provisions of the Acts of 1875 and 1878 and re-enact them with the addition of the points omitted from the Merchant Shipping Bill of 1879.

These Acts of 1875 and 1878 relate in part to the suspension and cancellation of Board of Trade certificates to which the provisions of the Imperial Merchant Shipping Acts apply. An examination of the provisions of our Acts in connection with those of the Imperial Acts shows that our Acts deal with several matters already provided for by Parliament. This is not desirable. Apart from the question which might be raised as to the validity of our law, where that law is not transcribed *verbatim*, it is inconvenient from a practical point of view that double provisions relating to the same subject-matter should exist side by side. In re-enacting, therefore, the provisions of the Acts repealed by the Bill, an endeavour has been made to restrict the provisions of the Bill to matters for which the Imperial Acts do not provide, and on which it is clear we can legislate. This has necessitated the omission of some and the amendment of other provisions of the present law.

4. The opportunity of this Bill has been taken to amend section 26 of Act IV of 1875, so as to provide that, when the service of any lascar is to end at any port not in British India, the agreement between him and the master shall invariably stipulate for his return to British *India*, and not merely for his employment on board some vessel bound to such other port as may be agreed on, possibly not in British India. It is clear that, with the extended employment of Native seamen in the Eastern trade, and the increasing number of Asiatic sailors found in a destitute condition at European ports, Government should, on economical grounds, if for no other reason, devise steps to secure the return of Indian seamen to this country at the expense of the persons who take them away.

5. The 31st section of Act IV of 1875, which confers certain powers on Courts for the trial of pilots constituted under Act XII of 1859, has been excluded from the present Bill, as the matter is one which will be more properly provided for by a separate Bill amending that Act.

WHITLEY STOKES.

The 24th February, 1881.

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

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 4th March, 1881, and was referred to a Select Committee :—

No. 7 OF 1881.

A Bill to give power to arrest persons whose evidence is needed under Act No. XII of 1859.

Preamble.

WHEREAS it is expedient to empower the Judges holding trials under Act No. XII of 1859 (*An Act to make better provision for the trial of Pilots at the Presidency of Fort William in Bengal for breach of duty*) to arrest persons whose evidence is required on such trials; It is hereby enacted as follows :—

Addition to Act XII of 1859, after section 14.

1. The following section shall be inserted immediately after section 14 of the said Act, namely :—

"15. Whenever the Judge of the said Court thinks it necessary for obtaining evidence that any person should be arrested, he may issue a warrant for his arrest, and may, for the purpose of effecting such arrest, authorize any officer (subject, nevertheless, to any general or special instructions from the Local Government) to enter any vessel.

"Any officer so authorized may, for the purpose of enforcing such entry, call to his aid any officers of police or customs, or any other persons, and may seize and detain the vessel for such time as is reasonably necessary to effect the arrest; and every such officer or other person shall be deemed to be a public servant within the meaning of the Indian Penal Code, section 186.

"No person shall be detained under this section for more than forty-eight hours."

STATEMENT OF OBJECTS AND REASONS.

THE last section of Act IV of 1875, which confers on Courts established for the trial of pilots in Bengal under Act XII of 1859 certain powers for compelling the attendance of witnesses, will be repealed if the Merchant Shipping Bill, which is to be introduced to-day, becomes law. As such a provision is somewhat out of place in a Merchant Shipping Act, it seems better to re-enact it as a section in Act XII of 1859, and the present Bill has accordingly been prepared for this purpose.

WHITLEY STOKES.

The 4th March, 1881.

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

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, MARCH 12, 1881.

☞ 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 4th March, 1881, and was referred to a Select Committee:—

No. 5 OF 1881.

A Bill to amend the Indian Penal Code.

Preamble.

FOR the purpose of amending the Indian Penal Code; It is hereby enacted as follows:—

Amendment of section 40, clause 2, of Indian Penal Code.

1. In the second clause of section 40 of the said Code, before the figure "109," the figures "65, 66, 71" shall be inserted.

Amendment of section 64 of same Code.

2. In section 64 of the said Code, for the first twelve words, the following shall be substituted, namely:—

"In every case punishable under any law in force for the time being, with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment,

and in every case punishable under this Code with fine only, in which the offender is sentenced to a fine,"

Amendment of section 67 of same Code.

3. In section 67, after the words "fine only," the words "the imprisonment which the Court imposes in default of payment of the fine shall be simple, and" shall be inserted.

Addition to section 71 of same Code.

4. To section 71 of the said Code, the following clause shall be added:—

"Where anything is 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 offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences."

New Exception to section 214 of same Code.

5. In section 214 of the said Code, for the Exception, the following shall be substituted, namely:—

"*Exception.*—The provisions of sections 213 and 214 do not extend to any case in which the offence may lawfully be compounded."

Addition to section 435 of same Code.

6. In section 435 of the said Code, after the words "or upwards" the following words shall be inserted, namely:—

"or (where the property is agricultural produce) ten rupees or upwards."

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to make six amendments of the Indian Penal Code.

The first is to render the word "offence," as used in sections 65, 66 and 71 (as amended by this Bill), applicable to things punishable under the Code or any special or local law.

The second is to render section 64 (as to sentence of imprisonment on default of payment of fine) applicable to convictions under special and local laws in case of offences punishable both with imprisonment and fine. It corresponds with the first clause of section 309 of Act X of 1872, which will be repealed by the new Code of Criminal Procedure.

The third is to declare that, when an offence is punishable with fine only, the imprisonment in default of payment of the fine shall be simple: this is in accordance with a decision of the Bombay High Court (5 Bom. C. C. 55).

The fourth is to declare, by an addition to section 71, that, when anything is an offence falling within two or more separate definitions, the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences. This corresponds with the latter part of the second clause of section 454 of the present Code of Criminal Procedure; but it is clearly matter of substantive law, and should therefore be placed in the Penal Code.

The fifth is to replace the obscure Exception which now stands in section 214 by the following:—

"*Exception.*—The provisions of sections 213 and 214 do not extend to any case in which the offence may lawfully be compounded."

This will be read with section 345 of the new Code of Criminal Procedure, which declares that certain specified offences, and no others, may be compounded.

The sixth is to render the offence of committing mischief by fire, intending to cause damage to agricultural produce worth ten rupees or upwards, punishable with the severer penalty provided by section 435 of the Code. As the law stands, mischief by fire is cognizable only when committed with intent to cause damage to the amount of Rs. 100 or upwards. But agricultural holdings are generally so small that the total produce of a holding is often less than Rs. 100. The result is that a raiyat may have garnered his crop and lose the whole of it through the act of an incendiary, and yet the offence is only punishable with three months' imprisonment and fine, and may not be investigated by the police without the special order of a Magistrate. An alteration in the paragraph of the second schedule to the new Code of Criminal Procedure, which relates to section 435 of the Penal Code, will render the offence in question cognizable by the police.

WHITLEY STOKES.

The 20th February, 1881.

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

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 4th March, 1881, and was referred to a Select Committee:—

No. 6 OF 1881.

MERCHANT SHIPPING BILL, 1881.

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A Bill for the further amendment of the law relating to Merchant Shipping.

WHEREAS it is expedient to amend the law relating to investigations into casualties affecting ships and charges against masters, mates and engineers; Preamble.

and whereas it is also expedient to provide, in other respects hereinafter appearing, for the regulation and control of merchant shipping;

It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title. **1.** This Act may be called "The Indian Merchant Shipping Act, 1881;"

Extent. It extends to the whole of British India;

Commencement. and it shall come into force at once.

Repeal of enactments. **2.** The Indian Merchant Shipping Act, 1875, and Act No. XIII of 1878 (*An Act to provide for the recovery in British India of wages due to, and expenses incurred in respect of, certain seamen and apprentices, and to amend the Indian Merchant Shipping Act, 1875, and the Indian Ports Act, 1875*), are hereby repealed.

But all proceedings commenced, officers appointed, powers conferred, investigations held, certificates cancelled or suspended, agreements made and persons authorized under the said Acts or either of them, shall be deemed to have been respectively commenced, appointed, conferred, held, cancelled or suspended, made and authorized under this Act.

Interpretation-clause. **3.** In this Act

Definition of ship: "ship" includes every description of vessel used in navigation not propelled by oars; and

"master." "master" means any person (except a pilot or harbour-master) having for the time being control or charge of a ship.

Cf. Act IV of 1875, s. 23: Act XV of 1863, s. 10: Act XXVIII of 1861, s. 3.

Saving of powers of certain Admiralty Courts. **4.** Nothing in this Act affects the powers conferred by section two hundred and forty of the Merchant Shipping Act, 1854, or by section eighty of Act No. I of 1859 (*for the amendment of the law relating to Merchant Shipping*), on Courts having admiralty jurisdiction in India.

Exercise of such powers by principal criminal Courts. The powers conferred by the last-mentioned enactment may, at any port in British India where there is no Court having admiralty jurisdiction, be exercised by the principal Court of ordinary criminal jurisdiction.

CHAPTER II.

INVESTIGATIONS INTO CASUALTIES AFFECTING SHIPS, AND CHARGES AGAINST MASTERS, MATES OR ENGINEERS.

See Act XIII of 1878, s. 4.

Chapter not to apply to certain ships. **5.** Nothing in this chapter shall be deemed to apply to any ship belonging to, or in the service of, Her Majesty or belonging to any foreign Prince or State.

Report of casualties to be made to Local Government. **6.** Whenever any Magistrate, or any officer appointed by the Local Government in this behalf, receives credible information that— See Act IV of 1875, s. 3, and section 81 of the Bill which afterwards became Act VII of 1880.

(*a*) any ship has been lost, abandoned, stranded or damaged on or near the coasts of British India; or

(*b*) by reason of any casualty happening to or on board of any ship on or near such coasts, loss of life has ensued; or

(*c*) any ship has caused loss or damage to any other ship on or near such coasts; or

(*d*) any such loss, abandonment, stranding, damage or casualty has happened elsewhere, and any competent witnesses thereof have arrived or are to be found at any place in British India; or

(*e*) any ship is supposed to have been lost, and any evidence can be obtained in British India as to the circumstances under which she proceeded to sea or was last heard of;

he shall forthwith report in writing such information to the Local Government.

In the cases mentioned in clauses (*a*), (*b*) and (*c*), the master, pilot, harbour-master or other person in charge of the ship or (where two ships are concerned) in charge of each ship, at the time of such loss, abandonment, stranding, damage or casualty, and

in cases under clause (*d*), where the ship concerned proceeds direct from the place where such loss, abandonment, stranding, damage or casualty has occurred to any place in British India, the master of such ship at the time she arrives at such place,

shall, on arriving in British India, give immediate notice of such loss, abandonment, stranding, damage or casualty to the nearest Magistrate, or, when he arrives at a port, to the officer appointed at such port as aforesaid.

Any person bound to give notice under this section and wilfully failing to give the same shall be punished with fine which may extend to five hundred rupees, and, in default of payment, to simple imprisonment for a term which may extend to three months.

Power to appoint special Court of Enquiry. **7.** If in any such case a formal investigation into the facts mentioned in section six, clause (*a*), (*b*), (*c*), (*d*) or (*e*), appears to the Local Government to be requisite or expedient, the Local Government (whether such notice be given or not) may appoint a special Court, consisting of not less than two nor more than four persons, and direct such Court to make such investigation, and may fix the place for making the same. See Act IV of 1875, s. 4.

One of such persons shall be a Magistrate acting in or near the place where the investigation is made; another shall be some person conversant with maritime affairs. The other or others (if any) shall be conversant with either maritime or mercantile affairs.

Other Courts authorized to investigate casualties. **8.** Every Court having admiralty jurisdiction in British India, and the principal Court of ordinary criminal jurisdiction at every port of British India where there is no Court having admiralty jurisdiction, is hereby authorized, when so directed by the Local Government, to make the investigations referred to in section seven. See Act IV of 1875, s. 5.

Power to inquire into charges against masters, mates and engineers. **9.** Any Court making an investigation under section seven or section eight may inquire into any charge of incompetency or misconduct arising, in the course of such investigation, against any master, mate or engineer holding a certificate granted, under any enactment for the time being in force, by the Board of Trade or a Local Government, as well as into any charge of a wrongful act or default on his part causing any such loss, abandonment, stranding, damage or casualty as aforesaid. Act XIII of 1878, s. 3.

In every case in which there is reason to believe that any such charge, whether of incompetency or misconduct, or of a wrongful act or default, as aforesaid, will arise against any such master, mate or engineer in the course of an investigation, the Court shall, if practicable, before the commencement of such investigation, cause to be furnished to him a copy of the report upon which such investigation has been directed.

Cf. s. 6 of Act IV of 1875. Also s. 241 of 17 & 18 Vic., c. 104.

Local Government may direct investigation in cases of incompetency or misconduct. **10.** If the Local Government has reason to believe that there are grounds for charging any such master, mate or engineer with incompetency or misconduct, otherwise than in the course of an investigation under section seven or section eight, it may transmit a statement of the case to any Court mentioned in section eight, at or nearest to the place at which it may be convenient for the parties and witnesses to attend, and may direct such Court to make an investigation into such charge.

Cf. Act IV of 1875, s. 7. Before commencing such investigation, the Court shall cause the master, mate or engineer so charged to be furnished with a copy of the statement so transmitted by the Local Government.

Act IV of 1875, s. 10.

Person accused to be heard. **11.** For the purpose of an investigation under this chapter into any charge against a master, mate or engineer, the Court may summon him to appear, and shall give him full opportunity of making a defence either in person or otherwise.

Cf. Act IV of 1875, s. 9.

Powers of Courts as to evidence and regulating proceedings. **12.** For the purpose of any investigation under this chapter, the Court making the investigation, so far as relates to compelling the attendance and examination of witnesses and the production of documents and the regulation of the proceedings, shall have—

(*a*) if such Court is a special Court—the same powers as are exerciseable by the principal Court of ordinary criminal jurisdiction for the place at which the investigation is made;

(*b*) if such Court is a Court having admiralty jurisdiction or a principal Court of ordinary criminal jurisdiction—the same powers as are exerciseable by such Court in the exercise of such admiralty or criminal jurisdiction (as the case may be).

Assessors. And every Court making any such investigation, other than a special Court, may, if it think fit, constitute as its assessor, for the purposes of the investigation, any person conversant with maritime affairs and willing to act as such assessor.

Such person shall attend during the investigation and deliver his opinion in writing, to be recorded on the proceedings. But the exercise of all powers conferred on the Court by this Act or any other enactment for the time being in force shall rest with the Court.

Power to arrest witnesses and cause entry and detention of vessels. **13.** If any Court making an investigation under this chapter thinks it necessary for obtaining evidence that any person should be arrested, it may issue a warrant for his arrest, and may, for the purpose of effecting such arrest, authorize any officer (subject, nevertheless, to any general or special instructions from the Local Government) to enter any vessel. Act IV of 1875, s. 15.

Any officer so authorized may, for the purpose of enforcing such entry, call to his aid any officers of police or customs, or any other persons, and may seize and detain the vessel for such time as is reasonably necessary to effect the arrest; and every such officer or other person shall be deemed to be a public servant within the meaning of the Indian Penal Code, section 186.

No person shall be detained by virtue of this section for more than forty-eight hours.

Power to commit for trial. **14.** Whenever, in the course of any such investigation, it appears that any person has committed an offence punishable under any law in force in British India, the Court making the investigation may (subject to such rules consistent with this Act as the High Court may from time to time prescribe) cause him to be arrested, or commit him or hold him to bail to take his trial before the proper Court; and may bind over any person to give evidence at such trial, and may, for the purposes of this section, exercise all the powers of a Magistrate of the first class or of a Presidency Magistrate: Act IV of 1875, s. 16.

Power to bind over persons to give evidence.

Depositions. And whenever in the course of such trial the testimony of any witness is required in relation to the subject-matter, any deposition previously made by him in relation to the same subject-matter before any Court making an investigation under this chapter shall, if authenticated by the signature of the Magistrate or presiding Judge, be admissible in evidence on proof—

(*a*) that the witness cannot be found within the jurisdiction of the Court before which the trial is held; and

(*b*) that it was made in the presence of the person accused.

A certificate by the Magistrate or presiding Judge that the deposition was made in the presence of the accused shall, unless the contrary be proved, be sufficient evidence that it was so made.

Report by Court to Local Government. **15.** The Court shall, in the case of all investigations under this chapter, transmit to the Local Government a full report of the conclusions at which it has arrived, together with the evidence. Cf. Act IV of 1875, ss. 11 and 12.

In cases in which, under the Merchant Shipping Acts, 1854 to 1880, the Court is required to send a report to the Board of Trade, such report shall be sent through the Local Government, and the

submission of such report to the Local Government shall be a sufficient compliance with this section.

CHAPTER III.

SUSPENSION AND CANCELLATION OF CERTIFICATES AND GRANT OF FRESH CERTIFICATES.

16. Nothing herein contained shall affect the powers conferred by the Merchant Shipping Acts, 1854 to 1880, on the Courts conducting investigations under sections seven, eight, nine and ten of this Act, to cancel or suspend certificates granted under any of the said Merchant Shipping Acts, or certificates to which the provisions of any such Act have been made applicable under the Merchant Shipping (Colonial) Act, 1869.

Saving of power to cancel and suspend certificates under English Acts.

When any such Court cancels or suspends any such certificate, it may, in its report to the Local Government, advise such Government to grant, without examination, to the holder of such certificate, when such certificate is a certificate as master, a certificate as master or mate; and, when such certificate is a certificate as mate or engineer, a certificate as mate or engineer, as the case may be; and such Local Government, if it thinks fit, and if it is empowered by any enactment of a British Indian legislature for the time being in force to grant such certificate, may grant it under such enactment, but without examination. A certificate so granted shall, except for the purposes of the said Merchant Shipping (Colonial) Act, 1869, have the same effect as if it had been granted after examination.

Power to issue local certificates in lieu of such certificates.

See Act IV of 1875, s. 18.

17. Any certificate (whether of competency or service) which has been granted by any Local Government, to any master, mate or engineer, and to which the provisions of the Merchant Shipping (Colonial) Act, 1869, do not apply, may be suspended or cancelled, by that or any other Local Government, in the following cases, that is to say:—

Local Government may suspend or cancel certain certificates—

(*a*) if, upon any investigation made under this Act, the Court reports that the loss, stranding or abandonment of, or damage to, any ship, or loss of life, has been caused by his wrongful act or default, or that he is incompetent, or has been guilty of any gross act of drunkenness, tyranny or other misconduct;

after investigation under this Act:

(*b*) if, upon any investigation made under the provisions of the Merchant Shipping Acts, 1854 to 1880, or upon any investigation made by any Court or tribunal for the time being authorized by the legislative authority in any British possession to make enquiry into charges of incompetency or misconduct on the part of masters, mates or engineers of ships, or as to shipwrecks or other casualties affecting ships, the Court or tribunal reports that such master, mate or engineer is incompetent, or has been guilty of any gross act of misconduct, drunkenness or tyranny, or that the loss, stranding or abandonment of, or damage to, any ship, or loss of life, has been caused by his wrongful act or default;

after investigation under other Acts:

(*c*) if he is proved to have been convicted of any offence which, if committed in British India, would be non-bailable, or, if committed in England, would be a felony: and

Act IV of 1875, s. 18, cl. (*d*).

after conviction of any offence:

(*d*) if (in the case of a master) he has been superseded by the order of any Admiralty Court, or of any Naval Court constituted as provided by the Merchant Shipping Act, 1854, or by any other law for the time being in force:

after supersession.

Provided that, in any case in which an investigation has been made into a charge against any master, mate or engineer, no certificate shall be suspended or cancelled under clause (*a*) unless the Local Government is satisfied that the holder of the certificate has been furnished before the commencement of the investigation with the copy of the report or statement required by section nine or section ten, as the case may be.

See Act IV of 1875, s. 19.

18. Every master, mate or engineer whose certificate is cancelled or suspended under section seventeen shall deliver it to the Shipping Master, or to such other person as the Local Government which cancelled or suspended the certificate directs, and in default of such delivery shall, for each offence, be punished with fine which may extend to five hundred rupees.

Master, &c., to deliver up certificate.

See Act IV of 1875, s. 20.

19. If the Local Government which cancels or suspends, under section seventeen, a certificate of a master, mate or engineer is not the Local Government that granted the same, the Local Government so cancelling or suspending the certificate shall report the proceedings, and the fact of cancelment or suspension, to the Local Government which granted such certificate.

Report to other Local Governments.

See Act IV of 1875, s. 21.

20. Every Local Government cancelling or suspending under section seventeen the certificate of a master, mate or engineer shall, as soon as may be practicable, report to the Board of Trade the fact of such cancellation or suspension.

Report to Board of Trade.

See Act IV of 1875, s. 22.

21. Any Local Government may at any time revoke any order of cancelment or suspension which it may have made under section seventeen, or grant, without examination, to any person, whose certificate it has so cancelled, a new certificate of the same or of any lower grade.

Power to revoke cancellation or suspension.

Power to grant new certificate.

A certificate so granted shall, except for the purposes of the said Merchant Shipping (Colonial) Act, 1869, have the same effect as if it had been granted after examination.

A certificate of competency for a Home-trade ship under the said Act No. I of 1859 shall be deemed, for the purposes of this section, to be of a lower grade than a certificate of competency for a foreign-going ship under the same Act.

Every revocation and every grant under this section shall, as soon as may be practicable, be reported to the Board of Trade.

CHAPTER IV.

AGREEMENTS WITH SEAMEN.

Act IV of 1875, s. 28.

22. This chapter shall be read with, and taken as part of, the said Act No. I of 1859.

Chapter to be read with Act I of 1859.

See Act IV of 1875, s. 24.

23. The master of every ship, except ships of a burden not exceeding three hundred tons employed only in the Home-trade, shall enter into an agreement with every seaman whom he carries to sea from any port in British India as one of his crew, in the manner hereinafter mentioned.

Masters to enter into agreements with seamen.

See Act IV of 1875, s. 25.

24. Every such agreeemnt shall be in a form sanctioned by the Governor General in Council, and shall be dated at the time of the first signature thereof, and shall be signed by the master before any seaman signs the same, and shall contain the following particulars as terms thereof, that is to say:—

Form and contents of agreement.

(*a*) either the nature and, as far as practicable, the duration of the intended voyage or engagement, or the maximum period of the voyage or engagement, and the places or parts of the world, if any, to which the voyage or engagement is not to extend;

(*b*) the number and description of the crew, specifying how many are engaged as sailors;

(*c*) the time at which each seaman is to be on board or to begin work;

(*d*) the capacity in which each seaman is to serve;

(*e*) the amount of wages which each seaman is to receive;

(*f*) a scale of the provisions which are to be furnished to each seaman; and

(*g*) any regulations as to conduct on board, and as to fines, short allowance of provisions or other lawful punishments for misconduct, which have been sanctioned by the Governor General in Council as regulations proper to be adopted, and which the parties agree to adopt.

And every such agreement shall be so framed as to admit of stipulations to be adopted at the will of the master and seaman in each case (not being inconsistent with the provisions of any enactment for the time being in force relating to Merchant Shipping), as to advance of wages and supply of warm clothing, and may contain any other stipulations which are not contrary to law.

See sec. 82 of the Bill which became Act VII of 1880.

25. In the case of such agreements with lascars or other Native seamen, the scale of the provisions agreed to be furnished to each of such seamen shall not be less than a scale to be from time to time fixed and published by the Local Government with the previous sanction of the Governor General in Council.

Scale of provisions to be furnished to lascars.

Any master entering into an agreement with any lascar or other Native seaman for a scale of provisions less than the scale so fixed and published shall be punished with fine which may extend to two hundred rupees.

Act IV of 1875, s. 26.

26. Whenever it is agreed that the service of any lascar or other Native seaman shall end at any port not in British India, the agreement shall, in addition to the particulars specified in section twenty-four, contain a stipulation that fit employment shall be provided for him on board some other ship bound to the port at which he was shipped, or such other port in British India as may be agreed on; or

Stipulation where lascars are shipped.

that a passage shall be provided for him to some port in British India free of charge, or on such other terms as may be agreed on;

and every such stipulation shall be signed by the owner of the ship, or by the master on his behalf.

EXPLANATION.—In this section the word "seaman" includes also a Native of British India carried to sea from any port in British India as one of the crew of a ship.

Act IV of 1875, s. 27.

27. If the master of any ship belonging to the United Kingdom or any British possession has an agreement with his crew, made in due form according to the law of the place to which such ship belongs, or in which her crew were engaged, and engages a single seaman, not being a lascar or other Native seaman, in any port in British India, such seaman may sign the agreement so made, and it shall not be necessary for him to sign an agreement under this Act.

Forms for British or Colonial ships.

CHAPTER V.

PORT-INSPECTORS.

See sec. 80 of the Bill which became Act VII of 1880.

28. In the Indian Ports Act, 1875, after section eighteen, the following sections shall be inserted, that is to say:—

Addition to Act XII of 1875.

"18A. The Local Government may, from time to time, appoint in any port subject to this Act an officer to be called the Port-inspector, and suspend or remove such officer.

Appointment and powers of Port-inspectors.

"Every officer so appointed shall, subject to the control of the Local Government, have the following powers within the limits of the port for which he is appointed, that is to say:—

"(*a*) he may at any time enter any vessel, and may inspect the same and every part thereof, and the provisions and water provided for the use of the persons on board such vessel, and the medicines and appliances and the accommodation for the seamen;

"(*b*) he may medically examine all or any of the persons on board such vessel;

"(*c*) he may require and enforce the production of the log and any other books, papers or documents which he thinks necessary for the purpose of enquiring into the health and medical condition of the persons on board such vessel;

"(*d*) he may call before him and examine for such purpose all or any of such persons, and may require answers to any inquiries he thinks fit to make;

"(*e*) he may require any persons so examined by him to make and subscribe a declaration of the truth of the statements made by such person.

"18B. The Port-inspector shall, on first entering any vessel after its arrival, inquire whether any lascar or other Native seaman on board such vessel desires to make any complaint against the master or any of the crew thereof.

Port-inspector to inquire into complaints;

"In the event of any such seaman so desiring, the Port-inspector shall hear such complaint and record the particulars thereof in writing, and may, for the purpose of ascertaining the truth of the same, exercise any of the powers mentioned in section 18A.

"The Port-inspector shall forthwith report in writing to the Shipping Master the particulars of any complaint made to him under this section, together with his opinion thereon."

and report the same to Shipping Master.

CHAPTER VI.

MISCELLANEOUS.

See Act XIII of 1878, s. 1.

29. In cases where any wages or expenses recoverable under section 213 of the Merchant Shipping Act, 1854, or under section 16 of the Merchant Shipping Act Amendment Act, 1855, are, under the same sections, a charge upon any ship, or recoverable from any master, owner or other person, within the jurisdiction of any Court in British India, the Governor General in Council may, from time to time, by notification in the *Gazette of India*, authorize, either generally or specially, such persons as he thinks fit to sue for and recover, in manner in the Merchant Shipping Act, 1854, section 213, provided, such wages or expenses.

Power to appoint persons to sue.

Every person so authorized shall be entitled to sue and recover accordingly in any such Court, and shall be deemed to be a person filling a public office within the meaning of the Indian Evidence Act, 1872, section 57, clause 7.

All suits and proceedings under this section shall be instituted and carried on in the name of the Secretary of State for India in Council. See Act XIII of 1878, s. 2.

Suits, &c., to be instituted in name of Secretary of State for India in Council.

30. Sections 9 to 16 (both inclusive) of the said Act No. I of 1859 shall not apply to ships registered under Act No. X of 1841 and trading between ports in India and the coasts of Arabia, when such ships are navigated and manned exclusively by Arabs, lascars, or other Asiatic masters and seamen. See Act IV of 1875, s. 29.

Provisions as to examinations, &c., of masters not to apply to certain ships.

31. In sections 2, 15, 17 and 23 of the said Act No. X of 1841, for the words "on information in any Court of Her Majesty or the East India Company by the Advocates General of the respective Presidencies," "by information as aforesaid," "on information as aforesaid," "upon information as aforesaid," in each of the places where they occur, the following words shall be substituted, namely:—"on conviction before a Presidency Magistrate or a Magistrate of the first class." See Act IV of 1875, s. 30.

Amendment of Act X of 1841, secs. 2, 15, 17 and 23.

STATEMENT OF OBJECTS AND REASONS.

PARAGRAPH 8 of the Report, dated the 20th February, 1880, of the Select Committee on the Bill relating to Merchant Shipping, which afterwards became the Indian Merchant Shipping Act, 1880, ran as follows :—

"8. We have omitted chapters VII and VIII of the Bill as introduced, as we consider that the matters to which they relate would be more fitly dealt with in a Bill to consolidate Act No. IV of 1875 and the sections of Act No. XIII of 1878 by which it is amended."

2. The nature of the contents of these omitted chapters will be learnt from the following paragraphs of the Statement of Objects and Reasons, dated the 29th August, 1879, appended to that Bill :—

"21. Chapter VII, by an addition to the Ports Act, 1875, provides for the appointment of an officer called a 'Port-inspector.' This officer, in addition to performing the duties at present performed by the Health-officer (for the performance of which duties he is by the Bill invested with certain legal powers), is intrusted with the duty of inquiring into any complaints which may be made on the arrival of a ship in port by any of the crew against the master or any others of the crew. This latter provision has been inserted, in compliance with the desire of the Secretary of State, for the protection of lascars or other Oriental seamen when serving on board a European ship.

"22. Chapter VIII makes two amendments of the Indian Merchant Shipping Act, 1875. The one extends the provisions of section 3 of that Act so as to give power to hold Marine Courts of Enquiry in certain cases which are at present unprovided for. This change has been introduced at the request of the local Marine authorities, and is in accordance with the provisions of the English law as recently amended. The other amendment gives the Local Government power to fix a scale of provisions, for less than which it will be penal for a master to contract with any lascar or Native seaman—a provision which has been found to be essential for the protection of such seamen."

3. It is with a view to carry out the suggestion of the Select Committee above quoted that the present Bill has been prepared.

The Bill, however, does more than merely consolidate the provisions of the Acts of 1875 and 1878 and re-enact them with the addition of the points omitted from the Merchant Shipping Bill of 1879.

These Acts of 1875 and 1878 relate in part to the suspension and cancellation of Board of Trade certificates to which the provisions of the Imperial Merchant Shipping Acts apply. An examination of the provisions of our Acts in connection with those of the Imperial Acts shows that our Acts deal with several matters already provided for by Parliament. This is not desirable. Apart from the question which might be raised as to the validity of our law, where that law is not transcribed *verbatim*, it is inconvenient from a practical point of view that double provisions relating to the same subject-matter should exist side by side. In re-enacting, therefore, the provisions of the Acts repealed by the Bill, an endeavour has been made to restrict the provisions of the Bill to matters for which the Imperial Acts do not provide, and on which it is clear we can legislate. This has necessitated the omission of some and the amendment of other provisions of the present law.

4. The opportunity of this Bill has been taken to amend section 26 of Act IV of 1875, so as to provide that, when the service of any lascar is to end at any port not in British India, the agreement between him and the master shall invariably stipulate for his return to British *India*, and not merely for his employment on board some vessel bound to such other port as may be agreed on, possibly not in British India. It is clear that, with the extended employment of Native seamen in the Eastern trade, and the increasing number of Asiatic sailors found in a destitute condition at European ports, Government should, on economical grounds, if for no other reason, devise steps to secure the return of Indian seamen to this country at the expense of the persons who take them away.

5. The 31st section of Act IV of 1875, which confers certain powers on Courts for the trial of pilots constituted under Act XII of 1859, has been excluded from the present Bill, as the matter is one which will be more properly provided for by a separate Bill amending that Act.

WHITLEY STOKES.

The 24th February, 1881.

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

5 c

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 4th March, 1881, and was referred to a Select Committee :—

No. 7 OF 1881.

A Bill to give power to arrest persons whose evidence is needed under Act No. XII of 1859.

Preamble.

WHEREAS it is expedient to empower the Judges holding trials under Act No. XII of 1859 (*An Act to make better provision for the trial of Pilots at the Presidency of Fort William in Bengal for breach of duty*) to arrest persons whose evidence is required on such trials; It is hereby enacted as follows :—

Addition to Act XII of 1859, after section 14.

1. The following section shall be inserted immediately after section 14 of the said Act, namely :—

"15. Whenever the Judge of the said Court thinks it necessary for obtaining evidence that any person should be arrested, he may issue a warrant for his arrest, and may, for the purpose of effecting such arrest, authorize any officer (subject, nevertheless, to any general or special instructions from the Local Government) to enter any vessel.

"Any officer so authorized may, for the purpose of enforcing such entry, call to his aid any officers of police or customs, or any other persons, and may seize and detain the vessel for such time as is reasonably necessary to effect the arrest; and every such officer or other person shall be deemed to be a public servant within the meaning of the Indian Penal Code, section 186.

"No person shall be detained under this section for more than forty-eight hours."

STATEMENT OF OBJECTS AND REASONS.

THE last section of Act IV of 1875, which confers on Courts established for the trial of pilots in Bengal under Act XII of 1859 certain powers for compelling the attendance of witnesses, will be repealed if the Merchant Shipping Bill, which is to be introduced to-day, becomes law. As such a provision is somewhat out of place in a Merchant Shipping Act, it seems better to re-enact it as a section in Act XII of 1859, and the present Bill has accordingly been prepared for this purpose.

WHITLEY STOKES.

The 4th March, 1881.

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

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 4th March, 1881, and was referred to a Select Committee :—

No. 8 OF 1881.

No. II.

THE CODE OF CRIMINAL PROCEDURE, 1882.

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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, 1882:" and shall come into force on the first day of January, 1883;

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.

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—

Act X, 1872, s. 540. (*a*) the Commissioner of Police or the police in the towns of Calcutta, Madras and Bombay;

(*b*) any officer duly authorized to try petty offences in military bázárs at cantonments and stations occupied by the troops of the said Presidencies respectively;

(*c*) heads of villages in the Presidency of Fort Saint George; *or*

(*d*) village Police-officers in the Presidency of Bombay.

Act X, 1875, s. 2. Act X, 1872, s. 2, para. 1. Repeal of enactments. **2.** On and from the first day of January, 1883, 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.

Act X, 1872, ss. 82, 86. Act X, 1872, s. 2, last para., s. 10. Notifications, &c., under repealed Acts. 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, 1883, shall be deemed to have been respectively published, issued, conferred, 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, *or to any other enactment hereby repealed*, such reference shall, *so far as may be practicable*, be taken to be made to this Code or to its corresponding chapter or section.

Expressions in former Acts. In every enactment *passed before this Code comes into force* 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 *Magistrate with a view to institute proceedings under this Code* that some person, whether known or unknown, has *committed* an offence; *but does not include the report of a Police-officer*:

"Investigation." (*b*) "Investigation" includes all the proceedings *under* this Code for the collection of evidence *conducted by the Police or by any person authorized by a Magistrate in this behalf*:

"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 *legally* taken:

"Writing." (*e*) "Writing" *and* "*written*" include "printing," "lithography," "photography" and "engraving" *and the like*:

New. "To sign." (*f*) "To sign" means to affix a name or mark in writing or by means of a stamp:

New. "Sub-division." (*g*) "Sub-division" means a sub-division of a District *made under this Code*:

"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 *criminal* jurisdiction of the High Court of Judicature at Fort William, Madras or Bombay:

Act X, 1875, s. 3. altered. Another definition *infra*, s. 267. "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, the Chief Court of the Panjáb *and the Recorder of Rangoon*:

Query as to Special Court acting under the 79th section of the Burma Courts Act, 1875. In other cases "High Court" means the highest Court of criminal appeal or revision for any local area:

See précis, para. 160. *or, where no such Court is established under any law for the time being in force, such officer as the Governor General in Council may from time to time appoint in this behalf*:

Act X, 1875, s. 3. "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:

Act X, 1875, s. 3. "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:

New: see Act X, 1872, s. 57. Act X, 1875, s. 3. See 11 Bom., 103. "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:

New. "Pleader." (*o*) "Pleader" used with reference to any proceeding in any Court means a pleader authorized *under any law for the time being in force* to practise in such Court, and includes (1) an advocate, a vakíl and an attorney of a High Court so authorized, and (2) any *mukhtár or* other person appointed with the permission of the Court to act in such proceeding:

"Police-station." "Officer in charge of a Police-station." (*p*) "*Police-station*" *means any post declared by the Local Government to be a Police-station for the purposes of this Code; and* "Officer in charge of a Police-station" includes, when the officer in charge of the station is absent *therefrom* or ill, the Police-officer next in rank present at the Police-station above the rank of Constable, *or, when the Local Government so directs, any other Police-officer so present*:

Act X, 1872, s. 136.

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 any *act or omission* made punishable by any law for the time being in force:

Act XI, 1874, s. 1. "Cognizable offence." "Cognizable case." (*s*) "Cognizable offence" means an offence for, and "cognizable case" means a case in, which a Police-officer may, *in accordance with the second schedule, or* 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:

Act XI, 1874, s. 1. "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, 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, ss. 71. Act X, 1875, s. 3. "European British subject." (*w*) "European British subject" means—

(1) any subject of Her Majesty 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:

New. "Chapter." "Schedule." (*x*) "Chapter" means a chapter of this Code: "Schedule" means a schedule hereto annexed:

New. "Place." (*y*) "Place" includes also a house, building, *tent* 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." *New.* 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. *See Act XI, 1874, s. 42.*

Act X, 1872, ss. 6, 7, 11. Act X, 1872, ss. 6, 7, 8, para. 1, 55, Expl. Act X, 1875, s. 6. Act IV, 1877, s. 14. Trial of offences under Penal Code. **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 *or place* of inquiry or trial, be enquired into and tried according to the provisions hereinafter contained. Trial of offences against other laws.

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 shall be five classes of Criminal Courts in British India, namely :—

Classes of Criminal Courts.

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, s. 12.

7. Every Province (excluding the Presidency-towns) shall be a Sessions Division, or shall consist of Sessions Divisions;

Sessions Divisions.

Act XI, 1874, s. 4.

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 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 X, 1872, s. 14. Act XI, 1874, s. 4.

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.

Act IV, 1877, s. 8, para. 5.

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.

8. The Local Government may divide any District outside the Presidency-towns into Sub-divisions, or *make* any portion of any such District a Sub-division, and may alter the limits of any Sub-division.

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, 17, 18.

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, 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 *from time to time* define local areas within which such persons may exercise *all or any of* the powers with which they may respectively be invested under this Code.

Subordinate Magistrates.

Local limits of their jurisdiction.

Except as otherwise provided by such definition, *the jurisdiction and powers of* such persons *shall extend* 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, *and relieve him of the charge as occasion requires.*

Power to put Magistrate in charge of Sub-division.

Such Magistrates shall be called Sub-divisional Magistrates.

The Local Government may delegate its powers under this section to the District Magistrate.

Delegation of power to Magistrate of District.

Act X, 1872, s. 42.

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.

Act XI, 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 V, 1861, s. 6.

No powers shall be conferred under this section on any Police-officer below the grade of Assistant District Superintendent, and no powers shall be so conferred except so far as may be necessary for preserving the peace, preventing crime and detecting, apprehending and detaining offenders in order to their being brought before a Magistrate, and for the performance by the officer of any other duties imposed upon him by any law for the time being in force.

ct 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.

Jafferuddin v. Ibrahim, I. L. R., 3 Cal., 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 exerciseable by Bench in absence of special direction.

Act X, 1872, ss. 52, 53.

16. *The Local Government may, or* the District Magistrate subject to the control of the Local Government, from time to time make rules consistent with this Code for the guidance of Magistrates' Benches in *any* 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. 27, para. 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. 52.

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.

All Assistant Sessions Judges shall be subordinate to the Sessions Judge in whose Court they exercise jurisdiction.

Act X, 1872, s. 27, para. 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. 8, last 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 on 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 *established by Royal Charter* 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 *established by Royal Charter*, 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 *only* shall *not be suspended or removed by any other authority.*

Suspension and removal of Judges and Magistrates.

Act II, 1869, s. 9.

27. The Governor General in Council may suspend *or dismiss* 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.

e.g., ss. 194, 195. Act XI, 1874, s. 1. Act IV, 1877, s. 4.

28. *Subject to the other provisions of this Code,* 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, *para.* 1.

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

(a) no Magistrate of the first class shall try any such offence which is punishable with imprisonment for a term which may exceed seven years;

(*b*) 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

(*c*) 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.

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.

Act X, 1872, ss. 15, para. 2, 17.

An Assistant Sessions Judge may pass any sentence authorized by law except a sentence of death *or of* transportation *for any term* or *of* 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:—

Sentences which Magistrates may pass.

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; 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.

Act X, 1872, s. 20, Expl., s. 309, para. 2. See I. L. R., 1 Mad., 77.

33. The Court of any Magistrate may award such term of imprisonment in default of payment of fine as is authorized by law *in case of such default*: Provided that the term is not in excess of the Magistrate's powers under this Code:

Power to sentence to imprisonment in default of fine.

Act X, 1872, s. 309, para. 1, *proviso*. As to para. 1 of that section see Act I of 1868. Act IV, 1877, s. 12, omitting paras. 1 & 3.

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.

Proviso as to cases decided by a Magistrate.

Act X, 1872, s. 20, Expl.

The imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under section 32.

Act X, 1872, s. 36.

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.

Higher powers of certain District Magistrates.

See infra., s. 380.

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. 309. 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., Bom., 223.

For the purpose of confirmation or appeal, *aggregate* sentences 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. 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.

Act X, 1872, ss. 23, 25, 27, 29.

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.

The power conferred on the District Magistrate by this section shall be exercised subject to the control of the Local Government.

38. All Magistrates of the first and second classes, and all Magistrates of the third class specially empowered in this behalf, shall have all the powers conferred by this Code on an officer in charge of a Police-station.

Police-powers of Magistrates.

D.—Conferment, Continuance and Cancellation of Powers.

Act X, 1872, s. 43.

39. 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.

Act X, 1872, s. 36.

40. 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

Continuance of powers of officers transferred.

equal or higher office of the same nature within a like local area *under the same Local Government*, 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 Cal., 117.

Act X, 1872, s. 54.

41. *Any authority* may cancel any powers conferred *by it* on any person under this Code.

Powers may be varied or cancelled.

PART III.

GENERAL PROVISIONS.

CHAPTER IV.

Of Aid and Information to the Magistrates, the Police and persons making arrests.

Act X, 1872, s. 91. Act IV, 1877, s. 247.

42. Every person is bound to assist a Magistrate or Police-officer demanding his aid, whether within or without the Presidency-towns,

Public when to assist Magistrates and Police.

(*a*) in the taking of any other person whom such Magistrate or Police-officer is authorized to arrest;

(*b*) in the prevention of a breach of the peace, or of any injury attempted to be committed to *any railway, canal or* public property;

(*c*) in the suppression of a riot or affray; or

(*d*) *in the extinguishment of fire dangerous to human life or to valuable property.*

Act X, 1872, s. 163.

43. *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 the warrant is directed be near at hand and acting in the execution of the warrant.*

Aid to person other than Police-officer, executing warrant.

Act X, 1872, s. 89. Act IV, 1877, s. 246.

44. Every person, whether within or without the Presidency-towns, aware of the commission of *or intention to commit* 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, *forthwith* give information of the same to the nearest Magistrate or Police-officer.

Public to give information of certain offences.

Act X, 1872, s. 90.

45. Every village-headman, village-watchman, *village-police-officer*, owner or occupier of land, *and* 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—

Village-headmen, landholders and others bound to report certain matters.

(*a*) the residence of any notorious receiver or vendor of stolen property in *any* village of which he is headman, watchman *or police-officer*, or in which he owns or occupies land, or is agent, or collects revenue or rent;

(*b*) the resort to any place within, *or the passage through*, such village, of any person whom he knows, or reasonably suspects, to be a thug, robber, *escaped convict or proclaimed offender;*

(*c*) the commission of or intention to commit any non-bailable offence in or near such village;

(*d*) the occurrence therein of any death *under suspicious circumstances.*

Explanation.—In this section "village" includes village-lands.

CHAPTER V.

Of Arrest, Escape and Retaking.

A.—Arrest generally.

Act X, 1872, s. 177.

46. 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.

Alison's Cr. law cited Mayne P. C, s. 106.

Nothing in this section gives a right to cause the death of a person arrested who is accused of an offence not punishable with death.

Act X, 1872, ss. 99, 179.

47. 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.

48. If ingress to such place cannot be obtained under section 47, 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

Procedure where ingress not obtainable.

arrested an opportunity of escape, for a Police-officer, to enter such place and search therein, and

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 custom, 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.

49. 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. 183.

50. 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, *para. 1. See section 634, infra.*

51. 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, *or by a private person under a 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 *he* makes over the person arrested, may search such person, and place in safe custody all articles, other than necessary wearing apparel, found upon him.

Act X, 1872, s. 336. Act IV, 1877, s. 166.

52. Whenever it is necessary to cause a woman to be searched, the search shall be made with strict regard to custom.

Mode of searching women.

New. Liv., p. 50.

53. 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

Power to seize offensive weapons.

or whom the person making the arrest is required by this Code to produce the person arrested,

B.—Arrest without Warrant.

Act X, 1872, s. 92, omitting cl. 3.

54. 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 credible information has been received*, or a reasonable suspicion exists, of his having been so concerned;

Cf. Livingston, 503.

secondly—any person who has been proclaimed *as an offender* either under this Code or *by order of the Local Government;*

thirdly—any person in *whose possession anything is found* 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.

55. 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 *a cognizable* 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.

Act X, 1872, s. 102, *para. 1.*

56. 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 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. 98.

57. 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

Refusal to give name and residence.

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 released *on his executing a bond for his appearance before a Magistrate if so required.*

Act X, 1872, s. 103.

58. For the purpose of arresting without warrant any person whom he is authorized 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.

59. 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. 184.

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 54 or 57, 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.

Act X, 1872, s. 101.

60. 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 *a* 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, *para.* 1.

61. 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 *under section 168*, 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. 122, *para.* 1.

62. Officers in charge of Police-stations shall report to the District Magistrate, *or if he so directs, to the* 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 X, 1872, *s.* 133, *para.* 2. Act IV, 1877, s. 70, para. 1.

63. No person who has been so arrested by a Police-officer shall be discharged except on his *bond*, 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.

64. When any offence is committed in the presence of a Magistrate *within the local limits of his jurisdiction*, he may *himself arrest or* 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, para. 2. Act IV, 1877, s. 62.

65. Any Magistrate may at any time *arrest or* direct the arrest, in his presence, *within the local limits of his jurisdiction*, of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant.

Arrest *by or* in presence of Magistrate.

Act XXV, 1861, s. 112. N. Y. Cr. Pro. Code, s. 186.

66. If a person in lawful custody escapes or is rescued, *and* the person from whose custody he escaped or was rescued *is not, under the provisions hereinbefore contained, authorized to arrest him without warrant, he* may immediately pursue and *arrest* him in any place in British India.

Power, on escape, to pursue and retake.

Act XXV, 1861, s. 112. N. Y. Cr. Pro. Code, s. 186.

67. The provisions of sections 47 and 48 shall apply to arrests under section 66, although the person making such arrest is not acting under a warrant and is not a Police-officer having authority to arrest.

Provisions of sections 47 and 48 to apply to cases under section 66.

CHAPTER VI.

Of Processes to compel Appearance.

A.—Summons.

Act X, 1872, s. 152. Act IV, 1877, s. 47.

68. Every summons issued by a Court under this Code shall be in writing *in duplicate* signed *and sealed* 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 be served by *a Police*-officer; *or, subject to such rules as the Local Government may prescribe in this behalf*, by *an officer of the Court issuing it.*

Summons by whom served.

Act X, 1872, s. 154. Act IV, 1877, s. 48.

69. The summons shall *if practicable* be served personally on *the person summoned* by delivering or tendering *to him one of the duplicates of* the summons.

Summons how served.

Every person *on* whom a summons is so *served* shall, if so required by the serving officer, sign a receipt therefor *on the back of the other duplicate.*

Signature of receipt for summons.

Act X, 1872, s. 154. Act IV, 1877, s. 49.

70. Where the person summoned cannot by the exercise of due diligence be found, the summons may be served by leaving *one of the duplicates* for him with some adult male member 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 *on the back of the other duplicate.*

Service when person summoned cannot be found.

Act X, 1872, s. 155.

71. If the signature mentioned in sections 69 and 70 cannot by the exercise of due diligence be obtained, the serving officer shall fix *one of the duplicates* of the summons on some

Procedure when receipt cannot be obtained.

conspicuous part of the house in which the person summoned ordinarily resides; and thereupon the summons shall be deemed to have been duly served.

Act X, 1872, s. 158, *proviso.*

72. Where the person summoned is in the active service of *the* Government or of a Railway Company, the Court issuing the summons shall *ordinarily* send it *in duplicate* 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 69, *and shall return it to the Court with the endorsement required by that section*

Service on servant of Government or of Railway Company.

Act XXIII, 1840, s. 1. Act IV, 1877, s. 50.

73. 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 *ordinarily* 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.

74. 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, a solemn declaration, purporting to be made before a Magistrate, that such summons has been served, *and* a *duplicate* of the summons purporting to be *endorsed (in manner provided by section 69 or section 70)* by the person to whom it is delivered or tendered or with whom it is left, ***shall be admissible in evidence, and the statements made therein shall be deemed to be correct unless and until the contrary is proved.***

Proof of service in such cases, and when serving officer not present.

The declaration mentioned in *this section* may be endorsed on the *duplicate* 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 Bom., 157.

75. Every warrant *of arrest* issued by a Court *under this Code* shall be in writing, *signed and sealed by the* presiding officer; *or, in the case of a Bench of Magistrates, by any member of such Bench.*

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.

76. 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 *attendance* before the Court *at* a specified *time and thereafter until otherwise directed by the Court*, 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 *time at* which he is to *attend* 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.

77. 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.

78. A District Magistrate *or Sub-divisional 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 *a* Magistrate having jurisdiction *in the case*, unless security is taken under section 76.

Act X, 1872, s. 163.

79. 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. 165. Act IV, 1877, s. 60.

80. 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.

81. 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. 167.

82. The Police-officer or other person executing a warrant of arrest shall (subject to the provisions of section 76 as to security) without unnecessary delay bring the person arrested before the Court before which he is required by *law* to produce him.

Person arrested to be brought before Court without delay.

Act X, 1872, s. 167. Act IV, 1877, s. 65.

Where warrant may be executed.

83. A warrant of arrest may be executed at any place in British India.

Act X, 1872, ss. 168, paras. 1 & 2, 170, first part. Act IV, 1877, s. 64.

Warrant forwarded to Magistrate for execution outside jurisdiction.

84. 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.

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 X, 1872, ss. 168, paras. 1 & 3, 170, first part. Act IV, 1877, s. 64, paras. 5, 6, 7.

Warrant directed to Police-officer for execution outside jurisdiction.

85. 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 *shall ordinarily* 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.

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.

Act X, 1872, s. 169. Act IV, 1877, s. 65, para. 1.

Procedure on arrest of person against whom warrant issued.

86. 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 76, be taken before such Magistrate or Commissioner.

Act X, 1872, s. 170. Act IV, 1877, s. 65, para. 2.

Procedure by Magistrate before whom person arrested is brought.

87. 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: *Provided that if* the offence is bailable, *and such person is ready and willing to give bail to the satisfaction of such Magistrate or Commissioner, or a direction has been endorsed under section 76 on the warrant*, and such person is ready and willing to give the security required *by such direction*, the Magistrate or Commissioner shall take *bail or* such security, *as the case may be*, and forward the bond to the Court which issued the warrant.

C.—Proclamation and Attachment.

Act X, 1872, ss. 171, 353, para. 1. Act X, 1875, s. 82. Act IV, 1877, ss. 67, 137. 10 Ben. App. 18.

Proclamation for person absconding.

88. If a Court has reason to believe (*whether after taking evidence or not*) that any person against whom a warrant has been issued by it *has absconded or* is 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 *publishing* such proclamation.

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 *issuing the proclamation* 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, 353, paras. 2 & 3. Act IV, 1877, ss. 68, 137.

Attachment of property of person absconding.

89. The Court may, *after issuing a proclamation under section 88*, order the attachment of any property, moveable or immoveable, or both, belonging to *the proclaimed* person.

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 debts or other moveable property, the attachment under this section shall be made—

(*a*) *by seizure*; *or*

(*b*) *by the appointment of a receiver or to any one on his behalf*; *or*

(*c*) *by an order in writing prohibiting the delivery of such property to the proclaimed person or to any one on his behalf*; *or*

(*d*) *by all or any two of such methods, as the Court thinks fit.*

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—

(*e*) by seizure; or

(*f*) by the appointment of a receiver; or

(*g*) by an order *in writing* prohibiting the payment of rent *or delivery of property* to the *proclaimed* person *or to any one on his behalf*; or

(*h*) by all or any two of such methods, as the Court thinks fit.

The powers, duties and liabilities of a receiver appointed under this section shall be the same as those of a receiver appointed under Chapter XXXVI of the Code of Civil Procedure.

If the person so believed to *have* absconded or *to be* 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.

Restoration of attached property.

90. 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 89 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 *avoiding execution of the warrant, and that he had not such notice of the proclamation as to enable him to attend within the time specified therein*, 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.—Other rules regarding processes.

Act X, 1872, ss. 156, para. 2, 158, 852, 394, para. 1. Act X, 1875, ss. 81, 84. Act IV, 1877, ss. 34, 36, 88, 135, 136, 317.

Issue of warrant in lieu of or in addition to summons.

91. A Court may, in any case in which it is empowered by this Code to issue a summons for the appearance of any person *other than a juror or assessor*, issue, *after recording its reasons in writing*, 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 IV, 1877, s. 140.

Power to take bond for appearance.

92. 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. 366, para. 2. Act IV, 1877, s. 154, para. 3.

Arrest on breach of bond for appearance.

93. 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, para. 1, 185. Act IV, 1877, s. 52.

Provisions in this chapter generally applicable to summonses and warrants of arrest.

94. 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 *AND FOR THE DISCOVERY OF PERSONS WRONGFULLY CONFINED.*

A.—Summons to produce.

Act X, 1872, s. 365. Act X, 1875, s. 86. Act IV, 1877, s. 144.

Summons to produce document or other thing.

95. Whenever any Court, or *in any place beyond the limits of the Presidency-towns* 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 may issue a summons, *or such officer a written order*, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it *or to produce it* at the time and place stated in the summons *or order*.

Act X, 1877, s. 164.

Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he cause such document or thing to be produced instead of attending personally to produce the same.

New.

Nothing in this section applies to a letter, *post card*, telegram *or other document* in the custody of the Postal or Telegraph Department.

Act X, 1872, s. 169 last sentence. Act IV, 1877, s. 146.

Procedure as to letters and telegrams.

96. If any *document in such custody* 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 *the Postal or Telegraph* Department, *as the case may be*, to deliver such *document* to such person as such Magistrate or Court directs.

If any such *document* 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 *or Telegraph* Department, *as the case may be*, to cause search to be made for and to detain such *document*, 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.

When search-warrant may be issued.

97. Where there is reason to believe that a person to whom a summons under section 95 or a requisition under section 96,

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, *para.* 1. 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 *in accordance therewith and the provisions hereinafter contained.*

Act X, 1872, s. 369, *cl.* 1.

Nothing herein contained shall authorize any Magistrate, other than a District Magistrate, to grant a warrant to search for a *document* in the custody of the Postal or Telegraph authorities.

Act X, 1872, s. 398, *para.* 2. General warrant should not be the rule.

98. The Court may, if it thinks fit, specify in the warrant the particular place 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 or part so specified.

Power to restrict warrant.

Act X, 1872, s. 377. Act IV, 1877, s. 160. *Section 97 seems to render this section superfluous.*

99. If a District Magistrate, Sub-divisional Magistrate, Presidency Magistrate or 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,

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 stamps* or for forging,

or that any forged documents, false seals or counterfeit stamps, or coin, or instruments or materials used for counterfeiting coin *or stamps* 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. 373, para. 2, 374.

100. 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, *any of* the things for which search is made *are* found, *such things, together with the list of the same prepared under the provisions hereinafter contained, shall be immediately taken before the Magistrate issuing the warrant, unless* such place is nearer to the Magistrate having jurisdiction therein than to such Court, *in which case the list and things shall* be immediately taken before such Magistrate; and, unless there be good cause to the contrary, such Magistrate shall make an order authorizing *them* to be taken to such Court.

Disposal of things found in search beyond jurisdiction.

C.—Discovery of persons wrongfully confined.

Search for persons wrongfully confined.

101. If any Presidency Magistrate, Magistrate of the first class, or Sub-divisional Magistrate has reason to believe that any person is confined so that such confinement amounts to an offence, he may issue a search-warrant, and the person to whom such warrant is directed may search for the person so confined; and such search shall be made in accordance therewith, and the person if found shall be immediately taken before a Magistrate.

D.—General Provisions relating to searches.

Act X, 1872, ss. 370, 371, 372, 373, *para.* 1, 375, 376. Act IV, 1877, s. 161.

102. The provisions of sections 75, 77, 79, 80, 83, 84 and 85 shall, so far as may be, apply to all search-warrants issued under section 97, *section 99, or section 101.*

Direction, &c., of search-warrants.

Act X, 1872, s. 382. Act IV, 1877, s. 162.

103. 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 48.

Act X, 1872, ss. 383, 384. Act IV, 1877, ss. 163, 164.

Act X, 1872, s. 385. Act IV, 1877, s. 165.

104. 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

Search to be made in presence of witnesses.

searched is situate to attend and witness the search.

The search shall be made in their presence, *and a list of all things found in the course of such search shall be prepared by such officer or other person and signed by such witnesses*, but *no person witnessing a search under this section* shall be required to attend the Court as *a* witness 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.

E.—Miscellaneous.

Act X, 1872, s. 367, *first part.* Act X, 1875, s. 88. Act IV, 1877, s. 147.

105. 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.

106. 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.
OF SECURITY FOR KEEPING THE PEACE AND FOR GOOD BEHAVIOUR.

A.—Security for keeping the Peace on Conviction.

Act X, 1872, ss. 490, para. 1, 490, clause 1. Act X, 1875, s. 140. Act IV, 1877, s. 208. Bond becomes void when conviction set aside, N.-W. P., 1875, p. 376.

107. Whenever *any* person accused of rioting, assault or other breach of the peace, or *of* abetting the same, or *of* assembling armed men or taking other unlawful measures with the evident intention of committing the same, *or any person accused of committing criminal intimidation by threatening injury to person or property*, 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, para. 1. Cf. s. 506. Act X, 1875, s. 141. Act IV, 1877, s. 209.

If the conviction is set aside on appeal or otherwise, the bond so executed shall become void.

B.—Security for keeping the Peace in other Cases and Security for Good Behaviour.

Act X, 1872, ss. 491, 492, 493, first para. Act IV, 1877, ss. 210, 211.

108. 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

Security for keeping the peace in other cases.

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.

One year in Act X, 1872, s. 498, *para.* 1. Act X, 1872, s. 494, *proviso.*

Procedure of Magistrate, &c., not empowered to act under section 108.

109. When any Magistrate not empowered to proceed under section 108, 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 *or before the Court*), and may send him before a Magistrate empowered to deal with the case under section 108.

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, *paras.* 1 *and* 4, 515, *para.* 2. Act IV, 1877, ss. 213, 231.

Security for good behaviour from vagrants and suspected persons.

110. Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class receives information—

(*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, 281. 10 *Kin.* 271.

Security for good behaviour from *habitual* offenders.

111. Whenever any such Magistrate receives information that any person within the local limits of his jurisdiction is an habitual robber, housebreaker or thief, or an habitual receiver of stolen property knowing the same to have been stolen,

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.

112. The provisions of sections 110 and 111 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, *para. 1*, 515, *para. 1*. Act IV, 1877, ss. 216, para. 1, 222.

113. When a Magistrate acting under section 108, section 110 or section 111 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, *character and class* of sureties (if any) required.

Order to be made.

Act X, 1872, s. 492, Expl. Act IV, 1877, s. 216, para. 2.

114. 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.

Procedure in respect of person present in Court.

115. 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 X, 1872, ss. 494, 515, *para. 1*. 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 (*the substance of which report or information shall be recorded by the Magistrate*), 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.

116. Every summons or warrant issued under section 115 shall be accompanied by a copy of the order made under section 113, 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 113 to accompany summons or warrant.

Act X, 1872, s. 495. Act IV, 1877, s. 218.

117. 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. *See Act X, 1872, s. 491, Explns.*

118. When an order under section 113 has been read or explained to a person present in Court under section 114, 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 115, the Magistrate shall proceed to enquire into the truth of the information upon which he has acted.

Inquiry as to truth of information.

Act X, 1872, s. 515, para. 4

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.

For the purposes of this section the fact that a person is an habitual offender may be proved by evidence of general repute or otherwise.

Act X, 1872, s. 497. Act IV, 1877, s. 220.

119. 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—

1st—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 113:

Act X, 1872, s. 498, *para. 1*. 1 O'Kin. 95.

2ndly—that the amount of every bond shall be fixed with due regard to the circumstances of the case and *shall not be excessive*.

3rdly—that when the person in respect of whom the enquiry is made is a minor, the bond shall be executed only by his sureties.

Act X, 1872, s. 496. Act IV, 1877, s. 219.

120. If, on an enquiry under section 118, *it is not proved* 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, *or if such person is not in custody shall discharge him.*

Discharge of person informed against.

C.—Proceedings in all Cases subsequent to Order to furnish Security.

Act X, 1872, ss. 499, *para. 2*, 504, para. 2. Act IV, 1877, ss. 210, 224. I. L. R., 1 All., 666, n.

121. If any person in respect of whom an order requiring security is made under section 107 or section 119 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. *Act IV, 1877, s. 227.*

122. The bond to be executed by any such person shall bind him to keep the peace or to be of good behaviour, as the case may be, and in *either* 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.

123. A Magistrate may refuse to accept any surety for good behaviour offered under this chapter, on the ground that, *for reasons to be recorded by the Magistrate*, such surety is an unfit person.

Power to reject sureties.

Act X, 1872, ss. 489, *para. 1, last sentence*, 490, *last sentence*, 497, 498, 499, para. 3, 510. Act IV, 1877, s. 223.

124. If any person ordered to give security under section 107 or section 119 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.

125. Whenever the District Magistrate or a Presidency Magistrate is of opinion that any person imprisoned for failing to give security under this chapter, 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.

Power to release persons imprisoned for failing to give security.

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 released without such *hazard*, 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, s. 500.

126. *The Magistrate of the District may at any time, if he see sufficient cause, cancel any bond for keeping the peace executed under this chapter by order of any Court in the District not superior to his Court.*

Power of District Magistrate to cancel any bond for keeping the peace.

Act X, 1872, ss. 501, 513. Act IV, 1877, s. 226.

127. Any security 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 122, 123, 124 and 125, be deemed to be an order made under section 107 or section 119 as the case may be.

CHAPTER IX.

Unlawful Assemblies.

Act X, 1872, s. 480. Act XI, 1874, s. 43. Penal Code, ss. 145, 151.

128. 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.

129. If, upon being so commanded, any such assembly does not disperse, *or if without being so commanded it conducts itself in such a manner as to show a determination not to 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.

130. 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.

131. When a Magistrate determines to disperse any such assembly by military force, he may require any *Commissioned or Non-commissioned* 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 *may be* consistent with dispersing the assembly and arresting and detaining such persons.

Act X, 1872, s. 487.

Power of commissioned military officers to disperse assembly.

132. 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 *if while he is acting under this section, it becomes possible for him to communicate with a Magistrate, he shall do so, and shall thenceforward obey the instructions of the Magistrate as to whether he shall or shall not continue such action.*

Act X, 1872, s. 488.

Protection against prosecution for acts done under this chapter.

133. No prosecution against any Magistrate, Military officer, Police-officer, soldier *or volunteer* 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; and

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 132 in good faith,

(*c*) no person doing any act in good faith in compliance with a requisition under section 129 or section 131, and

(*d*) no inferior officer, or soldier, *or volunteer*, 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 X.

Public Nuisances.

Act X, 1872, s. 521, substituting "way" for "thoroughfare."

Conditional order for removal of nuisance.

134. Whenever a District Magistrate, *a* 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,

that any unlawful obstruction or nuisance should be removed from any *way or* river *which may lawfully be used by the public, or from any* public place, or

that any trade or occupation, *or the keeping of any goods or merchandise*, by reason of its being injurious to the health or physical comfort of the community, *or offensive to the religious feelings of any considerable section thereof*, should be suppressed or removed or *prohibited, or*

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 *such* way 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 keeping any such goods or merchandise*, or owning, possessing or controlling such building, substance, tank or well, 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 remove such goods or merchandise; or

to prevent or stop the construction of such building; or

to remove, *repair or support* 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 *also* property belonging to the State, camping grounds, and grounds left unoccupied for sanitary and recreative purposes.

"Combustible" omitted.

Act X, 1872, s. 522.

Service or notification of order.

135. The order shall, if practicable, be served on the person against whom it is made in manner herein provided for service of a summons.

If such order cannot be so served, it shall be notified by proclamation, *published in such manner as the Local Government may direct*, 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, para. 1.

Person to whom order is addressed to obey,

or shew cause or claim jury.

136. The person against whom such order is made shall—

(*a*) perform, within the time specified in the order, the act directed thereby; or

(*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.

Consequence of his failing to do so.

137. 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 136, 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.

Act X, 1872, ss. 525, 527. Act XI, 1874, s. 45.

Procedure where he appears to shew cause.

138. If he appears and shews cause against the order, the Magistrate shall take evidence in the matter.

1 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.

Procedure where he claims jury.

139. On receiving an application under section 136 to appoint a jury, the Magistrate shall—

Col. 509.

(*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, para. 1.

(*b*) summon such foreman and members to attend at such place and time as the Magistrate thinks fit; and

Act X, 1872, s. 523, para. 5.

(*c*) fix a time within which they are to return their verdict.

Act X, 1872, ss. 523, para. 6, 525, para. 2.

Procedure where jury finds Magistrate's order to be reasonable.

140. 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).

In other cases, no further proceedings shall be taken.

Act X, 1872, s. 526, para. 1.

Procedure on order being made absolute.

141. When an order has been made absolute under section 137, section 138, or section 140, 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.

Act X, 1872, s. 526, para. 2.

Consequences of disobedience to order.

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 *such* 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.

No suit shall lie in respect of anything done *in good faith* under this section.

Act X, 1872, s. 525, para. 3.

Act X, 1872, s. 523, para. 4.

Procedure on failure to appoint jury or omission to return verdict.

142. 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 141.

Act X, 1872, s. 528.

Injunction pending inquiry.

143. If a Magistrate making an order under section 134 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 done *in good faith* by a Magistrate under this section.

Act X, 1872, s. 519. Penal Code, s. 291.

Magistrate may prohibit repetition or continuance of public nuisance.

144. A *District Magistrate or* 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, *as defined in the Indian Penal Code or any special or local law.*

CHAPTER XI.

Temporary orders in urgent cases.

Act X, 1872, s. 518, with Expl. 1. 1 O'Kin. 56.

Power to issue order absolute at once in urgent cases.

145. 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,

Act X, 1872, s. 518. 1 Ben. Ap. Cr. 20.

such Magistrate may, by a written order stating the material facts of the case and served in manner provided by section 135, 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. 2.

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

Disputes as to immoveable property.

upon the person against whom the order is directed, be passed *ex parte*.

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. 518, Expl. IV.

Any Magistrate may rescind or alter any order made under this section by himself *or any Magistrate subordinate to him* or by his predecessor in office.

5 Cal. 7.
4 Cal. 410.

No order under this section shall remain in force for more than two months from the making thereof; unless, in cases of danger to human life, health or safety, or a riot or affray, the Local Government by notification in the official Gazette otherwise directs.

CHAPTER XII.

DISPUTES AS TO IMMOVEABLE PROPERTY.

Act X, 1872, s. 530. 3 Calc. 552.

146. 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 *pleader*, 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 *physical* possession of the subject of dispute.

Procedure where dispute concerning land, &c., is likely to cause breach of peace.

I. L. R. 3 Cal. 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, *receive the evidence produced by them* respectively, consider the effect of *such* evidence, *take such further evidence* (*if any*) *as he thinks necessary*, and *then*, if possible, decide whether any and which of the parties is in *such* possession of the said subject.

Inquiry as to possession.

1 O'Kin. 136. 2 O'Kin. 67, 284. *See* 6 *Calc.* 206.

If *the Magistrate* decides that one of the parties is in *such* 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. 86.

147. If *the* Magistrate decides that none of the parties is in *such* possession, or is unable to satisfy himself as to which of them is in *such* 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.

148. 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:

Disputes concerning easements, &c.

Act X, 1872, s. 532. 4 Calc. 324.

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 *the* right has been so exercised during the season next before *such institution*.

Act X, 1872, s. 533.

149. 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 *written* 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.

The report of the person so deputed may be read as evidence in the case.

CHAPTER XIII.

PREVENTIVE ACTION OF THE POLICE.

Act X, 1872, s. 95.

150. 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.

151. 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 *whose duty it is* to prevent or take cognizance of the commission of any such offence.

Information of design to commit such offences.

Act X, 1872, s. 97.

152. 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 *it appears to such officer that* the commission of the offence cannot be otherwise prevented.

Arrest to prevent such offences.

Act X, 1872, s. 98, *para.* 1.

153. 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.

Act X, 1872, s. 381.

154. 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. 112. *Cf. Penal Code, s. 180.*

155. Every information *relating to the commission of a cognizable offence, if given orally* to an officer in charge of a Police-station, shall be reduced to writing by *him* or under his direction, and *any such information, whether given in writing or reduced to writing as aforesaid*, 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 *in* cognizable cases.

Act X, 1872, s. 113.

156. When *information* is *given* 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 *enter in a book to be kept as aforesaid the substance of such complaint and* refer the complainant to the Magistrate.

Information 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 *an officer in charge of a Police-station may exercise* in a cognizable case.

Act X, 1872, ss. 109, *114, para.* 2; *v. infra, s. 184.*

157. 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, *para.* 1.

158. 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 157 to investigate, he shall *forthwith* send a report of the same to *a* Magistrate *empowered to take cognizance of such offence upon a police report*, 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.

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:

Where local investigation dispensed with.

Act X, 1872, s. 117, para. 1.

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 investigate the case.

Where Police-officer in charge sees no sufficient ground for investigation.

In each of these cases the officer in charge of the Police-station shall state in his said report his reasons for not fully complying with the requirements of the first clause of this section.

Act X, 1872, s. 117, para. 2.

159. Every report *sent to a Magistrate* under section 158 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.

Reports under section 158 how submitted.

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.

Act X, 1872, s. 115.

160. 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 *an investigation or* preliminary inquiry into, or otherwise to dispose of, the case in manner provided in this Code.

Power to hold investigation or preliminary inquiry.

Act X, 1872, s. 118.

161. 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

Police-officer's power to require attendance of witnesses.

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. 118, 119, paras. 1 and 2, 121.

162. 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.

Examination of witnesses by Police.

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, s. 119, para. 3, 121. 11 Bom. H.C. Rep., 120.

163. No statement, *other than a dying declaration*, made by any person to the police *in the course of an investigation under this chapter* shall be used as evidence against the accused *or shall*, if reduced into writing, be signed by the person making it.

Statements to Police not to be signed or admitted in evidence.

Act X, 1872, ss. 120, 184. Cf. Act I, 1872, s. 24. See 6, Calc. 293-297.

164. No Police-officer or other person in authority shall offer or make any such inducement, threat or promise as is mentioned in the Indian Evidence Act, 1872, section 24.

No inducement to be offered to confess.

Nelson, 113.

But no Police-officer or other person shall prevent, by any caution or otherwise, *any* person from making *in the course of any investigation under this chapter* any statement which he may be disposed to make of his own free will.

Act X, 1872, s. 122. Act IV, 1877, s. 16. See 6 Cal. 293-297.

165. Any Magistrate *not being a Police-officer* may record any statement or confession made to him in the course of an investigation under this chapter, *or at any time afterwards before the commencement of the inquiry or trial.*

Power to record statements and confessions.

I. L. R., 1 Bom. 219.

Such statements shall be recorded in *such of* the manners hereinafter prescribed for recording evidence *as is in his opinion best fitted for the circumstances of the case.* Such confessions shall be recorded and signed in the manner provided in section *364*, 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 taken in my presence and hearing, and* was read over to the person making it and admitted by him to be correct, *and it contains a full and true account of the statement made by him.*

"(*Signed*) A. B.,
"*Magistrate.*"

Act X, 1872, s. 379.

166. Whenever an officer in charge of a Police-station, or a Police-officer making an investigation, considers that the production of any *document or other* thing is necessary to the conduct of an investigation into any offence which he is authorized to investigate, *and there is reason to believe that a person to whom a summons under section 95 has been or might be addressed will not or would not produce such document or other thing as directed in the summons, or when such document or other thing is not known to be in the possession of any person, such officer* 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.

Search by officer in charge of Police-station.

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 *document or other* 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.

167. 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.

When officer in charge of Police-station may require another to issue search-warrant.

Such officer, on being so required, shall proceed according to the provisions of section 166, and shall forward the thing found, if any, to the officer at whose request the search was made, *unless the place at which such thing is found is in a different District, and is nearer to the Magistrate having jurisdiction in such place than to the station of which the latter officer is in charge. In such case the thing shall be taken before such Magistrate, who, unless there be good cause to the contrary, shall order such thing to be forwarded to such officer.*

Act X, 1872, s. 124, paras. 2, 3 and 4.

168. When*ever it appears that* any investigation under this chapter *cannot* be completed within the period of twenty-four hours fixed by section *61*, and there are grounds for believing that the accusation is well-founded, the officer in charge of the Police-station shall *transmit* to the nearest Magistrate *a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate, unless, for reasons to be recorded by such officer, he thinks that the accused should not be so forwarded.*

Procedure when investigation *cannot be* completed in twenty-four hours.

The Magistrate receiving a copy under this section may, whether he has or has not jurisdiction to try the case, authorize the detention of the accused *in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole.* If he has not jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may *order* the accused *to be forwarded* to a Magistrate having such jurisdiction.

A Magistrate authorizing under this section *detention in the custody of the police* shall record 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, para 2.

169. 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.

Report of investigation by subordinate Police-officer.

Act X, 1872, s. 125.

170. 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, if and when so required, *before a Magistrate having jurisdiction to take cognizance of the offence on a polic ereport.*

Release of accused when evidence deficient.

Act X, 1872, ss. 123, para. 1, 127, para. 1, 130, paras. 1 to 4.

171. 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 *a* Magistrate empowered to take cognizance of *the* offence upon a police report, or if the offence 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.

Case to be sent to Magistrate when evidence is sufficient.

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 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 *one* of the persons who executed it, and shall then send to the Magistrate the original with his report.

Act X, 1872, s. 130, last para.

172. No complainant or witness on his way to the Court of the Magistrate *shall be required to accompany a Police-officer,*

Complainants and witnesses not to *be required to* accompany Police-officer.

Act X, 1872 s. 131, para. 1.

or shall be subjected to unnecessary restraint or inconvenience, or required to give any security for his appearance other than his own bond:

Complainants and witnesses not to be subjected to restraint.

Act X, 1872, s. 131, para. 2.

Provided that, if any complainant or witness refuses to attend or to execute the bond directed in section 171, 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.

Recusant complainant or witness may be forwarded in custody.

Act X, 1872, s. 126.

173. 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.

Diary of proceedings in 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, paras. 1 & 2.

174. 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 *a* Magistrate having jurisdiction *to take cognizance of the offence on a police report* a report in the form prescribed by the Local Government, setting forth the names of

Report of Police-officer.

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 159, the report shall be submitted through him, and he may, pending the orders of the Magistrate, *direct the officer in charge of the Police-station to make further* investigation.

Whenever it appears from a report forwarded under this section, that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

Act X, 1872, s. 133.

175. 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 died *under suspicious circumstances*, or

(*c*) has committed suicide,

shall immediately give intimation thereof to the nearest Magistrate empowered to hold inquests, and, *unless otherwise directed by any rule prescribed by the Local Government, or by any general or special order of the District or Sub-divisional Magistrate*, 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 *of injury* as may be found on the body, and stating in what manner, or by what weapon or instrument (*if any*) such marks appear to have been inflicted.

This power may be exercised so as to save Military Courts of Inquest.

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, *or when for any other reason the Police-officer considers it expedient so to do, he* shall, *subject to such rules as the Local Government may prescribe in this behalf*, 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.

176. 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. *Every* 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. Act X, 1872, s. 134. Penal Code, ss. 174, 175.

Power to summon persons.

If the facts do not disclose a cognizable offence to which section 171 applies, such persons shall not be required by the Police-officer to attend a Magistrate's Court.

177. *When any person dies while in the custody of the police* the nearest Magistrate empowered to hold inquests *shall, and in any other case mentioned in section 175, clauses* (*a*), (*b*) *and* (*c*), *any Magistrate so empowered may*, hold an inquiry into the cause of 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 *by Magistrate* into cause of death.

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.

178. Every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed. Act X, 1872, s. 68, para. 1. Act IV, 1877, s. 16.

Ordinary place of inquiry and trial.

179. Notwithstanding anything contained in section 178, 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, 1872, s. 63, para. 2.

Power to order cases to be tried in different Sessions Divisions.

Act XI, 1874, s. 2.

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 537.

Act X, 1872, s. 65. Act IV, 1877, s. 19.

180. 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, *omitting Illustration* (*d*). Act IV, 1877, s. 20.

181. When an act is an offence by reason of its relation to any other act which is also an offence, *or which would be an offence if the doer were capable of committing 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*), *omitting* s. 68, Act IV, 1877, s. 22.

182. The offence of being a thug, *of being a thug and committing* murder, 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 (*e*).

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 *any part of* 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.

The offence of stealing *anything* may be inquired into or tried by a Court within the local limits of whose jurisdiction such *thing* was stolen or was possessed by the thief or by any person who receives or retains the same knowing or having reason to believe it to be stolen. Act X, 1872, s. 67, Illustration (*f*). I. L. R. 1 Mad. 17.

Stealing.

Act XVIII, 1862, ss. 29-35. Act X, 1872, s. 67, *omitting the Illustrations*. Act IV, 1877, s. 21.

183. 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.

184. An offence committed whilst the offender is 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. Act X, 1872, s. 67, Illustration (*a*). I Mad. H. C. Rep. 193.

Offence committed on a journey.

185. 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 *all* the witnesses necessary for his prosecution are to be found within such town. Act IV, 1877, s. 238. Act DII, 1860, repealed. Act IV, 1877, s. 239.

Offences against Railway, Telegraph, Post-office and Arms Acts.

186. Whenever any doubt arises as to the Court by which any offence should *under the preceding provisions of this chapter* 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. Act X, 1872, s. 69. Act IV, 1877, s. 23.

High Court to decide, in case of doubt, district where inquiry or trial shall take place.

187. 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 178 to 185 (both inclusive), or any other law for the time being in force, be inquired into or tried within such local limits, but is under Act X, 1872, s. 157. Act IV, 1877, s. 54.

Power to issue summons or warrant for offence committed beyond local jurisdiction.

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.

Act X, 1872, s. 174. Act IV, 1877, s. 55. Act XXIII, 1840, s. 7.

Magistrate's procedure on arrest.

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.

188. If the person has been arrested under a warrant issued under section 187 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 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 187, such Magistrate shall send such person to the District Magistrate or Sub-divisional Magistrate to whom such Court is immediately subordinate.

Act XXI, 1879, s. 9.

Liability of British subjects for offences committed out of British India.

189. When a European British subject commits an offence in the dominions of a Prince or State in India in alliance with Her Majesty, or

when a Native Indian subject of Her Majesty commits an offence at any place beyond the limits of British India,

he may be dealt with in respect of such offence as if it had been committed at any place within British India at which he may be found:

Provided that no charge as to any such offence shall be inquired into in British India unless the Political Agent, if there be one, for the territory in which the offence is alleged to have been committed, certifies that, in his opinion, the charge ought to be inquired into in British India:

Political Agent to certify fitness of inquiry into charge.

Provided also that any proceedings taken against any person under this section which would be a bar to subsequent proceedings against such person for the same offence if such offence had been committed in British India shall be a bar against further proceedings against him under this Code in respect of the same offence in any territory beyond the limits of British India.

Power to direct copies of depositions and exhibits to be received in evidence.

Act XXI, 1879, s. 10.

190. Whenever any such offence as is referred to in section 189 is being inquired into or tried, the Local Government may, if it thinks fit, direct that copies of depositions made or exhibits produced before the Political Agent or a judicial officer in or for the territory in which such offence is alleged to have been committed shall be received as evidence by the Court holding such inquiry or trial in any case in which such Court might issue a commission for taking evidence as to the matters to which such depositions or exhibits relate.

"Political Agent" defined.

Act XXI, 1879, s. 3.

191. In sections 189 and 190 the expression "Political Agent" means and includes—

(a) the principal officer representing the British Indian Government in any territory beyond the limits of British India:

(b) any officer in British India appointed by the Governor General in Council, or the Governor in Council of the Presidency of Fort St. George or Bombay, to exercise all or any of the powers of a Political Agent under the Foreign Jurisdiction and Extradition Act, 1879, for any territory not forming part of British India.

B.—Conditions requisite for Initiation of Proceedings.

Cognizance of offences by Magistrates.

Act X, 1872, ss. 140, (a), (b) and (c), 142, para. 1. Act IV, 1877, ss. 25, 28.

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—

(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, ss. 140, (d), 142, para. 1. Act IV, 1877, s. 46. Act X, 1872, ss. 28, 25, 27.

The Local Government, or the District Magistrate *subject to* the general or special orders of the Local Government, may specially empower any Magistrate to take cognizance under clause (*a*) or clause (*b*) of offences.

Act X, 1872, ss. 25, 27.

The Local Government may empower any Magistrate of the first or second class to take cognizance under clause (*c*) of offences.

Transfer of cases by Magistrates.

Act X, 1872, ss. 44, para. 1, 141, para. 2. Act XI, 1874, s. 6.

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.

When any Magistrate of the first class specially empowered in this behalf by the Magistrate of a District has taken cognizance of any case, he may transfer it for inquiry or trial to any other Magistrate in such District competent to deal with it under this Code.

Act X, 1872, s. 231. Act XI, 1874, s. 18.

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 X, 1872, s. 17.

Cases to be tried by Additional and Joint Sessions Judges;

Additional Sessions 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. 18.

by 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 26.

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, ss. 40, 46.

Prosecution for contempts of lawful authority of public servants.

196. No Court shall take cognizance—

(*a*) of any offence *punishable under* sections 172 to 188 (both inclusive) of the Indian Penal Code, except with the *previous* sanction, or on the complaint, of the public servant concerned, or of *some public servant to whom he is subordinate*;

Act X, 1872, s. 468. Act IV, 1877, s. 41.

Prosecution for certain offences against public justice.

(*b*) of any offence *punishable under* 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 *in or in relation to any proceeding in* any Court, except with the *previous* 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. 42.

Prosecution for certain offences relating to documents given in evidence.

(*c*) of any offence described in section 463 *or punishable under section* 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 *previous* sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate.

Act X, 1872, s. 470, para. 1. Act X, 1875, s. 144.

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.

Act IV, 1877, s. 43. Bom. 36, per West, J. No appeal from order according sanction. I. L. R. 1 All. 17.

When sanction *is given* in respect of any offence referred to in this section, the Court taking cognizance of the case *may* amend the charge to one of any other offence *so referred to which is* disclosed by the facts.

Act X, 1872, s. 470, para. 2.

Any sanction given under this section may be revoked by any authority to which the authority giving it is subordinate.

For the purposes of this section every Court shall be deemed to be subordinate to the Court to which appeals from the former Court ordinarily lie.

Act X, 1872, s. 465. Act X, 1875, s. 131. Act IV, 1877, ss. 38, 46.

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.

Act X, 1872, s. 466, paras. 1, 2, 3 and 4. Act X, 1875, s. 132. Act IV, 1877, ss. 39, 46. 7 Bom. 63.

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.

Power of Government as to prosecution.

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.

Act X, 1872, s. 142, para. 2. Act IV, 1877, s. 29.

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 *by some person aggrieved by such offence.*

Act X, 1872, ss. 478, 479. Act IV, 1877, s. 45. Sec 1 O'Kin. 524.

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.

CHAPTER XVI.

OF COMPLAINTS TO MAGISTRATES.

Act X, 1872, s. 144.

Examination of complainant.

201. A Magistrate taking cognizance of a case on complaint shall at once examine the complainant upon oath, and the examination shall be reduced into writing and shall be

Act X, 1872, s. 44, para. 2. signed by the complainant, and also by the Magistrate:

Provided that when the complaint is made in writing, nothing herein contained shall be deemed to require a Magistrate to examine the complainant before transferring the case under section 193:

Act IV, 1877, s. 30. Provided also that where the Magistrate is a Presidency Magistrate, such examination may be on oath 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. 44, para. 2. Provided *also* 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 X, 1872, s. 145. **202.** Procedure by Magistrate not empowered to entertain complaint. If the Magistrate is not competent to entertain the complaint, *and such* complaint has been made in writing, he shall return it for presentation to the proper tribunal *with an endorsement to that effect.*

Act X, 1872, s. 146. **203.** Postponement of issue of process. If *any Presidency Magistrate or* Magistrate *of the first or second class* sees reason to distrust the truth of a complaint *of* which he is authorized to *take cognizance*, he may, *when the complainant has been examined*, postpone the issue of process for compelling the attendance of the person complained against, and may direct a previous *local* investigation to be made by means of any officer immediately subordinate to such Magistrate or of a Police-officer, or *by* such other *person* as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint.

If such 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.** Dismissal of complaint. The Magistrate before whom a complaint is made may dismiss the complaint if, after examining the complainant *and considering the result of the investigation (if any) made under section 203*, there is in his judgment no sufficient ground for proceeding.

CHAPTER XVII.

Of the Commencement of Proceedings before Magistrates.

Act X, 1872, ss. 147, para. 3, 148, para. 1, 149. Act XI, 1874, s. 1. Act IV, 1877, ss. 27, 33, 34, 35. **205.** Issue of process. If in the opinion of a Magistrate taking cognizance of a case there is sufficient ground for *proceeding* and 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, *he shall* issue his summons. If the case appears to be one in which according to that column a warrant should issue in the first instance, *he shall ordinarily issue* 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.

Nothing in this section shall be deemed to affect the provisions of section 91. Act X, 1872, ss. 148, para. 2, 150.

Act X, 1872, s. 151. Act IV, 1877, s. 37. **206.** Magistrate may dispense with personal attendance of accused. 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.

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.** Power to commit for trial. 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.

But save as herein otherwise provided, no person triable by the Court of Session shall be committed for trial to the High Court.

Act X, 1872, s. 189. Act IV, 1877, s. 81. **208.** Procedure in inquiries preparatory to commitment. 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, ss. 190, 191. Act IV, 1877, s. 82. **209.** Taking of evidence produced. 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, *or as may be called for by the Magistrate.*

Act X, 1872, ss. 357, para. 1, 358, Act IV, 1877, s. 83, para. 2. Process for production of further evidence. 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, he deems it unnecessary to do so.

Nothing in this section shall be deemed to require a Presidency Magistrate to record his reasons.

Act X, 1872, s. 195. Act XI, 1874, s. 14. Act IV, 1877, s. 87, omitting the Explanations. **210.** When accused person to be discharged. When the evidence referred to in section 209, *paragraphs 1 and 2*, has been taken, and *he* 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.

Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

Act X, 1872, ss. 195, Expln. III, 196, 198, para. 1. Act IV, 1877, s. 88. Act IV, 1877, s. 89, omitting paras. 3 and 4. Act X, 1872, s. 199. Act X, 1875, s. 13. Act IV, 1877, s. 90. **211.** When charge is to be framed. 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.

Charge to be explained, and copy furnished, to accused. 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 requires, be given to him free of cost.

Act X, 1872, s. 200, paras. 1 and 3. Act IV, 1877, s. 91. **212.** List of witnesses for defence on trial. 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.

Further list. 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.

Act X, 1872, s. 200, para. 2. Act IV, 1877, s. 91. **213.** Power of Magistrate to examine such witnesses. The Magistrate may in his discretion summon and examine any witness named in any list given in to him under section 212.

Act X, 1872, ss. 198, para. 1, 200, para. 2. Act IV, 1877, ss. 89, para. 1, 91. **214.** Order of commitment. 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.

Act X, 1872, s. 197, omitting the Explanation. **215.** Person charged in Mufassal jointly with European British subject. 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 an 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.

Act X, 1872, s. 197, Explanation and last para. **216.** Quashing commitments under section 214 or 215. 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.

Act X, 1872, s. 358. Act IV, 1877, s. 92. **217.** Summons to witnesses for defence when accused is committed. 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 appeared before himself to appear before the Court to which the accused has been committed:

Act X, 1872, s. 359. 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:

Refusal to summon unnecessary witness unless deposit made. 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. I. L. R. 3 Cal. 582.

Act X, 1872, s. 360. Act IV, 1877, s. 93. **218.** Bond of complainants and witnesses. 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.

Detention in custody in case of refusal to attend or to execute recognizance. 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.

Act X, 1872, s. 202, *para.* 1.

219. 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, *paras.* 2, 3 *and* 4.

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 or Court of Session.

Act X, 1872, s. 198, *para.* 4.

When the commitment is made to the High Court and any part of the record is not in English, an English translation of such part shall be forwarded with the record.

English translation to be forwarded to High Court.

Act X, 1872, s. 357, para. 2.

Act IV, 1877, s. 91, para. 4.

220. 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.

See sec. 552, *infra.*

221. Pending the trial, the Magistrate *shall*, subject to the provisions of this Code regarding the taking of bail, commit the accused, by warrant, to custody.

Custody of accused pending trial.

CHAPTER XIX.

Of the Charge.

See s. 565, *infra.*

Form of Charges.

Act X, 1872, s. 439, *paras.* 1 *to* 6.

Act IV, 1877, s. 94.

222. 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.

Language of charge.

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 *the Court* is *competent to* award, the fact of the previous conviction must be stated in the charge. If such statement is omitted, *the Court* may add *it* at any time before sentence is passed.

Previous conviction when to be set out.

Act X, 1875, s. 118.

Act X, 1872, s. 439, last para.

Act IV, 1877, s. 94, last para.

Illustrations.

Act X, 1872, s. 439, Illustrations.

Act IV, 1877, s. 94, 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.

223. The charge shall contain such particulars as to the time and place of the alleged offence, and the person (*if any*) against whom, or the thing (*if any*) 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.

224. When the nature of the case is such that the particulars mentioned in sections 222 and 223 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.

Act XVIII, 1862, s. 82.

225. 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 *law under which such offence is punishable*.

Words in charge taken in sense of *law under which offence is punishable.*

Act X, 1872, s. 443.

Act X, 1875, s. 24.

Act IV, 1877, s. 98.

226. 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 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, 1872, s. 446.

Act X, 1875, ss. 7, 8.

227. When any person is committed for trial *without a charge, or with an imperfect or erroneous charge, the Court, or, in the case of a High Court*, the Clerk of the Crown, *may frame a charge, or add to or otherwise alter the charge, as the case may be*, having regard to the rules contained in this Code as to the form of charges.

Procedure on commitment *without charge or with imperfect charge.*

Act X, 1872, ss. 444, 445.

Act X, 1875, ss. 9, 10.

Act IV, 1877, ss. 99, 100.

228. Any Court may 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.

Court 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.

229. If the *charge framed or alteration made under either of the two last preceding sections* is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence *or the prosecutor in the conduct of the case*, the Court may in its discretion, after *such charge or* alteration *has been framed or made*, proceed with the trial as if the *new or* 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.

230. If the *new or altered charge* is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused *or the prosecutor as aforesaid*, the Court may either direct a new trial or *adjourn* the trial for such period as may be necessary.

When new trial may be directed, or trial suspended.

Act X, 1872, s. 450.

Act X, 1875, s. 16.

Act IV, 1877, s. 104.

231. If the offence stated in the *new or* 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. 449.

Act X, 1875, s. 15, omitting 'during the trial.'

Act IV, 1877, s. 103.

232. Whenever a charge is altered by the Court *after the commencement of the trial*, the *prosecutor* and the accused shall be allowed to recall *or re-summon*, and examine with reference to such alteration, any witness who may have been examined.

Recall of witnesses when charge altered.

Act X, 1872, s. 451.

233. If any Appellate Court, or the High Court in the exercise of its powers of revision *or of its powers under Chapter XXVII*, is of opinion that any person convicted of an offence was misled in his defence *by the absence of a charge or* by an error in the charge, it shall direct a new trial to be had upon a charge *framed* 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. Act IV, 1877, s. 105.

234. There must be a separate charge for every distinct offence of which any person is accused, and every such charge must be tried separately, except in the cases mentioned in sections 235, 236, 237 and 240.

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. 1 *O'Kin.* 480. I. L. R., 3 Calc. 540. Act IV, 1877, s. 106; cf. 24 & 25 Vic., c. 96, s. 5.

235. When a person is accused at the same time of more offences than one of the same kind, committed 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 Illustrations (*e*), (*h*), (*i*) and (*k*). Act X, 1875, s. 19. Act IV, 1877, s. 107.

236. 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 *and tried at one trial for* each 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 *and tried at one trial for* every *such* offence, or any of *such* different offences.

III.—Acts severally constituting more than one offence, but collectively coming within one definition.

Nothing contained in this section shall affect the Indian Penal Code, section 71.

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 charged with *and tried* for offences under sections 225 and 333 of the Indian Penal Code.

(*b*) *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.

(*c*) *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.

(*d*) *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, *and* convicted of, the possession of each seal under section 473 of the Indian Penal Code.

(*e*) With intent to cause injury to *B*, *A* institutes a criminal proceeding against him, knowing that there is no just or lawful ground for such proceeding; *and 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, *and* convicted of, two offences under section 211 of the Indian Penal Code.

(*f*) *A*, with intent to cause injury to *B*, falsely accuses 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, *and* convicted of, offences under sections 211 and 194 of the Indian Penal Code.

(*g*) *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, *and* convicted of, offences under sections 147 and 325 and 152 of the *Indian* Penal Code.

(*h*) *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, *and* convicted of, each of the three offences under section 506 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.

(*j*) Several stolen sacks of corn are made over to *A* and *B*, who know they are stolen property, *for the purpose of concealing them*. *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.

(*k*) *A exposes her child with the knowledge that she is thereby likely to cause its death. The child dies in consequence of such exposure. A may be separately charged with, and convicted of, offences under sections 317 and 304 of the Indian Penal Code.*

(*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.

to paragraph III—

(*m*) *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.

Act X, 1872, s. 455. Act X, 1875, s. 20. Act IV, 1875, s. 108. N.W.P., 1875, p. 137.

237. 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.

238. If, in the case mentioned in section 237, 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.

Act X, 1872, s. 457. Act X, 1875, s. 22. Act IV, 1877, s. 110. 11 Bom. 241, per West, J.

239. 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 *such combination* is proved *but the remaining particulars are not proved*, he may be convicted of *the minor* offence, though he was not charged with it.

When offence proved included in offence charged.

When a person charged with an offence proves circumstances which reduce it to a minor offence, he may be convicted of the minor offence although he is not charged with it.

Nothing in this section shall be deemed to authorize a conviction of any offence referred to in section 199 or section 200 when no complaint has been made as required by that section.

Illustrations.

(*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.

28 *Suth. Cr. R.* 61.

(*b*) *A is charged under section 325 of the Indian Penal Code with causing grievous hurt. He proves that he acted on grave and sudden provocation. He may be convicted under section 335 of the Penal Code.*

Act X, 1872, s. 458. Act X, 1875, s. 23. Act IV, 1877, s. 111.

240. 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.

241. 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. 203, para. 1. Act IV, 1877, s. 114. Act X, 1872, ss. 206, para. 2, first clause, 206, para. 1. Act IV, 1877, s. 119.

242. The following procedure shall be observed by Magistrates in the trial of summons-cases.

Procedure in summons-cases.

243. 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; *but no formal charge shall be framed.*

Substance of accusation to be stated.

244. 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.

Act X, 1872, s. 206, para. 2. Act IV, 1877, s. 120.

Conviction on admission of truth of accusation.

245. If the accused does not make such admission, the Magistrate shall proceed to hear the complainant (if any), and take all such evidence as

Act X, 1872, s. 207. Act IV, 1877, s. 121.

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.

246. If the Magistrate upon taking the evidence referred to in section 245 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 X, 1872, s. 203, para. 2, second clause. Act IV, 1877, s. 117. Nelson, 206.

247. A Magistrate may, under section 244 or section 246, 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, 208, paras. 3, 212. Act IV, 1877, s. 118.

248. 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.

249. 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.

250. In any case instituted otherwise than upon complaint, *a Presidency Magistrate or Magistrate of the first class, or, with the previous sanction of the District Magistrate, any other Magistrate,* may, *for reasons to be recorded by him,* 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.

251. If in any case instituted upon complaint a Magistrate acquits the accused under section 246 or section 248, 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 *sentenced to simple imprisonment* for such term, not exceeding thirty days, as the Magistrate directs, unless such sum is sooner paid.

Recovery of compensation.

At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section.

CHAPTER XXI.

Of the Trial of Warrant-cases by Magistrates.

Act X, 1872, s. 213.

252. The following procedure shall be observed by Magistrates in the trial of warrant-cases.

Procedure in warrant-cases.

Act X, 1872, s. 190.

253. 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.

See I. L. R., 3 Cal., 389.

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. 362, para. 1. Act IV, 1877, s. 143, para. 1.

Act X, 1872, s. 215, *with Expln. III.* I. L. R., 3 Calc., 389.

254. If upon taking all the evidence *referred to in* section 253, and such examination (if any) of the accused as the Magistrate thinks necessary, he finds that no *case against the accused has been made out which if unrebutted would warrant his conviction,* the Magistrate shall discharge him.

Discharge of accused.

Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

Act X, 1872, s. 216, *without Explanations I & II.* Act XI, 1874, s. 16. Act IV, 1877, ss. 116, 122.

255. 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 V, 1877, ss. 120, 122.

256. 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, *para.* 2, 324.

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.

257. 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 *shall* file it with the record.

Act X, 1872, s. 362, *para.* 2. Act IV, 1877, s. 142, para. 2. Cf. ss. 253 and 209.

258. 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. See *infra*, s. 247. Act IV, 1877, s. 126, first half.

259. 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. 213, Expl. Contrast Act IV, 1877, s. 138, but see s. 133 of same.

260. 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. 262, 223, 224.

261. Notwithstanding anything contained *in this Code,* 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 Cal., 644.

(*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, *380 or 381* of the same Code, where the value of the property stolen does not exceed fifty rupees;

(*e*) Receiving *or retaining* stolen property, under section 411 of the same Code, *when the value of such property does not exceed fifty rupees;*

(*f*) *Assisting in the concealment or disposal of stolen property, under section 414 of the same Code, when the value of such property does not exceed fifty rupees;*

(*g*) Mischief, under section 427 of the same Code;

(*h*) House-trespass, under section 448 of the same Code;

(*i*) Insult with intent to provoke a breach of the peace, under section 504, and criminal intimidation, under section 506, of the same Code; *Act XI, 1874, s. 17.*

(*j*) Abetment of any of the foregoing offences;

(*k*) An attempt to commit any of the foregoing offences when such attempt is an offence:

Provided that no case in which a District Magistrate exercises the special powers conferred by section 34 shall be tried in a summary way.

Act X, 1872, s. 225.

262. 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.

263. 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.

264. In cases where no appeal lies, the Magistrate or Bench of Magistrates need not record the evidence of the witnesses or frame a formal charge; but he or they shall enter in *such form as the Local Government may direct* 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, *parentage* 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 *or other final order*; and

(*j*) the date on which the proceedings terminated.

Act X, 1872, s. 228. Record in appealable cases.

265. 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 substance of the evidence and also the particulars mentioned in section 264.

Such judgment shall be the only record in cases coming within this section.

Act X, 1872, s. 229. Language of *record and* judgment.

266. Records made under section 264 and judgments recorded under section 265 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 authorized 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 Beuch 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.

267. In this chapter, *except in section 308*, 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.

268. All trials under this chapter before a High Court shall be by jury;

and, notwithstanding anything herein contained, *in* 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.

269. All trials before a Court of Session shall be either by jury, or with the aid of assessors.

Act X, 1872, s. 233, *paras. 1 and 2*. Local Government may order trials before Court of Session to be by jury.

270. 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 *charged* at the same *trial with* 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.

271. 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.

272. 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, ss. 28, 29.

Act X, 1872, s. 73. 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, 1872, s. 30. Refusal to plead or claim to be tried.

273. 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, 1872, 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, 1872, s. 14. Entry on unsustainable charge.

274. When *it* appears to *the* Court at any time before the commencement of the trial of the person charged, *that there is no legal evidence to sustain any charge or a portion thereof, the* Judge may make on the charge an entry to that effect.

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, 1872, s. 33. Number of jury.

275. In trials before the High Court the jury shall consist of nine persons.

Act X, 1872, s. 286.

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.

276. In a trial by jury, before the Court of Session, of a person not being an European or an American, *a majority* of the jury shall, if he so desires, consist of persons who are neither Europeans nor Americans.

Act X, 1872, s. 240. Act X, 1872, s. 33. Jurors to be chosen by lot.

277. The jurors shall be chosen by lot from the persons summoned to act as such, in such manner as *the High Court* may from time to time by rule direct:

As to practice in Bombay, see I. L. R., 1 Bom. 462.

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, *para.* 3. Act X, 1875, s. 33. 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, *paras. 1 and 2*. Act X, 1875, s. 53. Names of jurors to be called.

278. 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, 406. Act X, 1875, ss. 47, 54. Grounds of objection.

279. 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 presumed or actual partiality in the juror;

(*b*) some personal ground, such as alienage, deficiency in the qualification required by any law or rule having the force of law for the time being in force, *or being under the age of twenty-one or above the age of sixty years*;

(*c*) his having by habit or religious vows relinquished all care of worldly affairs;

(*d*) his holding any office in or under the Court;

(*e*) his executing any duties of Police or being entrusted with Police-duties;

(*f*) his having been convicted of any offence which, in the opinion of the Court, renders him unfit to serve on the jury;

(*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. 248, para. 3. Decision of objection.

280. Every objection taken to a juror shall be decided by the Court, and such decision shall *be recorded* and be final.

Act X, 1875, ss. 48, 55.

Act X, 1872, s. 243, *para.* 4. 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 277; 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 279 and allowed.

Act X, 1872, s. 246. Act X, 1875, s. 58. Foreman of jury.

281. 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.

282. 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.

283. 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 new juror shall be added, or the jury shall be discharged and a new jury chosen.

In *each of such* cases the trial shall commence anew.

Act X, 1875, s. 99. Discharge of jury in case of sickness of prisoner.

284. 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. Assessors how chosen.

285. 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. 269. Procedure when assessor is unable to attend.

286. 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

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.

287. 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.

288. The examination of the accused before the committing Magistrate shall be tendered by the prosecutor 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 Bom. 282.

Evidence given at preliminary inquiry admissible.

289. 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 *and examined*, be treated as evidence in the case.

Act X, 1872, s. 251, *paras. 1 and 2.* Act, X, 1875, s. 62.

Procedure after examination of witnesses for prosecution.

290. 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 *adduce evidence.*

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 *considers that there is no legal evidence to sustain the charge*, 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, *or any one of the accused* (*when there are several*), says that he means to *adduce evidence*, or if, on his saying that he does not mean to *adduce evidence*, the prosecutor sums up his case and the Court *considers that there is legal evidence to sustain the charge*, the Court shall call on the accused to enter on his defence.

Act X, 1872, s. 251, *para. 3.* Act X, 1875, s. 62.

Defence.

291. The accused or his pleader may then open his case, stating the facts or law on which he intends to rely, and *making such comments as he thinks necessary on* the evidence for the prosecution. 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.

292. 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 212, 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.

293. *If the accused, or any of the accused, has stated, when asked under section 290, that he means to adduce* evidence, the prosecutor shall be entitled to reply.

Act X, 1872, s. 253. Act X, 1875, s. 64. Taken from Livingston, Art. 357.

View by jury or assessors.

294. 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, *except with the permission of the Court*, 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.

295. 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.

296. 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.

297. 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, *para. 1.* Act X, 1875, s. 90.

Charge to jury.

298. 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.

299. 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, 187 2 s. 257. Act X, 1875, s. 93.

Duty of jury.

300. 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 (*other than terms of law*) 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. 263, *para. 1.* Act X, 1875, s. 92.

Retirement to consider.

301. 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, *para. 1.* Act X, 1875, s. 94.

Delivery of verdict.

302. 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. I. L. R., 6 Calc., 351 (*where the jury are unanimous*).

Procedure where jury differ.

303. 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, paras. 1, 2. Act X, 1875, s. 95.

Verdict to be given on each charge. Judge may question jury.

304. *Unless otherwise ordered by the Court*, 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.

305. When *by accident or mistake* 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.

306. 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.

If the Judge disagrees with the majority, he shall at once discharge the jury.

Discharge of jury in other cases.

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.

307. 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, 1874, s. 21.

Act X, 1872, s. 263, *paras. 5 and 6.* Act XI, 1874, s. 21. I. L. R., 1 Bom., 10. The dissent must be complete, I. L. R., 2 Bom., 526

Procedure where Judge disagrees with verdict.

308. 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. *In dealing* with the case so submitted *the High Court may exercise any of the powers which it may exercise on* 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. **309.** 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, *para.* 1, 261, 262. **310.** When in a case tried with the aid of 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. **311.** 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. **312.** 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.

313. 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—

Act X, 1875, s. 42.

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 person 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 *in the case of the High Court at Calcutta, and in the case of other High Courts the Local Government*, 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. **314.** 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. **315.** 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. **316.** 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. **317.** 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. **318.** Any person summoned under section 315, 316 or 317, 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. 404. **319.** All male persons between the ages of twenty-one and sixty *shall*, except *as* next hereinafter mentioned, be *liable to* serve as jurors and assessors *at any trial held within the District in which they reside.*

Liability to serve as jurors and assessors.

Act X, 1872, ss. 344, 405, 406, *para.* 1. **320.** 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;

(*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.

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 *liable to serve 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 likely to be successfully objected to under section 279, clauses (b) to (k), both inclusive.*

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 *claim* the exemption from service given by section 320, 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.

Any exemption not claimed under this section shall be deemed to be waived until the list is next revised.

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. 407.

326. The Sessions Judge shall ordinarily, three days at least before the time fixed for holding the sessions, send a letter to *the District* 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.

Court to summon jurors *and assessors*.

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.

327. The Court of Session may direct jurors or assessors to be summoned at other periods than the period specified in section 326, 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.

Power to summon another set of jurors or assessors.

Act X, 1872, s. 409, para. 1.

328. 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.

Form and service of summons.

Act X, 1872, s. 411.

329. 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.

When Government *or Railway servant* may be excused.

Act X, 1872, s. 412.

330. The Court of Session may for reasonable cause excuse any juror or assessor from attendance at any particular session.

Court may excuse attendance of juror or assessor.

Act X, 1872, s. 413.

331. At each session, the said Court shall cause to be made a list of the names of those who *have attended* as jurors or assessors at such session.

List of jurors or assessors attending.

Such list shall be kept with the list of the jurors and assessors *as revised* 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.

332. 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.

Penalty for non-attendance of juror or assessor.

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, 1872, s. 146. Cf. s. 260, *supra*.

333. 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.

Power of Advocate General to stay prosecution.

Act X, 1872, s. 4.

334. 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.

Time of holding sittings.

Act X, 1872, s. 6.

335. 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.

Place of holding sittings.

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, *and* 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.

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.

336. The High Court may direct that all European British subjects *and persons liable to be tried by it under section 215, who have been* committed 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,

Place of trial of European British subjects.

or direct that they shall be tried at a particular place named.

CHAPTER XXIV.

GENERAL PROVISIONS AS TO INQUIRIES AND TRIALS.

Act X, 1872, s. 347. Act IV, 1877, s. 180.

337. 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 *other* Magistrate, may, *in any warrant-case*, with the view of obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, *the* offence, 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.

Tender of pardon to accomplice.

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 *any Magistrate* has made such tender and examined the person *to whom it has been made*, he shall not try the case himself, although the offence which *such* 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.

338. At any time after commit*ment*, but before judgment is passed, the *Court to which the commitment is made* 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 *order* the committing Magistrate *or the District Magistrate* to tender, a pardon on the same condition to such person

Power to direct tender of pardon.

Act X, 1872, ss. 193, para. 1, 250, 342. Act X, 1872, s. 61. Act IV, 1877, ss. 6, 149. 6 *Calc.* 521. 1 O'Kin. 436.

339. Where a pardon has been tendered under section 337 or 338, *and* 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, *he may be tried* 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.

Commitment of person to whom pardon has been tendered.

Act X, 1872, s. 349. Act X, 1875, s. 78. Act IV, 1877, s. 151. 7 *Calc.*, 66.

The statement made by a person under pardon may be given in evidence against him when the pardon has been withdrawn under this section.

Act X, 1872, s. 186, paras. 1 and 2. Act XI, 1874, s. 13. Act X, 1875, s. 81. Act IV, 1877, s. 130.

340. Every person accused before any Criminal Court may of right be defended by a pleader.

Right of accused to be defended.

Act X, 1872, s. 186, para. 3. Act X, 1875, s. 130. Act IV, 1877, s. 131.

341. 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 circumstances of the case, and the High Court shall pass thereon such order as it thinks fit.

Procedure where accused does not understand proceedings.

Act X, 1872, ss. 193, para. 2, 343; Act I, 1872, s. 114, ill. (*h*).

342. 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.

Power to examine the accused.

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 *and the jury* (*if any*) shall draw such inference from such refusal or answers as it thinks just.

Act X, 1872, s. 193, *expln.*

The answers given by the accused may be put in evidence *for or* 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. 342.

No oath shall be administered to the accused.

Act X, 1872, s. 343. Act IV, 1877, s. 149.

343. Except as provided in sections *337 and 338*, 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.

No influence to be used to induce disclosures.

Power to postpone or adjourn proceedings.

Act X, 1872, ss. 194, para. 1 and Expln., 208, para. 1, 219, 264. Act X, 1875, s. 66. Act IV, 1877, ss. 86, 124. 11 & 12 Vic., c. 42, s. 21.

344. 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, the Court may, by order *in writing, stating the reasons therefor*, 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 remand the accused if in custody:

Remand.

Provided that no Magistrate shall remand an accused person to custody under this section for a *term* 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.

Reasonable cause for remand.

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.

Act X, 1872, s. 188. Act X, 1875, s. 151. Act IV, 1877, s. 133. Compare N. Y. Crim. Proc. Code, s. 781.

345. *The offences punishable under the sections of the Indian Penal Code described in the first two columns of the Table next following may be compounded by the persons mentioned in the third column of that Table:—*

Compounding of offences.

Offence.	*Sections of Indian Penal Code applicable.*	*Person by whom offence may be compounded.*
Causing hurt ...	*323, 334, 337, 338*	*The person to whom the hurt is caused.*
Wrongfully restraining or confining any person.	*341, 342*	*The person restrained or confined.*
Assault or use of criminal force.	*352, 358*	*The person assaulted or to whom criminal force is used.*
Unlawful compulsory labour.	*374*	*The person compelled to labour.*
Mischief, when the only loss or damage caused is loss or damage to a private person.	*426, 427*	*The person to whom the loss or damage is caused.*
Criminal trespass ...	*447*	*The person in possession of the property trespassed upon.*
House-trespass ...	*448*	
Criminal Breach of Contract of service.	*490, 491, 492*	*The person with whom the offender has contracted.*
Adultery ...	*497*	*The husband of the woman.*
Enticing or taking away or detaining with a criminal intent a married woman.	*498*	
Defamation ...	*500*	*The person defamed.*
Printing or engraving matter knowing it to be defamatory.	*501*	
Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter.	*502*	
Insult intended to provoke a breach of the peace.	*504*	*The person insulted.*
Criminal Intimidation, except when the offence is punishable with imprisonment for seven years.	*506*	*The person intimidated.*

The offence of voluntarily causing hurt, voluntarily causing grievous hurt or cheating, punishable under section 324, section 335 or section 417 of the Indian Penal Code may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the person to whom the hurt has been caused, or by the person cheated, as the case may be.

When any offence is compoundable under this section, the abetment of such offence or an attempt to commit such offence (when such attempt is itself an offence) may be compounded in like manner.

When the person who would otherwise be competent to compound an offence under this section is a minor, an idiot or a lunatic, any person competent to contract on his behalf may compound such offence.

The composition *of an offence under this section* shall have the effect of an acquittal of the accused.

No offence not mentioned in this section shall be compounded.

Act X, 1872, s. 45, paras. 1 and 2. Madras H. C. ruling cited Nelson, 63.

Procedure of Mufassal Magistrate in cases which he cannot dispose of.

346. 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.

The Magistrate to whom the case is submitted *may*, if so empowered, either try the case himself, or refer it to any *Magistrate* subordinate to him having jurisdiction, or commit the accused for trial.

Act X, 1872, ss. 46, para. 3, 221, 436, para. 3. Act IV, 1877, s. 127.

Procedure when after commencement of inquiry or trial Magistrate finds case should be committed.

347. If in any *enquiry* before a Magistrate *or in any trial before a Magistrate before signing judgment*, it appears to him at any stage of the proceedings that the case is one which ought to be tried by the Court of Session or High Court, and *if* he is empowered to commit for trial, he shall stop further proceedings and commit the accused under the provisions hereinbefore contained.

If such Magistrate is not empowered to commit for trial, he shall proceed under section 346.

Act X, 1872, s. 315. Act IV, 1877, s. 128.

Trial of persons previously convicted of offences against coinage, stamp-law and property.

348. 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 a habitual offender, be committed to the Court of Session or High Court, as the case may be; *or*, in districts in which the District Magistrate has been invested with powers under section 30, placed on his trial before such Magistrate.

Act X, 1872, s. 46, paras. 1 and 2, inserting "different in kind from or"

Procedure when Magistrate cannot pass sentence sufficiently severe.

349. 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 opinion 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.

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 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.

e.g., he may order commitment to Sessions Court; I. L. R., 1 Mad., 289. *See. I. L. R., 4 Bom.*, 240.

Act X, 1872, ss. 328, 329. Act IV, 1877, s. 156. *See. 4 Calc.*, 452, *and sec.* 568, *infra.*

Conviction *or commitment* on evidence partly recorded by one Magistrate and partly by another.

350. Whenever any Magistrate, after having heard the whole or any part of the evidence in an enquiry 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:

Provided that *in any trial* the accused may, when the second Magistrate commences his proceedings, demand that the witnesses *or any of them* be re-summoned and re-heard:

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 346.

Act X, 1872, s. 104.

Detention of offenders attending Court.

351. 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.

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. 187. Act X, 1872, s. 150. Act IV, 1877, s. 132.

Courts to be open.

352. 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:

Provided that the presiding Judge *or Magistrate* 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 XXV.

Of the Mode of taking and recording Evidence in Inquiries and Trials.

Act X, 1872, s. 191, para. 1. Act IV, 1878, s. 83, para. 1.

Evidence to be taken in presence of accused.

353. 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.

Act X, 1872, s. 332.

Manner of recording evidence in Mufassal.

354. 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.

Act X, 1872, ss. 222, 333.

Record in summons-cases, and in trials of certain offences by first and second class Magistrates.

355. In summons-cases tried before a Magistrate, other than a Presidency Magistrate, and in cases of the offences mentioned *in section 261, clauses (b) to (k), both inclusive,* 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.

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.

Act X, 1872, s. 334.

Record in other cases in the Mufassal.

No exception of cases in which no appeal lies. 11 Ben. Appx. 6.

356. 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 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.

357. 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 *of each witness* shall in the cases referred to in section 356 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 the Local Government may direct *the Sessions Judge or Magistrate* to take down the evidence in the English language, or in the language of the Court, *although such language is not his mother-tongue.*

Act X, 1872, s. 336.

Option to Magistrate in cases under section 355.

358. In cases of the kind mentioned in section 355, the Magistrate may, if he thinks fit, take down the evidence of any witness in the manner provided in section 356, or, if within the local limits of the jurisdiction of such Magistrate the Local Government has made the order referred to in section 357, in the manner provided in the same section.

Act X, 1872, s. 338.

Mode of recording evidence under section 356 or 357.

359. Evidence taken under section 356 or 357 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.

Act X, 1872, s. 339.

Procedure in regard to such evidence when completed.

360. As the evidence of each witness taken under section 356 is completed, it shall be read over to him in the presence of the accused if in attendance, or of his pleader, if 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.

361. 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. 341. Act IV, 1877, s. 118.

Record of evidence in Presidency Magistrates' Courts.

362. 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. 342. 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. 343.

Remarks respecting demeanour of witness.

363. 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. 345, paras. 1, 2, 3 and 4. Act IV, 1877, ss. 84, 122.

Examination of accused how recorded.

364. 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, *in the language in which he is examined, or, if that is not practicable, in the language of the Court,* and *such record* 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 record* 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 *the examination* was taken in his presence and hearing, and *that the record* 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.

Nothing in this section shall be deemed to apply to the examination of an accused person under section 243, 244 or 264.

Act X, 1875, s. 68, including Chief Court.

Record of evidence in High Court.

365. 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, 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 XXVI.

Of the Judgment.

Act VIII, 1859, s. 183. Act X, 1872, ss. 211, para. 8, 462.

Mode of delivering judgment.

366. 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. 300.

Language of judgment.

367. 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, and shall contain the point or points for determination, the decision thereon, and the

Act X, 1872, s. 464, para. 1. Cf. Act VIII, 1859, s. 185.

Contents of judgment.

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, ss. 461, cl. 1, 464, para. 1.

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 to which he is sentenced.

Act X, 1872, s. 461, cl. 2.

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, ss. 255, last para., 464, *para. 4.*

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.

368. When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.

Sentence of death.

Act X, 1872, s. 464, *para. 1*, second sentence.

369. No Court when it has signed its judgment shall alter or review the same, *except as provided in section 395 or to correct a clerical error.*

Court not to alter judgment.

Act IV, 1877, s. 114.

370. 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, *and (except in the case of an European British subject) his parentage and residence* ;

(*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, *para. 1.*

371. 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. *Such copy shall, in any case other than a summons-case, be given* free of cost.

Judgment to be explained and copy given to accused.

In trials by jury, a copy of the heads of the charge to the jury shall, on the application of the accused, be given to him without delay and free of cost.

Act XI, 1874, s. 22.

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.

Act X, 1872, s. 464, para. 3.

372. 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, *para. 1.*

373. In cases tried by the Court of Session, the Court shall forward a copy of its judgment (*if any*) 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 XXVII.

Of the Submission of Sentences for Confirmation.

Act X, 1872, s. 287, para. 1.

374. 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.

375. 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 *take such evidence itself or* direct *it* to be taken.

Power to direct additional evidence *to be taken.*

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 *when it is not taken by the High Court* shall be certified to *such* Court.

Act X, 1872, s. 288.

376. In any case submitted under section 374, whether tried with the aid of assessors or by jury, the High Court—

Power of High Court to confirm sentence or annul conviction.

(*a*) may confirm the sentence, or pass any other sentence warranted by law, or

(*b*) may annul the conviction, *and convict the accused of any offence of which the Sessions Court might have convicted him, or* order a new trial on the same or an amended charge, or

(*c*) may acquit the accused person :

Provided that no order of confirmation shall be made under this section until the period allowed for preferring an appeal has expired, or, if an appeal is presented within such period, until such appeal is disposed of.

Act X, 1872, s. 290.

377. 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 *made and* signed by at least two of them.

Confirmation or new sentence to be signed by two Judges.

Act X, 1872, s. 271B. (Act XI, 1874, s. 22.)

378. 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.

379. 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, 36. XI, 1874,

380. 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—

Confirmation of sentence of Assistant Sessions Judge or Magistrate acting under section 34.

I. L. R., 4 Bom., 289.

(*a*) may *confirm the sentence, or pass any other sentence which the lower Court might have passed, or*

(*b*) *may annul the conviction, and convict the accused of any offence of which the lower Court might have convicted him, or order a new trial on the same or an amended charge, or*

(*c*) *may acquit the accused ; or*

(*d*) 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.

Unless the *Sessions* 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.

The result of such evidence shall be certified to the Sessions Court.

CHAPTER XXVIII.

Of Execution.

Act X, 1872, s. 301, para. 2.

381. 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 confirmation or other order* of the High Court thereon, cause such order to be carried into effect by issuing a warrant or taking such other steps as may be necessary.

Execution of order passed under section 376.

Act X, 1872, s. 306. Act X, 1875, s. 114, adding "to transportation for life."

382. If a woman sentenced to death be found 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, *cl. 1.* (Act XI, 1874, s. 32.) Act IV, 1877, s. 183.

383. Where the accused is sentenced to transportation or imprisonment in cases other than those provided for by section 381, the Court *passing the sentence* shall forthwith forward a warrant to the jail in which he is to be confined *together with the accused, unless he is already confined in such jail.*

Execution of sentences of transportation or imprisonment in other cases.

Act X, 1872, s. 303. Act X, 1875, ss. 103, 104. Act IV, 1877, s. 184.

384. 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 of warrant for execution.

Act X, 1872, s. 304. Act X, 1875, s. 104.

385. When the prisoner is to be confined in a jail, the warrant shall be lodged with the jailor.

Warrant with whom to be lodged.

Act X, 1872, s. 307, para. 1. Act X, 1875, s. 105. Act IV, 1877, s. 185.

386. 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.

Warrant for levy of fine.

Act X, 1872, s. 307, para. 2. Act X, 1875, s. 105. Act IV, 1877, s. 185.

387. 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.

Effect of warrant.

Act IV, 1877, s. 186.

388. When *an offender has been sentenced to fine only, and the* Court issues a warrant under section 386, it may, instead of at once ordering *him* to be imprisoned under section 64 of the Indian Penal Code, release him

Detention of offender until return made to distress-warrant.

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 *fifteen* days from the time of executing the bond.

Act X, 1872, s. 307, last *para.* Act IV, 1877, s. 185, last sentence.

389. Who may issue warrant. The warrant may be issued either by any Judge or Magistrate who *passed the sentence* or by his successor in office.

Act X, 1872, s. 302A, *cl. 2.* (*Act XI, 1874, s. 32.*) Act IV, 1877, s. 183.

390. Execution of sentence of whipping only. Where the accused is sentenced to whipping only, the sentence shall be executed at such place and time as the Court may direct.

Act X, 1872, s. 310. Act IV, 1877, s. 187.

391. Execution of sentence of whipping, in addition to imprisonment. 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 *as soon as possible after* the expiry of the fifteen days or, in case of an appeal, *as soon as possible after* the receipt of the order of the appellate Court confirming the sentence.

Act X, 1872, s. 311, para. 3. Act XI, 1874, s. 33, *para. 1.* 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.

392. Mode of inflicting punishment. 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.

Act X, 1872, s. 311, para. 2. *See précis, paras.* 249, 251.

393. Limit of number of stripes. 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.

Act X, 1872, s. 312, para. 3. Act IV, 1877, s. 190.

Not to be executed by instalments. No sentence of whipping shall be executed by instalments.

Act X, 1872, s. 312, *paras. 1 and 2.* Act XI, 1874, s. 33, *para. 2.* Act X, 1875, s. 108. Act IV, 1877, s. 189.

394. Whipping not to be inflicted if offender not in fit state of health. 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.

Stay of execution. 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.

Act X, 1872, s. 313. Act X, 1875, s. 108. Act IV, 1877, s. 191.

395. Procedure if punishment cannot be inflicted under the last section. In any case in which, under section 394, a sentence of whipping is, wholly or partially, prevented from being executed, the offender shall be kept 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 *term not exceeding three months*, which may be in addition to any other punishment to which he may have been sentenced for the same offence.

Act X, 1872, s. 316. Act X, 1875, s. 110. Act IV, 1877, s. 192.

396. Execution of sentence on escaped convicts. When sentence is passed under this Code on an escaped convict, such sentence, if of death, fine or whipping, shall, *subject to the provisions hereinbefore contained*, take effect immediately, and if of imprisonment, penal servitude or transportation, shall take effect according to the following rules, that is to say:—

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.

397. Sentence on offender already sentenced for another offence. 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:

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.

Act X, 1872, s. 317, *proviso.*

398. Saving as to sections 396 and 397. Nothing in section 396, or section 397, 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. 318. Act X, 1875, s. 112. Act V of 1876 has not yet come into force anywhere except—

399. Confinement of youthful offenders in reformatories. 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.

All persons confined under this section shall be subject to the rules so prescribed.

Act X, 1872, s. 305.

400. When a sentence has been fully executed, Return of warrant on execution of sentence. *the officer executing it shall return the warrant to the Court from which it issued, with an endorsement under his hand certifying the manner in which the sentence has been executed.*

CHAPTER XXIX.

Of Suspensions, Remissions and Commutations of Sentences.

Act X, 1872, s. 322, para. 1. Act XI, 1874, s. 34, *cl. 1.*

401. Power to suspend or remit sentences. 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.

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 *or by* which the conviction was had *or confirmed* 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.

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 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 XI, 1874, s. 34, *cl. 2.*

402. Power to commute punishment. 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:—

death, transportation, penal servitude, *rigorous* imprisonment, *simple imprisonment.*

Act X, 1872, s. 322, para. 3.

CHAPTER XXX.

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. 378.

403. Person once convicted or acquitted not to be tried for same offence. 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 237, or for which he might have been convicted under section 238.

A person acquitted or convicted 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 236, paragraph one.

A person 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 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 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, ss. 147, para. 2, 195, Expls, 215, Expl. 2. Act X, 1875, s. 14.

EXPLANATION.—The dismissal of a complaint, *the stopping of proceedings under section 250*, the discharge of the accused, or any entry made upon a charge under section 274, 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, *while the acquittal remains in force*, 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 *causing grievous hurt* and convicted. The person *injured* afterwards dies. *A* may be tried again for culpable homicide.

(*d*) *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*.

(*e*) *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.

(*f*) *A* is charged by a Magistrate *of the second class* 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.

(*g*) *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 XXXI.
OF APPEALS.

Act X, 1872, ss. 282, para. 2, 286, *omitting the Illustrations.*

Unless otherwise provided, no appeal to lie.

404. 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 IV, 1877, s. 180.

Appeal from order rejecting application for restoration of attached property.

405. *Any person whose application under section 90 for the delivery of property or the proceeds of the sale thereof has been rejected by any Court, may appeal to the Court to which appeals ordinarily lie from the sentences of the former Court.*

Act X, 1872, s. 267.

Appeal from order requiring security for good behaviour.

406. Any person required by a Magistrate, other than the District Magistrate or a Presidency Magistrate, to give security for good behaviour under section 119 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.

407. 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 349, may appeal to the District Magistrate.

Transfer of appeals to first class Magistrate.

The District Magistrate may *direct that* any appeal under this section, or any class of such appeals, *shall be heard by* any Magistrate of the first class subordinate to him and empowered by the Local Government to hear such appeals, and *thereupon such appeal or class of appeals shall be presented to such Subordinate Magistrate, or if already presented shall be transferred to him. The District Magistrate* may withdraw from such Magistrate any appeal *or class of appeals* so *presented or transferred.* Act X, 1872, s. 47, para. 2.

Appeal from sentence of *Assistant Sessions Judge or* Magistrate of the first class.

408. Any person convicted on a trial held by *an Assistant Sessions Judge*, a District Magistrate or other Magistrate of the first class, or any person sentenced under section 349 by a Magistrate of the first class, may appeal to the Court of Session: Act X, 1872, ss. 269, *para.* 1, 270, *para.* 2.

Provided that when *in any case an Assistant Sessions Judge or* a District Magistrate passes *any* sentence *which is subject to the confirmation of the Sessions Court, every* appeal *in such case* shall lie to the High Court, *but shall not be presented until the case has been disposed of by the Sessions Court:* Act X, 1872, s. 270, *paras.* 1 *and* 3.

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. 79.

Appeals to Court of Session how heard.

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.

Appeal from sentence of Sessions Court.

410. Any person convicted on a trial held by a Sessions Judge, or Additional or Joint Sessions Judge, may appeal to the High Court. Act X, 1872, ss. 80, 270, *para.* 3, 271, Act XI, 1874, s. 22, *cl.* 1.

Appeal from sentence of Presidency Magistrate.

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. Act IV, 1877, s. 167.

No appeal in certain cases when accused pleads guilty.

412. Notwithstanding anything hereinbefore contained, where an accused person has *pleaded guilty and* been convicted by a Court of Session or a Presidency Magistrate on *such* plea, there shall be no appeal except as to the extent or legality of the sentence. Act X, 1872, s. 273, last para. Act IV, 1877, s. 167.

No appeal in petty cases.

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. Act X, 1872, s. 273, para. 1.

Explanation.—There is no appeal from a sentence of imprisonment passed by such Court or Magistrate in default of payment of fine when no substantive sentence of imprisonment has been passed. Act X, 1872, s. 273, para. 2.

No appeal from certain summary convictions.

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 261 passes a sentence of imprisonment not exceeding three months only, or of fine not exceeding two hundred rupees only, or of whipping only. Act X, 1872, s. 274, *para.* 1.

Proviso to sections 413 and 414.

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. Act X, 1872, s. 274, para. 2.

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 XI, 1874, s. 24.

Saving of sentences on European British subjects.

416. Nothing in sections 413 and 414 applies to appeals from sentences passed on European British subjects under Chapter XXXIII. Act X, 1872, s. 274, *para.* 3.

Appeal on behalf of Government in case of acquittal.

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 *passed by any Court other than a High Court.* Act X, 1872, ss. 272, *paras.* 1 *and* 2. Act IV, 1877, s. 168, para. 1.

Appeal on what matters admissible.

418. An appeal may lie on a matter of fact as well as a matter of law, except where *the* trial *was* by jury, in which case the appeal shall be admissible on a matter of law only. Act X, 1872, s. 271, last para. Act XI, 1874, s. 23. Act X, 1872, s. 275. Act IV, 1877, s. 169.

Petition of appeal.

419. Every appeal shall be made in the form of a petition in writing presented by the appellant *or his pleader*, 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 367. Act X, 1872, s. 277. Act IV, 1877, s. 171.

Procedure when appellant in jail.

420. If the appellant is in jail, he may present his petition of appeal, and the *copies accompanying the same*, to the officer in charge of the jail, who shall thereupon forward such petition and copies to the proper Appellate Court. Act X, 1872, s. 277. Act IV, 1877, s. 171.

Summary rejection of appeal.

421. On receiving the petition and copy under section 419 or section 420, 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 419 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. 276, *para.* 1, *and* 2. Act IV, 1877, s. 169.

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.

Notice of appeal.

422. If the Appellate Court does not reject the appeal summarily, it shall cause notice to be given to the appellant *or his pleader* and *to such officer as the Local Government may appoint in this behalf*, of the time and place at which such appeal will be heard, and shall, *on the application of such officer*, furnish *him* with a copy of the grounds 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.

Powers of Appellate Court in disposing of appeal.

423. The Appellate Court shall then send for the record of the case, *if such record is not already in Court.* After perusing *such record*, and hearing the appellant or his pleader, if he appears, and the Public Prosecutor if he appears, *the Court* may, if it considers there is no sufficient ground for interfering, reject the appeal or may— Act X, 1872, ss. 272, *para.* 3, 280. Act IV, 1877, ss. 174, 179.

(*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 a conviction (1) reverse the finding and sentence, and *acquit or discharge* the accused, or *order him to be* retried by a Court of competent jurisdiction subordinate to such Appellate Court, or (2) alter the finding, *maintaining the sentence*, or, with or without altering the finding, enhance or reduce the sentence, or (3) alter the nature of the sentence with or without such enhancement or reduction and with or without altering the finding; Act X, 1872, s. 284.

(*c*) in an appeal from any other order, alter or reverse such order:

Provided that, if the appeal is from the sentence of a Magistrate *acting otherwise than under section 30*, 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 authorize 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. Act X, 1872, s. 271, *extended to appeals by the Crown.* Act X, 1872, s. 299, *para.* 3.

Judgments of subordinate Appellate Courts.

424. The rules contained in Chapter XXVI 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.

Order on *appeal* to be certified to lower Court or District Magistrate.

425. Whenever a case is *decided on appeal* by the High Court under this chapter, it shall certify its decision or order to the Court by which the finding, sentence or order *appealed against* was recorded or passed. If the finding, sentence or order was recorded or passed by a Magistrate other than the Act X, 1872, s. 284, last para.

District Magistrate, the certificate shall be sent through the District Magistrate.

The Court or Magistrate to which the High Court certifies its *decision or* 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.

Act X, 1872, s. 281, and s. 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, *for reasons to be recorded by it in writing*, 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 *or on his own bond*.

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 *issue a warrant directing that* the accused be arrested and brought before it *or any subordinate Court*, and *the Court before which he is brought* 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. 282, *paras. 1, 3 and 4.* 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 Court of Session or* a Magistrate.

Appellate Court may take further evidence or direct it to be taken.

When the additional evidence is taken by *the Court of Session or* the Magistrate, *it or* 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. 295.

430. Judgments and orders passed by an Appellate Court upon appeal shall be final, except in the cases provided for in section 416 and Chapter XXXII.

Finality of orders on appeal.

I. L. R., 2 Bom., 564.

431. Every appeal under section 417 finally abates on the death of the accused, and every other appeal under this chapter finally abates on the death of the appellant.

Abatement of appeals.

CHAPTER XXXII.

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.

434. When any person has, in a trial before a Judge of a High Court *consisting of more Judges than one and* 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 as the High Court thinks fit.

Act X, 1872, ss. 294, 295, para. 1. 12 Ben., 293.

435. The High Court or any Court of Session or District Magistrate, *or any Sub-divisional Magistrate empowered by the Local Government in this behalf*, 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 *correctness*, 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.

If any Sub-divisional Magistrate acting under this section considers that any such finding, sentence or order is illegal or improper, or that any such proceedings are irregular, he shall forward the record, with such remarks thereon as he thinks fit, to the District Magistrate.

Act X, 1872, s. 520. See I. L. R., 2 Calc., 295.

Orders made under sections 144 and 145 *and proceedings under section 177* are not proceedings within the meaning of this section.

Act X, 1872, s. 296, paras. 2 and 3. (Act XI, 1874, s. 29.) 10 Ben., 289.

436. When on examining the record of any case under section 435 *or otherwise*, 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, *instead of directing a fresh inquiry*, 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.

1 O'Kin. 98.

Provided that the accused has had an opportunity of shewing cause to such Court or Magistrate why the commitment 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 *or otherwise*, the Court of Session may direct the District Magistrate by himself or by any of the Magistrates subordinate to him *to make, and* the District Magistrate may *himself make or* direct any subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under section 204, *or into the case of any accused person who has been discharged.*

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 *or otherwise* the record of any proceeding, report for the orders of the High Court the results of such examination, *and when such report contains a recommendation that a sentence be reversed, may order that the execution of such sentence be suspended, and if the accused is in confinement that he be released on bail or on his own bond.*

Report to High Court.

Act X, 1872, s. 297, para. 1. 1 Cale., 113. 1 Ind. Jur., 139. 7 Mad., 115; Nelson, 287. 1 O'Kin. 94. 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 423, 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, 1872, ss. 297, 298, para. 2.

440. No party has any right to be heard either personally or by pleader before any High Court when exercising its powers of revision: *Provided that* the High Court may, if it thinks fit, when exercising such powers, hear any party either personally or by pleader: *Provided also that no order shall be made to the prejudice of the accused unless he has had an opportunity of being heard in his own defence.*

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 Presidency Magistrate of grounds of his decision to be considered by High Court.

Act X, 1872, ss. 299, paras. 1 & 2.

442. When a case is revised by the High Court under this chapter, it shall certify its decision or order in manner provided by section 425, and the Court or Magistrate to which the High Court so certifies its decision or order shall give effect thereto in manner provided by that section.

High Court's order to be certified to lower Court or District Magistrate.

PART VIII.

SPECIAL PROCEEDINGS.

CHAPTER XXXIII.

Criminal Proceedings against Europeans and Americans.

Act X, 1872, ss. 72, paras. 1 & 2, 74, para. 1.

443. No 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 an European British subject, *shall inquire into or try any charge against an European British subject.*

Magistrates who may inquire into and try charges against European British subjects.

Act X, 1872, ss. 72, paras. 1, 76, para. 1.

444. No *Judge presiding in a Court of Session shall exercise jurisdiction over* an European British subject unless *he himself* is an European British subject; *and if he is an Assistant Sessions Judge*, unless he has held the office of Assistant Sessions Judge for at least three years, and has been specially empowered in this behalf by the Local Government.

Sessions Judge to be an European British subject.

Assistant Sessions Judge to have held office for three years and to be specially empowered.

Act X, 1872, ss. 75, 436.

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 an 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. 74, *para.* 2.

446. Notwithstanding anything contained in section 32, or section 34, no Magistrate other than a Presidency Magistrate shall pass any sentence on an 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, *para.* 1, 438, *para.* 2.

447. When an 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, *para.* 1.

When the offence *which appears to have been committed* is punishable with death or transportation for life, the commitment shall be to the High Court.

Act XI, 1874, s. 12, *para.* 2.

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 offences.

Trial for offences of which one is, and the others are not, punishable with death or transportation.

Act X, 1872, s. 76.

449. *Notwithstanding anything contained in section 31, no Court of Session shall* pass on *any* European British subject any sentence *other than a 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 time after the commitment and* before signing 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 an European British subject, the case shall be reported by the committing Magistrate for the orders of the *highest Court of Criminal appeal for the local area within which such division is situate.*

Procedure when Sessions Judge is not an 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.

Mixed jury for trial of European British subjects.

Act X, 1872, s. 78, *para.* 2. Act X, 1875, s. 35.

452. In any case in which an 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. 36.

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 an 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, 1875, s. 37.

453. When any person claims to be dealt with as an 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 an 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.

Act X, 1872, s. 83.

When any such person is committed by the Magistrate for trial before the Court of Session, and such person before such Court claims to be dealt with as an European British subject, such Court shall after such further enquiry, if any, as it thinks fit, decide whether he is or is not an 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 an European British subject, such decision shall form a ground of appeal from the sentence or order passed in such trial.

454. If an 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.

Act X, 1872, s. 84.

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 *relinquished his right* as such European British subject, and shall not assert it in any subsequent stage of the same case.

6 Calc., Rep. 465.

Unless the Magistrate has reason to believe that any person brought before him is not an European British subject, the Magistrate shall ask such person whether he is such a subject or not.

Act X, 1872, s. 85.

455. Where a person who is not an European British subject is dealt with as such under this chapter, 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 an European British subject.

Act X, 1872, s. 81, *para.* 1, *cl.* 1.

456. *When* any European British subject is *unlawfully* detained in custody by any person, *such European British subject or any person on his behalf* may apply to the High Court which would have jurisdiction over *such European British subject* 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, *para.* 1, *cl.* 2.

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, *para.* 2.

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 *on Magistrates or on the Court of Session* 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 jurisdiction on *Magistrates or the Sessions Court.*

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 *triable by jury or with the aid of assessors* 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 *claims*, be Europeans or Americans.

Jury for trial of Europeans or Americans.

Act X, 1872, s. 234, *para.* 1, *cl.* 2.

Act X, 1872, s. 242.

461. Whenever an European or American is charged before the Court of Session jointly with a person *not an European or American*, and *in compliance with a claim made under section 460 is* tried by a jury *or with the aid of a set of assessors, of which* at least one-half *consists* of Europeans and Americans, such person shall, if he so *claims*, be tried separately.

Jury when European or American charged jointly with one of another race.

Act X, 1872, s. 408, *paras.* 1, 2 & 3.

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 hereinbefore 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 277, until a jury containing the proper number of Europeans or Americans, or a number approaching thereto as nearly as possible, has been obtained:

Act X, 1872, s. 406, last clause.

Provided that in any case in which the proper number of Europeans and Americans cannot otherwise be obtained, the Court may in its discretion, for the purpose of constituting the jury, summon any person excluded from the list on the ground of his being exempted under section 320.

Act X, 1872, s. 87.

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 *this Code*.

Conduct of criminal proceedings against European British subjects.

CHAPTER XXXIV.

LUNATICS.

Act X, 1872, ss. 423, 424, *para.* 3. 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 *consequently* incapable of making

Procedure in case of accused being lunatic.

his defence, 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 *and consequently incapable of making his defence*, he shall postpone further proceedings in the case.

Act X, 1872, s. 425. Act X, 1875, s. 120.

465. Procedure in case of person committed before Court of Session or High Court being lunatic. 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 *consequently* 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.

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. Release of lunatic pending investigation or trial. 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 case is one in which bail may be taken*, 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.

If the *case is one in which bail may not be taken*, 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 *the accused* 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. Resumption of inquiry or trial. 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.

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. Procedure on accused appearing before Magistrate or Court. 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.

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, *paras. 1 and 2.* Act IV, 1877, s. 195.

469. When accused appears to have been insane. 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 *wrong or* 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.

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. Judgment of acquittal on ground of lunacy. 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, or that it was *wrong or* contrary to law, the *finding* shall state specifically whether he committed the act or not.

Act X, 1872, s. 430. Act X, 1875, s. 125. Act IV, 1877, s. 200.

471. Person acquitted on such ground to be kept in safe custody. 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 orders of the Local Government.

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. 431. Act X, 1875, s. 127. Act IV, 1877, s. 202.

472. Lunatic prisoners to be visited by Inspector General. 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.

Act X, 1872, s. 432. Act X, 1875, s. 126. Act IV, 1877, s. 201.

473. Procedure where lunatic prisoner is reported capable of making his defence. 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

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 IV, 1877, s. 203.

474. Procedure where lunatic confined under section 466 or 471 is declared fit to be discharged. 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 and two medical officers.

And such 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, *which* 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. Delivery of lunatic to care of relative. 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 XXXV.

PROCEEDINGS IN CASE OF CERTAIN OFFENCES AFFECTING THE ADMINISTRATION OF JUSTICE.

Act X, 1872, s. 435. Act X, 1875, s. 130. Act IV, 1877, s. 44, containing last paragraph.

476. Procedure in cases mentioned in section 196. When any *Civil, Criminal or Revenue* 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 *or trial* to *the District* Magistrate, 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.

I. L. R., 1 Calc., 130. I. L. R., 1 All., 193. 24 & 25 Vic., c. 100, s. 19. 2 Ox. Ca. 217.

Such Magistrate shall thereupon proceed according to law, and may transfer the enquiry *or trial* to some other competent Magistrate.

Act X, 1872, s. 436, *paras. 1 and 3.* *Reg.* v. *Nomal*, 4 Ben. App. Crim. Jur. 11.

477. Power of Sessions Court as to such offences committed before itself. *Subject to the provisions of section 444*, 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.

Act X, 1872, s. 474, paras. 1 and 2. *See I. L. R.*, 4 Bom., 287.

478. Power of Civil Courts to complete investigation and commit to Sessions Court. When any such offence is committed before any Civil *or Revenue* Court, or brought under the notice of any Civil *or Revenue* Court in the course of a judicial proceeding and *the* case is triable exclusively by the High Court or Court of Session, or such Civil *or Revenue* Court thinks that it ought to be tried by the High Court or Court of Session, such Civil *or Revenue* 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.

See I. L. R., 4 Bom., 289.

Act X, 1872, s. 475.

For the purposes of an enquiry under this section, the Civil *or Revenue* Court may, *subject to the provisions of section 443*, 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. 475.

479. Procedure of Civil Court in such cases. When any such commitment is made by a Civil *or Revenue* 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 authorized 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, 1872, s. [illegible], Act IV, 1877, s. [illegible].

480. Procedure in certain cases of contempt. 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 *Civil, Criminal or Revenue* 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

* Pollard's case, L. R. 2, P. C. 106.

exceeding two hundred rupees and, in default of payment, to *simple* imprisonment for a term which may extend to one month, unless such fine be sooner paid.

Act X, 1872, s. 435, paras. 2 and 3.

481. Record in such cases. 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.

Act X, 1872, s. 436, paras. 1 *and* 2. Act IV, 1877, s. 206.

482. Procedure where Court considers that case should not be dealt with under section 480. 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.

New. 13, Bengal App. 40.

483. Registrar to be deemed a Civil Court within section 480. A Registrar appointed under the Indian Registration Act, 1877, *and, when the Local Government so directs, a Sub-Registrar appointed under the same Act*, shall be deemed to be a Court within the meaning of sections 480 *and* 482.

Act X, 1872, s. 437. Act IV, 1877, s. 207.

484. Discharge of offender on submission or apology. When any Court has under section 480 adjudged an offender to punishment 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.

Act X, 1872, ss. 356, 364. Act X, 1875, s. 89. Act IV, 1877, s. 141.

485. Imprisonment or committal of person refusing to answer or produce document. 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, *for reasons to be recorded in writing*, 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, *or to produce the document*; after which, in the event of his persisting in his refusal, he may be dealt with according to the provisions of section 480 or 482, and in the case of a Court *established by Royal Charter* shall be deemed guilty of a contempt.

Omitting 'by warrant under his hand and seal.'

Act X, 1872, s. 268.

486. Appeals from convictions in contempt-cases. Any person convicted by any Court under section 480 or section 485 may, *notwithstanding anything hereinbefore contained*, appeal to the Court to which decrees or orders made in such Court are ordinarily appealable.

Sections 419, 420, 421, 426 and 428 shall apply to appeals under this section, and the Appellate Court may alter or reverse the finding or sentence appealed against.

An appeal from such conviction by a Court of Small Causes in a Presidency-town shall lie to the High Court, and

an appeal from such conviction by *any other* Court *of Small Causes shall lie* 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 *or Sub-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 *District Judge, or, in the Presidency-towns, to the High Court.*

Act X, 1872, s. 473. I. L. R., 1 Bom., 339, 1 All., 162, 625. 7 Mad., XVI. App. Pro. See I. L. R., 1 Mad., 305. I. L. R., 1 All., 625.

487. Judge or Magistrate not to try offences referred to in section *196* when committed before himself. Except as provided in sections 477, 480 and 485, no Judge *of a Criminal Court* 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 in contempt of his authority*, or *is* brought *to* his notice *as such Judge or Magistrate* in a judicial proceeding.

Nothing in section 476 or 482 shall prevent a Magistrate empowered to commit to the Court of Session or High Court from *himself* 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 XXXVI.

Of the Maintenance of Wives and Children.

Act X, 1872, s. 536. Act IV, 1877, s. 284.

488. Order for maintenance of wives and children. 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:

1 O'Kin. 89.

Enforcement of order. Proviso. 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.

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. 285.

489. Alteration in allowance. On proof of a change in the circumstances of any person receiving *under section 488 a monthly allowance*, or ordered under *the same* section to pay a monthly allowance *to* his wife or child, the Magistrate may make such alteration in the allowance as he thinks fit, provided the monthly rate of fifty rupees be not exceeded.

Act X, 1872, s. 538. Act IV, 1877, s. 286.

490. Enforcement of order of maintenance. 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.

CHAPTER XXXVII.

State-Prisoners.

Ben. Reg. III, 1818, s. 4. Mad. Reg. II, 1819, s. 2. Bom. Reg. XXV, 1827, preamble and section 1.

491. Procedure in placing persons under restraint as State-prisoners. 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, *hereinafter called the Government*, 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 *Government* and under the hand of one of *its* Secretaries, shall be issued to the officer in whose custody such person (hereinafter called a State-prisoner) is to be placed.

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. Form and effect of warrant. Such warrant shall authorize the detention of the State-prisoner therein mentioned in any fortress, jail or other place within British India.

Ben. Reg. III, 1818, s. 5. Mad. Reg. II, 1819, s. 5. Bom. Reg. XXV, 1827, s. 5, clause 2.

493. Representations made by State-prisoners to be submitted to Government. 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.

Ben. Reg. III, 1818, s. 6. Mad. Reg. II, 1819, s. 6. Bom. Reg. XXV, 1827, s. 5, clause 1.

494. Report to Government regarding nature of confinement, health and allowances of State-prisoners. 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.

Ben. Reg. III, 1818, s. 9. Mad. Reg. II, 1819, s. 9. Bom. Reg. XXV, 1827, s. 7.

495. Attachment of lands *in mufussal* by order of Government. Whenever the *Government* for any of the reasons mentioned in section 491, considers it necessary to attach, without any previous decision of a Court of justice or other judicial proceeding, the lands of any proprietor *which are situate outside the Presidency-towns, it* 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.

Ben. Reg. III, 1818, s. 10. Mad. Reg. II, 1819, s. 10. Bom. Reg. XXV, 1827, s. 8.

496. Lands attached to be placed under management. The lands so attached shall be held under the management of the Collector, and shall be administered in *such* manner as the Government *may direct.*

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 collections 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, Ch. 1, s. 1.

500. Nothing in this chapter applies to European British subjects.

Saving of European British subjects.

CHAPTER XXXVIII.

Directions of the Nature of a Habeas Corpus.

Act X, 1872, s. 82. Act X, 1875, s. 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 jail 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 XXXVII or under any enactment hereby repealed.

PART IX.

SUPPLEMENTARY PROVISIONS.

CHAPTER XXXIX.

Of the Public Prosecutor.

Act X, 18[illegible] ss. 57, 2[illegible]

502. The Governor General in Council or the Local Government may appoint *in any case or for any* class of cases in any local area *one or more* officers to be called Public Prosecutors.

Power to appoint public prosecutors.

Act X, 18[illegible] s. 203, [illegible] 2.

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 *below the rank of Assistant District Superintendent* to be Public Prosecutor *for the purposes of such case.*

Act X, 1[illegible] 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

Public Prosecutor may plead in all Courts in cases under his charge.

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.

Pleaders, privately instructed, to be under his direction.

Act X, 1872, s. 61.

504. The Public Prosecutor may, with the consent of the Court, in cases tried by jury before the return of the verdict, and in other cases before the judgment is pronounced, withdraw *from the prosecution of* any person, and upon such withdrawal,

Effect of withdrawal *from prosecution.*

(*a*) if it is made *before a charge has been framed,* the accused shall be discharged;

New.

(*b*) if it is made *after a charge has been framed, or when under this Code no charge is required,* he shall be acquitted.

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 *other than an officer of police below the rank of Assistant District Superintendent* to conduct the prosecution; but no person, other than the Advocate General, Standing Counsel, Government Solicitor, *Public Prosecutor or other officer generally or specially empowered by the Local Government in this behalf* 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 XL.

Of Bail.

Act X, 1872, ss. 126, para. 2, 194, para. 2, 204, para. 1, 388, 393. Act IV, 1877, ss. 70, 74. N.-W. P., 1874, p. 371.

506. When any person *other than a person accused of a non-bailable offence* is arrested or detained without warrant by *an officer in charge of a Police-station,* or appears or is brought before a Court, and is prepared at any time while in the custody of such *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, s. 126, para. 1, 194, para. 2. Act IV, 1877, s. 71.

507. When any person accused of any non-bailable offence is arrested or detained without warrant by *an officer in charge of a Police-station* or appears or is brought before a Court, *he may be released on bail, but* he shall not be *so* released if there appear reasonable grounds for believing that he has been guilty of the offence of which he is accused.

When bail *may* 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 *are* not reasonable grounds for believing that *the accused* has committed such offence, but that there *are* sufficient grounds for further inquiry into his guilt, the accused shall, pending such inquiry, be released on bail, *or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.*

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, ss. 390, 508. Act X, 1875, s. 136. I.L. R., 1 All., 151.

508. The *amount of every bond executed under this chapter shall be fixed with due regard to the circumstances of the case, and shall not be excessive; and the* High Court or Court of Session may in any case, whether there be an appeal on conviction or not, direct that any 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.

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 *person for whose appearance it has been executed* 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, fraud, *or otherwise,* insufficient sureties have been *accepted,* or if they afterwards become insufficient, the Court may issue a warrant of arrest directing that the person *released on bail* 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 *custody*.

CHAPTER XLI.

Of Commissions for the Examination of Witnesses.

Act X, 1872, s. 330, paras. 1 and 2. Act X, 1875, s. 76, para. 1. Act IV, 1877, s. 157. Act IV, 1877, s. 158.

513. Whenever, in the course of an inquiry, trial or other proceeding under this Code, it appears to a Presidency Magistrate, *a District 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.

When the witness resides in the dominions of any Prince or State in alliance with Her Majesty in which there is an officer representing the British Indian Government, the commission may be issued to such officer.

The Magistrate *or officer* to whom the commission is issued, or, if he is the District Magistrate, *he or* such Magistrate of the first class as he appoints in this behalf, shall proceed to the place where *the* witness is, or shall summon *the* witness before him, and shall take *down* 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, *para.* 1. 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. 330, para. 4. *Act XI, 1874, s. 35, para.* 2. Act X, 1875, s. 76, 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 *or officer* to whom the commission is directed shall examine the witness upon such interrogatories.

Parties may examine witness.

Such parties may appear before such Magistrate *or officer* 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 *an inquiry or* trial *or other proceeding under this Code* before any Magistrate other than a Presidency Magistrate *or District 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, *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 shall apply to the *District Magistrate*, stating the reasons for the application; and *the District Magistrate* may either issue a commission in the manner hereinbefore provided or reject the application.

Power of mufassal *Subordinate* Magistrate to apply for issue of commission.

As in sec. 513.

Act XI, 1874, s. 35, *last para.* 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, trial *or other proceeding* may be stayed for a specified time reasonably sufficient for the execution and return of the commission.

Stay of inquiry or trial.

CHAPTER XLII.

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, taken and attested by a Magistrate *in the presence of the accused*, 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, *para.* 1. 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.

Act XVIII, 1862, s. 39. 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. In any inquiry, trial or other proceeding under this Code a previous conviction or acquittal may be proved, *in addition to any other mode provided by any law for the time being in force*,—

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 *given in evidence against him* on *the inquiry into or* trial for the offence with which he is charged, *provided that* the attendance of the deponent cannot be procured.

Record of evidence in absence of accused.

CHAPTER XLIII.

Provisions as to Bonds.

Act X, 1872, ss. 396, 397, 398, *paras.* 1 & 2, 502, *paras.* 1 to [illegible] 7, 508, 514, Act X, 1872, Act IV, 1877, s. 160.

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, *paras.* 1 & 2, 502, *paras.* 1 to [illegible] 7, 508, 514, Act X, 1872, Act IV, 1877, s. 160.

525. Whenever it is proved *to the satisfaction of* the Court by which a bond under this Code has been taken, or *of* the Court of a Presidency Magistrate or Magistrate of the first class,

Procedure on forfeiture of bond.

or, when the bond is for appearance before a Court, to the satisfaction of such Court,

that such bond has been forfeited, *the* 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.

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 moveable 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 authorize the distress and sale of any moveable 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. 398, last para. 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.

CHAPTER XLIV.

Of the Disposal of Property.

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 Sept. 1877, p. 823.

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.

When an order is made under this section in a case in which an appeal lies, such order shall not be carried out until the period allowed for presenting such appeal has passed, or, when such appeal is presented within such period, until such appeal has been dismissed.

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.

529. *In lieu of itself passing an order* under section 528, *the Court may direct* the property *to be delivered* to the District Magistrate or to a Sub-divisional Magistrate, who shall in such cases deal with it as if *it* had been seized by the police, and the seizure had been reported to him in the manner hereinafter mentioned.

Act X, 1872, s. 420. Order may take form of reference to District *or Sub-divisional* Magistrate.

30 & 31 Vic., c. 35, s. 10. **530.** *When any person is convicted of any offence which includes, or amounts to, theft or receiving stolen property, and it is proved that any other person has bought the stolen property from him without knowing or having reason to believe that the same was stolen, and that any money has under this Code been taken out of the possession of the convicted person, the Court may, on the application of such purchaser and on the restitution of the stolen property to the person entitled to the possession thereof, order that out of such money a sum not exceeding the price paid by such purchaser be delivered to him.*

Payment to innocent purchaser of money found on prisoner.

Act X, 1872, s. 419. I. L. R., 3 Calc., 379. *'Court of appeal.'* **531.** Any Court of appeal, confirmation, reference or revision may direct any order *under section 528 or 529* 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 order *under section 528 or 529.*

Livingston, p. 480. **532.** 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. **533.** Whenever a person is convicted of *an offence attended by* 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, ss. 887, para. 2, 415. Act IV, 1877, s. 244. **534.** The seizure by any Police-officer of property *taken under section 51, or* 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 make such order as he thinks fit respecting the delivery of such property to *the person entitled to the possession thereof*, or if such *person* cannot be ascertained respecting the custody and production of such property.

Procedure by police upon seizure of property *taken under section 51* or stolen.

If the *person so entitled* is known, the Magistrate *may* order *the property* to be delivered to him on such condition (if any) as the Magistrate thinks fit. If *such person* 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.

Act X, 1872, s. 416. Procedure where owner of property seized unknown.

Act X, 1872, s. 417. Act IV, 1877, s. 244. **535.** 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.

Act X, 1872, s. 415, para. 2. **536.** If the *person entitled to the possession* of such property is unknown or absent, and *the* 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 534 and 535 shall, as nearly as may be, apply to the nett proceeds of such sale.

Power to sell perishable property.

CHAPTER XLV.

OF THE TRANSFER OF CRIMINAL CASES.

Act X, 1872, s. 64. Act X, 1875, s. 147. **537.** 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 178 to 185, 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 268, 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, *with or without sureties*, 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.

Nothing in this section shall be deemed to affect any order made under section 198.

Act X, 1872, s. 644A. (Act XI, 1874, s. 11.) **538.** 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, ss. 64, last portion, 407, para. 1. **539.** 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 XLVI.

OF IRREGULAR PROCEEDINGS.

Act X, 1872, ss. 32, 134, cl. (9). Nelson, p. 54. **540.** If any Magistrate *not* empowered by law to do any of the following things, namely:—

Irregularities which do not vitiate proceedings.

(*a*) to issue a search-warrant, under section 99;

(*b*) to order, under section 156, the police to investigate an offence;

(*c*) to hold an inquest under section 177;

(*d*) to issue process, under section 187, 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 tender a pardon under section 337 or section 338.*

(*h*) *to sell property under section 535 or section 536;*

(*i*) to withdraw a case and try it himself under section 539;

erroneously in good faith does that thing, his proceedings shall not be set aside merely on the ground of *his not being so empowered.*

Act X, 1872, ss. 34, excepting cl. (9). **541.** 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 349, on proceedings recorded by another Magistrate;

(*b*) takes cognizance under section 192, clause (*c*), of an offence;

(*c*) attaches and sells property under section 89;

(*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 134 as to a local nuisance;

(*n*) issues an order under section 145;

(*o*) prohibits under section 144 the repetition or continuance of a public nuisance;

(*p*) makes an order under Chapter XII; or

(*q*) makes an order for maintenance;

his proceedings shall be void.

Act X, 1872, s. 70. Act IV, 1877, s. 24. **542.** 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 such error *occasioned a failure of justice.*

Proceedings in wrong place.

Act X, 1872, s. 33. Act X, 1875, s. 35. **543.** 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

When irregular commitments may be validated.

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.

Act X, 1872, s. 346, last para.

544. If *any Court before which a confession or other statement of an accused person recorded under section 165 or 364 is tendered in evidence* finds that the provisions of *such* section have not been fully complied with by *the* Magistrate *recording the statement*, 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.

Non compliance with provisions of section 165 or 364.

Act X, 1872, s. 85.

545. An omission to ask any person whether he is an European British subject in a case to which the second clause of section 454 applies shall not affect the validity of any proceeding, *although it appears that he was aware of the rights claimable under this Code by him as such subject.*

Omission to ask question prescribed by section 454, clause 2.

Act X, 1872, s. 216, Explu. I.

546. 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, Explu. 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 283, Explu. 4 Calc 409.

547. 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 X, 1872, ss. 203, *para.* 3, 283, *para.* 1, 300, 464, *paras.* 6 and 7. (Act XI, 1874, s. 41,) 11 & 12 Vic. c. 43, s. 9. Act IV. 1877, ss. 117, 177. I. L. R., 1 All., 610. Act IV, 1877, ss. 81, 178. 1 Bom. 238.

548. Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered *under Chapter XXVII* *or* on appeal or revision on account—

Finding or sentence when reversible by reason of error or omission in charge or proceedings.

of any error, omission *or irregularity* in the complaint, summons or charge, *judgment* or *other* proceedings *before or* during trial, *or*

of the want of any sanction required by section 196, or

of any misdirection in any charge to a jury, unless such error, omission, *irregularity, want or* misdirection has occasioned a failure of justice.

Act IV, 1877, s. 185, para. 5.

549. 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.

Distress not illegal nor distrainer a trespasser for defect of form in proceedings.

CHAPTER XLVII.

MISCELLANEOUS.

Provide for succession abolished Court? See précis, paras. 617 & 618.

550. 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, 1875, s. 149.

551. 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, 184.

Power to summon material witness, or examine person present.

552. Unless when otherwise provided by any law for the time being in force, the Local Government may direct in what place any person liable to be imprisoned or committed to custody under this Code shall be confined.

Act X, 1872, s. 88.

Power to appoint place of imprisonment.

553. 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. 189.

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.

554. 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, 1872, s. 432.

Interpreter to be bound to interpret truthfully.

555. 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. 421. Act X. 1875, s. 116. Act IV, 1877, s. 345.

Expenses of complainants and witnesses.

556. Whenever under any law in force for the time being a Criminal Court 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 *when passing judgment* order the whole or any part of the fine *recovered* to be applied—

Act X, 1872, s. 308, *paras.* 1, 2 and 3. Act X 1875 s. 106. Act IV, 1877, s. 186.

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 *committed*, where substantial compensation *is*, in the opinion of the Court, recover*able* 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. 308, last para. Act. X, 1875, s. 106, last para. 22 Suth. W. R., Civil Rulings, 336.

557. At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid *or recovered* as compensation under section 556.

Payments to be taken into account in subsequent suit.

558. Any money (other than a fine) payable by virtue of any order made under this Code shall be recoverable as if it were a fine.

Moneys ordered to be paid recoverable as fines.

Act X, 1872, ss. 201, 276. Act XI, 1874, s. 25. *Act X, 1875, s. 13.* Act IV, 1877, s. 170.

559. 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.

Bon. Reg. XX, 1825.

560. When any person *is brought before a Magistrate and charged with an offence for which he is liable, under the Army Discipline and Regulation Act, 1879, section forty-one, to be tried by a Court-martial, such Magistrate* shall, unless the Governor General in Council otherwise *generally or specially* 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 *liable to be tried by Court-martial.*

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 person accused of *such* offence.

Apprehension of such persons.

Act X, 1872, s. 187.

561. Police-officers superior in rank to officers in charge of a Police-station may exercise the same powers, within the *local area for* 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. 552.

562. Upon complaint made to a Presidency Magistrate *or District 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.

Act IV, 1877, s. 342, omitting provision as to complaints, is also

563. 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 *shall be sentenced to simple imprisonment* for such term not exceeding thirty days as the Magistrate directs, unless such sum is sooner paid.

564. *With the previous sanction of the Governor General in Council, the High Court at Fort William, and with the previous sanction of the Local Government, any other High Court established by Royal Charter, may from time to time make rules for the inspection of the records of subordinate Courts.*

Act X, 1872, ss. 292, 293.

Power to make rules for inspection of records of subordinate Courts.

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 for other purposes.

(*a*) make rules for regulating its own practice and proceedings and the practice and proceedings of all Criminal Courts subordinate to it;

(*b*) 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

(*c*) frame forms for every proceeding in the said Courts for which it thinks that a form should be provided:

Provided that *the* rules and forms *made and framed under this section shall not* be 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.

565. Subject to the power conferred by section 564, 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.

See Act X, 1872, ss. 443, 493, para. 1, 509, para. 2; and Act IV, 1877, s. 97.

Forms.

566. The Local Government may determine what, for the purposes of this Code, shall be *deemed* to be the language of each Court within the territories administered by such Government, other than the High Courts established *by Royal Charter.*

Act X, 1872, s. 337.

Power to decide language of the Court.

567. 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.

568. The *provisions of* this Code shall *apply*, so far as may be, *to* all cases pending in any Criminal Court when this Code comes into force and *to* all miscellaneous criminal cases and proceedings instituted in any Court.

Act X, 1872, ss. 3, 539. Act IV, 1877, ss. 5, 237.

Pending cases and miscellaneous proceedings.

If any doubt arises as to the procedure to be followed in any case or class of cases under this section, the Court shall be guided by such rules consistent with this Code as the High Court may from time to time make in this behalf.

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.
Act V of 1861 ...	*Police Act*	*Sections 6 and 24.* *Section 35, down to and including the words "Provided that."* *Sections 37 to 40, both inclusive.*
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.

SCHEDULE I—*continued.*

ENACTMENTS REPEALED—(*continued*).

(*b*).—*Acts*, continued.

Number and year.	Subject.	Extent of repeal.
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 *Act except section 57.*
XXI of 1879 ...	*Extradition*	*Chapter III.*

(*c*).—*Regulations.*

Number and Year.	Subject.	Extent of repeal.
Bengal Regulation III of 1818.	State-Prisoners	So much as has 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 seventh 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 *Whether compoundable or not.*	7 Punishment under the Indian Penal Code.	8 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.	*According as the offence abetted is compoundable 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	Ditto.

	When one act is abetted and a different act is done, subject to the proviso.	Ditto	...	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	...	*Ditto*	...	The same punishment as for the offence committed.	Ditto.
113	If abettor is present when offence is committed.	Ditto	...	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	...	*Ditto*	...	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	...	*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.		*Ditto*	...	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	...	*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—(*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 *Whether compoundable or not.*	7 Punishment under the Indian Penal Code.	8 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.	*According as the offence abetted is compoundable 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 ...	*Ditto* ...	Imprisonment of either description for 7 years and fine.	Ditto.
	If the offence be not committed ..	Ditto ...	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.	*Ditto* ...	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 ...	*Ditto* ...	Imprisonment of either description for 10 years.	
	If the offence be not committed ...	Ditto ...	Ditto ...	According as the offence abetted is bailable or not.	*Ditto* ...	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	Ditto.
	If not committed	Ditto ...	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 ...	*Not compoundable.*	Death, or transportation for life, and forfeiture of property.	Court of Session.
121A	Conspiring to commit certain offences against the State.	Ditto ...	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 ...	*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 ...	*Ditto* ...	Imprisonment of either description for 10 years and 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 *Whether compoundable or not.*	Punishm nt under the Indian Penal e Code.	8 By what Court triable.
124	Assaulting Governor General, Governor, &c., with intent to compel or restrain the exercise of any lawful power.	Shall not arrest without warrant.	Warrant ...	Not bailable ...	*Not compoundable.*	Imprisonment of either description for 7 years and fine.	Court of Session.
124A	Exciting, or attempting to excite, disaffection.	Ditto ...	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 ...	*Ditto* ...	Transportation for life and fine, or imprisonment of either description for 7 years and fine, or fine.	Ditto.
126	Committing depredation on the territories of any Power in alliance or at peace with the Queen.	Ditto ...	Ditto ...	Ditto ...	*Ditto* ...	Imprisonment of either description for 7 years and fine, and forfeiture of certain property.	Ditto.
127	Receiving property taken by war or depredation mentioned in sections 125 and 126.	Ditto ...	Ditto ...	Ditto ...	*Ditto* ...	Ditto	Ditto.
128	Public servant voluntarily allowing prisoner of State or War in his custody to escape.	Ditto ...	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 ...	*Ditto* ...	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 ...	*Ditto* ...	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 ...	*Not compoundable.*	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 ...	*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 ...	*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 ...	*Ditto* ...	Imprisonment of either description for 7 years and fine.	Court of Session.

SCHEDULE II—*continued.*

CHAPTER VII.—OFFENCES RELATING TO THE ARMY AND NAVY—(*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 *Whether compoundable or not.*	7 Punishment under the Indian Penal Code.	8 By what Court triable.
135	Abetment of the desertion of an officer, soldier or sailor.	May arrest without warrant.	Warrant ...	Bailable ...	*Not compoundable.*	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	Ditto.
137	Deserter concealed on board merchant-vessel, through negligence of master or person in charge thereof.	Shall not arrest without warrant.	Summons ...	Ditto ...	*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 ...	*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 ...	*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 ...	*Not compoundable.*	Imprisonment of either description for 6 months, or fine, or both.	Any Magistrate.
144	Joining an unlawful assembly armed with any deadly weapon.	Ditto ...	Warrant ...	Ditto ...	*Ditto* ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
145	Joining or continuing in an unlawful assembly, knowing that it has been commanded to disperse.	Ditto ...	Ditto ...	Ditto ...	*Ditto* ...	Ditto	Ditto.
147	Rioting.	Ditto ...	Ditto ...	Ditto ...	*Ditto* ...	Ditto	Ditto.
148	Rioting armed with a deadly weapon.	Ditto ...	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.	*Ditto* ...	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 ...	*Ditto* ...	The same as for a member of such assembly, and for any offence committed by any member of such assembly.	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 *Whether compoundable or not.*	7 Punishment under the Indian Penal Code.	8 By what Court triable.
151	Knowingly joining or continuing in any assembly of five or more persons after it has been commanded to disperse.	May arrest without warrant.	Summons ...	Bailable ...	*Not compoundable.*	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 ...	*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 ...	*Ditto* ...	Imprisonment of either description for 1 year, or fine, or both.	Any Magistrate.
	If not committed	Ditto ...	Summons ...	Ditto ...	*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 ...	*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 ...	*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	Ditto.
157	Harbouring persons hired for an unlawful assembly.	May arrest without warrant.	Ditto ...	Ditto ...	*Ditto* ...	Imprisonment of either description for 6 months, or fine, or both.	Ditto.
158	Being hired to take part in an unlawful assembly or riot.	Ditto ...	Ditto ...	Ditto ...	*Ditto* ...	Ditto	Ditto.
	Or to go armed	Ditto ...	Warrant ...	Ditto ...	*Ditto* ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
160	Committing affray	Shall not arrest without warrant.	Summons ...	Ditto ...	*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 ...	*Not compoundable.*	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.

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 *Whether compoundable or not.*	7 Punishment under the Indian Penal Code.	8 By what Court triable.
162	Taking a gratification in order by corrupt or illegal means to influence a public servant.	Shall not arrest without warrant.	Summons ...	Bailable ...	*Not compoundable.*	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
163	Taking a gratification for the exercise of personal influence with a public servant.	Ditto ...	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 ...	*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 ...	*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 ...	*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 ...	*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 ...	*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 ...	*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 ...	*Ditto* ...	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.
171	Wearing garb or carrying token used by public servant with fraudulent intent.	Ditto ...	Summons ...	Ditto ...	*Ditto* ...	Imprisonment of either description for 3 months, or fine of 200 rupees, or both.	Ditto.

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 ...	*Not compoundable.*	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 ...	*Ditto* ...	Simple 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—(*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 *Whether compoundable or not.*	7 Punishment under the Indian Penal Code.	8 By what Court triable.
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.	Shall not arrest without warrant.	Summons ...	Bailable ...	*Not compoundable.*	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 ...	*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 ...	*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 ...	*Ditto* ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
	Intentionally omitting to produce a document to a public servant by a person legally bound to produce or deliver such document.	Ditto ...	**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 XXXV, 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 ...	*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 ...	*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 ...	*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	Ditto.
	If the information required respects the commission of an offence, &c.	Ditto ...	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 *Whether compoundable or not.*	7 Punishment under the Indian Penal Code.	8 By what Court triable.
178	Refusing oath when duly required to take oath by a public servant.	Shall not arrest without warrant.	Summons ...	Bailable ...	*Not compoundable.*	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 XXXV 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	Ditto.
180	Refusing to sign a statement made to a public servant when legally required to do so.	Ditto ...	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 ...	*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 ...	*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	Ditto.
184	Obstructing sale of property offered for sale by authority of a public servant.	Ditto ...	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 ...	*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 ...	*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 ...	*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 ...	*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 ...	*Ditto* ...	Simple imprisonment for 1 month, or fine of 200 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 *Whether compoundable or not.*	7 Punishment under the Indian Penal Code.	8 By what Court triable.
	If such disobedience causes danger to human life, health or safety, &c.	Shall not arrest without warrant.	Summons ...	Bailable ...	*Not compoundable.*	Imprisonment for 6 months, or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
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.	Ditto ...	Ditto ...	Ditto ...	*Ditto* ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
190	Threatening any person to induce him to refrain from making a legal application for protection from injury.	Ditto ...	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 ...	*Not compoundable.*	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 ...	*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 ...	*Ditto* ...	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 ...	*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 ...	*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.	*Ditto* ...	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 ...	*Ditto* ...	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	Ditto.
199	False statement made in any declaration which is by law received as evidence.	Ditto ...	Ditto ...	Ditto ...	*Ditto* ...	Ditto	Ditto.
200	Using as true any such declaration known to be false.	Ditto ...	Ditto ...	Ditto ...	*Ditto* ...	Ditto	Ditto.

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 *Whether compoundable or not.*	7 Punishment under the Indian Penal Code.	8 By what Court triable.
201	Causing disappearance of evidence of an offence committed, or giving false information touching it to screen the offender, if a capital offence.	Shall not arrest without warrant.	Warrant ...	Bailable ...	*Not compoundable.*	Imprisonment of either description for 7 years and fine.	Court of Session.
	If punishable with transportation or imprisonment for ten years.	Ditto ...	Ditto ...	Ditto ...	*Ditto* ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If punishable with less than 10 years' imprisonment.	Ditto ...	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.
202	Intentional omission to give information of an offence by a person legally bound to inform.	Ditto ...	Summons ...	Ditto ...	*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 ...	*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* ...	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 ...	*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 ...	*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	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* ...	Ditto	Presidency Magistrate or Magistrate of the first class.
209	False claim in a Court of Justice...	Ditto ...	Ditto ...	Ditto ...	*Ditto* ...	Imprisonment of either description for 2 years and fine.	Ditto.

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 *Whether compoundable or not.*	7 Punishment under the Indian Penal Code.	8 By what Court triable.
210	Fradulently obtaining a decree for a sum not due, or causing a decree to be executed after it has been satisfied.	Shall not arrest without warrant.	Warrant ...	Bailable ...	*Not compoundable.*	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
211	False charge of offence made with intent to injure.	Ditto ...	Ditto ...	Ditto ...	*Ditto* ...	Ditto	Ditto.
	If offence charged be capital, or punishable with transportation for life, or imprisonment for *a term exceeding* 7 years.	Ditto ...	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 ...	*Ditto* ...	Imprisonment of either description for 5 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 ...	*Ditto* ...	Imprisonment of either descriptionfor 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 ...	*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 ...	*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 ...	*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 ...	*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 ...	*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 ...	*Ditto* ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presiency 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 *Whether compoundable or not.*	7 Punishment under the Indian Penal Code.	8 By what Court triable.
	If with imprisonment for less than 10 years.	**Shall not arrest without warrant.**	**Warrant ...**	**Bailable ...**	*Not compoundable.*	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 moveable property of which a person has been deprived by an offence, without causing apprehension of offender.**	**Ditto ...**	**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 ...**	*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 ...**	*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 ...**	*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.
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 ...**	**Ditto ...**	*Ditto ...*	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 ...**	*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 ...**	*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.
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 ...**	*Ditto ...*	Imprisonment of either description for 7 years, with or without fine.	Ditto.

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 *Whether compoundable or not.*	7 Punishment under the Indian Penal Code.	8 By what Court triable.
	If punishable with transportation for life, or imprisonment for 10 years.	Shall not arrest without warrant.	Warrant ...	Bailable ...	*Not compoundable.*	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 ...	*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 ...	*Ditto* ...	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 ...	*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 ...	*Ditto* ...	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 ...	*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 ...	*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	Ditto.
	If charged with an offence punishable with transportation for life, or imprisonment for 10 years.	Ditto ...	Ditto ...	Not bailable ...	*Ditto* ...	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 ...	*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 ...	*Dito* ...	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 *Whether compoundable or not.*	7 Punishment under the Indian Penal Code.	8 By what Court triable.
	If under sentence of death ...	May arrest without warrant.	Warrant ...	Not bailable ...	*Not compoundable.*	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.
225A	Escape, or attempt to escape, from custody for failing to furnish security for good behaviour.	Ditto ...	Ditto ...	Bailable ...	*Ditto* ...	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 ...	*Ditto* ...	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 ...	*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 ...	*Ditto* ...	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 XXXV of this Code.
229	Personation of a juror or assessor...	Ditto ...	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 ...	*Not compoundable.*	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 ...	*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 ...	*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 ...	*Ditto* ...	Imprisonment of either description for 7 years and fine	Court of Session.
235	Possession of instrument or material for the purpose of using the same for counterfeiting coin.	Ditto ...	Ditto ...	Ditto ...	*Ditto* ...	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 ...	*Ditto* ...	Imprisonment of either description for 10 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 Whether compoundable or not.	7 Punishment under the Indian Penal Code.	8 By what Court triable.
236	Abetting in India the counterfeiting out of British India of coin.	May arrest without warrant.	Warrant ...	Not bailable ...	*Not compoundable.*	The punishment provided for abetting the counterfeiting of such coin within British India.	Court of Session.
237	Import or export of counterfeit *coin, knowing the same to be* counterfeit.	Ditto ...	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 ...	*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 ...	*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 ...	*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 ...	*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 ...	*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 ...	*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* ...	Ditto	Court of Session.
245	Unlawfully taking from a Mint any coining instrument.	Ditto ...	Ditto ...	Ditto ...	*Ditto* ...	Ditto	Ditto.
246	Fraudulently diminishing the weight or altering the composition of any coin.	Ditto ...	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 weignt or altering the composition of the Queen's coin.	Ditto ...	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 ...	*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 *Whether compoundable or not.*	7 Punishment under the Indian Penal Code.	8 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 ...	*Not compoundable.*	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 ...	*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 ...	*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 ...	*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 ...	*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 ...	*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 ...	*Ditto* ...	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 ...	*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	Ditto.
258	Sale of counterfeit Government stamp.	Ditto ...	Ditto ...	Ditto ...	*Ditto* ...	Ditto	Ditto.
259	Having possession of a counterfeit Government stamp.	Ditto ...	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 ...	*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 ...	*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 ...	*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 ...	*Ditto* ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.

SCHEDULE II—*continued.*

CHAPTER XIII.—OFFENCES RELATING TO WEIGHTS AND MEASURES.

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 *Whether compoundable or not.*	7 Punishment under the Indian Penal Code.	8 By what Court triable.
264	Fraudulent use of false instrument for weighing.	Shall not arrest without warrant.	Summons ...	Bailable ...	*Not compoundable.*	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
265	Fraudulent use of false weight or measure.	Ditto	Ditto ...	Ditto ...	*Ditto* ...	Ditto	Ditto.
266	Being in possession of false weights or measures for fraudulent use.	Ditto ...	Ditto ...	Ditto ...	*Ditto* ...	Ditto	Ditto.
267	Making or selling false weights or measures for fraudulent use.	Ditto ...	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 ...	*Not compoundable.*	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 ...	*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 ...	*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 ...	*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	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	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	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	Ditto.
277	Defiling the water of a public spring or reservoir.	May arrest without warrant.	Ditto ...	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 ...	*Ditto* ...	Fine of 500 rupees ...	Ditto.

SCHEDULE II—*continued.*

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS—(*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 *Whether compoundable or not.*	7 Punishment under the Indian Penal Code.	8 By what Court triable.
279	Driving or riding on a public way so rashly or negligently as to endanger human life, &c.	May arrest without warrant.	Summons ...	Bailable ...	*Not compoundable.*	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Any Magistrate.
280	Navigating any vessel so rashly or negligently as to endanger human life, &c.	Ditto ...	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 ...	*Ditto* ...	Imprisonment of either description for 7 years, or fine, or both.	Court of Session.
282	Conveying for hire any person by water, in a vessel in such a state, or so loaded, as to endanger his life.	Ditto ...	Summons ...	Ditto ...	*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.
283	Causing danger, obstruction or injury in any public way or line of navigation.	Ditto ...	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 ...	*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* ...	Ditto	Any Magistrate.
286	So dealing with any explosive substance.	Ditto ...	Ditto ...	Ditto ...	*Ditto* ...	Ditto	Ditto.
287	So dealing with any machinery.	Shall not arrest without warrant.	Ditto ...	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	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* ...	Ditto	Any Magistrate.
290	Committing a public nuisance ...	Shall not arrest without warrant.	Ditto ...	Ditto ...	*Ditto* ...	Fine of 200 rupees ...	Ditto.
291	Continuance of nuisance after injunction to discontinue.	May arrest without warrant.	Ditto ...	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 ...	*Ditto* ...	Imprisonment of either description for 3 months, or fine, or both.	Ditto.

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 *Whether compoundable or not.*	7 Punishment under the Indian Penal Code.	8 By what Court triable.
293	Having in possession obscene book, &c., for sale or exhibition.	May arrest without warrant.	Warrant ...	Bailable ...	*Not compoundable.*	Imprisonment of either description for 3 months, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
294	Obscene songs	Ditto ...	Ditto ...	Ditto ...	*Ditto* ...	Ditto	Ditto.
295A	*Keeping a lottery-office* ...	Shall not arrest without warrant.	Summons ...	Ditto ...	*Ditto* ...	Imprisonment of either description for 6 months, or fine, or both.	Any Magistrate.
	Publishing proposals relating to lotteries.	Ditto ...	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 ...	*Not compoundable.*	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
296	Causing a disturbance to an assembly engaged in religious worship.	Ditto ...	Ditto ...	Ditto ...	*Ditto* ...	Imprisonment of either description for 1 year, or fine, or both.	Ditto.
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	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	Ditto.

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.

Offences affecting Life.

302	Murder	May arrest without warrant.	Warrant ...	Not bailable ...	*Not compoundable.*	Death, transportation for life and fine.	Court of Session.
303	Murder by a person under sentence of transportation for life.	Ditto ...	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 ...	*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 ...	*Ditto* ...	Imprisonment of either description for 10 years, or fine, or both.	Ditto.
304A	Causing death by rash or negligent act.	Ditto ...	Ditto ...	Bailable ...	*Ditto* ...	Imprisonment of either description for two years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.

SCHEDULE II—*continued.*

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—(*continued*).

Offences against Life—(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 *Whether compoundable or not.*	7 Punishment under the Indian Penal Code.	8 By what Court triable.
305	Abetment of suicide committed by a child, or insane or delirious person, or an idiot, or a person intoxicated.	May arrest without warrant.	Warrant ...	Not bailable ...	*Not compoundable.*	Death, or transportation for life, or imprisonment for 10 years and fine.	Court of Session.
306	Abetting the commission of suicide.	Ditto ...	Ditto ...	Ditto ...	*Ditto* ...	Imprisonment of either description for 10 years and fine.	Ditto.
307	Attempt to murder ...	Ditto ...	Ditto ...	Ditto ...	*Ditto* ...	Ditto ...	Ditto.
	If such act cause hurt to any person.	Ditto ...	Ditto ...	Ditto ...	*Ditto* ...	Transportation for life, or as above.	Ditto.
308	Attempt to commit culpable homicide.	Ditto ...	Ditto ...	Bailable ...	*Ditto* ...	Imprisonment of either description for 3 years, or fine, or both.	Ditto.
	If such act cause hurt to any person.	Ditto ...	Ditto ...	Ditto ...	*Ditto* ...	Imprisonment of either description for 7 years, or fine, or both.	Ditto.
309	Attempt to commit suicide ...	Ditto ...	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 ...	*Ditto* ...	Transportation for life and fine.	Court of Session.

Of the Causing of Miscarriage; of Injuries to Unborn Children; of the Exposure of Infants; and of the Concealment of Births.

312	Causing miscarriage	Shall not arrest without warrant.	Warrant ...	Bailable ...	*Not compoundable.*	Imprisonment of either description for 3 years, or fine, or both.	Court of Session.
	If the woman be quick with child	Ditto ...	Ditto ...	Ditto ...	*Ditto* ...	Imprisonment of either description for 7 years and fine.	Ditto.
313	Causing miscarriage without woman's consent.	Ditto ...	Ditto ...	Not bailable ...	*Ditto* ...	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 ...	*Ditto* ...	Imprisonment of either description for 10 years and fine.	Ditto.
	If act done without woman's consent.	Ditto ...	Ditto ...	Ditto ...	*Ditto* ...	Transportation for life, or as above.	Ditto.
315	Act done with intent to prevent a child being born alive, or to cause it to die after its birth.	Ditto ...	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 ...	*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 ...	*Ditto* ...	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 ...	*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.

SCHEDULE II—*continued.*

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—(*continued*).

Of Hurt.

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 *Whether compoundable or not.*	7 Punishment under the Indian Penal Code.	8 By what Court triable.
323	Voluntarily causing hurt.	*Shall not* arrest without warrant.	Summons ...	Bailable ...	*Compoundable*	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.	May arrest without warrant.	Ditto ...	Ditto ...	*Compoundable when permission is given by the Court before which a prosecution is pending.*	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 ...	*Not compoundable.*	Imprisonment of either description for 7 years and fine.	Ditto.
326	Voluntarily causing grievous hurt by dangerous weapons or means.	Ditto ...	Ditto ...	Not bailable ...	*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.
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 ...	*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	Ditto.
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.	Ditto ...	Ditto ...	Ditto ...	*Ditto* ...	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 ...	*Ditto* ...	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 ...	*Ditto* ...	Imprisonment of either description for 10 years and fine.	Ditto.
332	Voluntarily causing hurt to deter public servant from his duty.	Ditto ...	Ditto ...	Bailable ...	*Ditto* ...	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 ...	*Ditto* ...	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.	*Shall not arrest without warrant.*	Summons ...	Bailable ...	*Compoundable*	Imprisonment of either description for 1 month, or fine of 500 rupees, or both.	Any Magistrate.

SCHEDULE II—*continued.*

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—(*continued*).

Of Hurt—(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 *Whether compoundable or not.*	7 Punishment under the Indian Penal Code.	By what Court triable.
335	Causing grievous hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.	May arrest without warrant.	Summons ...	Bailable ...	*Compoundable when permission is given by the Court before which a prosecution is pending.*	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 ...	*Not compoundable.*	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 ...	*Compoundable.*	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 ...	*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 ...	*Compoundable.*	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
342	Wrongfully confining any person.	Ditto ...	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 ...	*Not compoundable.*	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
344	Wrongfully confining for ten or more days.	Ditto ...	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.
345	Keeping any person in wrongful confinement, knowing that a writ has been issued for his liberation.	Shall not arrest without warrant.	Ditto ...	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	Ditto.
347	Wrongful confinement for the purpose of extorting property, or constraining to an illegal act, &c.	Ditto ...	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 st oration of property, &c.	Ditto ...	Ditto ...	Ditto ...	*Ditto* ...	Ditto	Court of Session, Presidency Magistrate or Magistrate of the first class.

SCHEDULE II—*continued.*

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—(*continued*).

Of Criminal Force and Assault.

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 *Whether compoundable or not.*	7 Punishment under the Indian Penal Code.	8 By what Court triable.
352	Assault or use of criminal force otherwise than on grave provocation.	Shall not arrest without warrant.	Summons ...	Bailable ...	*Compoundable.*	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 ...	*Not compoundable.*	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	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	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* ...	Ditto	Any Magistrate.
357	Assault or use of criminal force in attempt wrongfully to confine a person.	Ditto ...	Ditto ...	Bailable ...	*Ditto* ...	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Ditto.

	Assault or use of criminal force on grave and sudden provocation.	Shall not arrest without warrant.	Summons ...	Ditto ...	*Compoundable.*	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 ...	*Not compoundable.*	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
364	Kidnapping or abducting in order to murder.	Ditto ...	Ditto ...	Ditto ...	*Ditto* ...	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 ...	*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 ...	*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	Ditto.
368	Concealing or keeping in confinement a kidnapped person.	Ditto ...	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 ...	*Ditto* ...	Imprisonment of either description for 7 years and fine.	Ditto.

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 *Whether compoundable or not.*	7 Punishment under the Indian Penal Code.	8 By what Court triable.
370	Buying or disposing of any person as a slave.	Shall not arrest without warrant.	Warrant ...	Bailable ...	*Not compoundable.*	Imprisonment of either description for 7 years and fine.	Court of Session.
371	Habitual dealing in slaves ...	May arrest without warrant.	Ditto ...	Not bailable ...	*Ditto* ...	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 ...	*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	Ditto.
374	Unlawful compulsory labour ...	Ditto ...	Ditto ...	Bailable ...	*Compoundable.*	Imprisonment of either description for 1 year, or fine, or both.	Any Magistrate.
	Of Rape.						
376	Rape	May arrest without warrant.	Warrant ...	Not bailable ...	*Not compoundable.*	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 ...	*Not compoundable.*	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 ...	*Not compoundable.*	Imprisonment of either description for 3 years, or fine, or both.	Any Magistrate.
380	Theft in a building, tent or vessel.	Ditto ...	Ditto ...	Ditto ...	*Ditto* ...	Imprisonment of either description for 7 years and fine.	Ditto.
381	Theft by clerk or servant of property in possession of master or employer.	Ditto ...	Ditto ...	Ditto ...	*Ditto* ...	Ditto	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 ...	*Ditto* ...	Rigorous imprisonment for 10 years and fine.	Court of Session.

SCHEDULE II—*continued.*

CHAPTER XVII.—OF OFFENCES AGAINST PROPERTY—(*continued*).

Of Extortion.

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 *Whether compoundable or not.*	7 Punishment under the Indian Penal Code.	8 By what Court triable.
384	Extortion	Shall not arrest without warrant.	Warrant ...	Bailable ...	*Not compoundable.*	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 ...	*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 ...	*Ditto* ...	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 ...	*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 ...	*Ditto* ...	Imprisonment of either description for 10 years and fine.	Ditto.
	If the offence threatened be an unnatural offence.	Ditto ...	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 ...	*Ditto* ...	Imprisonment of either description for 10 years and fine.	Ditto.
	If the offence be an unnatural offence	Ditto ...	Ditto ...	Ditto ...	*Ditto* ...	Transportation for life ...	Ditto.

Of Robbery and Dacoity.

392	Robbery	May arrest without warrant.	Warrant ...	Not bailable ...	*Not compoundable.*	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 ...	*Ditto* ...	Rigorous imprisonment for 14 years and fine.	Ditto.
393	Attempt to commit robbery ...	Ditto ...	Ditto ...	Ditto ...	*Ditto* ...	Rigorous imprisonment for 7 years and fine.	Ditto.
394	Person voluntarily causing hurt in committing or attempting to commit robbery, or any other person generally concerned in such robbery.	Ditto ...	Ditto ...	Ditto ...	*Ditto* ...	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* ...	Ditto	Court of Session.
396	Murder in dacoity	Ditto ...	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 ...	*Ditto* ...	Rigorous imprisonment for not less than 7 years.	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 *Whether compoundable or not.*	7 Punishment under the Indian Penal Code.	8 By what Court triable.
398	Attempt to commit robbery or dacoity when armed with deadly weapon.	May arrest without warrant.	Warrant ...	Not bailable ...	*Not compoundable.*	Rigorous imprisonment for not less than 7 years.	Court of Session.
399	Making preparation to commit dacoity.	Ditto ...	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 ...	*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 ...	*Ditto* ...	Rigorous imprisonment for 7 years and fine.	Ditto.
402	Being one of five or more persons assembled for the purpose of committing dacoity.	Ditto ...	Ditto ...	Ditto ...	*Ditto* ...	Ditto	Ditto.

Of Criminal Misappropriation of Property.

403	Dishonest misappropriation of moveable property, or converting it to one's own use.	Shall not arrest without warrant.	Warrant ...	Bailable ...	*Not compoundable.*	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 ...	*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 ...	*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 ...	*Not compoundable.*	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 ...	*Ditto* ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
408	Criminal breach of trust by a clerk or servant.	Ditto ...	Ditto ...	Ditto ...	*Ditto* ...	Ditto	Court of Session, Presidency Magistrate or Magistrate of the first or second 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 *Whether compoundable or not.*	7 Punishment under the Indian Penal Code.	8 By what Court triable.
409	Criminal breach of trust by public servant or by banker, merchant or agent, &c.	Shall not arrest without warrant.	Warrant ...	Not bailable ...	*Not compoundable.*	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 ...	*Not compoundable.*	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 ...	*Ditto* ...	Transportation for life, or rigorous imprisonment for 10 years and fine.	Court of Session.
413	Habitually dealing in stolen property.	Ditto ...	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 ...	*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 ...	*Compoundable when permission is given by the Court before which a prosecution is pending.*	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 ...	*Not compoundable.*	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	Ditto.
420	Cheating and thereby dishonestly inducing delivery of property, or the alteration or destruction of a valuable security.	Ditto ...	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 *Whether compoundable or not.*	7 Punishment under the Indian Penal Code.	8 By what Court triable.
421	Fraudulent removal or concealment of property, &c., to prevent distribution among creditors.	Shall not arrest without warrant.	Warrant ...	Bailable ...	*Not compoundable.*	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	Ditto.
423	Fraudulent execution of deed of transfer containing a false statement of consideration.	Ditto ...	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	Ditto.
	Of Mischief.						
426	Mischief	Shall not arrest without warrant.	Summons ...	Bailable ...	*Compoundable when the only loss or damage caused is loss or damage to a private person.*	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 ...	*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 ...	*Not compoundable.*	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 ...	*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	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	Ditto.
432	Mischief by causing inundation or obstruction to public drainage attended with damage.	Ditto ...	Ditto ...	Ditto ...	*Ditto* ...	Ditto	Ditto.
433	Mischief by destroying or moving or rendering less useful a lighthouse or seamark, or by exhibiting false lights.	Ditto ...	Ditto ...	Ditto ...	*Ditto* ...	Imprisonment of either description for 7 years, or fine, or both.	Court of Session.

* See Act XI of 1874, section 46.

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 *Whether compoundable or not.*	7 Punishment under the Indian Penal Code.	8 By what Court triable.
434	Mischief by destroying or moving, &c., a landmark fixed by public authority.	Shall not arrest without warrant.	Warrant ...	Bailable ...	*Not compoundable.*	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 *or, in case of agricultural produce, 10 rupees or upwards.*	May arrest without warrant.	Ditto ...	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 ...	*Ditto* ...	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 ...	*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 ...	*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 ...	*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 ...	*Ditto* ...	Imprisonment of either description for 5 years and fine.	Ditto.

Of Criminal Trespass.

447	Criminal trespass	May arrest without warrant.	Summons ...	Bailable ...	*Compoundable.*	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.
448	House-trespass	Ditto ...	Warrant ...	Ditto ...	*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 ...	*Not compoundable.*	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 ...	*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 ...	*Ditto* ...	Imprisonment of either description for 2 years and fine.	Any Magistrate.
	If the offence is theft ...	Ditto ...	Ditto ...	Not bailable ...	*Ditto* ...	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	Ditto.

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 *Whether compoundable or not.*	7 Punishment under the Indian Penal Code.	8 By what Court triable.
453	Lurking house-trespass or house-breaking.	May arrest without warrant.	Warrant ...	Not bailable ...	*Not compoundable.*	Imprisonment of either description for 2 years and fine.	Presidency Magistrate or Magistrate of the first or second class.
454	Lurking house-trespass or house-breaking in order to the commission of an offence punishable with imprisonment.	Ditto ...	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 the offence is theft ...	Ditto ...	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* ..	Ditto	Court of Session, Presidency Magistrate or Magistrate of the first class.
456	Lurking house-trespass or house-breaking by night.	Ditto ...	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-trespass or house-breaking by night in order to the commission of an offence punishable with imprisonment.	Ditto ...	Ditto ...	Ditto ...	*Ditto* ...	Imprisonment of either description for 5 years and fine.	Ditto.
	If the offence is theft ...	Ditto ...	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* ...	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 ...	*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	Ditto.
461	Dishonestly breaking open or unfastening any closed receptacle containing or supposed to contain property.	Ditto ...	Ditto ...	Bailable ...	*Ditto* ...	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 ...	*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.

SCHEDULE II—*continued.*

CHAPTER XVIII.—OF OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY-MARKS.

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 *Whether compoundable or not.*	7 Punishment under the Indian Penal Code.	8 By what Court triable.
465	Forgery	Shall not arrest without warrant.	Warrant ...	Bailable ...	*Not compoundable.*	Imprisonment of either description for 2 years, or fine, or both.	Court of Session.
466	Forgery of a record of a Court of Justice or of a Register of births, &c., kept by a public servant.	Ditto ...	Ditto ...	Not bailable ...	*Ditto* ...	Imprisonment of either description for 7 years and fine.	Ditto.
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 ...	*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 ...	Ditto.
468	Forgery for the purpose of cheating.	Shall not arrest without warrant.	Ditto ...	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 ...	*Ditto* ...	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 ...	*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 ...	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 ...	*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 ...	*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	Ditto.
	If the document is a valuable security or will.	Ditto ...	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	Ditto.

SCHEDULE II—*continued.*

CHAPTER XVIII.—OF OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR 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 *Whether compoundable or not.*	7 Punishment under the Indian Penal Code.	8 By what Court triable.
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.	Shall not arrest without warrant.	Warrant ...	Not bailable ...	*Not compoundable.*	Imprisonment of either description for 7 years and fine.	Court of Session.
477	Fraudulently destroying or defacing, or attempting to destroy or deface, or secreting, a will, &c.	Ditto ...	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 ...	*Not compoundable.*	Imprisonment of either description for one year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
483	Counterfeiting a trade or property-mark used by another, with intent to cause damage or injury.	Ditto ...	Ditto ...	Ditto ...	*Ditto* ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
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 ...	*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 ...	*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 ...	*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 ...	*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	Ditto.
489	Removing, destroying or defacing any property-mark with intent to cause injury.	Ditto ...	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 XIX.—OF THE CRIMINAL BREACH OF CONTRACTS OF SERVICE.

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 *Whether compoundable or not.*	7 Punishment under the Indian Penal Code.	8 By what Court triable.
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 ...	*Compoundable.*	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 ...	*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 ...	*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 ...	*Not compoundable.*	Imprisonment of either description for 10 years and fine.	Court of Session.
494	Marrying again during the lifetime of a husband or wife.	Shall not arrest without warrant.	Warrant ...	Bailable ...	*Ditto* ...	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 subsequent marriage is contracted.	Ditto ...	Ditto ...	Not bailable ...	*Ditto* ...	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 ...	*Ditto* ...	Imprisonment of either description for 7 years and fine.	Ditto.
497	Adultery ...	Ditto ...	Ditto ...	Bailable ...	*Compoundable.*	Imprisonment of either description for 5 years, or fine, or both.	*Presidency Magistrate or Magistrate of the first class.*
498	Enticing or taking away or detaining with a criminal intent a married woman.	Ditto ...	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 ...	*Compoundable.*	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	Ditto.

SCHEDULE II—*continued.*

CHAPTER XXI.—OF DEFAMATION—(*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 *Whether compoundable or not.*	7 Punishment under the Indian Penal Code.	8 By what Court triable.
502	Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter.	Shall not arrest without warrant.	Warrant ...	Bailable ...	*Compoundable.*	Simple imprisonment for 2 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.

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 ...	*Compoundable.*	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 ...	*Not compoundable.*	Ditto	Presidency Magistrate or Magistrate of the first or second class.
506	Criminal intimidation ...	Ditto ...	Ditto ...	Bailable ...	*Compoundable.*	Ditto	Ditto.
	If threat be to cause death or grievous hurt, &c.	Ditto ...	Ditto ...	Ditto ...	*Not compoundable.*	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 ...	*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 ...	*Ditto* ...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
509	Uttering any word or making any gesture intended to insult the modesty of a woman.	Shall not arrest without warrant.	Warrant ...	Bailable ...	*Ditto* ...	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 ...	*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.	*Compoundable when the offence attempted is compoundable.*	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.

SCHEDULE II—*concluded.*

OFFENCES AGAINST OTHER LAWS.

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 *Whether compoundable or not.*	7 Punishment under the Indian Penal Code.	8 By what Court triable.
	If punishable with death, transportation or imprisonment for seven years or upwards.	May arrest without warrant.	Warrant ...	Not bailable ...	*Not compoundable.*	.....	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 ...	*Ditto* ...	.....	
	If punishable with imprisonment for less than three years.	Shall not arrest without warrant.	Summons ...	Bailable ...	*Ditto* ...	.....	
	If punishable with fine only ...	Ditto ...	Ditto ...	Ditto ...	*Ditto* ...	.....	

SCHEDULE III.

ORDINARY POWERS OF MUFASSAL MAGISTRATES.

I.—Ordinary Powers of Magistrates of the Third Class.

(1) Power to arrest, *or direct the arrest of*, an offender in the presence of the Magistrate, section 65.
(2) Power to endorse a warrant, or to order the removal of an accused person arrested under a warrant, sections 84, 85 & 87.
(3) Power to issue proclamations in cases judicially before him, section 88.
(4) Power to attach and sell property in cases judicially before him, section 89.
(5) Power to endorse a search-warrant and order delivery of thing found, sections 100 & 102.
(6) Power to record confessions or statements during a Police-investigation, section 165.
(7) Power to authorize detention of a person during a Police-investigation, section 168.
(8) Power to detain an accused person found in Court, section 351.
(9) Power to sell perishable property of a suspected character, section 536.

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, section 156.

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, section 99.
(3) Power to require security to keep the peace, section 108.
(4) Power to require security for good behaviour, sections 110 & 111.
(5) Power to make orders, &c., in possession-cases, sections 146, 147, 148.
(6) Power to commit for trial.
(7) Power to make orders of maintenance, sections 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 nuisances, section 134.
(3) Power to make orders under section 145.
(4) Power to make orders prohibiting repetitions of nuisances, section 144.
(5) Power to hold inquests, section 175.
(6) Power to issue process for person within jurisdiction who has committed an offence outside the jurisdiction, section 187.
(7) Power to entertain complaints, section 192.
(8) Power to receive police-reports, section 192.
(9) Power to entertain cases without complaint, section 192.
(10) Power to transfer cases to a Subordinate Magistrate, section 193.
(11) Power to pass sentence on proceedings recorded by a Subordinate Magistrate, section 349.
(12) Power to sell property alleged or suspected to have been stolen, &c., section 535.
(13) Power to withdraw cases other than appeals, and to try or refer them for trial, section 539.

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, section 78.
(3) Power to issue search-warrants for *documents* in Post-office *or Telegraph Department*, section 97.
(4) Power to discharge persons bound to be of good behaviour, section 125.
(5) Power to try summarily, section 261.
(6) Power to quash convictions in certain cases, section 350.
(7) Power to withdraw or refer appeals from convictions by Magistrates of the second and third classes, section 406.
(8) Power to hear appeals from convictions by Magistrates of the second and third classes, section 406.
(9) Power to call for proceedings, section 435.
(10) Power to revise orders passed under section 525, *see section* 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 134: (2) Power to make orders under section 145: (3) Power to make orders prohibiting repetitions of nuisances, section 144: (4) Power to hold inquests, section 175: (5) Power to issue process for person within jurisdiction who has committed an offence outside the jurisdiction, section 187: (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 261: (10) Power to hear appeals from convictions by Magistrates of the second and third classes, section 407: (11) Power to sell property alleged or suspected to *have* been stolen, &c., section 535:
	BY THE MAGISTRATE OF THE DISTRICT	(1) Power to make orders under section 145: (2) Power to make orders prohibiting repetitions of nuisances, section 144: (3) Power to hold inquests, section 175: (4) Power to entertain complaints, section 192: (5) Power to receive police reports, section 192: (6) *Power to transfer cases, section 193.*
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 145: (3) Power to make orders prohibiting repetitions of nuisances, section 144: (4) Power to hold inquests, section 175: (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 145: (2) Power to make orders prohibiting repetitions of nuisances, section 144: (3) Power to hold inquests, section 175: (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 145: (3) Power to make orders prohibiting repetitions of nuisances, section 144: (4) Power to hold inquests, section 175: (5) Power to entertain complaints, section 192:
	BY THE MAGISTRATE OF THE DISTRICT	(1) Power to make orders under section 145: (2) Power to make orders prohibiting repetitions of nuisances, section 144: (3) Power to hold inquests, section 175: (4) Power to entertain complaints, section 192.

SCHEDULE V.

FORMS.

I.—SUMMONS TO AN ACCUSED PERSON.

(*See section 68.*)

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 pleader, as the case may be*) before the (*Magistrate*) of at , on the day of .

Herein fail not.

Dated this day of , 18 .

(*Seal.*) (*Signature.*)

II.—WARRANT OF ARREST.

(*See section 75.*)

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.*)

(*See section 76.*)

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 *attend* before me on the day of *and to continue so to attend until otherwise directed by me,* he may be released.

Dated this day of , 18 .

(*Signature.*)

III.—BOND AND BAIL-BOND AFTER ARREST UNDER A WARRANT.

(*See section 87.*)

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

FORMS. SCHEDULE V—*continued.*

charge of , do hereby bind myself to *attend* in the Court of on the day of next to answer to the said charge, *and to continue so to attend until otherwise directed by the Court*; 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 shall continue so to attend until otherwise directed by the Court*; 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 88.*)

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*);

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 88.*)

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 89.*)

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

SCHEDULE V—*continued.* FORMS.

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 89.*)

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 89.*)

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 91.*)

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 forcible 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.*)

FORMS. SCHEDULE V—*continued.*

VIII.—WARRANT TO SEARCH AFTER INFORMATION OF A PARTICULAR OFFENCE.

(*See section 98.*)

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 99.*)

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 107.*)

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.—BOND FOR GOOD BEHAVIOUR.

(*See sections 110 and 111.*)

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.*)

SCHEDULE V—*continued.* FORMS.

XII.—SUMMONS ON INFORMATION OF A PROBABLE BREACH OF THE PEACE.

(*See section 115.*)

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 124.*)

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 124.*)

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 125.*)

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 134.*)

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.*)

SCHEDULE V—*continued.* FORMS.

XVII.—MAGISTRATE'S ORDER CONSTITUTING A JURY.

(*See section 139.*)

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 141.*)

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 143.*)

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 PROHIBITING THE REPETITION, &C., OF A NUISANCE.

(*See section 144.*)

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. XXI*);

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.*)

XXI.—MAGISTRATE'S ORDER TO PREVENT OBSTRUCTION, RIOT, &C.

(*See section 145.*)

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 pub-

FORMS. SCHEDULE V—*continued.*

lic 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.*)

XXII.—MAGISTRATE'S ORDER DECLARING PARTY ENTITLED TO RETAIN POSSESSION OF LAND, &C., IN DISPUTE.

(*See section 146.*)

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 147.*)

To the Police-officer in charge of the Police-station at [*or, to the Collector of*].

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*) [*or I am unable to satisfy myself as to which of the said parties was in possession as aforesaid*];

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 148.*)

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

SCHEDULE V—*continued.* FORMS.

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 170.*)

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 171.*)

I, (*name*), of (*place*), do hereby bind myself to *attend* 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 TO GOVERNMENT PLEADER.

(*See section 219.*)

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 222, 223, 224.*)

(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.

FORMS. SCHEDULE V—*continued.*

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 , *robbed* [*state the name*] *and thereby* committed 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 166.

(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," *and in* (*c*) *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 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*].

SCHEDULE V—*continued.* FORMS.

(*c*) And I hereby direct that you be tried by the said Court on the said charge.

[*To be substituted for* (*b*) :—] [*Signature and seal of the Magistrate.*]

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*].

On sections 302 and 304.

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*].

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*].

On sections 379 and 382.

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*].

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*].

Alternative charges on section 193.

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 246 and 259.*)

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.*

XXX.—WARRANT OF IMPRISONMENT ON FAILURE TO RECOVER AMENDS BY DISTRESS.

(*See section 251.*)

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*), *subject to the provisions of section 69 of the Indian Penal Code*, 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 68 and 253.*)

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 259.*)

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 *Indian* 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.

XXXIII.—PRECEPT TO DISTRICT MAGISTRATE TO SUMMON JURORS AND ASSESSORS.

(*See section 326.*)

To the District 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 328.*)

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 374.*)

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 *Indian* Penal Code, and sentenced to suffer death, subject to the confirmation of the said sentence by the Court of ;

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 381.*)

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 (*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 sections 381, 382.*)

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 386.*)

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*) the presence (*or view*) of the Court committed wilful contempt,

And whereas for such 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.*)

SCHEDULE V—*continued.* FORMS.

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 485.*)

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.*)

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 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.*)

FORMS. SCHEDULE V—*continued.*

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, 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 491.

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 XXXVII.

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.

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 Sessions 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 Sessions 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 Sessions 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.*)

SCHEDULE V—*continued.* FORMS.

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.*)

XLVIII.—NOTICE TO SURETY ON BREACH OF A BOND.

(*See Section 525.*)

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.

(*See Section 525.*)

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;

FORMS. SCHEDULE V—*continued.*

You are hereby required to pay the said penalty of rupees , or to shew 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.

(*See Section 525.*)

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.

(*See Section 525.*)

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.*)

LII.—NOTICE OF FORFEITURE OF A BOND TO KEEP THE PEACE TO THE PRINCIPAL.

(*See Section 525.*)

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.

(*See Section 525.*)

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

SCHEDULE V—*continued.* FORMS.

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.

(*See Section 525.*)

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, 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.

(*See Section 525.*)

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 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 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.

(*See Section 525.*)

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 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 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.*)

Table shewing correspondence of the section-numbers of Act X of 1872, as amended by Act XI of 1874, with those of the Bill.

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[1] See Act XI 1874, s. 1.

[2] See Act XI, 1874, s. 2.

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[1] and [2] See Act XI, 1874, s. 3.

[3] See Act XI, 1874, s. 4.
[4] Ditto ditto, s. 5.

[5] and [7] See Act XI, 1874, s. 6.
[6] Ditto ditto, s. 7.

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[1] See Act XI, 1874, s. 8.
[2] Ditto ditto, s. 9.
[3] Repealed by Act XI, 1874, s. 10.
[4] See Act XI, 1874, s. 11.
[5] and [6] See Act XI, 1874, s. 12.

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[1] See Act XI, 1874, s. 13.
[2] Ditto ditto, s. 14.

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[1] See Act XI, 1874, s. 15.

[2] See Act XI, 1874, s. 16.
[3] Ditto ditto, s. 17.
[4] Ditto ditto, s. 18.

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[1] See Act XI, 1874, s. 19.
[2] Ditto ditto, s. 20.

[3], [4] and [5] See Act XI, 1874, s. 21.

ACT X OF 1872.	BILL.	ACT X OF 1872.	BILL.
270, para. 3 ...	408, *Proviso* 1, and 410	282, para. 2 ...	404
271, para. 1[1] ...	410	3 ...	428, para. 2
2[2] ...	418, and 423, *Proviso* 2	4 ...	428, para. 3
271A, para. 1[3] ...	371, para. 3	5 ...	.....
2[4] ...	.....	283, para. 1 ...	548
271B[5] ...	378, 429	2 ...	.....
272, para. 1 ...	417	3 ...	.....
2, cl. 1	417	284 ...	423, cl. (*b*)
2, cl. 2[6]	.....	285 ...	430
3 ...	423	286 ...	404
273, para. 1 ...	413	286, *Illustrations* ...	.....
2 ...	413, *Expln.*	287, para. 1 ...	374
3 ...	412	2 ...	367, para. 5
274, para. 1 ...	414	288 ...	376
2[7] ...	415	289, para. 1 ...	375, para. 1
3 ...	416	2 ...	2
Expln.[8] ...	415, *Expln.*	3 ...	3
275 ...	419	290 ...	377
276[9] ...	559	291 ...	.....
277 ...	420	292 ...	564
278, para. 1 ...	421, para. 1	293 ...	564
2 ...	2	294 ...	435, para. 1
3[10] ...	Om. see secs. 421, 423	295, para. 1 ...	1
279, cl. 1 ...	422, cl. 1	2 ...	.....
cl. 2[11] ...	2	296, para. 1 ...	438
280[12] ..	423	2[13] ...	436, *cl.* 1
Proviso ...	423, *Proviso* 1	*Proviso*[14] ...	436, *Proviso* 2
281 ...	426	297[15] ...	439
282, para. 1 ...	428, para. 1	297, para. 8 ...	426, para. 1

[1], [2], [3], [4] and [5] See Act XI, 1874, s. 22.
[7] and [8] Ditto ditto, s. 23.
[6] Ditto ditto, s. 24.
[9] See Act XI, 1874, s. 25.
[10] Ditto ditto, s. 26.
[11] Ditto ditto, s. 27.
[12] Ditto ditto, s. 28.
[13] and [14] See Act XI, 1874, s. 29.
[15] Ditto ditto, s. 30.

ACT X OF 1872.	BILL.	ACT X OF 1872.	BILL.
297, para. 10 ...	440	311, para. 1 ...	392
298[1] ...	437	2 ...	393, para. 1
299, para. 1 ...	425, para. 1 442	3[3] ...	391, para. 2
2 ...	425, para. 2 442	312, paras. 1 & 2[4]	394
3 ...	423, *Proviso* 2	para. 3 ...	393, para. 2
300 ...	548	313 ...	395
301, para. 1 ...	379	314, para. 1 ...	35, para. 1
2 ...	381	2 ...	2
302, para. 1 ...	373	2, *Prov.* 1	2, *Proviso* 1
2 ...	.....	2, *Prov.* 2	2, *Proviso* 2
3 ...	.....	315 ...	348
302 A,[2] para. 1 ...	383	316 ...	396
2 ...	390	317 ...	397
303 ...	384	*Proviso* ...	398
304, para. 1 ...	386	318 ...	399
2 ...	.....	319 ...	.....
305 ...	400	320 ...	.....
306 ...	429	322, para. 1[5] ...	388
307, para. 1 ...	386	2 ...	401, para. 1
2 ...	387	3 ...	3
3 ...	.....	4, cl. 1[6]	402
4 ...	389	cl. 2[7]	401, para. 4
308, paras. 1, 2 & 3	556	323 ...	.....
4 ...	557	324 ...	519
309, para. 1 ...	.....	325, para. 1 ...	256, para. 2
1, *Prov.*	33, para. 1, *Proviso* 2	2 ...	520
2 ...	33, para. 1, with *Proviso* 1	326 ...	.....
310 ...	391, para. 1	327 ...	522
		328 ...	523
			350, para. 1

[1] See Act XI, 1874, s. 31.
[2] Ditto ditto, s. 32.
[3] See Act XI, 1874, s. 33, para. 1.
[4] Ditto ditto, s. 33, para. 2.
[5], [6] and [7] Ditto ditto, s. 34.

ACT X OF 1872.	BILL.
329 ...	350, para. 1
330, para. 1 ...	513, para. 1
2 ...	513, paras. 1 & 3
3[1] ...	514, para. 1
4[2] ..	515
5 ...	516
6[3] ...	517
331 ...	.....
332 ...	354
333 ...	355
334, para. 1 ...	356, para. 1
paras. 2 & 3	2
para. 4 ...	3
5 ...	4
335 ...	357, and 362, para. 1
336 ...	358
337 ...	566
338 ...	359, and 362, para. 2
339 ...	360
340 ...	361
341 ...	363
342 ...	342, para. 1
343 ...	2
344 ...	343
345 ...	342, para. 4
346, para. 1 ...	364, para. 1
2 ...	2
3 ...	3
4 ...	2
5 ...	544
347 ...	337
348 ...	338
349 ...	339
350 ...	.....
351 ...	551
352 ...	91
353, para. 1 ...	88, paras. 1, 2, *cl.* (*b*)
2 ...	89, para. 1
3 ...	2
354 ...	90
355 ...	91
356 ...	485
357, para. 1 ...	209, para. 2
2 ...	220
358 ...	217, para. 1
359 ...	217, *Prov.* 2
360 ...	218
361 ...	245, paras. 2 and 3
362, para. 1 ...	209, para. 2 253, para. 2
2 ...	209, para. 2 258, para. 1
363 ...	292
364 ...	485
365 ...	95, para. 1
366 ...	97
367 ...	105
368, para. 1 ...	97
2 ...	98
369, *cl.* 1 ...	97, para. 2
2 ...	96

[1], [2], and [3] See Act XI, 1874, s. 35.

ACT X OF 1872.	BILL.
370 ...	102
371 ...	102
372 ...	102
373, para. 1 ...	102
2 ...	100
3 ...	.....
374 ...	100
375 ...	102
376, para. 1 ...	102
2 ...	102
3 ...	102
4 ...	102
377 ...	99, except cl. (*d*) & (*e*)
378, para. 1 ...	.....
2 ...	106
379[1] ...	166
380 ...	167
381 ...	154
382 ...	103, para. 1
383 ...	2
384 ...	2
385 ...	104
386 ...	52
387, para. 1 ...	51, para. 1
2 ...	534, para. 1
388 ...	506
389, para. 1 ...	507, para. 1
2 ...	2
390 ...	508
391 ...	509
392 ...	511
393 ...	506
394 ...	510
395 ...	512
396 ...	525, paras. 1, 2 & 3
397, para. 1 ...	525, para. 1
2 ...	2 & 3
3 ...	4
398, para. 1 ...	525, paras. 1 to 4
1, *Prov.*[2]	para. 5
2 ...	526
3 ...	527
399 ...	524
400, para. 1 ...	321, para. 1
2 ...	2
401, para. 1 ...	322
2 ...	323
402 ...	324, paras. 1 to 4
403 ...	325
404 ...	319
405, cl. 1 ...	279, 320
2 ...	279, cl. (*d*)
3 ...	(*e*)
4 ...	(*f*)
5 ...	279, 320
6 ...	279, cl. (*c*)
406, para. 1, cl. 1	320, cl. 1
2	(*a*)
3	(*b*)

See Act XI, 1874, s. 36.

[2] See Act XI, 1874, s. 37.

ACT X OF 1872.	BILL.
406, para. 1, cl. 4	320, cl. (*c*)
5	(*d*)
6	(*e*)
7	279, 320
8	320, cl. (*g*)
9	(*h*)
10	(*i*)
11	(*f*)
12	(*j*)
406, para. 2 ...	279, 320
3 ...	279, 320
4 ...	462, *Proviso*
407 ...	326
408, para. 1 ...	462, para. 1
2 ...	2
3 ...	3
4 ...	.....
409, para. 1 ...	328
2 ...	Chapter VI,—A
3 ...	Ditto
410 ...	327
411 ...	329
412 ...	330
413 ...	331
414 ...	332
515, para. 1 ...	534, para. 1
2 ...	536
416 ...	534, para. 2
417, para. 1 ...	535, para. 1
2 ...	2

ACT X OF 1872.	BILL.
418[1]	528, para. 1
418, *Expln.*[2] ...	528, *Expln.*
419 ...	531
420 ...	529
421 ...	555
422 ...	554
423 ...	464
424, para. 1 ...	469
2 ...	469
3 ...	464
425, para. 1 ...	465, para. 1
2[3] ...	2
426 ...	466
427 ...	467
428 ...	468
429 ...	470
430 ...	471
431 ...	472
432 ...	473
433 ...	474
434 ...	475
435, para. 1 ...	480
paras. 2 & 3	481
436, para. 1 ...	482, para. 1
2 ...	2
3 ...	347
4 ...	.....
437 ...	484
438, para. 1 ...	445
2 ...	447, para. 1

[1] and [2] See Act XI, 1874, s. 38.
[3] Ditto ditto, s. 39.

ACT X OF 1872.	BILL.
439 ...	222
440 ...	223
441 ...	224
442 ...	565
443 ...	226
444 ...	228
445 ...	228
446 ...	227
447 ...	229
448 ...	230
449 ...	232
450 ...	231
451[1] ...	233
452 ...	234
453 ...	235
453, *Expln.* ...	.....
454, paras. 1 to 3	236
454, *Ill.* (*a*) ...	236, *Ill.* (*a*)
(*b*) ...	(*d*)
(*c*) ...	(*e*)
(*d*) ...	(*f*)
(*e*) ...	.....
(*f*) ...	236, *Ill.* (*g*)
(*g*) ...	(*h*)
(*h*) ...	.....
(*i*) ...	.....
(*j*) ...	236, *Ill.* (*i*)
(*k*) ...	.....
(*l*) ...	236, *Ill.* (*j*)
(*m*) ...	(*l*)

ACT X OF 1872.	BILL.
454, *Ill.* (*n*) ...	236, *Ill.* (*b*)
(*o*) ...	(*m*)
(*p*) ...	(*c*)
455 ...	237
456 ...	238
457 ...	239, para. 1
457, *Ill.* (*a*) ...	239, *Ill.* (*a*)
(*b*) ...	.....
458 ...	240
459 ...	241
460, para. 1 ...	403, para. 1
2 ...	2
3 ...	3
4 ...	4
Ill. (*a*) ...	*Ill.* (*a*)
(*b*) ...	(*b*)
(*c*) ...	(*c*)
(*d*) ...	.....
(*e*) ...	403, *Ill.* (*d*)
(*f*) ...	(*e*)
(*g*) ...	(*f*)
(*h*) ...	(*g*)
461, cl. 1 ...	367, para. 2
2 ...	3
462 ...	366
463 ...	367, para. 1
464, para. 1 ...	367, paras. 1, 2 & 4 369
2[2] ...	371, para. 1
3 ...	372
4 ...	367, para. 5, *Proviso*

See Act XI, 1874, s. 40.
[2] See Act XI, 1874, s. 41.

ACT X OF 1872.	BILL.
464, para. 5 ...	.....
6 ...	548
7[1] ...	548
465	197
466, paras. 1, 2 & 3	198, para. 1
4 ...	2
5[2] ...	4, last para.
467 ...	196, para. 1, cl. (*a*)
468 ...	(*b*)
469	(*c*)
470, para. 1 ...	196, para. 2
2 ...	3
470, *Expln.* ...	.....
471, paras. 1 & 2	476, para. 1
3	2
472, para. 1 ...	477, para. 1
2 ...	.....
3 ...	477, para. 2
473 ...	487, para. 1
474, paras. 1 & 2	478
3	.....
475 ...	479
476 ...	478, para. 2
477 ...	476
478 ...	200
479 ...	200
480 ...	128
481 ...	129
482 ...	130
483 ...	133, cl. (*a*)
484 ...	131
485 ...	133, cl. (*c*)
486 ...	(*d*)
487 ...	132, and 133, cl. (*b*)
488 ...	133, cl. 1
480 to 488 (Ch. XXXVI)[3]	128 to 133 (Ch. IX)
489, para. 1 ...	107, para. 1 124, paras. 1 to 3
2 ...	121, para. 1
3 ...	.....
4 ...	.....
490 ...	107, para. 1 124, paras. 1 to 3
491 ...	108
Explns. ...	108, 118
492 ...	118
492, *Expln.* ...	114
493, para. 1, cl. 1	565
2	107, para. 1, last cl., and 119, *Proviso 2nd.*
2 ...	.....
494 ...	91
Proviso ...	109, para. 1 115, *Proviso*
495 ...	117
496 ...	1 0
497 ...	119, para. 1 124, para. 1
498, para. 1 ...	108, 124
2 ...	124
499, para. 1 ...	.....
2 ...	.....

[1] See Act XI, 1874, s. 41.
[2] Ditto ditto, s. 42.
[3] See Act XI, 1874, s. 43.

ACT X OF 1872.	BILL.
499, para. 3 ...	124, paras. 1 & 4
Expln. ...	.....
500 ...	125, para. 1, and 126.
501 ...	127
502, para. 1 ...	525, para. 1
2 ...	2
3 ...	3
4 ...	4
5 ...	1
6 ...	122
7 ...	108, 525
503, para. 1 ...	525, para. 1
2 ...	2 & 3
3[1] ...	4
504, para. 1 ...	110
2 ...	121, para. 1
3 ...	.....
4 ...	110
505 ...	111
506 ...	111
507, para. 1 ...	124, para. 2
2 ...	3
508 ...	124, para. 3
509, para. 1 ...	113
2 ...	565
510, para. 1 ...	124, para. 1
2 ...	5
511 ...	125, para. 1
512 ...	2
513 ...	127
514, para. 1	525, para. 1
2	paras. 2 & 3
3	para. 4
515, para. 1 ...	113, 115
2 ...	110
3 ...	118, para. 2
4 ...	522
516 ...	123
517 ...	112
518, with *Expln.* 1	145, para. 1
518, *Expln.* 2 ...	2
3 ...	3
4 ...	4
519 ...	144
520 ...	435, para. 3
521 ...	134
522 ...	135
523, para. 1	136
2 ...	139, cl. (*a*)
3 ...	140
4 ...	142
5 ...	139, cl. (*c*), and 140
524, para. 1 ...	139, cl. (*b*)
2 ...	.....
525, para. 1 ...	137, & 138, para. 1 141, para. 2.
2 ...	141, para. 3
526, para. 1 ...	140, para. 1 141, para. 1
2 ...	141, para. 2
527[2]	138, para. 2

[1] See Act XI, 1874, s. 44.
[2] See Act XI, 1874, s. 45.

ACT X OF 1872.	BILL.	ACT X OF 1872.	BILL.
528 ...	143	535 ...	1, para. 2
529 ...	1, para. 2	536 ...	488
530 ...	146	537 ...	489
531 ...	147	538 ...	490
532 ...	148	539 ...	568, para. 1
533 ...	142, para. 1	540 ...	1, para. 2
534 ...	533	541 ...	1, para. 2

Table shewing correspondence of the section-numbers of Act XI of 1874 separately with those of the Bill.

ACT XI OF 1874.	BILL.	ACT XI OF 1874.	BILL.
1 ...	4, cl. (*s*) & (*t*), 28, 205, para. 1	23 ...	.....
2 ...	4, para. 2, cl. 1	24, cl. 1 ...	.....
3 ...	380, para. 1	2 ...	415, *Expln.*
4 ...	7, para. 1, cl. 2, para. 3	25 ...	559
5 ...	14, para. 3	26 ...	Om., see secs. 421, 423
6 ...	193, para. 1, 539, para. 1	27 ...	422, cl. 2
7 ...	.....	28 ...	423
8 ...	505	29, cl. 1 ...	436, cl. 1
9 ...	179, *Proviso*	2 ...	*Proviso* 2
10 ...	.....	30 ...	439
11 ...	538	31 ...	437
12 ...	447, para. 2, 448	32 ...	383, 390
13 ...	340	33 ...	391, para. 2, 394
14 ...	210	34, cl. 1 ...	401, para. 1
15 ...	219, cl. 1	2 ...	4
16 ...	255	3 ...	.....
17 ...	261, cl. (*i*)	35 ...	514, para. 1, 515, 517
18 ...	194, para. 1	36 ...	166, para. 4
19 ...	287	37 ...	525, para. 5
20 ...	289	38 ...	528, para. 1 & *Expln.*
21 ...	307, para. 1, 308	39 ...	465, para. 2
22, cl. 1 ...	410	40 ...	233, *Ill.*
2 ...	418, 423, *Proviso* 2	41 ...	371, para. 1, 548
3 ...	371, para. 3	42 ...	4, last para.
4 ...	.....	43 ...	Chapter IX
5 ...	378, 429	44 ...	525, para. 4
		45 ...	138, para. 2

Table shewing correspondence of the section-numbers of the High Courts Act (X of 1875) with those of the Bill.

ACT X OF 1875.	BILL.	ACT X OF 1875.	BILL.
1 ...	...	31 ...	340
2 ...	2	32 ...	268
3 ...	4, 267	33 ...	275, 277, 277
4 ...	334	34 ...	273
5 ...	335	35 ...	451
6 ...	5	36 ...	452
7 ...	227	37 ...	452
8 ...	227	38 ...	277
9 ...	228	39 ...	311
10 ...	228	40 ...	312
11 ...	229	41 ...	312
12 ...	230	42 ...	313
13 ...	211, 559	43 ...	313
14 ...	274, 403	44 ...	314
15 ...	232	45 ...	315
16 ...	231	46 ...	318
17 ...	234	47 ...	278, 279
18 ...	235	48 ...	280
19 ...	236	49 ...	277
20 ...	237	50 ...	316
21 ...	238	51 ...	317
22 ...	239	52 ...	.....
23 ...	240	53 ...	278
24 ...	226	54 ...	279
25 ...	543	55 ...	280
26 ...	221	56 ...	280
27 ...	336	57 ...	279
28 ...	272	58 ...	281
29 ...	272	59 ...	287
30 ...	273	60 ...	288

ACT X OF 1875.	BILL.	ACT X OF 1875.	BILL.
61 ...	342	92 ...	301
62 ...	290, 291	93 ...	300
63 ...	293	94 ...	302
64 ...	294	95 ...	304
65 ...	297	96 ...	303
66 ...	344	97 ...	306
67 ...	296	98 ...	306
68 ...	365	99 ...	284
69 ...	295	100 ...	309
70 ...	554	101 ...	434
71 ...	519	102 ...	241
72 ...	520	103 ...	384
73 ...	.....	104 ...	384, 385
74 ...	523	105 ...	386, 387
75 ...	289	106 ...	556, 557
76 ...	513, 514, 515, 517	107 ...	.....
77 ...	338	108 ...	392, 394, 395
78 ...	339	109 ...	85
79 ...	.....	110 ...	396
80 ...	551	111 ...	397
81 ...	91	112 ...	399
82 ...	88	113 ...	368
83 ...	90	114 ...	382
84 ...	91	115 ...	528
85 ...	292	116 ...	555
86 ...	95	117 ...	403
87 ...	97	118 ...	222
88 ...	105	119 ...	522
89 ...	485	120 ...	465
90 ...	298	121 ...	466
91 ...	299	122 ...	467

ACT X OF 1875.	BILL.	ACT X OF 1875.	BILL.
123 ...	468	139 ...	524
124 ...	470	140 ...	107
125 ...	471	141 ...	107
126 ...	473	142 ...	533
127 ...	472	143 ...	1
128 ...	474	144 ...	.....
129 ...	475	145 ...	195
130 ...	341	146 ...	333
131 ...	197	147 ...	537
132 ...	198	148 ...	501
133 ...	196	149 ...	550
134 ...	196	150 ...	352
135 ...	476	151 ...	345
136 ...	508	152 ...	25
137 ...	525	153 ...	.....
138 ...	525, 527		

Table shewing correspondence of the section numbers of the Presidency Magistrates' Act (IV of 1877) with those of the Bill.

ACT IV OF 1877.	BILL.	ACT IV OF 1877.	BILL.
1 ...	.....	31 ...	548
2 ...	.....	32 ...	204
3 ...	1	33 ...	205
4 ...	.....	34 ...	91, 205
5 ...	342, 568	35 ...	205
6 ...	4	36 ...	91
7 ...	.....	37 ...	206
8 ...	7, 18, 19, 20, 25	38 ...	197
9 ...	18, 20; 21	39 ...	198
10 ...	3	40 ...	196
11 ...	32	41 ...	196
12 ...	33	42 ...	196
13 ...	35	43 ...	196
14 ...	5	44 ...	476
15 ...	64	45 ...	200
16 ...	165	46 ...	196, 197, 198
17 ...	562	47 ...	68
18 ...	178	48 ...	69
19 ...	180	49 ...	70
20 ...	181	50 ...	73
21 ...	183	51 ...	74
22 ...	182	52 ...	94
23 ...	186	53 ...	91
24 ...	542	54 ...	187
25 ...	192	55 ...	187
26 ...	.....	56 ...	75, 77
27 ...	205	57 ...	.....
28 ...	192	58 ...	76
29 ...	199	59 ...	77
30 ...	201	60 ...	80

ACT IV OF 1877.	BILL.	ACT IV OF 1877.	BILL.
61 ...	.....	92 ...	217
62 ...	65	93 ...	218
63 ...	83	94 ...	222, 222
64 ...	84, 85	95 ...	223
65 ...	86, 87	96 ...	224
66 ...	.....	97 ...	565
67 ...	88	98 ...	226
68 ...	89	99 ...	228
69 ...	90	100 ...	228
70 ...	63, 506	101 ...	229
71 ...	507	102 ...	230
72 ...	509	103 ...	232
73 ...	510	104 ...	231
74 ...	506	105 ...	234
75 ...	511	106 ...	235
76 ...	512	107 ...	236
77 ...	525	108 ...	237
78 ...	525	109 ...	238
79 ...	525	110 ...	239
80 ...	524	111 ...	240
81 ...	208	112 ...	241
82 ...	209	113 ...	403
83 ...	209, 353	114 ...	242, 370
84 ...	364	115 ...	362
85 ...	551	116 ...	255
86 ...	344	117 ...	247, 548
87 ...	210	118 ...	248, 260
88 ...	211	119 ...	243
89 ...	211, 214, 221	120 ...	244, 256
90 ...	211	121 ...	245, 257
91 ...	212, 213, 214, 220, 292	122 ...	255, 206
		123 ...	364

Act IV of 1877.	Bill.	Act IV of 1877.	Bill.
124 ...	93, 344	155 ...	523
125 ...	249	156 ...	350
126 ...	246, 259, 370	157 ...	513
127 ...	347	158 ...	513
128 ...	348	159 ...	97
129 ...	505	160 ...	99
130 ...	340	161 ...	102
131 ...	341	162 ...	103
132 ...	352	163 ...	103
133 ...	260, 345	164 ...	103
134 ...	551	165 ...	104
135 ...	91	166 ...	52
136 ...	91	167 ...	411, 412
137 ...	88, 89	168 ...	417, 427
138 ...	90	169 ...	419
139 ...	553	170 ...	559
140 ...	92	171 ...	420
141 ...	485	172 ...	421
142 ...	245	173 ...	422
143 ...	253, 258	174 ...	423
144 ...	95	175 ...	426
145 ...	97	176 ...	428
146 ...	96	177 ...	548
147 ...	105	178 ...	549
148 ...	342	179 ...	423
149 ...	343	180 ...	404
150 ...	337	181 ...	537
151 ...	339	182 ...	441
152 ...	519	183 ...	383, 390
153 ...	520	184 ...	384
154 ...	522	185 ...	386, 387, 388, 389 549

Act IV of 1877.	Bill.	Act IV of 1877.	Bill.
186 ...	556	217 ...	91, 115
187 ...	391	218 ...	117
188 ...	392	219 ...	120
189 ...	394	220 ...	119
190 ...	393	221 ...	124
191 ...	395	222 ...	113
192 ...	396	223 ...	124
193 ...	397	224 ...	121
194 ...	464	225 ...	125
195 ...	469	226 ...	127
196 ...	466	227 ...	122
197 ...	467	228 ...	525
198 ...	468	229 ...	525
199 ...	470	230 ...	522
200 ...	471	231 ...	108, 110, 111
201 ...	473	232 ...	112
202 ...	472	233 ...	533
203 ...	474	234 ...	488
204 ...	475	235 ...	489
205 ...	480	236 ...	490
206 ...	247, 482	237 ...	568
207 ...	484	238 ...	185
208 ...	107	239 ...	185
209 ...	107	240 ...	432
210 ...	121	241 ...	433
211 ...	.....	242 ...	251, 563
212 ...	110	243 ...	528
213 ...	111	244 ...	528, 534, 535
214 ...	111	245 ...	555
215 ...	108	246 ...	44
216 ...	113, 114	247 ...	42

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 twelve in number:—

Acts.

XXIII of 1840 (Execution of process).
XXXIV of 1850 (State-Prisoners).
III of 1858 (State Prisoners).
V of 1861, sections 6, 24, 37 to 40 inclusive, part of section 35 (Police).
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).
XXI of 1879, Chapter III (Inquiries in British India into crimes committed abroad by British subjects).

Regulations.

Bengal Regulation III, 1818 (State-Prisoners).
Bengal Regulation XX, 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 568 sections for fifteen enactments containing 1,055 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.

I.—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,' 'place,' and 'police-station' have been added. The definition of 'complaint' has been amended so as to exclude the report of a Police-officer and information given to a Police-officer; and the definition of 'investigation' has been extended so as to comprise the proceedings of persons authorized by a Magistrate under section 160 or 203 to make local investigations. The definition of 'cognizable offence' has been amended so as to connect it with the second schedule. A clause has been added to the definition of 'High Court' so as to enable the Governor General in Council to appoint in outlying territories where no such Court is established by law, an officer to perform its functions under the Code. 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.

II.—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 provisions of the Police Act (V of 1861), section 6, have been incorporated in this chapter, section 14. The Local Government has been empowered (section 16) to make rules for the guidance of Magistrates' Benches. This will result in uniformity of practice wherever such uniformity is desirable. Assistant Sessions Judges have been declared (section 17) subordinate to the Sessions Judge in whose Court they exercise jurisdiction. This will preclude a doubt which has been raised on the subject.

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 in the following cases. Magistrates of the first class are forbidden (section 29) to try offences under special or local laws which are punishable with imprisonment for seven years: such grave cases should be tried by a higher Court. All Magistrates of the first and second classes, and all Magistrates of the third class when specially empowered, are to have the powers of an officer in charge of a Police-station (section 38). It is desirable that the police powers which Magistrates can exercise in investigating offences should be clearly defined. In section 40 (= 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 that powers conferred by one Local Government do not accompany an officer, when he is transferred to a province under another Local Government.

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.

III.—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, the Police and persons making arrests: arrest, escape and retaking: processes to compel appearance and production of documents, and processes for the discovery of persons wrongfully confined. Here, again, the changes in the law are little more than verbal. But to the offences which the public are bound to assist in preventing, have been added (section 42) attempts to injure public property, railways and canals: the public (section 42) must assist in cases of fire dangerous to human life or valuable property: the section (45) requiring village-headmen, &c., to report, has, for obvious reasons, been extended to escaped convicts and proclaimed offenders, and (to provide for villages in hill-passes through which bands of dacoits habitually proceed), also to cases where the criminal merely goes through the village: the section (46) 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: power has been given (section 49) 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: persons making arrests have been expressly empowered (section 53) to take from the person arrested any offensive weapons which he may have about him: the police have been authorized (section 54) to arrest, without warrant, deserters from the Navy; and sections (66, 67) equivalent to Act XXV of 1861, section 112, have been inserted to provide for the retaking of persons escaping or rescued from lawful custody.

The wording of section 178 of the present Code, which empowers the police to use "all means necessary to effect the arrest" of a person forcibly resisting or attempting to escape, appears dangerously wide. The Bill accordingly explains that this power does not give the right to cause the death of an arrested person who is not accused of a capital offence. The Bill here follows the law of Scotland, which, in Mr. Mayne's opinion, is in India the safer rule.

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 68) provides that (subject to rules to be made by the Local Government) they may also be served by an officer of the Court. Provision is made (sections 73, 74) 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 75 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. Warrants of arrest issued by a Bench of Magistrates may be signed by any member of the Bench. This will legalise what probably is the practice at present.

Sub-divisional Magistrates have been empowered (section 78) to direct warrants to land-holders, &c., for the arrest of escaped convicts. This extension is in harmony with the large powers generally possessed by Magistrates in charge of sub-divisions.

10. Section 88 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.

12. The present Code does not provide how attachment of debts and other moveable property is to be effected. Provision has, therefore, been made (section 89) for this purpose; and the powers, duties and liabilities of receivers have been declared by reference to the Code of Civil Procedure.

13. A person required merely to produce a document will (as under the Civil Procedure Code, section 164) be deemed to have complied with the requisition, if he causes the document to be produced instead of attending personally to produce it (section 95).

14. Section 99 of the Bill has been retained pending the opinion of Local Governments as to the expediency of its retention. It seems to be rendered superfluous by section 97.

Provision is made (section 104) for making a list (signed by witnesses) of things found in execution of a search-warrant beyond the jurisdiction of the Court issuing it. It is believed that the necessity of obtaining the signature of the witnesses will be of use as a check upon the irregularities which, it is said, sometimes occur in the course of searches. Criticism of this proposed change in the law is solicited.

15. A clause (section 101) has been inserted giving Presidency Magistrates, Magistrates of the first class, and Sub-divisional Magistrates, power to issue warrants to search for persons wrongfully confined. No such power, though needed, is supposed to exist in India, except, of course, in the Presidency-towns, where the High Courts issue, under Act X of 1875, directions of the nature of a *habeas corpus*.

IV.—Prevention of Offences.

16. 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 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.

17. In the chapter relating to security for keeping the peace, and for good behaviour, the section (107) dealing with security for keeping the peace on conviction has been extended to cases in which the accused is convicted of criminal intimidation by threatening injury to person or property. This is an offence of the same nature as taking unlawful measures with the intention of committing a breach of the peace, and should, therefore, as regards the taking of security, be placed on the same footing. When the conviction is set aside on appeal or otherwise, the bond will become void. On this the present law is silent.

In section 111 (= sections 505, 506 of the present Code) the words which give the Magistrate power to demand security from persons of notoriously bad livelihood or of a "dangerous character" have been omitted. It has been objected that these words are vague, and that the powers which they place in the hands of the police are liable to great abuse.

The Magistrate is empowered (section 113) to make an order as to the character and class of the sureties required. This, it is hoped, will prevent certain persons making a trade of becoming sureties. The object of the law (as will be seen from section 399 of the present Code) is not merely to provide a money-security, but also to obtain respectable persons as guarantees for the good behaviour of the criminal concerned.

For the purposes of the section (118) as to enquiring into the truth of the information upon which a Magistrate has acted under this chapter, the fact that a person is an habitual offender may be proved by evidence of general repute.

The Bill contains no provision corresponding to sections 499 of the present Code and 211 of the Presidency Magistrates' Act. If, before the expiration of the term of the original bond, it appears to the Magistrate unsafe to release the obligor at the end of that term, in justice to the obligor fresh proceedings should be instituted.

Some change has been made (section 118) in the manner of conducting inquiries regarding security for good behaviour. They will under the Bill be made as in warrant-cases, instead of as in summons-cases, which is now the practice. Where the person who would otherwise be

ordered to give security is a minor, the bond (section 119) will be executed only by his sureties. It has been made clear in section 127 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. Sub-divisional Magistrates are empowered (section 110) to require security for good behaviour.

18. In the chapter (IX) 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.

19. In Chapter X, section 134 has been extended to cases of keeping goods or merchandise injurious to the public health, and of carrying on occupations offensive to the religious feelings of any considerable section of the community. Criticism is invited on the latter alteration, which is intended to meet such cases as that of a butcher exercising his trade in a Hindú town, so as to cause risk of breach of the peace.

The power conferred by section 518 of the present Code is intended to be exercised only in urgent cases where a speedy remedy is desirable. The Bill (section 145) provides that no orders under Chapter XI shall remain in force for more than two months, unless in case of danger to human life, health or safety, or a riot or affray, the Local Government directs otherwise. Where time allows the procedure must be under Chapter X.

20. Chapter XII, on disputes as to immoveable property, has been expressly restricted to cases in which the dispute is as to the right to *physical* possession.

Doubts have been raised as to whether the report of the person deputed (under section 149) to make a local inquiry may be read as evidence in the case. The Bill now settles this in the affirmative.

V.—Information to the Police, and their power to investigate.

21. 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 and 380 of the same Act.

22. 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 158 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.

23. Section 165 makes it clear that confessions to Magistrates shall not only be "taken," but signed and certified, like examinations of accused persons. In the form of memorandum relating to confessions words have been introduced to show that the confession was taken in the Magistrate's presence and hearing, and that it contains a full and true account of the statement.

24. The sections (166 and 167) dealing with searches by the police have been amended so as to meet difficulties which have arisen in practice. Section 168 has also been amended. On the one hand, there is strong objection to allowing extraordinary powers to be exercised by a Police-officer [illegible] for the Magistrate, whose presence on the spot may be indispensable for securing evidence or recovering property, might be a serious impediment to justice. Under proper precautions, the retention of the accused for sufficient reasons will, as now, be allowed, but the period of detention has been limited to fifteen days in the whole.

25. Power resembling that conferred on Coroners by Act IV of 1871, section 11, has been given (section 177) to Magistrates authorized to hold inquests, to disinter and examine corpses in order to discover the cause of death.

VI.—Proceedings in Prosecutions.

26. Part VI treats of proceedings in prosecutions up to appeal, and is divided into sixteen 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. General Provisions as to Inquiries and Trials.
XXV. Evidence.
XXVI. The Judgment.
XXVII. Submission of Sentences for Confirmation.
XXVIII. Execution.
XXIX. Suspensions, Remissions and Commutations of Sentences.
XXX. 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.

27. Chapter XV (as to the jurisdiction of the Courts in inquiries and trials) deals, first, with the place of inquiry or trial: and, secondly, with the conditions requisite for the initiation of proceedings.

Sections 9 and 10 of the Foreign Jurisdiction Act (XXI of 1879), which deal respectively with the liability of British subjects for offences committed out of British India, and with the reception in evidence of depositions made before Political Agents, have been transferred to this part of the Code (sections 189 and 190), which is obviously their proper place.

28. To the provisions contained in the existing law regarding the transfer of cases, there has been added a clause, providing that, when any Magistrate of the first class, specially empowered in this behalf by the Magistrate of a district, has taken cognizance of any case, he may transfer it for inquiry or trial to any other competent Magistrate in such district. This will enable such Magistrates to distribute the work in their Courts, when it is necessary to do so, with less delay than at present.

29. 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. Provision has been made for the revocation of the sanction by any authority to which the authority giving it is subordinate. And in order to remove doubts which have been felt on the point, it is declared that, for the purposes of this section, every Court shall be deemed to be subordinate to the Court to which appeals from the former Court ordinarily lie.

30. 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.

The Bill makes it clear that the power (section 203) to postpone the issue of process cannot be exercised by a Magistrate of the third class.

31. In Chapter XVIII, of inquiry into cases triable by the Court of Session or High Court, power is given (section 210) to the Magistrate to discharge the accused at any stage of the case if, for reasons to be recorded, the Magistrate considers the charge to be groundless.

32. 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. *Chanji Hur*, 11 Bomb. 241, on the corresponding section (457) of Act X of 1872, section 239 of the Bill has been confined to offences consisting of several particulars, a combination of some only of which constitutes a complete minor offence.

From the section (236) relating to joinder of charges, corresponding with section 454 of the present Code, have been omitted all provisions as to the amount of punishment. They obviously belong to substantive law, not to procedure, and will find their proper place in the Penal Code. The illustrations have also been amended.

Provision has been made in section 239 for the case where a person charged with an offence proves circumstances which reduce it to a minor offence. He may then be convicted of the minor offence, though he is not charged with it.

33. Chapter XX, Trial of Summons-cases.—To the section (251) relating to frivolous and vexatious complaints, a clause has been added, providing that, when awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section.

34. In Chapter XXI, of trials of warrant-cases, as in Chapter XVIII, has been inserted a clause (section 254) authorizing the Magistrate to discharge the accused at any stage of the case if, for reasons to be recorded, the Magistrate considers the charge to be groundless. 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 257) to cases where the witnesses are present in the Court or its precincts. The power to recall witnesses for the prosecution after they had left the Court is said to be often abused for the purpose of harassment and delay.

35. In Chapter XXII, summary trials, the Local Government has been authorized 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. The offences of retaining stolen property not exceeding Rs. 50 in value, and assisting in the concealment or disposal of stolen property not exceeding Rs. 50 in value, have been added to the list of those triable in a summary way; and the offence of receiving stolen property will not be so triable where its value exceeds that amount.

36. 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.

The power to stay proceedings on an unsustainable charge has been extended (section 274) to the Court of Session.

The power of directing how jurors shall be chosen by lot has been transferred to the High Court from the Local Government (section 277).

Where there are several accused persons and one of them has stated that he means to adduce evidence, the prosecutor (section 293) will be entitled to reply.

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 294) 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 308) 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.

37. Chapter XXIV, General Provisions as to Inquiries and Trials.—At the instance of many authorities consulted, the power of tendering conditional pardons to accomplices, which is now exerciseable only in cases triable by the Sessions Court, has been extended (section 337) to all warrant-cases. This change, which has been advocated by many authorities, is an important one, and further opinions on its propriety are desirable.

38. 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 345 declares in unmistakeable language that certain specified offences, and no others, may be compounded. These are—

Causing hurt (Penal Code, sections 323, 334, 337, 338).
Wrongfully restraining or confining (Penal Code, sections 341, 342).
Assault or use of criminal force (Penal Code, sections 352, 358).
Unlawful compulsory labour (Penal Code, section 374).
Mischief, when the loss or damage is caused to a private person (Penal Code, sections 426, 427).
Criminal trespass and house-trespass (Penal Code, sections 447, 448).
Criminal breach of contract of service (Penal Code, sections 490, 491, 492).
Adultery, and enticing, &c., a married woman (Penal Code, sections 497, 498).
Defamation (Penal Code, section 500).
Printing or engraving defamatory matter (Penal Code, section 501).
Sale of printed or engraved substance containing defamatory matter (Penal Code, section 502).
Insult intended to provoke a breach of the peace (Penal Code, section 504).
Criminal intimidation, except when the offence is punishable with imprisonment for seven years (Penal Code, section 506).

[illegible] with the punishment of [illegible] the person cheated, as the case may be.

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."

39. In Chapter XXVI, as to judgment, section 367 allows the judgments of Mufassal Courts to be written in the mother-tongue of the presiding officer.

40. Chapter XXVIII, Execution.—In section 395 (= section 313 of the present Code) the imprisonment which may be inflicted in lieu of whipping has been limited to three months; but on the other hand, the proviso that the whole period of imprisonment to which the offender is sentenced shall not exceed that to which he was liable by law, or that which the Court is competent to award, has been cancelled, and the power to imprison is thus extended. Criticism is sought on this alteration.

41. There are no sections in this chapter 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 a section equivalent to Act X of 1872, sections 319, 320.

42. Chapter XXIX, Suspensions, Remissions and Commutations of Sentences.—Where application is made for the suspension or remission of a sentence, the Government is empowered (section 401) 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.

The power of the Government to commute punishment (section 402) has been so worded as to authorize a sentence of rigorous, to be commuted to one of simple, imprisonment.

VII.—Appeal, Reference and Revision.

43. Part VII deals with appeals, references and the revisional jurisdiction of the High Court.

44. Chapter XXXI.—An appeal has been given (section 405) from orders rejecting applications for delivery of attached property.

45. Section 408 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 appeals from an Assistant Sessions Judge. There seems to be no reason for making any distinction between the two.

46. Section 423, 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.

47. 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. In the absence of this power cases have occurred in which criminals, afraid of the result of the appeal, escaped, and made the appeal on behalf of the Government of no avail.

48. 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, where justice to the family of the convicted person may so require, to alter his sentence even after the appeal has abated.

49. Chapter XXXII.—Sub-divisional Magistrates empowered by the Local Government in this behalf are authorized (section 435) to call for records of inferior Courts. This is in accordance with the powers of control in other respects which they exercise.

50. 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.

51. When the Court of Session or District Magistrate reports for the orders of the High Court the results of examining any proceeding, and recommends that a sentence be reversed, the Court of Session or District Magistrate may order (section 438) its execution to be suspended, and the accused, if in confinement, to be released on bail or on his own bond.

52. 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.

53. Where the High Court exercises its powers of revision, no order (section 440) will be made to the prejudice of the accused, unless he has had an opportunity of being heard.

VIII.—Special Proceedings.

54. 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*.

55. Chapter XXXIII.—Section 451 removes some unnecessary 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. 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 by Americans as well as Europeans. Under the present Code (section 78), the trial of a European British subject before the Court of Session need not be by jury. But under section 284 an European or American, not being a British subject, has an absolute right to be so tried. The Bill omits the latter provision.

56. Chapter XXXIV.—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, to the case of persons who, being found to be insane at the time of trial, are committed to custody.

57. Chapter XXXV.—This chapter (sections 476, 478, 479, 480, 482) has been expressly made applicable to Revenue Courts.

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.

Where the Local Government so directs, Sub-Registrars will (section 483) be 'Civil Courts' within the meaning of section 480. The position and qualifications of Sub-Registrars vary in different provinces; but, in some parts of the country, they are believed to be fitted for the exercise of these powers.

Section 486 gives an appeal to the High Court from a conviction in a contempt case by a Court of Small Causes in a Presidency-town.

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.

IX.—Supplementary Provisions.

58. 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.

59. Chapter XXXIX, Public Prosecutor.—Power has been given to appoint as public prosecutor, in any case committed to the Session Court, a Police-officer not below the rank of Assistant District Superintendent. The entire exclusion of the police from such a function is, in the opinion of many authorities, inexpedient. With the limitation above described, there will be no fear of intimidation of witnesses or undue influence.

60. 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.

61. Chapter XL, Bail.—The powers here given to Police-officers have been expressly confined to officers in charge of Police-stations.

62. Chapter XLI, Commissions for Examination of Witnesses.—The provisions of the present law as to commissions for the examination of witnesses have been amended in four respects. Where the witness resides in a Native State, power has been given (section 513) to issue the commission to the Political Agent or other local officer representing the British Government. Section 515 requires that the interrogatories shall be thought relevant by the Magistrate or Court directing the commission. Where a Subordinate Magistrate wishes for a commission, he will (section 516) apply to the District Magistrate, and not (as at present) to the Sessions Judge: this will relieve the Court of Session of a duty which can be more conveniently performed by the District Magistrate. 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.

63. Chapter XLII, Special Rules as to Evidence.—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.

64. Chapter XLIV, Disposal of property produced under the Code.—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.

65. Orders under section 528 made in appealable cases will not be carried out until the time allowed for appealing has expired, or, if an appeal is presented in due time, until the appeal is dismissed.

66. Where an innocent purchaser buys stolen property and restores it to the lawful possessor, provision has been made (section 530) for payment of the price out of money found on the convicted thief. This is in accordance with 30 & 31 Vic., cap. 35, section 10.

67. Section 532 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.

68. Chapter XLV, Transfer of Criminal Cases.—Section 537 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. The High Court has been empowered to transfer cases where the transfer will promote the ends of justice.

69. Chapter XLVI, Irregular Proceedings.—Tender of pardon under Chapter XXIV, and sale of property under section 535 or section 536, have been added to the list of proceedings which will not be set aside merely on the ground of the Magistrate not being duly empowered.

70. Chapter XLVII, Miscellaneous.—Power has been given (section 552) to the Local Government to fix places of imprisonment or custody. Moneys (other than fines) payable by virtue of any order made under the Code will be recoverable as if they were fines (section 558). The power to compel restoration of abducted females, which now exists only in the Presidency-towns, has been extended (section 562) to District Magistrates. Power has been given to the High Courts (section 564) to make rules for the inspection of the records of subordinate Courts. And as to miscellaneous criminal proceedings, if any doubt arise as to the procedure to be followed, the Court will be guided by such rules (consistent with the Code) as the High Court may make in this behalf (section 568). The Bill contains no clause equivalent to Act I of 1868, section 5, although similar provisions are contained in each of the Codes now consolidated (X of 1872, section 309, X of 1875, section 107, IV of 1877, section 12). The matter will be provided for by the Bill above-mentioned, to amend the Penal Code.

Schedules.

71. 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 latter schedule now contains no less than 56 forms, which have stood the test of practice in the Presidency of Madras and the Panjáb.

The offence of voluntarily causing hurt has been made one for which the police may not arrest without a warrant. A like change has been made as to voluntarily causing hurt on grave and sudden provocation, not intending to hurt any other than the person who gave it. The numerous investigations by the police into charges of "hurt," which the present law renders necessary, are said to distract the attention of the police-force from more important duties, and to result in little good to the public.

The offence of adultery has been made triable by a Presidency Magistrate and a Magistrate of the first class.

The paragraph relating to mischief by fire with intent to cause damage has been altered in accordance with a proposed amendment of section 435 of the Penal Code. This alteration has been made in order to check the offence, which is very common in some parts of the country, of setting fire to garnered crops. A cultivator may have the whole of his crop destroyed in this way, and yet if its value be less than Rs. 100 (as is often the case) he cannot obtain the aid of the police to arrest the offender without a warrant from a Magistrate.

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.

72. The Bill was published in the *Gazette of India* for the 5th, 12th and 19th April 1879, and circulated to the various Local Governments, with a request that it might be examined by selected local officers. This was done, and the result of the examination is contained in a thick folio volume. The Bill was then revised with reference to this mass of criticism, and to the cases reported since it was framed; and it may truly be said, in its present form, to be the work of the whole body of Indian Judges and Magistrates rather than of any individual or Department. The additions and changes (other than omissions) which have been made in this second revision are printed in italics. The chief omission is that of the sections relating to limitation, which, in deference to many high authorities, have been struck out as unsuited to India.

73. It is proposed that the measure shall not come into force till 1st January 1883,—ten years from the date on which the present Code came into force. This is five years after the date on which, according to Sir FitzJames Stephen, the Code should have been re-enacted. "I should say," he writes in his well-known Minute on the Administration of Justice in British India, "that this process ought to be repeated at least once in every five years for every important Act."

74. Excluding the special provisions of the Acts relating respectively to Coroners, European British vagrants and criminal tribes, the Bill is now, so far as Mr. Cockerell, Mr. Colvin, 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, notwithstanding the careful and repeated revision it has undergone, they will doubtless discover in so large and complicated a work.

CALCUTTA;
The 25th February, 1881.

WHITLEY STOKES.

D. FITZPATRICK,
Secretary to the Government of India.

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 11th March, 1881, and was referred to a Select Committee:—

No. 9 OF 1881.

A Bill to amend the Dekkhan Agriculturists' Relief Act, 1879, and for other purposes.

Preamble.

WHEREAS it is expedient to amend, in manner hereinafter appearing, the Dekkhan Agriculturists' Relief Act, 1879, and to give effect to the registration of certain instruments executed before the said Act came into force and required to be registered under section 71 of the same Act; It is hereby enacted as follows:—

Short title. Commencement.

1. This Act may be called "The Dekkhan Agriculturists' Relief Act, 1881," and shall come into force at once.

"Section."

2. In this Act "section" means a section of the Dekkhan Agriculturists' Relief Act, 1879.

Repeal of last 14 words of section 2.

3. In section two the last fourteen words shall be repealed.

Amendment of section 19.

4. In section nineteen, first clause, for the words "there is no other claim against him," the words "the other debts (if any) due by him do not, taken together with such sum, amount to fifty rupees" shall be substituted; and to the same clause the words "of such sum" shall be added.

Addition to section 38.

5. To section thirty-eight, the following shall be added:—

"The expression 'officer of Police' in this section shall not be deemed to include a Police Patel appointed under Bombay Act No. VIII of 1867, (*for the Regulation of the Village Police in the Presidency of Bombay*)."

Amendment of section 46.

6. In section forty-eight after the word "suit" the words "or application" shall be inserted.

Addition to section 56.

7. To section fifty-six the following shall be added, namely,—

"or apply to any instrument which is not executed by an agriculturist otherwise than as a surety."

New section substituted for section 57.

8. For section fifty-seven the following section shall be substituted:—

"57. When any persons desire to execute any instrument to which section fifty-six applies, all the intending parties to such instrument shall appear before the Village Registrar appointed for the area in which the agriculturist, or when there are several agriculturists executing the instrument, any one of such agriculturists, resides, and such Registrar, after satisfying himself in such manner as he deems fit as to the identity of the intending executants and receiving from the intending parties the fee (if any) prescribed by the Local Government in this behalf, and the stamp (if any) which may be required by law, shall write the instrument, or cause the same to be written under his superintendence, and after reading the same aloud, or causing it to be so read in the hearing of the intending parties, shall require the intending executants to execute it in his presence.

Such instruments to be written by, or under the superintendence of, a Village Registrar and executed in his presence.

"Every instrument so written and executed shall at the time of execution be attested by the Village Registrar, and also, if any of the executants thereof is unable to read such instrument, by two respectable witnesses.

Attestation of such instruments.

"For the purposes of this section every executant of any such instrument shall appear in person before the Village Registrar, but every other party thereto may appear either in person or by any agent, being his relative, servant or dependent, whom he has duly furnished with a power of attorney authorizing him to appear and act on his behalf."

Amendment of section 58.

8. In section fifty-eight for the words "parties to any instrument have executed it," the words "intending executants have executed any instrument" shall be substituted.

New section substituted for section 71.

9. For section seventy-one the following section shall be substituted:—

"71. No instrument executed before the first day of November, 1879, and purporting to create any mortgage, lien or charge of, or upon, any immoveable property belonging to an agri-

All mortgages executed before the 1st November, 1879, to be produced before, and marked by, Village Registrar.

culturist, shall be received in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon by any such person or by any public officer unless such instrument has, before the first day of November, 1881, been produced before the Village Registrar appointed for the area in which the agriculturist, or where there are several such agriculturists, any one of the agriculturists, to whom such property belongs, resides, and been marked by such Registrar in such manner as the Local Government may by rule prescribe:

"Provided that nothing in this section shall—

"(*a*) apply to an instrument purporting to create a mortgage, lien or charge in favour of the Government or of any officer of the Government in his official capacity; or

"(*b*) prevent the admission of any instrument in evidence in any criminal proceeding."

Amendment of section 72.

10. In section seventy-two the words "against an agriculturist" shall be omitted, and in the same section after the word "money," the words "from a person who at the time when the cause of action arose was an agriculturist" shall be inserted.

New section substituted for section 75.

11. For section seventy-five the following section shall be substituted:—

Additional power to make rules.

"75. The Local Government may, from time to time, make rules:—

"(*a*) for defining more precisely what classes of persons shall be deemed to be agriculturists for the purposes of this Act;

"(*b*) generally for carrying out the provisions of this Act."

Certain instruments to be deemed produced before Village Registrar and marked under section 71.

12. Every instrument described in section seventy-one, as amended by this Act, which, before the passing of this Act, has been registered by a Village Registrar in accordance with rules prescribed in this behalf by the Inspector General of Registration, with the previous sanction of the Local Government, shall be deemed to have been duly produced before the Village Registrar and marked by him under the provisions of that section.

STATEMENT OF OBJECTS AND REASONS.

THE Bombay Government have brought to notice difficulties in the working of the Dekkhan Agriculturists' Relief Act, for the removal of which it appears necessary to make certain amendments in that Act, and to carry out those amendments this Bill has been prepared.

The first amendment provided for is in section 2 of the Act. That section enacts in effect that every agriculturist shall be deemed for the purposes of the Act to reside where he works as such. This rule is found to give rise to difficulty in the case of agriculturists holding land in more than one place, and it is accordingly proposed to repeal it altogether.

2. The first portion of section 19 of the Act confers on the Courts power to discharge an insolvent who owes a sum of less than fifty rupees under a decree, and against whom there is no other claim; but it makes no provision for the case of an insolvent judgment-debtor, against whom there are other claims, but of amounts so trifling that, taken with the amount of the decree, they do not amount to fifty rupees. There appears to be no reason why this latter case should not be treated on the same footing as the former, the insolvency chapter of the Bill being equally inapplicable to both, and the Bill accordingly amends the Act so as to give power to discharge the judgment-debtor from the balance due under the decree in either case.

3. Section 38 of the Act prohibits the appointment of "an officer of police" as a conciliator. A doubt has arisen as to whether a police patel is to be deemed an officer of police within the meaning of this provision, and at the instance of the local Government an explanation has been added to the section to show that he is not.

4. The amendment proposed in section 48 of the Act merely corrects an oversight in drafting.

5. The addition which it is proposed to make to section 56 of the Act, is intended to dispense with the necessity of having an instrument executed before the Village Registrar, merely because a party executing it *as a surety* is an agriculturist.

The changes made in sections 57 and 58 are intended merely to make the meaning clearer.

6. The new section, which it is proposed to substitute for section 71 of the Bill, differs materially from the original one, though the object of both is the same, *viz.*, to prevent the fabrication of mortgage deeds purporting to have been executed before the Act came into force.

The section as it now stands in the Act aims at effecting this object by requiring all existing mortgage deeds to be registered before a certain date under the Indian Registration Act; but it has been found that the practical difficulties in the way of such registration are so great that it is necessary to abandon this procedure and substitute for it the simpler expedient proposed by the Bill, of requiring such deeds to be merely produced before and marked by the Village Registrar before a certain date.

7. Section 72 of the Act, which prescribes periods of limitation longer than the ordinary periods for certain suits against agriculturists, applies in every case in which the defendant is an agriculturist at the time the suit is instituted. This would, in some cases, where the defendant had become an agriculturist shortly before the institution of the suit, lead to anomalous results.

To prevent this the Bill amends the section, so that it will apply only when the defendant was an agriculturist at the time the cause of action arose.

8. Difficulties having arisen as to the construction of the definition of "agriculturist," section 75 of the Act, which gives the Local Government a power to make rules, has been recast so as to admit of rules being made, among other matters, to define more precisely what classes of persons shall be deemed to be agriculturists for the purposes of the Act.

9. Section 12 of the Bill is intended to put mortgage deeds, executed before the Act came into force, and registered under a system of questionable legality established by the Local Government, on the same footing as if they had been marked by the Registrar under the new section 71.

The 8th March, 1881.

J. GIBBS.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First Publication.]

The following 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 4th March, 1881 :—

WE, the undersigned Members of the Select Committee to which the Bill to consolidate and amend the law relating to the Courts of Small Causes established in the Presidency-towns was referred, have the honour to report that we have considered the Bill and the papers noted in the margin.

From Acting Under Secretary to Government, Bombay, No. 7519, dated 9th November 1880, and enclosures [Papers No. 1].
„ Chief Secretary to Government, Madras, No. 2624, dated 2nd November, 1880, and enclosures [Papers No. 2].
„ Chief Secretary to Government, Madras, No. 2662, dated 17th November, 1880, and enclosure [Papers No. 3].
„ D. Seely, Esq., Vakil, High Court, Bombay, dated 26th November, 1880 [Paper No. 4].
Note by Hon'ble J. Sewell White, Judge, High Court, Calcutta, dated 13th December, 1880 [Paper No. 5].
From Secretary to Government, Bengal, No. 67J., dated 7th January, 1881, and enclosures [Papers No. 6].
„ J. Crawford, Esq., Registrar, High Court, Calcutta, No. 970, dated 30th May, 1879 [Papers No. 7].
„ Ditto ditto, No. 279, dated 5th February, 1881 [Papers No. 7].
„ H. J. Stephen, Esq., Barrister-at-law, High Court, Calcutta, dated 10th February, 1881, and enclosure [Papers No. 8].

2. We have added a clause to section 6 of the Bill giving the High Courts the same powers over the Small Cause Courts as they have under the 15th section of the High Courts Act over Courts subject to their appellate jurisdiction.

3. We have altered the section (7) relating to the appointment of the Judges so as to provide that one-third at least of the Judges shall be advocates of a High Court. We think the professional members of the Court should be chosen from the advocates of the High Courts, who may be expected to have acquired some experience of the country.

4. The Bill as introduced made the rank and precedence of the Judges depend on the seniority of their appointment. This would not have answered, as it appears that each seat in the Court has a special rank and salary of its own, and the candidates for appointment are posted to particular seats in the Court with reference to their respective qualifications. The second Judge ought, therefore, always to rank above the third, the third above the fourth, and so on, without any reference to the dates of their appointment, and we have accordingly, in section 8, after providing that the Chief Judge shall be the first in rank, introduced words leaving it to the Local Government to fix the rank of the rest.

5. Another change we have made in the constitution of the Court established by the Bill as introduced, consists in the transfer to the Chief Judge of certain administrative powers, (see section 13 and also sections 61 and 62), which, we think, would be more efficiently exercised by a single individual.

6. The only other amendment we need notice in this portion of the Bill is the insertion of a clause in section 13, providing for the appointment of a Registrar and a section (14) empowering the Local Government to invest him with jurisdiction to try suits up to the limit of Rs. 20 in value. This amendment has been made at the instance of the Government of Bengal, and there is a precedent for it in the Mufassal Small Cause Courts Act No. XI of 1865.

7. Turning now to the chapter relating to jurisdiction in respect of suits, the first change we have made will be found in section 18 of the amended Bill (= section 16 of the Bill as introduced). The reasons given for framing that section as it originally stood are those given in the 7th paragraph of the Statement of Objects and Reasons :—

"Act IX of 1850, in conferring jurisdiction on the Courts up to a value of Rs. 500, confines its exercise to cases of defendants dwelling or carrying on business within the local limits. Act XXVI of 1864, on the other hand, in conferring jurisdiction between the values of Rs. 500 and Rs. 1,000, gives an alternative ground for its exercise, namely, the circumstance of the cause of action having arisen within the local limits. It has been urged by most of the

authorities consulted that the basis of the jurisdiction should be the same in cases of all values. On the other hand, fears have been expressed by some that a power to institute a suit of the lower value against a defendant residing at a distance might be liable to abuse unless some limitation were imposed. The correct view of the matter seems to be that taken by the Judges of the Madras High Court and Mr. Busteed, namely, that in this particular no distinction should be made between the High Court and the Small Cause Court, and accordingly the Bill has been drawn so as to place the jurisdiction of the Small Cause Court in this respect on precisely the same footing as that on which the jurisdiction of the High Court is placed by the Letters Patent."

The objection to the power to institute a suit in the Small Cause Court against a defendant residing at a distance has been again urged, and it is one to which we feel compelled to yield. We have accordingly inserted words requiring the leave of the Court to be obtained when it is proposed to institute a suit against a defendant residing beyond the local limits of the jurisdiction, and we have made this provision applicable to all suits without regard to value. The original scheme of putting the Small Cause Court jurisdiction on the same footing in this particular as the jurisdiction of the High Court being thus broken in upon, we have thought it best to bring the remainder of the section into conformity with the corresponding provisions of the Code of Civil Procedure.

8. In the following section, which excludes certain classes of suits from the jurisdiction of the Small Cause Court, we have omitted the second clause, "suits against the Secretary of State in Council," as it appears to be generally objected to, and we have added the following :—

(1) suits for the specific performance or rescission of contracts generally (such suits are, as regards contracts relating to immoveable property, excluded by the Bill as introduced) ;
(2) suits for compensation for malicious prosecution ;
(3) suits for the cancellation or rectification of instruments ;
(4) suits relating to general average and to insurances on sea-going vessels ;
(5) suits for compensation in respect of collisions at sea ;
(6) suits for compensation for the infringement of a patent, copy-right or trade-mark ;
(7) suits for a dissolution of partnership or for an account of partnership transations ;
(8) suits for declaratory decrees ;
(9) suits in which the plaintiff's claim depends on the decision of a question as to religious rites or ceremonies ;
(10) suits for possession of a hereditary office ;
(11) suits against Sovereign Princes or Ruling Chiefs, or against Ambassadors or Envoys of Foreign States.

The reasons for excluding these suits are so obvious that it is unnecessary to state them.

9. We have struck out the second clause of section 21 (new numbering), which deprived a plaintiff of costs in certain cases if he elected to institute in the High Court a suit against an officer of the Small Cause Court for a wrong done by him under colour of its process. We think that in all such cases a plaintiff should be allowed a free choice.

10. We have also struck out the latter portion of section 22 (new numbering), which specified the grounds on which a Judge in other cases, in which suits cognizable in the Small Cause Court are instituted in the High Court, may certify for costs, as we think that in such a matter the Judge should be allowed a full discretion.

11. Proceeding next to chapter V relating to procedure in suits, we desire to state that we have most carefully considered the objections urged against the first section of that chapter which applies to the Small Cause Courts a large portion of the Code of Civil Procedure.

Those objections, in so far as they come from the public, proceed chiefly from those classes of persons who most frequently appear as plaintiffs in suits of a very simple description, and we can well understand the apprehension they feel that the application of so large portion of the ordinary procedure may, in suits of that class, give rise to complication and delay. But it must be remembered that the great bulk of the provisions so extended are of such a nature as to be applicable only in exceptional cases, and we think that any one who follows the thread of the provisions applicable to ordinary suits will find the procedure to be extremely simple. Moreover, we find that a considerable portion of the Code has been actually in force for some time past in the Madras Small Cause Court, where the statistics show the amount of work performed by each Judge to be as large as in the Small Cause Courts at Calcutta and Bombay, and we further find that the Judges of the Calcutta Small Cause Court themselves propose to apply with little variation the great bulk of the sections contained in the second schedule to this Bill.

12. We have, however, in deference to the apprehensions which have been expressed, gone through the schedule item by item, and have struck out some portions; among others those requiring copies of the plaint or concise statements to be filed with the plaint, those relating to discovery, those requiring judgments to be in writing, and the whole chapter relating to pauper suits.

We have, moreover, in order to relieve the Judges, inserted in the body of the Bill a section (35) based on section 637 of the Code, empowering the Court to direct that any non-judicial or quasi-judicial act which the Code requires to be done by a Judge shall be done by a ministerial officer, and we think that the procedure as now settled is as simple as it can safely be made, and as the majority of the litigants would desire it to be.

13. We have added a section providing that no decision passed under the Act shall be conclusive, except as to the right to the relief granted or the absence of a right to the relief withheld by it. This provision, which cuts away to a great extent the doctrine of res judicata, will doubt leave it open to persistent parties to litigate a matter which has already carefully considered and well decided; but we think it [illegible]

this than to take the risk of having difficult questions of title to property of large value and complicated issues governing extensive transactions finally decided under an Act like this in the first petty case in which they may chance to present themselves.

14. We have extended section 27 (new numbering) to cases in which the plaintiff does not altogether fail in his suit, but fails to recover the full amount of his claim and to cases in which unfounded objections are made to the attachment of property in execution of decree.

15. Section 30 is new. The law, as it at present stands in this country, would appear to be peculiarly indulgent to tenants in the matter of the right to remove what they may have attached to the soil, and yet the holder of a decree of the Small Cause Court is probably precluded (unless he chooses to resort to the High Court) from taking in execution of such decree even some such things as might be taken under a *fieri facias* in England. It has, at all events, been held that though tenants in Calcutta have a right to remove "tiled huts," such huts cannot be taken in execution of decrees of the Small Cause Court. The landlords complain of this as a hardship, and we think not without reason; but the remedy should not, in our opinion, be limited to this particular case, and we have accordingly provided that anything which the tenant would be entitled to remove during his tenancy may be taken in the execution of a decree against him as if it were a moveable.

16. We have at the instance of the Judges of the Calcutta Small Cause Court substituted for the latter portion of section 230 of the Code a section (28) providing that no decree of a Small Cause Court shall be executed after the lapse of three years from the date on which it is passed, unless the judgment-debtor by force or fraud has prevented its execution within the three years.

17. We have, in section 34 of the Bill, restored section 31 of Act IX of 1850, which allows minors to sue for a sum not exceeding Rs. 500 due for wages, or piece-work or for work as a servant, as if they were of full age, but we have, to prevent mistake, expressly limited it to cases where such money is due under section 70 of the Contract Act, the only law, as we believe, under which a minor can now acquire a right to such money.

18. The only other amendment we have to notice in the chapter relating to procedure is the insertion of certain sections (36 to 38) providing for the exercise of the jurisdiction which may be conferred on the Registrar under section 14.

19. We have introduced a new chapter (VI) to include the section providing for a new trial and certain additional sections establishing a mode of having a suit of a value above Rs. 500, re-heard in the High Court, as if it had been instituted in that court. These sections, which have been proposed by Mr. Kennedy, are based on the provisions enacted by the 14th & 15th Vic. c. 57, for the Irish Civil Bill Courts, and they have in our opinion this advantage, that they provide, in cases where there has been a failure of justice, a substitute for an appeal without entailing the necessity of any elaborate record of evidence being kept by the Court below.

20. We have omitted the chapters which would have conferred on the Small Cause Courts jurisdiction in certain classes of insolvency and probate business, as we believe that unless the Court were to hear cases which, owing to their intricacy and difficulty, ought to be removed into the High Court, the saving of time to the High Court would be altogether unimportant. There is no doubt that the High Courts at present dispose of much petty business of these classes, but it is done for the most part in the offices of the Court, and costs the Judges little time or labour.

We may add that, so far as the grant of probates and letters of administration is concerned, we believe that the object in view will be better secured by the extension of the certificate system effected by Act No. IX of 1881.

21. We have confined section 59, which prevents the fees of a legal practitioner being recovered as costs unless his employment is held to be reasonable, to cases where the amount or value in dispute is less than Rs. 20. We do not see why in cases where a larger amount is at stake the ordinary rules as to allowing costs should not apply.

22. Lastly, we have inserted a section (72) to determine the functions of legal practitioners in the Small Cause Court. Its first clause provides that no persons other than advocates, attorneys and vakíls of the High Court and *persons who are now pleaders of the Small Cause Court* shall appear, plead or act in the Small Cause Court. We do not think it desirable to admit an inferior class of legal practitioners, whose business would be confined to the Small Cause Courts, and, accordingly, while we would save the rights of pleaders already admitted, we would bar the admission of any others.

The second clause of the section confines the right to conduct as counsel a suit at the hearing, in the extended jurisdiction now for the first time conferred on the Court, to advocates and vakíls of the High Court, and requires that a barrister so conducting a suit shall be instructed by an attorney or vakíl, or by a pleader of the Small Cause Court. The reasons for this latter requirement are obvious.

The section, it need hardly be mentioned, saves the right of parties to conduct their own cases, and appear for one another, and also the rights of recognized agents.

23. The publication of the Bill, with its Statement of Objects and Reasons, in English, has been reported by the Governments of Madras, Bombay and Bengal. We consider that the changes now made are such as to render its re-publication desirable; and we have accordingly altered the date on which it should come into force to the 1st January, 1882, and recommend that it now be re-published.

The 4th March, 1881.

WHITLEY STOKES.
J. GIBBS.
G. C. PAUL.
JOTINDRA MOHAN TAGORE.

I THINK that the limit in section 22 ought to be reduced from Rs. 2,000 to 1,000. In other respects I agree in the report.

J. PITT KENNEDY.

No. II.

THE PRESIDENCY SMALL CAUSE COURTS BILL, 1880.

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No. II.

A Bill to consolidate and amend the law relating to the Courts of Small Causes established in the Presidency-towns.

WHEREAS it is expedient to consolidate and amend the law relating to the Courts of Small Causes established in the towns of Calcutta, Madras and Bombay; It is hereby enacted as follows:— Preamble.

CHAPTER I.

PRELIMINARY.

Short title. 1. This Act may be called "The Presidency Small Cause Courts Act, 1881"; and it shall come into force on the first day of January, 1882. Commencement.

But nothing herein contained shall affect the provisions of the Army Discipline and Regulation Act, 1879, section 144.

Repeal of enactments. 2. On and from the day on which this Act comes into force, the enactments specified in the first schedule hereto annexed shall be repealed to the extent mentioned therein.

But all Courts constituted and appointments made under any of the said enactments shall, as far as may be, be deemed to have been respectively constituted and made under this Act.

References in previous Acts. All references to any enactment hereby repealed made in Acts passed prior to the day on which this Act comes into force shall be read, so far as may be practicable, as if made to this Act or the corresponding provisions hereof. For references, see Act V of 1871, s. 14: Act XVIII of 1879, s. 3.

Amendment of Acts. 3. In Act No. XXIII of 1850 (*for securing the Land-Revenue of Calcutta*), section 3, the words "as provided by the said Act" shall be repealed; and for each of the expressions "a Commissioner of the Court for recovery of small debts referred to in the said Act" and "the said Commissioners," the words "the Judges of the Court of Small Causes at Calcutta" shall be substituted.

In the Code of Civil Procedure, section 8, after the word and figures "chapter XXXIX," the words and figures "and by the Presidency Small Cause Courts Act, 1881," shall be inserted.

"Small Cause Court" defined. 4. In this Act, "the Small Cause Court" means the Court of Small Causes constituted under this Act in the town of Calcutta, Madras or Bombay, as the case may be.

CHAPTER II.

CONSTITUTION AND OFFICERS OF THE COURT.

Courts of Small Causes established. 5. There shall be in each of the towns of Calcutta, Madras and Bombay a Court, to be called the Court of Small Causes of Calcutta, Madras or Bombay, as the case may be.

New. See 8 Bom. H. C. Rep. (O. C. J.) 59 and sec. 652 of Act X of 1877.

6. The Small Cause Court shall be deemed to be a Court subject to the superintendence of the High Court of Judicature at Fort William, Madras or Bombay, as the case may be, within the meaning of the Letters Patent, respectively dated the 28th day of December, 1865, for such High Courts and within the meaning of the Code of Civil Procedure; and the High Court shall have, in respect of the Small Cause Court, the same powers as it has under the 24th & 25th of Vic., chapter 104, section 15, in respect of Courts subject to its appellate jurisdiction.

Court to be deemed under superintendence, &c., of High Court.

See Act XXVI of 1864, s. 12: Act IX of 1850, s. 5.

7. Subject to the control of the Governor General in Council, the Local Government may, from time to time, by notification in the official Gazette, appoint a person to be Chief Judge, and so many other persons as it thinks fit to be Judges of the Small Cause Court: Provided that not less than one-third of the persons so appointed, including the Chief Judge, shall be advocates of one of the said High Courts.

Appointment, suspension and removal of Judges.

Act IX of 1850, s. 10.

The Local Government may, by a like notification, suspend and, with the previous sanction of the Governor General in Council, remove any Judge so appointed.

See Act XXVI of 1864, s. 14.

8. The Chief Judge shall be the first of the Judges in rank and precedence.

Rank and precedence of Judges.

Act XVII of 1877, s. 6.

The other Judges shall have rank and precedence as the Local Government may, from time to time, direct.

Act XVII of 1877, s. 119. (Cf. Act IX of 1850, s. 29.)

9. Except as otherwise provided by this or any other law for the time being in force, the Small Cause Court may, with the previous sanction of the High Court, make rules to provide, in such manner as it thinks fit, for the exercise by one or more of its Judges of any powers conferred on the Small Cause Court by this Act or by any other law for the time being in force.

Delegation of powers of Court to its members.

Act XXVI of 1864, s. 14.

10. Subject to such rules, the Chief Judge may, from time to time, make such arrangements as he thinks fit for the distribution of the business of the Court among the various Judges thereof.

Chief Judge to distribute business of Court.

Act XI of 1859, s. 22.

11. Save as hereinafter otherwise provided, when two or more of the Judges sitting together differ on any question, the opinion of the majority shall prevail; and if the Court is equally divided, the Chief Judge, if he is one of the Judges so differing, or in his absence the Judge first in rank and precedence of the Judges so differing, shall have the casting voice.

Procedure in case of difference of opinion.

Act XVII of 1876, s. 10(b). (Cf. Act IX of 1850, s. 24.)

12. The Small Cause Court shall use a seal of such form and dimensions as are for the time being prescribed by the Local Government.

Seal to be used.

Act IX of 1850, ss. 18-19.

13. The Local Government may, from time to time, appoint an officer to be called the Registrar of the Court, and to be the chief ministerial officer of the Court;

and the Chief Judge may, from time to time, subject to the control of the Local Government, appoint as many clerks, bailiffs and other ministerial officers as may be necessary for the administration of justice by the Court and for the exercise and performance of the powers and duties conferred and imposed on it by this Act or any other law for the time being in force.

Appointment of Registrar and ministerial officers.

Cf. Act IX of 1850, ss. 14-16: Act XVII of 1877, s. 28.

The Registrar and other officers so appointed shall exercise such powers, and discharge such duties, of a ministerial nature as the Chief Judge (subject to the control of the High Court) may, from time to time, by rule, direct.

Powers and duties of such officers.

Act XVII of 1875, s. 20.

The Chief Judge may suspend or remove any Registrar or other officer so appointed; but the removal of any Registrar or officer drawing a monthly salary of one hundred rupees or upwards shall be subject to the orders of the Local Government.

New.

14. The Local Government may invest the Registrar with the powers of a Judge under this Act for the trial of suits in which the amount or value of the subject-matter does not exceed twenty rupees. And, subject to the orders of the Chief Judge, any Judge of the Small Cause Court may, whenever he thinks fit, transfer from his own file to the file of the Registrar any suit which the latter is competent to try.

Registrar may be invested with powers of a Judge in suits not exceeding twenty rupees.

Act IX of 1850, ss. 9 and 17.

15. No Judge or other officer appointed under this Act shall, during his continuance as such Judge or officer, either by himself or as a partner of any other person, practise or act, either directly or indirectly, as an Advocate, Attorney, Vakíl or other legal practitioner, or be concerned, either on his own account or for any other person, or as the partner of any other person, in any trade or profession.

Judge or other officer not to practise or trade.

Any such Judge or officer so practising, acting or concerned shall be deemed to have committed an offence under section 168 of the Indian Penal Code.

Nothing herein contained shall be deemed to prohibit any such Judge or officer from being a member of any company incorporated or registered under Royal Charter, Letters Patent, Act of Parliament or Act of any British Indian Legislature.

CHAPTER III.

LAW ADMINISTERED BY THE COURT.

Cf. Act XVII of 1875. See s. 37 of Act IX of 1850.

16. All questions other than questions relating to procedure or practice which arise in suits or other proceedings under this Act in the Small Cause Court shall be dealt with and determined according to the law for the time being administered by the High Court in the exercise of its ordinary original civil jurisdiction.

Questions arising in suits, &c., under Act to be decided according to law administered by High Court.

CHAPTER IV.

JURISDICTION IN RESPECT OF SUITS.

Act IX of 1850, s. 6.

17. The local limits of the jurisdiction of each of the Small Cause Courts shall be the local limits for the time being of the ordinary original civil jurisdiction of the High Court.

Local limits of jurisdiction of Court.

Act IX of 1850, ss. 25 and 32: Cf. Act X of 1877, s. 11.

19 & 20 Vic., c. 106, s. 24.

Letters Patent of 1865, s. 12.

18. Subject to the exceptions in section nineteen, the Small Cause Court shall have jurisdiction to try all suits of a civil nature—

Suits in which Court has jurisdiction.

when the amount or value of the subject-matter does not exceed two thousand rupees: and

(*a*) the cause of action has arisen, either wholly or in part, within the local limits of the jurisdiction of the Small Cause Court, and the leave of the Court has, for reasons to be recorded by it in writing, been given before the institution of the suit; or

(*b*) all the defendants, at the time of the institution of the suit, actually and voluntarily reside, or carry on business, or personally work for gain within such local limits; or

(*c*) any of the defendants, at the time of the institution of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, within such local limits: and either the leave of the Court has been given before the institution of the suit, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution.

Explanation I.—When in any suit the sum claimed is, by a set-off admitted by both parties, reduced to a balance not exceeding two thousand rupees, the Small Cause Court shall have jurisdiction to try such suit.

Explanation II.—Where a person has a permanent dwelling at one place and also a lodging at another place for a temporary purpose only, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary lodging.

Explanation III.—A Corporation or Company shall be deemed to carry on business at the place of its principal office in British India, and in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

Act IX of 1850, s. 25.

Sec. 2 Bom. H. C. Rep. (O. C. J.) 1.

19. The Small Cause Court shall have no jurisdiction in—

Suits in which Court has no jurisdiction.

(*a*) suits concerning the assessment or collection of the revenue;

(*b*) suits concerning any act ordered or done by the Governor General in Council or the Local Government, or by the Governor General or a Governor, or by any Member of the Council of the Governor General or of the Governor of Madras or Bombay, in his official capacity, or by any person by order of the Governor General in Council or the Local Government;

(*c*) suits concerning any act ordered or done by any Judge or judicial officer in the execution of his office, or by any person in pursuance of any judgment or order of any Court or any such Judge or judicial officer;

Act X of 1877, s. 16, cls. (a) to (d).

(*d*) suits for the recovery of immoveable property;

(*e*) suits for the partition of immoveable property;

(*f*) suits for the foreclosure or redemption of a mortgage of immoveable property;

(*g*) suits for the determination of any other right to or interest in immoveable property;

(*h*) suits for the specific performance or rescission of contracts;

(*i*) suits to obtain an injunction;

(*j*) suits for the cancellation or rectification of instruments;

(*k*) suits to enforce a trust;

(*l*) suits relating to general average and to insurances on sea-going vessels;

(*m*) suits for compensation in respect of collisions at sea;

(*n*) suits for compensation for the infringement of a patent, copy-right or trade-mark;

(*o*) suits for a dissolution of partnership or for an account of partnership-transactions;

(*p*) suits for an account of property and its due administration under the decree of the Court;

(*q*) suits for compensation for libel, slander, malicious prosecution, adultery or breach of promise of marriage;

(*r*) suits for the restitution of conjugal rights, for the recovery of a wife, or for a divorce;

(*s*) suits for declaratory decrees;

(*t*) suits in which the plaintiff's claim depends on the decision of a question as to religious rites or ceremonies;

(*u*) suits for possession of a hereditary office;

(*v*) suits against Sovereign Princes or Ruling Chiefs, or against Ambassadors or Envoys of Foreign States;

(*w*) suits on any judgment of a High Court; 19 & 20 Vic., c. 106, s. 27.

(*x*) suits the cognizance whereof by the Small Cause Court is barred by any law for the time being in force.

Act XXVI of 1864, s. 3.

20. When the parties to a suit which, if the amount or value of the subject-matter thereof did not exceed two thousand rupees, would be cognizable by the [illegible] Court have entered into a contract in writing that the Small Cause Court shall have jurisdiction to try such suit, the Court shall have jurisdiction to try the same, although the amount or value of the subject-matter thereof may exceed two thousand rupees.

Court may by consent try suits beyond pecuniary limits of jurisdiction.

Every such agreement shall be filed in the Small Cause Court, and, when so filed, the parties to it shall be subject to the jurisdiction of the Court, and shall be bound by its decision in such suit.

Act IX of 1850, s. 100.

21. All suits to which an officer of the Small Cause Court is, as such, a party, except suits in respect of property taken in execution of its process, or the proceeds or value thereof, may be instituted in the High Court at the election of the plaintiff as if this Act had not been passed.

Suits by and against officers of Court.

Act IX of 1850, s. 101. Act XXVI of 1864, s. 4.

22. If any suit cognizable by the Small Cause Court, other than a suit to which section twenty-one applies, is instituted in the High Court, and if in such suit the plaintiff obtains in the case of a suit founded on contract, a decree for any matter of an amount or value less than two thousand rupees, and in the case of any other suit a decree for any matter of an amount or value of less than three hundred rupees, no costs shall be allowed to the plaintiff;

Costs when plaintiff sues in High Court in other cases cognizable by Small Cause Court.

and if in any such suit the plaintiff does not obtain a decree, the defendant shall be entitled to his costs as between attorney and client.

The foregoing rules shall not apply to any suit in which the Judge who tries the same certifies that it was one fit to be brought in the High Court.

CHAPTER V.

PROCEDURE IN SUITS.

Portions of Civil Procedure Code extending to the Court.

23. The chapters and sections of the Code of Civil Procedure specified in the second schedule hereto annexed shall extend, and shall, so far as the same may, in the judgment of the Court, be applicable, be applied, to the Small Cause Court; and the procedure prescribed thereby shall be the procedure followed in the Court in all suits cognizable by it, except where such procedure is inconsistent with the procedure prescribed by any specific provisions of this Act.

Res judicata.

24. Notwithstanding anything contained in section 13 of the Code of Civil Procedure, no decision passed under the provisions of this Act shall be conclusive as to anything except the right at the time of such decision to the relief granted thereby, or the absence of a right at such time to any relief claimed by the plaintiff and withheld by such decision.

Illustrations.

(*a*). A sues B in the Small Cause Court for compensation for damage done by B to a house which A alleges to be his own. B denies that the house is A's. The Court decides that the house is A's, and that he is entitled to Rs. 100 compensation. The decision is conclusive as to A's right to the compensation, but not as to his title to the house, and, if A subsequently sues B for further damage done to the same house, B is not precluded from again questioning A's title.

(*b*). A sues B in the Small Cause Court for an instalment alleged to be due on a bond purporting to be executed by B. B denies the execution of the bond. The Court finds the execution proved, and gives A a decree for the amount of the instalment. A subsequently sues B for a later instalment on the same bond; B is not precluded from again denying the execution.

(*c*). A sues B as in illustration (*b*). B denies the execution of the bond, and the Court, finding that B's signature was forged, dismisses the suit. This does not preclude A from suing again on the bond.

(*d*). A sues B in the Small Cause Court for possession of a horse which A alleges to be his property, and to have been lent to B to use during A's pleasure. B denies that the horse is A's. The Court finds that the horse is A's, and gives him a decree for possession, and A recovers possession of the horse. B, subsequently alleging that the horse is his, sues A for possession of it. The decision in the former suit is no bar to B.

No written statement except in cases of set-off.

25. Except in cases of set-off under the Code of Civil Procedure, section 111, no written statement shall be received unless required by the Court.

Act X of 1877, s. 144.

Return of documents admitted in evidence.

26. When a period of eight days from the decision of a suit has expired without any application for a new trial or re-hearing of such suit having been made, or, when any such application has been made within such period and such application has been refused, or the new trial or re-hearing (as the case may be) has ended, any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit and placed on the record, shall, unless the document is impounded under section 143 of the Code of Civil Procedure, be entitled to receive back the same:

Provided that a document may be returned at any time before any of such events if the person applying for such return delivers to the proper officer a certified copy of such document to be substituted for the original. Provided also that no document shall be returned which by force of the decree has become void or useless.

On the return of a document which has been admitted in evidence, a receipt shall be given by the party receiving it, in a receipt-book to be kept for the purpose.

Act IX of 1850, s. 42.

Compensation payable by plaintiff to defendant in certain cases.

27. In any suit in which the defendant appears and does not admit the claim, and the plaintiff does not obtain a decree for the full amount of his claim, the Small Cause Court may in its discretion order the plaintiff to pay to the defendant, by way of satisfaction for his trouble and attendance, such sum as it thinks fit.

When any claim preferred, or objection made, under section 278 of the Code of Civil Procedure, is disallowed, the Small Cause Court may in its discretion order the person preferring or making such claim or objection to pay to the decree-holder, or to the judgment-debtor, or to both, by way of satisfaction as aforesaid, such sum or sums as it thinks fit.

Any order under this section may, in default of payment of the amount payable there-under, be enforced by the person in whose favour it is made against the person against whom it is made as if it were a decree of the Court.

Bar to applications for execution of decrees.

28. No application to execute a decree passed under this Act shall be received after the expiration of three years from the date of such decree, unless the judgment-debtor has, within the three years following such date, by force or fraud prevented the execution of such decree.

Decree-holder to accompany officer executing warrant.

29. Whenever the Small Cause Court issues a warrant for the arrest of a judgment-debtor or the attachment of his property, the decree-holder, or some other person on his behalf, shall accompany the officer of the Court entrusted with the execution of such warrant, and shall point out to such officer the judgment-debtor or the property to be attached, as the case may be.

Things attached to immoveable property and removeable by tenant to be deemed moveable in execution.

30. When the judgment-debtor under any decree of the Small Cause Court, is a tenant of immoveable property, anything attached to such property, and which he might before the termination of his tenancy lawfully remove without the permission of his landlord, shall, for the purpose of the execution of such decree, be deemed to be moveable property, and may, if sold in such execution, be severed by the purchaser, but shall not be removed by him from the property until he has done to the property whatever the judgment-debtor would have been bound to do to it if he had removed such thing.

Act IX of 1850, s. 33.

Discharge of judgment-debtor on sufficient security.

31. Whenever any judgment-debtor, who has been arrested in execution of a decree of the Small Cause Court, offers security to the satisfaction of such Court for payment of the amount which he has been ordered to pay and the costs, the Court may order him to be discharged.

Act IX of 1850, s. 71. (See I.L.R. 5 Calc., p. 294.)

Court may in certain cases suspend execution of decree.

32. Whenever it appears to the Small Cause Court that any judgment-debtor under its decree is unable, from sickness or other sufficient cause, to pay the amount of the decree, or, if such Court has ordered the same to be paid in instalments, the amount of any instalment thereof, it may, from time to time, for such time and upon such terms as it thinks fit, suspend the execution of such decree.

Act XI of 1865, s. 20.

Execution of decree of Small Cause Court by other Courts.

33. If the judgment-debtor under any decree of the Small Cause Court has not, within the local limits of its jurisdiction, moveable property sufficient to satisfy the decree, the Court may, on the application of the decree-holder, send the decree for execution—

(*a*) in the case of execution against immoveable property situate within such local limits—to the High Court;

(*b*) in all other cases—to any Civil Court within the local limits of whose jurisdiction such judgment-debtor, or any moveable or immoveable property of such judgment-debtor, may be found.

Procedure when decree transferred.

The procedure prescribed by the Code of Civil Procedure for the execution of decrees by Courts other than those which made them shall be the procedure followed in such cases.

Act IX of 1850, s. 31.

Minors may sue in certain cases as if of full age.

34. Notwithstanding anything contained in the Code of Civil Procedure as applied by this Act, any minor may institute a suit for any sum of money, not exceeding five hundred rupees, which may be due to him under section seventy of the Indian Contract Act, 1872, for wages or piece-work or for work done in the manner as if he were of full age.

Act X of 1877, s. 397.

Power to delegate non-judicial duties.

35. Any non-judicial or quasi-judicial act which the Code of Civil Procedure as applied by this Act requires to be done by a Judge, and any act which may be done by a Commissioner appointed to examine and adjust accounts under section 394 of that Code as so applied, may be done by the Registrar of the Small Cause Court or by such other officer of that Court as that Court may, from time to time, appoint in this behalf.

The High Court may, from time to time, by rule declare what shall be deemed to be non-judicial and quasi-judicial acts within the meaning of this section.

Registrar to hear and determine suits like a Judge.

36. The suits cognizable by the Registrar under section fourteen shall be heard and determined by him in like manner in all respects as a Judge of the Court might hear and determine the same:

Proviso.

Provided that, subject to the orders of the Chief Judge, any Judge of the Court may, whenever he thinks fit, transfer to his own file any suit on the file of the Registrar.

Registrar may execute all decrees with the same powers as a Judge.

37. The Registrar may receive applications for the execution of decrees of any value passed by the Court, and may commit and discharge judgment-debtors, and make any order in respect thereof which a Judge of the Court might make under this Act.

New.

Decrees and orders of Registrar to be subject to new trial as if made by a Judge.

38. Every decree and order made by the Registrar in any suit or proceeding shall be subject to the same provisions in regard to new trial as if made by a Judge of the Court.

CHAPTER VI.

NEW TRIALS AND REHEARING.

(Cf. Act XI of 1865, s. 21.) Cls., rule 23.

Judgments and orders of Court final.

39. Save as is herein specially provided, every decree and order of the Small Cause Court in a suit shall be final and conclusive;

Power to order new trial in Small Cause Court.

but the Court may, on application of either party, made within eight days from the date of the decree or order in any suit (not being a decree passed under section 522 of the Code of Civil Procedure) order a new trial to be held upon such terms as it thinks reasonable, and may, in the meantime, stay the proceedings.

Application for re-hearing in High Court.

40. Any party may, within eight days after the judgment in any suit in which the amount or value of the subject-matter exceeds five hundred rupees, apply to the High Court for an order that such suit may be re-heard.

Such application shall be supported by affidavits, and, in case the applicant has appeared by advocate, vakil or attorney, by a certificate from the leading Counsel at the hearing that in his opinion there are good grounds for re-hearing the suit, and, if on hearing such application, the High Court is of opinion that there has been a miscarriage or failure of justice, or that there are other good grounds for such re-hearing, the Court shall make an order *ex parte*, on such terms as it thinks fit, for such re-hearing and fix a day for the same, whereof notice shall be given to the opposite party.

The rules contained in sections 545, 546 and 547 of the Code of Civil Procedure relating to staying and executing decrees under appeal, shall apply in the case of applications under this section as if such applications were appeals from the decisions of the Small Cause Court.

Mr. Kennedy's draft, s. 22.

Procedure at re-hearing.

41. On the day fixed under section forty or on any other day to which the hearing may be adjourned, the High Court, or some Judge thereof, shall proceed to hear and determine the case as if the same were a suit brought in such High Court in its ordinary original civil jurisdiction, in which the plaintiff in the Small Cause Court was plaintiff, and the defendant in such Court was defendant, and in which written statements had not been ordered to be filed; and, except as herein otherwise provided, all the practice and procedure of such High Court in respect of suits brought in its ordinary original civil jurisdiction, shall be followed in suits re-heard under this section: Provided that there shall not be any appeal from any judgment, decree, or order under this section.

Mr. Kennedy's draft, s. 23.

Execution of decree of High Court.

42. Every decree or order made by any High Court upon any such rehearing may either be executed by such High Court in the same manner as other

decrees or orders of such Court or may, in the discretion of the High Court, be remitted to the Small Cause Court for execution.

CHAPTER VII.

RECOVERY OF POSSESSION OF IMMOVEABLE PROPERTY.

Act IX of 1850, s. 91. 19 & 20 Vic., c. 108, s. 50.

43. When any person has had possession of any immoveable property situate within the local limits of the Small Cause Court's jurisdiction and of which the annual value at a rack-rent does not exceed one thousand rupees, as the tenant, or by permission of, another person, or of some person through whom such other person claims,

Summons against person occupying property without leave.

and such tenancy or permission has been determined or been withdrawn,

and such tenant or occupier or any person holding under or by assignment from him, (hereinafter called the occupant) refuses to deliver up such property in compliance with a request made to him in this behalf by such other person,

such other person (hereinafter called the applicant) may apply to the Small Cause Court for a summons against the occupant, calling upon him to show cause, on a day therein appointed, why he should not be compelled to deliver up the property.

Act IX of 1850, s. 94.

44. The summons shall be served on the occupant in the manner provided by the Code of Civil Procedure for the service of a summons on a defendant.

Service of summons.

Act IX of 1850, ss. 92, 93. 19 & 20 Vic., c. 108, s. 50.

45. If the occupant does not appear at the time appointed and show cause to the contrary, the applicant shall, if the Small Cause Court is satisfied that he is entitled to apply under section forty-three, be entitled to an order addressed to a bailiff of the Court directing him to give possession of the property to the applicant on such day as the Court thinks fit to name in such order.

Order for possession.

Explanation.—If the occupant proves that the tenancy was created or permission granted by virtue of a title which determined previous to the date of the application, he shall be deemed to have shown cause within the meaning of this section.

Act IX of 1850, s. 93.

46. Any such order shall justify the bailiff to whom it is addressed in entering after the hour of six in the morning and before the hour of six in the afternoon upon the property named therein, with such assistants as he thinks necessary, and giving possession of such property to the applicant:

Such order to justify bailiff entering on property and giving possession.

Act IX of 1850, s. 95.

and no suit or prosecution shall be maintainable against any Judge or officer of the Small Cause Court by whom any such order as aforesaid was issued, or against any bailiff or other person by whom the same was executed, or by whom any such summons as aforesaid was served, for the issue, execution or service of any such order or summons, by reason only that the applicant was not entitled to the possession of the property.

Bar to proceedings against Judge or officer for issuing, &c., order or summons.

Act IX of 1850, s. 96.

47. When the applicant, at the time of applying for any such order as aforesaid, was entitled to the possession of such property, neither he nor any person acting in his behalf shall be deemed, on account of any error, defect or irregularity in the mode of proceeding to obtain possession thereunder, to be a trespasser; but any person aggrieved may bring a suit for the recovery of compensation for any damage which he has sustained by reason of such error, defect or irregularity:

Applicant, if entitled to possession, not to be deemed trespasser for any error in proceedings.

Occupant may sue for compensation.

when no such damage is proved, the suit shall be dismissed; and when such damage is proved but the amount of the compensation assessed by the Court does not exceed ten rupees, the Court shall award to the plaintiff no more costs than compensation, unless the Judge who tries the case certifies that in his opinion full costs should be awarded to the plaintiff.

Act IX of 1850, s. 98.

48. Nothing herein contained shall be deemed to protect any applicant obtaining possession of any property under this chapter from a suit by any person deeming himself aggrieved thereby, when such applicant was not at the time of applying for such order as aforesaid entitled to the possession of such property.

Liability of applicant obtaining order when not entitled.

Act IX of 1850, s. 97.

And when the applicant was not, at the time of applying for any such order as aforesaid, entitled to the possession of such property, the application for such order, though no possession is taken thereunder, shall be deemed to be an act of trespass committed by the applicant against the occupant.

Application for order in such case an act of trespass.

Act IX of 1850, s. 97.

49. Whenever on an application being made under section forty-three the occupant binds himself, with two sureties, in a bond for such amount as the Small Cause Court thinks reasonable, having regard to the value of the property and the probable costs of the suit next hereinafter mentioned, to institute without delay a suit in the High Court against the applicant for compensation for trespass, and to pay all the costs of such suit in case he does not prosecute the same or in case judgment therein is given for the applicant, the Small Cause Court shall stay the proceedings on such application until such suit is disposed of.

Stay of proceedings on occupant giving security to bring a suit against the applicant.

If the occupant obtains a decree in any such suit against the applicant, such decree shall supersede the order (if any) made under section forty-five.

Nothing contained in section twenty-two shall apply to suits under this section.

New.

50. In all proceedings under this chapter, the Small Cause Court shall, as far as may be and except as herein otherwise provided, follow the procedure prescribed for a Court of first instance by the Code of Civil Procedure.

Proceedings to be regulated by the Code of Civil Procedure.

Act IX of 1850, s. 98.

51. Recovery of the possession of any immoveable property under this chapter shall be no bar to the institution of a suit in the High Court for trying the title thereto.

Recovery of possession no bar to suit to try title.

CHAPTER VIII.

REFERENCES TO HIGH COURT.

Act XI of 1865, s. 32.

52. If two or more Judges of the Small Cause Court sit together in any suit, or in any proceeding under chapter VII of this Act, and differ in their opinion as to any question of law or usage having the force of law, or the construction of a document, which construction may affect the merits,

Reference when compulsory.

Act XXVI of 1864, s. 7.

or if in any suit or any such proceeding, in which the amount or value of the subject-matter exceeds five hundred rupees, any such question arises, and either party so requires,

(Ordinary references provided for by ch. XLVI, C. P. Code.)

the Small Cause Court shall draw up a statement of the facts of the case, and refer such statement, under section 617 of the Code of Civil Procedure, for the opinion of the High Court, and shall either reserve judgment or give judgment contingent upon such opinion.

Act XXVI of 1864, s. 8.

53. When judgment is given under section fifty-two contingent upon the opinion of the High Court, the party against whom such judgment is given shall at once furnish security, to be approved by the Small Cause Court, for the costs of the reference to the High Court and for the amount of such judgment:

Security to be furnished on such reference by party against whom contingent judgment given.

Act XXVI of 1864, s. 8. See 14 B. L. R., p. 182.

Provided that no security for the amount of such judgment shall be required in any case in which the Judge who tried the case has ordered such amount to be paid into Court, and the same has been paid accordingly.

Act IX of 1880, ss. 19 & 20. Act XXVI of 1864, s. 11.

Unless such security as aforesaid is at once furnished, the party against whom such contingent judgment has been given shall be deemed to have submitted to the same.

If no such security given, party to be deemed to have submitted to judgment.

CHAPTER IX.

FEES AND COSTS.

Act IX of 1850, s. 20 [illegible] s. 22.

Institution-fee.

54. A fee not exceeding—

(*a*) when the amount or value of the subject-matter does not exceed five hundred rupees—the sum of two annas in the rupee on such amount or value,

(*b*) when the amount or value of the subject-matter exceeds five hundred rupees—the sum of sixty-two rupees eight annas, and one anna in the rupee on the excess of such amount or value, over five hundred rupees,

shall be paid on the plaint in every suit, and every application under section forty or section forty-three; and no such plaint or application shall be received until such fee has been paid.

A fee of ten rupees shall be paid on the filing of every agreement under chapter XXXVIII of the Code of Civil Procedure.

Act IX of 1850, ss. 19 & 20. Act XXVI of 1864, s. 11.

Fees for processes.

55. The fees specified in the third and fourth columns of the third Schedule hereto annexed shall be paid previous to the issue in any suit or in any proceeding under chapter VII of this Act of the processes, to which the said columns respectively relate, by the persons on whose behalf such processes are issued, when the amount or value of the subject-matter exceeds the sum specified in the first column, but does not exceed the sum specified in the second column of the said Schedule.

Act IX of 1850, s. 20.

56. Whenever any such suit or proceeding is settled by agreement of the parties before the hearing, half the amount of all fees paid up to that time shall be repaid by the Small Cause Court to the parties by whom the same have been respectively paid.

Repayment of half fees on settlement before hearing.

Act IX of 1850, s. 20.

57. The Small Cause Court may, whenever it thinks fit, receive and register suits instituted, and applications under section forty-three made, by poor persons, and may issue processes on behalf of such persons, without payment of the fees mentioned in sections fifty-four and fifty-five, or on a part-payment of such fees.

Fees and costs of poor persons.

Act IX of 1850 s. 21.

58. The Local Government may, from time to time, by notification in the official Gazette, vary the amount of the fees payable under sections fifty-four and fifty-five:

Power to vary fees.

Provided that the amount of such fees shall in no case exceed the amount prescribed by the said sections.

Act XXVI of 1864, s. 13.

59. The expense of employing an advocate, vakíl, attorney or other legal practitioner incurred by any party shall not be allowed as costs in any suit or in any proceeding under chapter VII of this Act, in the Small Cause Court, in which the amount or value of the subject-matter does not exceed twenty rupees, unless the Court is of opinion that the employment of such practitioner was under the circumstances reasonable.

Expense of employing legal practitioners.

60. Nothing contained in this chapter shall affect the provisions of sections 3, 5 and 25 of the Court Fees Act, 1870.

Sections 3, 5 and 25 of Court Fees Act, 1870, cited.

CHAPTER X.

MISCONDUCT OF INFERIOR MINISTERIAL OFFICERS.

Act XVII of 1875, s. 70; Act XVII of 1877, s. 36; Act IX of 1850, s. 85.

61. The Chief Judge may, by order, fine, in an amount not exceeding one month's salary, any clerk, bailiff or other inferior ministerial officer of the Court who is guilty of misconduct or neglect in the performance of the duties of his office, and such fine may be deducted from his salary.

Power to fine officers.

Act IX of 1850, s. 85.

62. If any clerk, bailiff or other inferior ministerial officer of the Small Cause Court who is employed as such in the execution of any order or warrant, loses, by neglect, connivance or omission, an opportunity of executing such order or warrant, he shall be liable, by order of the Chief Judge, on the application of the person injured by such neglect, connivance or omission, to pay such sum, not exceeding in any case the sum for which the said order or warrant was issued, as, in the opinion of the Chief Judge, represents the amount of the damage sustained by such person thereby.

Default of bailiff or other officer in execution of order or warrant.

Act IX of 1850, s. 85.

63. If any clerk, bailiff or other inferior ministerial officer of the Small Cause Court is charged with extortion or misconduct while acting under colour of its process, or with not duly paying or accounting for any money levied by him

Extortion or default of officers.

under its authority, the Court may inquire into such charge, and may make such order for the repayment or payment of any money so extorted, or of any money so levied as aforesaid, and of damages and costs, by such officer, as it thinks fit.

Court empowered to summon witnesses, &c.

64. For the purposes of any inquiry under this chapter, the Small Cause Court shall have all the powers of summoning and enforcing the attendance of witnesses and compelling the production of documents which it possesses in suits under this Act.

Enforcement of order.

65. Any order under this chapter for the payment or repayment of money may, in default of payment of the amount payable thereunder, be enforced by the person to whom such amount is payable as if the same were a decree of the Small Cause Court in his favour.

CHAPTER XI.

CONTEMPT OF COURT.

Procedure of Court in certain cases of contempt.

66. 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 the Small Cause Court, the Court may cause the offender 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 is sooner paid.

Record in such cases.

67. In every such case the Court shall record the facts constituting the offence, the statement (if any) made by the offender, and 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 when interrupted or insulted was sitting, and the nature of the interruption or insult offered.

Procedure where Court considers that the case should not be dealt with under section 66.

68. If the Court considers that a person accused of any offence referred to in section sixty-six 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 if the Court is for any other reason of opinion that the case should not be disposed of under section sixty-six, the Court, after recording the facts constituting the offence and the statement of the accused as hereinbefore provided, may forward the case to a Presidency Magistrate, and may require security to be given for the appearance of such accused person before such Magistrate, or, if sufficient security is not given, may forward him under custody to such Magistrate.

Such Magistrate shall deal with the accused person in the manner provided by the Presidency Magistrates Act, 1877; and may sentence the offender to punishment as provided in the section of the Indian Penal Code under which he is charged.

Act X of 1872, s. 497. Act IV of 1877, s. 207. Cf. draft Code of Criminal Procedure, s. 494.

Discharge of offender on submission or apology.

69. When the Court has, under section sixty-six or section sixty-eight, sentenced an offender to punishment, or forwarded him to a Presidency 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 the Court, or on apology being made to its satisfaction.

Act X of 1872, ss. 356-364. Act X of 1875, s. 89. Act IV of 1877, s. 141. Cf. draft Code of Criminal Procedure, s. 485. (Also see Act IX of 1850, s. 49.)

Imprisonment or committal of person refusing to answer or produce document.

70. If any witness before the Small Cause 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, the 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 answer or to produce such document, as the case may be, after which, in the event of his persisting in his refusal, he may be dealt with according to the provisions of section sixty-six or sixty-eight.

Draft Code of Criminal Procedure, s. 287.

Appeal from orders under sections 66 and 70.

71. Any person deeming himself aggrived by an order under section sixty-six or section seventy may appeal to the High Court, and the provisions of the Presidency Magistrates Act, 1877, relating to appeals shall, so far as may be, apply to appeals under this section.

CHAPTER XII.

MISCELLANEOUS.

Who may appear, &c.

72. No person other than an advocate, vakíl or attorney of the High Court, or a person who is at the time this Act comes into force a pleader of the Small Cause Court, shall appear, plead or act in any suit or proceeding in the Small Cause Court under this Act, and

no person other than—

(*a*) an advocate of the High Court instructed by a vakíl or attorney of such Court or by a pleader of the Small Cause Court, or

(*b*) a vakíl of the High Court,

shall address the Court or examine witnesses at the hearing of any such suit in which the amount or value of the subject-matter exceeds one thousand rupees.

Nothing in this section shall affect the right of any party to conduct his own case or that of any other party to the suit, or the right of any recognized agent of a party under the Code of Civil Procedure as applied by this Act.

Act X of 1877, s. 638.

Persons by whom process may be served.

73. Notices to produce documents, summonses to witnesses, and all other processes issued in the exercise of any jurisdiction conferred on the Small Cause Court by this Act, except summonses to defendants and writs of execution, may, if the Court by general or special order so directs, be served by such persons as the Court, from time to time, appoints in this behalf.

Registers and returns.

74. The Small Cause Court shall keep such registers, books and [illegible] counts, and submit to the High Court such statements and returns, as may,

subject to the approval of the Local Government, be prescribed by the High Court.

Act XI of 1865, s. 53. Letters Patent, s. 43.

Court to furnish records, &c., called for by Local Government or High Court.

75. The Small Cause Court shall comply with such requisitions as may from time to time be made by the Local Government or High Court for records, returns and statements in such form and manner as such Government or Court, as the case may be, thinks fit.

Act XVII of 1875, s. 71. (Cf. Act IX of 1850, s. 23.)

Holidays and vacations.

76. The Small Cause Court shall, at the commencement of each year, draw up a list of holidays and vacations to be observed in the Court, and shall submit the same for the approval of the Local Government.

Such list, when it has received such approval, shall be published in the local official Gazette, and the said holidays and vacations shall be observed accordingly.

Act IX of 1850, s. 35.

Certain persons exempt from arrest by Court.

77. The Governor General and Members of his Council, the Governors of Fort St. George and Bombay and the members of their respective Councils, the Lieutenant-Governor of Bengal, and the Chief Justices and Judges of the High Courts established under the 24th & 25th of Victoria, chapter 104, shall not be liable to arrest by order of the Small Cause Court.

I. L. R. 5, Calc., p. 224.

No suit to lie upon decree of Court.

78. No suit shall lie on any decree of the Small Cause Court.

Place of imprisonment.

79. Any person ordered by the Small Cause Court to be imprisoned may be imprisoned in such place as the Local Government, from time to time, appoints in this behalf.

Act IX of 1850, s. 111.

Tender in suit for anything done under Act.

80. If any person against whom any suit is brought for anything purporting to be done by him under this Act, has, before the institution of the suit, tendered sufficient amends to the plaintiff, the plaintiff shall not recover.

Act IX of 1850, s. 111.

Limitation of prosecutions.

81. All prosecutions for anything purporting to be done under this Act must be commenced within three months after the offence is committed.

THE FIRST SCHEDULE.

(*See section 2.*)

ENACTMENTS REPEALED.

A.—Charters of the Supreme Courts.

Date.		Extent of repeal.
26th March, 1774	Charter of the Supreme Court at Fort William.	Clause 21.
26th December, 1800.	Charter of the Supreme Court at Madras.	Clause 47.
8th December, 1823.	Charter of the Supreme Court at Bombay.	Clause 59.

THE FIRST SCHEDULE—*contd.*

B.—Acts of the Governor General in Council.

Number and year.	Subject or short title.	Extent of repeal.
IX of 1850 ...	For the more easy recovery of small debts and demands in Calcutta, Madras and Bombay.	So much as has not been repealed.
XX of 1857 ...	To amend Act IX of 1850.	The whole.
XXVI of 1864	To extend the jurisdiction of the Courts of Small Causes at Calcutta, Madras and Bombay, and to provide for the appointment of an increased number of Judges of these Courts.	So much as has not been repealed.
X of 1877 ...	The Code of Civil Procedure.	Section eight, para. 2.

C.—Act of the Governor of Bombay in Council.

Number and year.	Subject.	Extent of repeal.
VI of 1864 ...	For the better regulation of the diet-money of persons imprisoned by the Bombay Court of Small Causes.	So much as has not been repealed.

THE SECOND SCHEDULE.

(*See section 23.*)

PORTIONS OF CIVIL PROCEDURE CODE EXTENDING TO COURT.

PRELIMINARY: Section 2, Interpretation-clause.

CHAPTER I.—Of the Jurisdiction of the Courts and *Res Judicata*, except section 11.

CHAPTER II.—Of the Place of suing, except sections 15 to 19 (both inclusive), section 20, paragraph 4, sections 22, 23 and 24 and section 25, paragraphs 2 and 3.

CHAPTER III.—Of Parties and their Appearances Applications and Acts, except section 37, clause (*b*) and the last paragraph.

CHAPTER IV.—Of the Frame of the Suit, except section 42 and section 44, rule *a*.

CHAPTER V.—Of the Institution of Suits, except section 53, clause (*e*), section 55, section 57, clause (*b*), and sections 58 and 62.

CHAPTER VI.—Of the Issue and Service of Summons, except, in section 64, the words "and the copies or concise statements required by section 58 have been filed," and sections 65, 66 and 86.

CHAPTER VII.—Of the Appearance of the Parties and Consequence of Non-appearance.

THE SECOND SCHEDULE—*contd.*

CHAPTER VIII.—Of Written Statements and Set-off, except sections 110, 112 and 113.

CHAPTER IX.—Of the Examination of the Parties by the Court, except section 119.

CHAPTER X.—Of Discovery and the Admission, &c., of Documents, sections 128 to 133 (both inclusive), section 135, section 136 (except so far as it relates to interrogatories), section 137 (except the second clause), section 138, section 139 (except the last sentence), section 140 (except the proviso and the last six words), sections 141, 142, 143 and 145.

CHAPTER XI.—Settlement of issues, sections 150 and 151.

CHAPTER XII.—Disposal of the Suit at the first hearing, except sections 154 and 155.

CHAPTER XIII.—Of Adjournments.

CHAPTER XIV.—Of the Summoning and Attendance of Witnesses, except sections 168, 169, 170 and 175.

CHAPTER XV.—Of the Hearing of the Suit and Examination of Witnesses, except sections 182 to 191 (both inclusive).

CHAPTER XVI.—Of Affidavits.

CHAPTER XVII.—Of Judgment and Decree, except sections 200, 201, 202, 204, 207, and 211 to 215 (both inclusive).

CHAPTER XVIII.—Of Costs.

CHAPTER XIX.—Of the Execution of Decrees, section 230, first two clauses, sections 231 to 236 (both inclusive), 243 to 259 (both inclusive), 266 (so far as relates to the attachment of moveable property or decrees therefor), 267 to 272 (both inclusive), 273 (so far as relates to decrees for moveable property), 275 to 303 (both inclusive), 328 to 333 (both inclusive), 336 (except the last three clauses), and 337 to 343 (both inclusive).

THE SECOND SCHEDULE—*concld.*

CHAPTER XXI.—Of the Death, Marriage and Insolvency of Parties.

CHAPTER XXII.—Of the Withdrawal and Adjustment of Suits.

CHAPTER XXIII.—Of Payment into Court.

CHAPTER XXIV.—Of Requiring Security for Costs.

CHAPTER XXV.—Of Commissions, except section 396.

CHAPTER XXVII.—Suits by or against Government, or public officers.

CHAPTER XXVIII.—Suits by Aliens and by and against Foreign and Native Rulers, except section 433.

CHAPTER XXIX.—Suits by and against Corporations and Companies.

CHAPTER XXX.—Suits by and against Trustees, Executors and Administrators.

CHAPTER XXXI.—Suits by and against Minors and Persons of Unsound Mind.

CHAPTER XXXII.—Suits by and against Military Men.

CHAPTER XXXIII.—Interpleader.

CHAPTER XXXIV.—Of Arrest and Attachment before Judgment, except as regards the attachment of immoveable property.

CHAPTER XXXV.—Interlocutory Orders, sections 498, 499, 500 and 502.

CHAPTER XXXVI.—Appointment of Receivers, section 503.

CHAPTER XXXVII.—Reference to Arbitration, except the provisions of section 522 as to appeals.

CHAPTER XXXVIII.—Of Proceedings on Agreement of Parties, except so much of section 527, clause (*b*), as relates to immoveable property.

CHAPTER XLVI.—Of Reference to and Revision by High Court.

CHAPTER XLIX.—Miscellaneous, sections 640 to 651 (both inclusive).

THE THIRD SCHEDULE.

(*See Section 55.*)

FEES FOR SUMMONSES AND OTHER PROCESSES.

When the amount or value of the subject-matter exceeds	But does not exceed	Fee for summons.			Fee for other processes.		
Rs.	Rs.	Rs.	A.	P.	Rs.	A.	P.
0	10	0	2	0	0	2	0
10	20	0	4	0	0	4	0
20	50	0	8	0	0	8	0
50	100	1	0	0	1	0	0
100	200	1	4	0	2	0	0
200	300	1	8	0	3	0	0
300	400	1	12	0	4	0	0
400	500	2	0	0	5	0	0
500	600	2	4	0	6	0	0
600	700	2	8	0	7	0	0
700	800	2	12	0	8	0	0
800	900	3	0	0	9	0	0
900	1,000	3	4	0	10	0	0
1,000	1,100	3	6	0	10	8	0
1,100	1,200	3	8	0	11	0	0
1,200	1,300	3	10	0	11	8	0
1,300	1,400	3	12	0	12	0	0
1,400	1,500	3	14	0	12	8	0
1,500	1,600	4	0	0	13	0	0
1,600	1,700	4	2	0	13	8	0
1,700	1,800	4	4	0	14	0	0
1,800	1,900	4	6	0	14	8	0
1,900	2,000	4	8	0	15	0	0

D. FITZPATRICK,
Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First Publication.]

The following third 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 11th March, 1881:—

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 the honour to state that the Report of the Indian Law Commissioners, 1879, was duly communicated to us. We have carefully considered so much of it as relates to that Bill, as well as the papers specified in the annexed list; and, in compliance with the wish of the Secretary of State for India, as expressed in his despatch (Legislative) No. 37, dated 7th October, 1880, we have now the honour to present this our third Report.

We agree generally in the enlargement of the Bill effected by the Law Commissioners, and we shall in this Report refer to the Bill as settled by them, and published in the *Gazette of India* for the 17th and 24th January, 1880.

CHAPTER I.—PRELIMINARY.

We have rendered the definition of "attached to the earth" inapplicable to objects which merely rest upon the earth. And we have amended the definition of "notice" by making it apply expressly to a case where a person wilfully abstains from a search in a register which he ought to have made.

CHAPTER II.—TRANSFERS OF PROPERTY BY ACT OF PARTIES.

This chapter, after declaring what rights are inalienable, and by what persons transfers may be made, proceeds to declare restrictions of the transfer of property called for in the interests of society. These restrictions are in substance identical with those contained in the Indian Succession Act, and rights and liabilities arising out of customs or personal laws are sufficiently saved by section 2, clause (*a*).

We have amended section 6 (as to what may be transferred) in these respects:—*First*, we have in the first clause substituted "Act" for "section." The effect will be to place Hindús on the same footing as Europeans as regards the power to make settlements, on marriage or otherwise, on persons not in existence at the date of the transfer. Although, no doubt, it has been laid down that the general principle of the Hindú law is that a donee must be in existence at the time of the gift, such settlements are in accordance with Native usage.

Secondly, we have re-drawn clause (*a*) thus:—

"(*a*) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of the same nature, cannot be transferred: the chance of a Hindú heir succeeding to property in the possession of a Hindú female cannot be transferred to any one except the present or future owner or co-owner of the property affected thereby."

Thirdly, we have made clause (*c*) run thus:—

"(*c*) An easement cannot be transferred apart from the dominant heritage."

Fourthly, we have extended clause (*e*) to rights to sue for harm illegally caused to property.

We think that the power to transfer property to or for the benefit of women, so that they shall not be able, during their marriage, to transfer or charge the same should be confined, as it is now, to women not being Hindús, Muhammadans or Buddhists; and we have altered section 10 accordingly.

It cannot be denied that one school of Muhammadan law does, as stated in the books, permit a settlement on a person, his children and their offspring in perpetuity. But in practice this form of settlement is obsolete, and, if made, the Courts would now refuse to recognise it as valid. We think, therefore, that section 14, which prohibits this kind of perpetuity, may stand unaltered.

We have shortened and simplified the sections (33, 34) which deal respectively with conditions that a transferee shall perform an act at or before a specified time, and like conditions wherein no such time is specified.

We do not think that the proposition laid down in section 40, as to a Hindú's right to receive maintenance from the profits of immoveable property, can be said to be authoritatively settled, and there are good grounds for questioning it.

We have therefore re-drawn the first clause of section 40 thus :—

"40. Where a third person has a right to receive maintenance or a provision for advancement or marriage from the profits of immoveable property, and such property is transferred with the intention of defeating the right, such right may be enforced against a transferee with notice of such intention, or a gratuitous transferee of the property affected by the right, but not against a transferee for consideration and without notice of the right, nor against such property in his hands."

The remainder of section 40, though suggested by English cases, is, in our opinion, founded on general principles of equity applicable to India, and may, therefore, fitly be left unaltered in the Bill.

Section 41 has been amended so as to bring a benámídár clearly within its operation.

We have confined section 42 to cases of transfers for consideration by persons having authority to revoke the transfer.

To the section (44) dealing with transfer by one co-owner we have added a clause declaring that, when the transferee of a share of a dwelling-house belonging to an undivided family is a stranger, nothing in this section shall be deemed to entitle him to joint possession or other common or part enjoyment of the house.

We have confined section 53 to cases of fraudulent transfer. To provide, as it now does, for fraudulent forfeitures would involve a change in the law the consequences of which cannot easily be foreseen.

CHAPTER III.—SALES OF IMMOVEABLE PROPERTY.

We agree with Sir Henry Maine as to the desirability of rendering the system of transfer of immoveable property a system of public transfer; and we are inclined to go a little further in this direction than seemed good to the Law Commissioners. Thus, we think that in the case of a reversion or other intangible thing, though its value may be less than Rs. 100, the transfer should be made only by registered assurance; and we have altered section 54 accordingly.

As to the duties of the seller, we think that, except where the property is sold subject to incumbrances, he should be bound to discharge all incumbrances on the property existing at the date of the sale; that he should not be bound to deliver the title-deeds till the whole of the purchase-money has been paid. We also think that the Bill may reasonably declare, as it does, that, in the absence of a stipulation to the contrary, the seller shall be deemed to contract that the interest which he assumes to transfer subsists and that he has power to make the transfer; but where he sells in a fiduciary character, we would follow the present practice, and declare simply that he shall be deemed to contract that he has done no act whereby the property is incumbered, or he is hindered from transferring it. We have altered section 55, clauses (*a*) (7), (8), (9), accordingly.

The proposition laid down in clause (*c*) (1), that a purchaser is bound to disclose any fact unknown to the vendor which increases his *interest* in the property, *e. g.*, the actual or imminent death of a prior life-tenant, has been questioned by a high authority. It appears to us in exact accordance with the rule laid down in *Turner* v. *Harvey*, Jac. 169; *Ellard* v *Lord Llandaff*, 1 Ball & B. 241; and (on the sale of a life-policy) *Jones* v. *Keene*, 2 Moo. & R. 348. We have, however, made a verbal amendment in this clause.

As to the duties of the buyer, we have struck out the clause requiring him to retransfer the property sold, where the ownership has passed before payment of the purchase-money and he fails to pay or tender it. In such case the seller's lien is, we think, sufficient.

As to the buyer's rights, we think that his lien as against the seller for purchase-money paid in anticipation should be available against all persons claiming under the seller with notice of the payment. We have altered the section accordingly.

Where two properties are subject to a common charge and one is sold, the buyer's right as against the seller to have the charge satisfied out of the other property does not depend on whether or not the buyer had notice of the charge. We have, therefore, struck out of section 56 the words relating to notice.

CHAPTER IV.—MORTGAGES.

We think that in the definition of simple mortgage the expression "makes it a collateral security" is likely to give rise to difficulties. We also think that a transaction may be a "mortgage by conditional sale" although accompanied by possession, and in the definition of usufructuary mortgage the words "or agrees to deliver" and "actual" seem unnecessary. We have therefore amended these definitions as follows :—

Simple Mortgage.

"Where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage-money and agrees expressly or impliedly that, in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold and the proceeds of sale to be applied, so far as may be necessary, in payment of what may be due to him on the mortgage, the transaction is called a simple mortgage and the mortgagee a simple mortgagee."

Mortgage by Conditional Sale.

"Where the mortgagor ostensibly sells the mortgaged property on condition that in default of payment of the mortgage-money on a certain date the sale shall become absolute, or

"on condition that on such payment being made, the sale shall become void, or

"on condition that on such payment being made, the buyer shall re-transfer the property to the seller,

"the transaction is called a mortgage by conditional sale and the mortgagee a mortgagee by conditional sale."

Usufructuary Mortgage.

"Where the mortgagor delivers possession of the property to the mortgagee and authorises him to retain such possession until payment of the mortgage-money, and to receive the rents and profits accruing from the property and to appropriate them in lieu of interest or in payment of the mortgage-money, the transaction is called an usufructuary mortgage and the mortgagee an usufructuary mortgagee."

We agree with the Law Commissioners that the requirement of registration will not only discourage fraud and facilitate investigations of title, but that it will also preclude some difficult question of priority. A majority of us, however, think that where the principal money secured is less than Rs. 100, the assurance need not be registered. And we have altered the Bill accordingly. Our colleague Mr. Stokes dissents from this alteration, as, in his opinion, all incumbrances should appear on the register: those who mortgage their property for small amounts, as a rule, require protection from fraud more than those who mortgage for large amounts, and the changes impending in the working of the law will deprive the requirement of registration of all hardship even in the pettiest cases.

A majority of us are of opinion that equitable mortgages by deposit of title-deeds should be valid when they are made in Calcutta, Madras, Bombay, Rangoon and Karáchí. The practice of raising money on such securities has long been established in those towns, and any attempt to disturb it would cause much inconvenience. Here, again, Mr. Stokes dissents on the grounds (*a*) that such mortgages are opposed to the policy of the registration-law; (*b*) that they lead to evasions of the stamp-duty; (*c*) that they are at variance with the principle of making the system of transfer of immoveable property, as far as possible, a system of public transfer; and (*d*) that, when the amount secured is Rs. 100 or upwards, they would be inconsistent with the general rule in section 58 requiring a written instrument.

We think, with Mr. Justice West, that nothing in the section (59) declaring the mortgagor's right to redeem should invalidate any provision to the effect that, if the time fixed for payment of the principal money has been allowed to pass, or no such time has been fixed, the mortgagee shall be entitled to reasonable notice before payment or tender of such money. In like manner, we think that nothing in section 82 or 83 should deprive the mortgagee of his right to interest where there exists a contract that he shall be entitled to such notice.

We concur with the Law Commissioners in the solution which they have proposed (section 68) of the moot question as to whether a power of sale conferred on the mortgagee is invalid, and as there is no prospect of the High Courts or the Privy Council making an authoritative declaration on the subject, we think it desirable to settle the matter by legislation as soon as possible.

For the section (98) as to the abandonment of his security where a mortgagee attaches and sells the mortgaged property, we have substituted the following :—

"98. Where a mortgagee, in execution of a decree for the satisfaction of any claim, whether arising under the mortgage or not, attaches the mortgaged property, he shall not be entitled to bring such property to sale otherwise than by instituting a suit under section 66."

We think that the High Court should have power to make rules for carrying out the provisions of this chapter.

CHAPTER V.—LEASES.

This chapter will, in our opinion, be of practical use in the case of leases of buildings, gardens and mines. We agree with the Law Commissioners that it should not of itself apply to the relations between zamíndár and raiyat, and we think that the power given to the Local Government by section 115 (now 116) to extend any of the provisions of the chapter to agricultural leases should only be exercised with the sanction of the Governor General in Council, and that the requisite notification should not take effect until the expiry of six months from the date of its publication.

The rule laid down in section 106, clause (*i*), as to the removeability of tenants' fixtures, has been objected to as not in accordance with the laws in force in this country. But it will operate only in the absence of a contract or local usage to the contrary, and will not in practice apply to tenants in husbandry. Moreover, it is impossible to say with certainty what the law of India on the subject really is. The Courts would, therefore, turn for guidance to the Civil law and the law of England. The Civil law permits a tenant to remove all fixtures where this can be effected without material injury to the property, and the strictness of the law of England has been relaxed where the fixtures have been annexed for the purposes of trade or manufacture, ornament, furniture and domestic use or convenience. The clause in question seems to us to represent with reasonable accuracy the rules of the Civil and the English law.

CHAPTER VI.—GIFTS.

We agree with the Law Commissioners that registration should be required in the case of gifts of immoveable property of whatever value. Such gifts are, as a rule, made by a written instrument, and as, under the Registration Act (III of 1877, section 17, clause (*a*)), the registration of such instruments is compulsory, the change of the existing law here proposed is almost nominal.

We have struck out the clause in section 121 (now 122) which is founded on the rule in the Succession Act as to bequests to attesting witnesses. It is, we think, inapplicable to a transaction *inter vivos*, where the donor can give evidence of his intention.

We have also struck out the section (120) which declares that the donor is not bound to warranty. It seems to the majority of us useless as denying what no one in this country would ever assert. Our colleague Mr. Stokes would retain it as precluding a doubt which may reasonably be felt by the Courts (see Burge II, 145).

We have made verbal and other unimportant amendments in sections 11, 25, 36, 37, 51, 59, 61, 64, 80, 81, 90, 91, 99, 101, 106, 126, 133.

The Bill as now settled seems to us a systematic and useful arrangement of the existing law. But we agree with the Law Commissioners that, when the body of substantive civil law enacted for India is recast in a more compact and convenient form than that of a series of fragmentary portions from time to time passed by the legislature, the chapters on Sale, Mortgage, Lease and Exchange contained in the present Bill will probably be placed in close connection with the rules contained in the Contract Act. Till then they may fitly be left in a law containing what the Contract Act does not contain, namely, general rules regulating the transmission of property between living persons.

We do not think that these rules, as now amended, will substantially alter or add to the existing law, or that they will invade or displace the functions of the Judges of the existing Courts. We, therefore, recommend that the Bill be passed. Drawn originally in England by the former Indian Law Commissioners, it was revised by Sir A. Hobhouse and introduced into the Council of the Governor General in June, 1877. It has since been twice circulated to the Local Governments for opinion and publication, and twice reported on by Select Committees, in February, 1878, and February, 1879. It was then carefully revised by the late Indian Law Commission. It has now been again revised by us. We think, therefore, of this Bill, as of the Bill dealing with negotiable instruments, that it is not now likely to be improved without the experience to be gained from its actual working. We recommend, however, that it should be republished in the *Gazette of India* with this Report; and, in obedience to the orders of the Secretary of State, it must also be sent home to him, published in the local Gazettes, and translated into the vernacular languages.

Our hon'ble colleagues Messrs. Grant and Paul have not been able to attend our meetings, and do not, therefore, sign this report.

WHITLEY STOKES.
J. PITT KENNEDY.
B. W. COLVIN.
JOTÍNDRA MOHAN TAGORE.

The 11th March, 1881.

LIST OF PAPERS.

From Secretary to Government, North-Western Provinces and Oudh, to Secretary to Government of India, Department of Revenue, Agriculture and Commerce, No. 722A, dated 8th October, 1878, and enclosure [Papers No. 34].
„ Acting Chief Secretary to Government, Madras, No. 467, dated 7th March, 1879, and enclosures [Papers No. 35].
„ Hon'ble H. S. Cunningham, dated 31st March, 1879 [Paper No. 36].
„ Registrar, High Court, Calcutta, No. 494, dated 24th March, 1879 [Paper No. 37].
„ Secretary for Birár to Resident, Haidarábád, No. 1, dated 8th April, 1879 [Paper No. 38].
„ Hon'ble G. H. P. Evans, dated 11th April, 1879 [Paper No. 39].
„ Officiating Secretary to Government, Bengal, No. 1947, dated 21st April, 1879, and enclosures [Papers No. 40].
„ Acting Under Secretary to Government, Bombay, No. 2348, dated 18th April, 1879, and enclosures [Papers No. 41].
„ Secretary to Government, Panjáb, No. 1705, dated 1st May, 1879, and enclosures [Papers No. 42].
„ Secretary for Birár to Resident, Haidarábád, No. 4, dated 30th April, 1879, and enclosure (Papers No. 43].
„ Officiating Secretary to Chief Commissioner, Mysore, No. 1086—3J, dated 5th May, 1879, and enclosures [Papers No. 44].
„ Officiating Secretary to Chief Commissioner, Central Provinces, No. 2044—98, dated 9th May, 1879, and enclosures [Papers No. 45].
„ Officiating First Assistant Resident, Haidarábád, No. 2P, dated 10th May, 1879 [Paper No. 46].
„ Secretary to Government, North-Western Provinces and Oudh, No. 367, dated 10th May, 1879, and enclosures [Papers No. 47].
„ Secretary to Government, North-Western Provinces and Oudh, No. 416, dated 21st May, 1879, and enclosures [Papers No. 48].
Memorandum by Pandit Lákhsmí Náráyana, Pleader, High Court, North-Western Provinces, dated 29th May, 1879 [Paper No. 49].

From Chief Commissioner, Ajmer-Merwára, No. 403, dated 29th May, 1879, and enclosures [Papers No. 50].
„ Secretary to Chief Commissioner, Assam, No. 643, dated 19th April, 1879, and enclosures [Papers No. 51].
„ Secretary to Government, Panjáb, No. 255C, dated 20th June, 1879, and enclosures [Papers No. 52].
„ Acting Chief Secretary to Government, Madras, No. 1320, dated 6th June, 1879, and enclosures [Papers No. 53].
„ Acting Under Secretary to Government, Bombay, No. 3720, dated 25th June, 1879, and enclosures [Papers No. 54].
„ R. Kristnaswamy Rão, Acting Subordinate Judge, Madura, dated 28th June, 1879 [Paper No. 55].
„ J. Crawfurd, Esq., Registrar, High Court, Calcutta, No. 1123, dated 27th June, 1879 [Paper No. 56].
„ Acting Chief Secretary to Government, Madras, No. 1558, dated 2nd July, 1879, and enclosures [Papers No. 57].
„ Secretary to Government, North-Western Provinces and Oudh, No. 857, dated 23rd October, 1879, and enclosures [Papers No. 58].
„ Officiating Secretary to Chief Commissioner, British Burma, No. 4389—111, dated 20th December, 1879, and enclosures [Papers No. 59].
Note by Hon'ble Whitley Stokes, dated 8th December, 1880.

No. V.

TRANSFER OF PROPERTY BILL, 1881.

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THE SCHEDULE.

No. V.

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.

1. This Act may be called "The Transfer of Property Act, 1881": Bill, s. 1: Bill II, s. 1: Bill III, s. 1.

'Short title.

It extends to the whole of British India;

Extent.

and it shall come into force on the first day of *March*, 1882.

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. But nothing herein contained shall be deemed to affect— Bill, s. 2: Bill II, s. 1: Bill III, s. 2.

Repeal of Acts.

(*a*) the provisions of any enactment not hereby expressly repealed: Act IX of 1872, s. 1.

Saving of certain enactments, incidents, rights, liabilities, &c.

(*b*) any terms or incidents of any contract or constitution of property which are consistent with the provisions of this Act, and are allowed by the law for the time being in force:

(*c*) any right or liability arising out of a custom or personal law consistent with this Act, or out of a legal relation constituted before this Act comes into force, or any relief in respect of any such right or liability: 4 Beng. A. C. 219.

(*d*) any transfer by operation of law or by decree or order of a Court of competent jurisdiction. I. L. R., 2 Bom. 541.

3. In this Act, unless there be something repugnant in the subject or context,— Bill, s. 3: Bill II, s. 1: Bill III, s. 3: Report, s. 2.

Interpretation-clause.

the "ownership" of a thing is the right of one or more persons to possess and use it to the exclusion of others. Such ownership is either absolute or qualified. The thing of which there may be ownership is called "property": N. Y. Code, para. 159.

"ownership":

"property":

"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 to or in immoveable property: Act III of 1877, s. 3, cl. (*b*).

"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": "attached to the earth" means—

(*a*) rooted in the earth, as in the case of trees and shrubs;

(*b*) imbedded in the earth, as in the case of walls or buildings; or

(*c*) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached:

and a person is said to have "notice" of a fact when he actually knows that fact, or when but for wilful abstention from an inquiry or search which he ought to have made, or gross negligence, he would have known it, or when information of the fact is given to or obtained by his agent under the circumstances mentioned in the Indian Contract Act, section 229.

"notice":

4. The chapters and sections of this Act which relate to contracts shall be taken as part of the Indian Contract Act, 1872.

Enactments relating to contracts to be taken as part of Act IX of 1872.

CHAPTER II.

OF TRANSFERS OF PROPERTY BY ACT OF PARTIES.

(*A*).—*Transfer of Property, whether moveable or immoveable.*

5. In the following sections "transfer" means an act by which one living person conveys to another, or to himself and another, in present or in future, the ownership of property or an interest therein, and "to transfer" is to perform such act.

"Transfer" defined.

6. The ownership of property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force:—

What may be transferred.

(*a*) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred. The chance of a Hindú heir succeeding to property in the possession of a Hindú female cannot be transferred to any one except the present or future owner or co-owner of the property affected thereby.

(*b*) A mere right of re-entry for breach of a condition subsequent cannot be transferred to any one except the owner of the property affected thereby.

(*c*) An easement cannot be transferred apart from the dominant heritage.

(*d*) An interest in property restricted in its enjoyment to the owner personally cannot be transferred by him.

(*e*) A mere right to sue for compensation for a fraud or for harm illegally caused cannot be transferred.

(*f*) A public office cannot be transferred, nor can the salary of a public officer whether before or after it has become payable. Cf. 11 & 12 Vic., c. 21, 27.

(*g*) Stipends allowed to military and civil pensioners of Government and political pensions cannot be transferred.

(*h*) No transfer can be made (1) in so far as it is opposed to the nature of the interest affected thereby, or (2) for an illegal purpose, or (3) to a person legally disqualified to be transferee.

7. Every person competent to contract and entitled to transferable property, or authorized to dispose of transferable property not his own, is competent to transfer such property either wholly or in part and either absolutely or conditionally, in the circumstances, to the extent and in the manner allowed and prescribed by any law for the time being in force. *Bill, s. 4:* Bill III, s. 5 Report, s. 4.

Persons competent to transfer.

8. Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in such property, and in the legal incidents thereof. Bill, s. 10: Bill III, s. 6: Report, s. 10: v. last clause, Report, s. 6: 2 W. R. 125 (buildings): 14 W. R. 379, N.-W. P., 1870, p. 251: 24 W. R. 380 (trees), "everything grown on it," Morley N. S. 269.

Operation of transfer.

Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth;

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, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows and all other things provided for permanent use therewith;

and, where the property is a debt or other actionable claim, the securities therefor, but not arrears of interest accrued before the transfer;

and, where the property is money or other property yielding income, the interest or income thereof accruing after the ownership passes.

9. A transfer may be made without writing in every case in which a writing is not expressly required by law. 7 Exch., s. 581.

Oral transfer.

10. Where a transfer is subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property transferred, the condition or limitation is void except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him: provided that property may be transferred to or for the benefit of a woman (not being a Hindú, Muhammadan or Buddhist), so that she shall not have power during her marriage to transfer or charge the same or her beneficial interest therein. Report, s. 47. L. R. 3 Chan. D. 748, 754.

Condition restraining alienation.

Act X of 1865, s. 125.

11. Where on a transfer of property an interest is created absolutely in favour of any person, but the terms of the transfer direct that such interest shall be applied or enjoyed in a particular manner, he shall be entitled to receive and dispose of such interest as if there were no such direction.

Restriction repugnant to interest created.

Nothing in this section shall be deemed to affect the right to restrain for the beneficial enjoyment of one piece of immoveable property, the enjoyment of another piece of such property, or to compel the enjoyment thereof in a particular manner.

Report, s. 48: See Act X of 1865, s. 107.

12. Where property is transferred subject to a condition or limitation making any interest therein reserved or given to or for the benefit of any person to cease on his becoming insolvent or endeavouring to transfer or dispose of the same, such condition or limitation is void.

Condition making interest determinable on insolvency or attempted alienation.

Nothing in this section applies to a condition in a lease for the benefit of the lessor or those claiming under him.

Act X of 1865, s. 100. Report, s. 49.

13. Where on a transfer of property an interest is created for the benefit of a person not in existence at the date of the transfer, subject to a prior interest created by the same transfer, the interest created for the benefit of such person shall not take effect, unless it extends to the whole of the remaining interest of the transferor in the property.

Transfer for benefit of person not in existence at date of transfer, subject to prior transfer.

Illustration.

A transfers property of which he is the owner to B in trust for A and his intended wife successively for their lives, and after the death of the survivor for the eldest son of the intended marriage for life, and after his death for his second son. The interest so created for the benefit of the eldest son does not take effect, because it does not extend to the whole of A's remaining interest in the property.

Report, s. 50, Succession Act, s. 101.

14. No transfer can operate to create an interest which is to take effect after the life-time of one or more persons living at the date of such transfer, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the interest created is to belong.

Rule against perpetuity.

Report, s. 51: *Bentinck v. Duke of Portland*, 7 Chan. D. 693.

15. If on a transfer of property an interest is created for the benefit of a class of persons with regard to some of whom such interest fails by reason of any of the rules contained in sections thirteen and fourteen, such interest fails as regards the whole class.

Transfer to class some of whom come under sections 13 and 14.

Report, s. 52.

16. Where an interest fails by reason of any of the rules contained in sections thirteen, fourteen and fifteen, any interest created in the same transaction and intended to take effect after or upon failure of such prior interest also fails.

Transfer to take effect on failure of prior transfer.

17. The restrictions in sections fourteen, fifteen and sixteen shall not apply to property transferred for the benefit of the public in the advancement of religion, knowledge, commerce, health, safety or any other object beneficial to mankind.

Transfer in perpetuity for benefit of public.

Act X of 1865, s. 104: Report, s. 53.

18. Where the terms of a transfer of property direct that the income arising therefrom shall be accumulated, such direction shall be void, and the property shall be disposed of as if no accumulation had been directed.

Direction for accumulation.

Donaldson v. Donaldson, L. R. 3 Chan. Div. 743.

Exception.—Where the property is immoveable or where accumulation is directed to be made from the date of the transfer, the direction shall be valid in respect only of the income arising from the property within one year next following such date; and at the end of the year such property and income shall be disposed of respectively as if the period during which the accumulation has been directed to be made had elapsed.

Report, ss. 56, 57, altered.

19. Where, on a transfer of property, an interest is created in favour of a person without specifying the time when it is to take effect, or in terms specifying that it is to take effect, forthwith or on the happening of an event which must happen, such interest is vested, unless a contrary intention appears from the terms of the transfer.

Vested interest.

A vested interest is not defeated by the death of the transferee before he obtains possession.

Explanation.—An intention that an interest shall not be vested is not to be inferred merely from a provision whereby the enjoyment thereof is postponed, or whereby a prior interest in the same property is given or reserved to some other person, or whereby income arising from the property is directed to be accumulated until the time of enjoyment arrives, or from a provision that if a particular event shall happen the interest shall pass to another person.

Report, s. 58, altered.

20. Where, on a transfer of property, an interest is created for the benefit of a person not then living, he acquires upon his birth, unless a contrary intention appear from the terms of the transfer, a vested interest, although he may not be entitled to the enjoyment thereof immediately on his birth.

Transfer for benefit of person not then living.

Act X of 1865, s. 107: Report, s. 59: IX, 72-33.

21. Where, on a transfer of property, an interest is created in favour of a person to take effect only on the happening of a specified uncertain event, or if a specified uncertain event shall not happen, such person thereby acquires a contingent interest in the property. Such interest becomes a vested interest, in the former case, on the happening of the event, in the latter, when the happening of the event becomes impossible.

Contingent interest.

Exception.—Where under a transfer a person becomes entitled to an interest in property upon attaining a particular age, and the transferor also gives to him absolutely the income to arise from

such interest before he reaches that age, or directs the income or so much thereof as may be necessary to be applied for his benefit, such interest is not contingent.

Act X of 1865, s. 108: Report, s. 60.

Transfer to members of a class who attain a particular age.

22. Where, on a transfer of property, an interest is created in favour of such members only of a class as shall attain a particular age, such interest does not vest in any member of the class who has not attained that age.

Act X of 1865, s. 111: Report, s. 61.

Transfer contingent on happening of specified uncertain event.

23. Where, on a transfer of property, an interest therein is to accrue to a specified person if a specified uncertain event shall happen, and no time is mentioned for the occurrence of that event, the interest fails unless such event happens before, or at the same time as, the intermediate or precedent interest ceases to exist.

Act X of 1865, s. 112.

Transfer to such of certain persons as survive at some period not specified.

24. Where, on a transfer of property, an interest therein is to accrue to such of certain persons as shall be surviving at some period, but the exact period is not specified, the interest shall go to such of them as shall be alive when the intermediate or precedent interest ceases to exist, unless a contrary intention appears from the terms of the transfer.

Illustration.

A transfers property to B for life, and after his death to C and D, equally to be divided between them, or to the survivor of them. C dies during the life of B. D survives B. At B's death the property passes to D.

Act X of 1865, s. 113: Act X of 1865, s. 114, expanded with reference to Act IX of 1872, s. 23.

Conditional transfer.

25. An interest created on a transfer of property and dependent upon a condition fails if the fulfilment of the condition is impossible, or is forbidden by law, or is of such a nature that if permitted, it would defeat the provisions of any law, or is fraudulent, or involves or implies injury to the person or property of another, or the Court regards it as immoral or opposed to pubic policy.

Illustrations.

(*a*). A lets a farm to B on condition that he shall walk a hundred miles in an hour. The lease is void.

(*b*). A gives Rs. 500 to B on condition that he shall marry A's daughter, C. At the date of the transfer C was dead. The transfer is void.

(*c*). A transfers Rs. 500 to B on condition that she shall murder C. The transfer is void.

(*d*). A transfers Rs. 500 to his niece C if she will desert her husband. The transfer is void.

Act X of 1865, s. 115.

Fulfilment of condition precedent.

26. Where the terms of a transfer of property impose a condition to be fulfilled before a person can take an interest in the property, the condition shall be deemed to have been fulfilled if it has been substantially complied with.

Illustrations.

(*a*). A transfers Rs. 5,000 to B on condition that he shall marry with the consent of C, D and E. E dies. B marries with the consent of C and D. B has fulfilled the condition.

(*b*). A transfers Rs. 5,000 to B on condition that he shall marry with the consent of C, D and E. B marries without the consent of C, D and E, but obtains their consent after the marriage. B has not fulfilled the condition.

Act X of 1865, s. 116.

Conditional transfer to one person coupled with transfer to another on failure of prior transfer.

27. Where, on a transfer of propery, an interest is created in favour of one person, and by the same transaction an ulterior disposition of the same interest is made in favour of another if the prior interest under the transfer shall fail, the ulterior disposition shall take effect upon the failure of the prior disposition, although the failure may not have occurred in the manner contemplated by the transferor.

Act X of 1865, s. 117.

But where the intention of the parties to the transaction is that the ulterior disposition shall take effect only in the event of the prior disposition failing in a particular manner, the ulterior disposition shall not take effect unless the prior disposition fails in that manner.

Illustrations.

(*a*). A transfers Rs. 500 to B on condition that he shall execute a certain lease within three months after A's death, and if he should neglect to do so, to C. B dies in A's lifetime. The transfer to C takes effect.

(*b*). A transfers property to his wife; but in case she should die in his life-time, transfers to B that which he had transferred to her. A and his wife perish together, under circumstances which make it impossible to prove that she died before him. The transfer to B does not take effect.

Act X of 1865, s. 118.

Ulterior transfer conditional on happening or not happening of specified event.

28. On a transfer of property an interest may be created to accrue to any person with the condition superadded that in case a specified uncertain event shall happen, such interest shall pass to another person; or that in case a specified uncertain event shall not happen, such interest shall pass to another person. In each case the dispositions are subject to the rules contained in sections ten, twelve, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five and twenty-seven.

Act X of 1865, s. 119.

Fulfilment of condition subsequent.

29. An ulterior disposition of the kind contemplated by the last preceding section cannot take effect unless the condition is strictly fulfilled.

Illustration.

A transfers Rs. 500 to B, to be paid to him on his attaining his majority or marrying, with a proviso that, if B dies a minor or marries without C's consent, the Rs. 500 shall go to D. B marries when only 17 years of age, without C's consent. The transfer to D takes effect.

Act X of 1865, s. 120.

Prior disposition not affected by invalidity of ulterior disposition.

30. If the ulterior disposition is not valid, the prior disposition is not affected by it.

Illustration.

A transfers a farm to B for her life, and, if she do not desert her husband, to C. B is entitled to the farm during her life as if no condition had been inserted.

Act X of 1865, s. 121.

Condition that transfer shall cease to have effect in case specified uncertain event happens or does not happen.

31. Subject to the provisions of section twelve, on a transfer of property an interest may be created with the condition superadded that it shall cease to exist in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.

Illustrations.

(*a*). A transfers a farm to B for his life, with a proviso that, in case B cuts down a certain wood, the transfer shall cease to have any effect. B cuts down the wood. He loses his life-interest in the farm.

(*b*). A transfers a farm to B, provided that, if B shall not go to England within three years after the date of the transfer, his interest in the farm shall cease. A does not go to England within the term prescribed. His interest in the farm ceases.

Act X of 1865, s. 122.

Such condition must not be invalid.

32. In order that a condition that an interest shall cease to exist may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of the creation of an interest.

Act X of 1865, s. 124.

Condition that transferee shall perform act at or before specified time.

33. Where, on a transfer of property, an interest is created subject to a condition that the person taking it shall perform a certain act at or before a specified time, and the transferor has at the time of creating the interest made an ulterior disposition thereof in favour of himself or of another, if the act be not performed within such time, the prior disposition ceases to have effect if the act is not performed within such time, or if the person benefited by the prior disposition renders the performance of the act impossible within the time specified. But where the transferor has not made any such ulterior disposition thereof, the transfer is, at the option of the transferor, voidable so far as regards such interest, if time is of the essence of the condition; but if it is not of the essence of the contract, the transfer shall not be so voidable.

When such intention is apparent, the circumstance that the interest has actually been enjoyed under the prior disposition does not affect the operation of the condition.

Transfer conditional on performance of act, no time being specified for performance.

34. Where, on a transfer of property, an interest is created subject to a condition that the person taking it shall perform a certain act, but no time is specified for the performance of the act, the condition is broken when he renders impossible, permanently or for an indefinite period, the performance of the condition.

Transfer conditional on performance of act, time being specified.

35. Where an act is to be performed by a person either as a condition to be fulfilled before an interest created on a transfer is enjoyed by him, or as a condition on the non-fulfilment of which the interest is to pass from him to another person, and a time is specified for the performance of the act, if such performance within the specified time is prevented by the fraud of a person who would be directly benefited by non-fulfilment of the condition, such further time shall as against him be allowed for performing the act as shall be requisite to make up for the delay caused by such fraud. But if no time is specified for the performance of the act, then if its performance is, by the fraud of a person interested in the non-fulfilment of the condition rendered impossible or indefinitely postponed, the condition shall as against him be deemed to have been fulfilled.

Election.

Draft, s. 62, added to.

Election when necessary.

36. Where a person professes to transfer property which he has no right to transfer, and as part of the same transaction confers any benefit on the owner of the property, such owner must elect either to confirm such transfer or to dissent from it; and in the latter case he shall relinquish the benefit so conferred, and the benefit so relinquished shall revert to the transferor or his representative as if it had not been disposed of,

Act X of 1865, s. 168.

subject nevertheless,

where the transfer is gratuitous and the transferor has before the election died or otherwise become incapable of making a fresh transfer,

and in all cases where the transfer is for consideration,

to the charge of making good to the disappointed transferee the amount or value of the property attempted to be transferred to him.

Illustration.

The farm of Sultánpur is the property of C and worth Rs. 800. A by an instrument of gift professes to transfer it to B, giving by the same instrument Rs. 1,000 to C. C elects to retain the farm. He forfeits the gift of Rs. 1,000.

In the same case, A dies before the election. His representative must out of the Rs. 1,000 pay Rs. 800 to B.

Act X of 1865, s. 169.

The rule in the first paragraph of this section applies whether the transferor does or does not believe that which he professes to transfer to be his own.

Act X of 1865, s. 171.

A person taking no benefit directly under a transaction, but deriving a benefit under it indirectly, need not elect.

Act X of 1865, s. 172.

A person who in his one capacity takes a benefit under the transaction may in another dissent therefrom.

Exception to the last preceding four rules.—Where a particular benefit is expressed to be conferred on the owner of the property which the transferor professes to transfer expressed to be in lieu of that property, if such owner claim that he must relinquish the particular benefit, but he is not bound to relinquish any other benefit conferred upon him by the same transaction.

Act X of 1865, s. 173.

Acceptance of the benefit by the person on whom it is conferred constitutes an election by him to confirm the transfer, if he is aware of his duty to elect and of those circumstances which would influence the judgment of a reasonable man in making an election, or if he waives enquiry into the circumstances.

Act X of 1865, s. 174.

Such knowledge or waiver shall, in the absence of evidence to the contrary, be presumed, if the person on whom the benefit has been conferred has enjoyed it for two years without doing any act to express dissent.

Act X of 1865, s. 175.

Such knowledge or waiver may be inferred from any act of his which renders it impossible to

place the persons interested in the property professed to be transferred in the same condition as if such act had not been done.

Illustration.

A transfers to B an estate to which to C is entitled, and to C a coal-mine. C takes possession of the mine and exhausts it. He has thereby confirmed the transfer of the estate to B.

Act X of 1865, s. 176. If he does not within one year after the date of the transfer signify to the transferor or his representatives his intention to confirm or to dissent from the transfer, the transferor or his representatives may, upon the expiration of that period, require him to make his election; and if he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the transfer.

Act X of 1865, s. 167. In case of disability, the election shall be postponed until the disability ceases, or until the election is made by some competent authority.

Apportionment.

Draft, s. 64: Bill III, s. 86.

37. In the absence of a contract to the contrary, all rents, annuities, pensions, dividends and other periodical payments in the nature of income shall, upon the transfer of the interest of the person entitled to receive such payments, be deemed, as between the transferor and the transferee, to accrue due from day to day, and to be apportionable accordingly, but to be payable on the days appointed for the payment thereof.

Apportionment of periodical payments on determination of interest of person entitled.

Severance of Obligation relating to property.

38. When in consequence of a transfer property is divided and held in several shares, and thereupon the benefit of any obligation relating to the property as a whole passes from one to several owners of the property, the corresponding duty shall, in the absence of a contract to the contrary amongst the owners, be performed in favour of each of such owners in proportion to the value of his share in the property, provided that the duty can be severed and that the severance does not substantially increase the burden of the obligation; but if the duty cannot be severed, or if the severance would substantially increase the burden of the obligation, the duty shall be performed for the benefit of such one of the several owners as they shall jointly designate for that purpose:

Provided that no person on whom the burden of the obligation lies shall be answerable for failure to discharge it in manner provided by this section, unless and until he has had reasonable notice of the severance.

Satisfaction of right arising in favour of several persons in consequence of a transfer.

Illustrations.

(*a*). A sells to B, C and D land situate in a village and leased to E at an annual rent of Rs. 30 and delivery of one fat sheep, B having provided half the purchase-money and C and D one quarter each. E having notice of this must pay Rs. 15 to B, Rs. 7½ to C and Rs 7½ to D, and must deliver the sheep according to the joint direction of B, C and D.

(*b*). Each house in the village being bound to provide ten days' labour each year on a dyke to prevent inundation, E had agreed as a term of his lease to perform this work for A. B, C and D severally require E to perform the ten days' work due on account of the house of each. E is not bound to do more than ten days' work in all, according to such directions as B, C and D may join in giving.

B.—Transfer of Immoveable Property.

Bill III, s. 7.

39. Where any person authorized only under circumstances in their nature variable to dispose of immoveable property transfers such property for consideration, alleging the existence of such circumstances, they shall, as between the transferee on the one part and the transferor and other persons (if any) affected by the transfer on the other part, be deemed to have existed, if the transferee, after using reasonable care to ascertain the existence of such circumstances, has acted in good faith.

Transfer by person authorized only under certain circumstances to transfer.

Illustration.

A, a Hindú widow, whose husband has left collateral heirs, agrees, for purposes neither religious nor charitable, to sell a field, part of the property held by her as such, to B. B satisfies himself by reasonable enquiry that the income of the property is in sufficient for A's maintenance, and that the sale of the field is necessary, and, acting in good faith, buys the field. As between B on the one part and A and the collateral heirs on the other part, a necessity for the sale shall be deemed to have existed.

Wilson *v.* Hare, L. R. 1 Ch. Richards *v.* Renell, 7 Ch. Div. 224. Maclean *v.* Dunlay, L. R. P. (32). A. 138 of 1877.

40. Where a third person has a right to receive maintenance or a provision for advancement or marriage from the profits of immoveable property, and such property is transferred with the intention of defeating such right, the right may be enforced against the transferee, if he has notice of such intention or if the transfer is gratuitous; but not against a transferee for consideration and without notice of the right, nor against such property in his hands.

Transfer of land where third person is entitled to maintenance,

Illustrations.

(*a*). A, a Hindú, transfers Sultánpur to his sister-in-law B, in lieu of her claim against him for maintenance in virtue of his having succeeded to her deceased husband's property, and agrees with her that if she is dispossessed of Sultánpur, A will transfer to her an equal area out of such of several other specified villages in his possession as she may elect. A sells the specified villages to C, who buys in good faith, without notice of the agreement. B is dispossessed of Sultánpur. She has no claim on the villages transferred to C.

(*b*). A, a Hindú widow, is entitled to maintenance out of the share of her deceased husband in Basaoli, which has passed to his brother B. B sells Basaoli to C, who has notice that there is no other property to satisfy A's claim. A may claim maintenance out of Basaoli in the hands of C.

Where for the more beneficial enjoyment of his own immoveable property a third person has, independently of any interest in the immoveable property of another, a right to restrain the enjoyment of the latter property or to compel its enjoyment in a particular manner, or

or has a right to restrain its enjoyment,

where a third person is entitled to the benefit of an obligation arising out of contract and annexed to the ownership of immoveable property, but not amounting to an interest therein or easement thereon,

or is entitled to benefit of obligation not amounting to interest or easement.

such right or obligation may be enforced against a transferee with notice thereof or a gratuitous transferee of the property affected thereby, but not against a transferee for consideration and without notice of the right or obligation, nor against such property in his hands.

Illustration.

A contracts to sell Sultánpur to B. While the contract is still in force he sells Sultánpur to C, who has notice of the contract. B may enforce the contract against C to the same extent as against A.

Bill III, s. 7: Act IX of 1872, s. 108, excepn. 2.

41. Where with the consent, express or implied, of the persons interested in immoveable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorized to make it: provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith.

Transfer by ostensible owner.

Illustrations.

(*a*). A, one of two co-proprietors of village land, leaves his village, and with his consent the land is registered by the Revenue-officer in the name of B, the other co-proprietor. After ten years B sells a portion of the land to C, who takes reasonable care to ascertain that B had power to make the transfer and acts in good faith. A is not entitled to have the sale set aside.

(*b*). A buys land and causes it to be transferred to his servant B to hold on his behalf, and also causes it to be entered in the revenue register in B's name. C, having ascertained that B is the registered owner of the land and pays the revenue due in respect thereof, buys the land in good faith from B. A cannot impeach the sale.

42. Where a person having authority to revoke a transfer of any immoveable property, transfers the property for consideration, such transfer operates in favour of the transferee (subject to any conditions attached to the exercise of the authority) as a revocation of the former transfer to the extent of the authority.

Transfer by person having authority to revoke former transfer.

Illustration.

A lets a house to B and reserves power to revoke the lease if in the opinion of a specified surveyor B should make a use of it detrimental to its value. Afterwards A, thinking that such a use has been made, lets the house to C. This operates as a revocation of B's lease subject to the opinion of the surveyor as to B's use of the house having been detrimental to its value.

43. Where a person erroneously represents that he is authorized to transfer certain immoveable property, and assumes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property, at any time during which the contract of transfer subsists.

Transfer by unauthorized person who subsequently acquires interest in property transferred.

Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.

Illustration.

A, a Hindú who has separated from his father B, sells to C three fields, X, Y and Z. Of these Z does not belong to A, it having been retained by B on the partition; but on B's dying A obtains Z as heir. C, not having rescinded the contract of sale, may require A to deliver Z to him.

Bill III, s. 9.

44. Where one of two or more co-owners of immoveable property legally competent in that behalf transfers his share of such property or any interest therein, the transferee acquires as to such share or interest, and so far as is necessary to give effect to the transfer, the transferor's right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same, but subject to the conditions and liabilities affecting, at the date of the transfer, the share or interest so transferred.

Transfer by one co-owner.

Where the transferee of a share of a dwelling-house belonging to an undivided family is a stranger nothing in this section shall be deemed to entitle him to joint-possession or other common or part enjoyment of the house.

Bill III, s. 18.

45. Where property is transferred for consideration to two or more persons, and such consideration is paid out of a fund belonging to them in common, they are in the absence of a contract to the contrary, respectively entitled to interests in such property identical, as nearly as may be, with the interests to which they were respectively entitled to the fund; and where such consideration is paid out of separate funds belonging to them respectively, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property in proportion to the shares of the consideration which they respectively advanced.

Joint transfer for consideration.

In the absence of evidence as to the interests in the fund to which they were respectively entitled, or as to the shares which they respectively advanced, such persons shall be presumed to be equally interested in the property.

Illustration.

A and B are the sons and C the grandson of a Hindú who has died leaving property. C's father D has also died. A partition has been made after which A and B have reunited. C remains severed in interest, his share being one-third. The separate property of D is of the same value. The whole fund belonging to A, B and C is expended in buying an estate, X. A and B take one moiety of X as joint estate and C takes the other moiety as separate property.

46. Where a transfer of immoveable property is made for consideration by persons having distinct interests therein, the transferors are, in the absence of a contract to the contrary, entitled to share in the consideration equally, where their interests in the property transferred were of equal value, and, where such interests were of unequal value, proportionately to the value of their respective interests.

Transfer for consideration by persons having distinct interests.

Illustrations.

(*a*). A, owing a moiety, and B and C, each a quarter share of mauza Sultánpur, exchange an eighth share of that mauza for a quarter share of mauza Lálpura. There being no agreement to the contrary, A is entitled to an eighth share in Lálpura, and B and C each to a sixteenth share in that mauza.

(b). A being entitled to a life interest in mauza Atrali and B and C to the reversion, sell the mauza for Rs. 1,000. A's life interest is ascertained to be worth Rs. 600, the reversion Rs. 400. A is entitled to receive Rs. 600 out of the purchase money, B and C to receive Rs. 400.

47. Where several co-owners of immoveable property transfer a share therein without specifying that the transfer is to take effect on any particular share or shares of the transferors, the transfer, as among such transferors, takes effect on such shares equally where the shares were equal, and where they were unequal, proportionately to the extent of such shares.

Transfer by co-owners of share in common property.

Illustration.

A, the owner of an eight annas share, and B and C, each the owner of a four annas share, in mauza Sultánpur, transfer a two-anna share in the mauza to D, without specifying from which of their several shares the transfer is made. To give effect to the transfer one anna share is taken from the share of A, and half an anna share from each of the shares of B and C.

48. Where a person purports to create by transfer at different times rights in or over the same immoveable property, and such rights cannot all exist or be exercised to their full extent together, each later created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created.

Priority of rights created by transfer.

49. Where immoveable property is transferred for consideration, and such property or any part thereof is at the date of the transfer insured against loss or damage by fire, the transferee, in case of such loss or damage, may, in the absence of a contract to the contrary, require any money which the transferor actually receives under the policy, or so much thereof as may be necessary, to be applied in reinstating the property.

Transferee's right under policy.

50. 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 such property, 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.

Illustration.

A lets a field to B at a rent of Rs. 50, and then transfers the field to C. B, having no notice of the transfer, in good faith pays the rent to A. B is not chargeable with the rent so paid.

51. When the transferee of immoveable property makes any improvement on the property, believing in good faith that he is absolutely entitled thereto, and he is subsequently evicted therefrom by any person having a better title, the transferee or his representative in interest has a right to require the person causing the eviction either to have the value of the improvement estimated and paid or tendered to the transferee, or to sell his interest in the property to the transferee at the then market value thereof irrespective of the value of such improvement.

Improvements made by *bonâ fide* holders under defective titles.

The amount to be paid or secured in respect of such improvement shall be the estimated value thereof at the time of the eviction.

When under the circumstances aforesaid the transferee has planted or sown on the property crops which are growing when he is evicted therefrom, he is entitled to such crops and to free ingress and egress to gather and carry them.

52. 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 contentious suit or proceeding in which any right to immoveable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

Transfer of property pending suit relating thereto.

Bill III, s. 10: 8 Beng. 478: 7 Mad. 111: 11 Bom. 24, 64, 139: N. W. P., 1874, p. 301: 10 W. R. 439: 7 W. R. 226: 15 W. R. 67: 23 W. R. 352: 2 Tayl. & Bell 113: 1 O'Kin. 308, 309: 5 W. R. P. C. 63: 8 Bom. A. C. J. 61:

53. Every transfer of immoveable property made with intent to defraud prior or subsequent transferees thereof for consideration, or co-owners or other persons having an interest in such property, or to defeat or delay the creditors of the transferor, is voidable at the option of any person so defrauded, defeated or delayed.

Fraudulent transfer.

Bill III, s. 10A: Cf. Act I of 1877, s. 38.

Where the effect of any transfer of immoveable property is to defraud, defeat or delay any such person, and such transfer is made gratuitously or for a grossly inadequate consideration, the transfer may be presumed to have been made with such intent as aforesaid.

Nothing contained in this section shall impair the rights of any transferee in good faith and for consideration.

CHAPTER III.

OF SALES OF IMMOVEABLE PROPERTY.

54. "Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

"Sale" defined.

Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered assurance.

Sale how made.

In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered assurance or by delivery of the property.

Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Bill III, s. 11: 14 Beng. 307, 312: N. W. P., 1866, p. 87. Consider 12 Suth. W. R. P., C. 6: as to delivery of assurance, W. R. 1864, p. 222: 5 W. R. 248: Morley N. S. 338.

Right to redeem, N. W. P., 1868, p. 376.

A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties.

Contract for sale.

Bill III, s. 14.

It does not, of itself, create any interest in or charge on such property.

Bill III, s. 11: Bill III, s. 11: Bill III, s. 12: Report, s. 14.

55. In the absence of a contract to the contrary, the buyer and the seller of immoveable property respectively are subject to the liabilities, and have the rights, mentioned in the rules next following, or such of them as are applicable to the property sold :

Rights and liabilities of buyer and seller.

Bill III, s. 13 (a).

(a). The seller is bound—

(1) to disclose to the buyer any defect in the property of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover ;

Bill III, s. 12 (a).

(2) to produce to the buyer on his request for examination all documents of title relating to the property which are in the seller's possession or power ;

Bill III, s. 12 (c).

(3) to 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 III, s. 12 (d).

(4) on payment or tender of the amount due in respect of the price, to execute a proper assurance of the property when the buyer tenders it to him for execution at a proper time and place, and, where the property is, or forms part of, a revenue-paying estate, to present an application to the proper officer for the requisite alteration of the revenue-register ;

(5) between the date of the contract of sale and the delivery of the property, to take as much care of the property and all documents of title relating thereto which are in his possession, as an owner of ordinary prudence would take of such property and documents ;

(6) to give, on being so required, the buyer, or such person as he directs, such possession of the property as its nature admits ;

Bill III, s. 12 (g).

(7) to pay all public charges and rent accrued due in respect of the property up to the date of the sale, the interest on all incumbrances on such property due on such date ; and, except where the property is sold subject to incumbrances, to discharge all incumbrances on the property then existing ; and

(8) and the seller shall be deemed to contract that the interest which he assumes to transfer the buyer subsists and that he has power to transfer the same :

provided that, where the sale is made by a person in a fiduciary character, he shall be deemed to contract that he has done no act whereby the property is incumbered or whereby he is hindered from transferring it.

(9) Where the whole of the purchase-money has been paid to the seller, he is also bound to deliver to the buyer all documents of title relating thereto which are in the seller's possession or power :

Bill III, s. 12 (i).

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 ;

(b) The seller is entitled—

Bill III, s. 13 (b).

(1) to the rents and profits of the property till the ownership thereof passes to the buyer ;

Bill III, s. 13 (c).

(2) where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a charge upon the property in the hands of the buyer for the amount of the purchase-money, or any part thereof remaining unpaid, and for interest on such amount or part.

(c). The buyer is bound—

Bill III, s. 13 (b).

(1) to disclose to the seller any fact as to the nature or extent of the seller's interest in the property of which the buyer is aware, but of which he has reason to believe that the seller is not aware, and which increases the value of such interest ;

Bill III, s. 13 (c).

(2) to pay or tender, at the time and place of completing the transfer, the purchase-money to the seller or such person as he directs : provided that, where the property is sold free from incumbrances, the buyer may retain out of the purchase-money the amount of the incumbrances on the property existing at the date of the transfer, and shall pay the amount so retained to the person entitled thereto ;

(3) where the ownership of the property has passed to the buyer, to bear any loss arising

the destruction, injury or decrease in value of the property not caused by the seller;

Bill III, s. 15. (4) where the ownership of the property has passed to the buyer, as between himself and the seller, to pay all public charges and rent which may become payable in respect of the property, the principal moneys due on the incumbrances subject to which the property is sold, and the interest thereon afterwards accruing due.

(*d*). The buyer is entitled—

Bill III, s. 14 (*c*). (1) where the ownership of the property has passed to him, to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof;

Bill III, s. 12 (*c*). (2) unless he has improperly declined to accept delivery of the property, to a charge on the property as against the seller and all persons claiming under him with notice of the payment, to the extent of the seller's interest on the property, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery and for interest on such amount; and when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission.

Bill III, s. 13. An omission to make such disclosures as are mentioned in this section, paragraph (*a*), clause (1), and paragraph (*c*), clause (1), is fraudulent.

Bill III, s. 16. **56.** Where 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.

Sale of one of two properties subject to a common charge.

CHAPTER IV.

OF MORTGAGES OF IMMOVEABLE PROPERTY AND CHARGES.

57. (*a*). A mortgage is the transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.

"Mortgage," "mortgagor" and "mortgagee" defined.

The transferor is called a mortgagor, the transferee a mortgagee; the principal-money and interest of which payment is secured for the time being are called the mortgage-money, the interest transferred is called the mortgaged property, and the instrument (if any) by which the transfer is effected is called a mortgage-deed.

(*b*). Where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage-money and agrees, expressly or impliedly, that, in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold and the proceeds of sale to be applied, so far as may be necessary, in payment of the mortgage-money, the transaction is called a simple mortgage and the mortgagee a simple mortgagee.

Simple mortgage. Moo. I. A. 275, 306. Colebs. Dig. B. i, c. III, t. 96.

(*c*). Where the mortgagor ostensibly sells the mortgaged property—

Mortgage by conditional sale.

on condition that on default of payment of the mortgage-money on a certain date the sale shall become absolute, or

on condition that on such payment being made the sale shall become void, or

on condition that on such payment being made the buyer shall transfer the property to the seller,

the transaction is called a mortgage by conditional sale and the mortgagee a mortgagee by conditional sale.

(*d*). Where the mortgagor delivers possession of the mortgaged property to the mortgagee and authorises him to retain such possession until payment of the mortgage-money, and to receive the rents and profits accruing from the property and to appropriate them in lieu of interest or in payment of the mortgage-money, the transaction is called an usufructuary mortgage and the mortgagee an usufructuary mortgagee.

Usufructuary mortgage.

(*e*). Where the mortgagor binds himself to repay the mortgage-money on a certain date, and transfers the mortgaged property absolutely to the mortgagee, but subject to a condition that he will re-transfer it to the mortgagor upon payment of the mortgage-money as agreed, the transaction is called an English mortgage.

English mortgage. Macph. 8 12, 59: R. B. Ghose 216, 219: 2 Moo. I. A. 487.

58. Where the principal money secured is one hundred rupees or upwards, a mortgage can be effected only by registered assurance signed by the mortgagor and attested by at least two witnesses.

Mortgage when to be by assurance. Bill II, s. 26: Bill III, s. 22: See Macph. 59: R. B. Ghose 64.

Where the principal money secured is less than one hundred rupees, a mortgage may be effected either by assurance signed and attested as aforesaid or by delivery of the property.

Nothing in this section shall be deemed to render invalid mortgages made in the towns of Calcutta, Madras, Bombay, Karáchí and Rangoon, by delivery to a creditor or his agent of documents of title to immoveable property, with intent to create a security thereon.

Rights and Liabilities of Mortgagor.

59. At any time after the principal money has become payable, the mortgagor, or, where there are more mortgagors than one, any of the mortgagors, has a right, on payment or tender, at a proper time and place, of

Right of mortgagor to redeem. Bill II, s. 28: Bill, s. 15: 5 Beng. 490: 6 Beng. 369: 7 Mad. 490: 7 Mad. 393: 2 Cal. Pro.

13 Beng. 205: N. W. P., 1868, p. 204: Bomb., 237: no redemption before expiration of period named. Redemption after fixed time has expired, 9 Bom. 69. See 7 Ben. 186 (P.C.)

the mortgage-money, to require the mortgagee (*a*) to deliver the mortgage-deed, if any, (*b*) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor, and (*c*) at the cost of the mortgagor either to re-transfer the mortgaged property to him or to such person as he may direct, or to execute and (where the mortgage has been effected by registered assurance) to have registered 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. 126.

provided that the right conferred by this section has not been extinguished by act of the parties or by order of a Court.

The right conferred by this section is called a right to redeem, and a suit to enforce it is called a suit for redemption.

Nothing in this section shall be deemed to render invalid any provision to the effect that, if the time fixed for payment of the principal money has been allowed to pass or no such time has been fixed, the mortgagee shall be entitled to reasonable notice before payment or tender of such money.

N. W. P., 1867, p. 88: 20 W. R., 397: 22 W. R., 362: 24 W. R., 24: N. W. P., 1870, p. 4: N. W. P., 1872, p. 92: N. W. P., 1873, p. 148: 2 B. L. R. 198: 15 Bengal 303.

Nothing in this section shall entitle a person interested in a share only of the mortgaged property to redeem his own share only, on payment of a proportionate part of the amount remaining due on the mortgage, except where a mortgagee, or, if there are more mortgagees than one, all such mortgagees, has or have acquired, in whole or in part, the share of a mortgagee.

Redemption of portion of mortgaged property.

Bill II, s. 33: Bill, s. 29: Agra, 6: 6 N. W. A. C. J. 1: But see 1 Agra, 380,

60. If the owner of two or more properties makes separate mortgages on them by separate assurances, each mortgage may, in the absence of a contract to the contrary, be dealt with irrespectively of the other, though the mortgages are made 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.

Bill III, s. 23, clause (*c*).

61. In the case of a usufructuary mortgage, the mortgagor has a right to recover possession of the property—

Right of usufructuary mortgagor to recover possession.

(*a*) where the mortgagee is authorized to pay himself the mortgage-money from the rents and profits of the property,—when such money is paid;

(*b*) where the mortgagee is authorized to pay himself from such rents and profits the interest of the principal money,—when the term (if any) prescribed for the payment of the mortgage-money has expired and the mortgagor pays or tenders to the mortgagee the principal money or deposits it in Court as hereinafter provided.

62. Where mortgaged property in possession of the mortgagee has during the continuance of the mortgage, received any accession, the mortgagor, upon redemption, shall, in the absence of a contract to the contrary, be entitled as against the mortgagee to such accession.

Accession to mortgaged property. 10 Bom. 369; 11 Bomb. 32: I. L. R. 5 Calc. 195.

Where such accession has been acquired at the cost of the mortgagee, and is capable of separate possession or enjoyment without detriment to the principal property, the mortgagor desiring to take the accession must pay to the mortgagee the cost of acquiring it. If such separate possession or enjoyment is not possible, the accession must be delivered with the property, the mortgagor being liable in the case of an acquisition necessary to preserve the property from destruction, forfeiture or sale, or made with his assent, to pay the proper cost thereof, as an addition to the principal money, at the same rate of interest.

Accession acquired in virtue of transferred ownership.

In the case last mentioned the profits, if any, arising from the accession shall be credited to the mortgagor.

Where the mortgage is usufructuary and the accession has been acquired at the cost of the mortgagee, the profits, if any, arising from the accession shall, in the absence of a contract to the contrary, be set off against interest, if any, payable on the money so expended.

Illustration.

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 on payment of their cost.

10 Bom, 369, 371, see N. W. P. 1866, p

63. Where the mortgaged property is a lease for a term of years, and the mortgagee obtains a renewal of the lease, the mortgagor, upon redemption, shall, in the absence of a contract by him to the contrary, have the benefit of the new lease.

Renewal of mortgaged lease. Bill II, N. W. P. 1867, p.

64. In the absence of a contract to the contrary, the mortgagor shall be deemed to contract with the mortgagee,

Implied contracts by mortgagor.

(*a*) that the interest which the mortgagor assumes to transfer to the mortgagee subsists, and that the mortgagor has power to transfer the same;

(*b*) that the mortgagor will defend, or, if the mortgagee be in possession of the mortgaged property, enable him to defend, the mortgagor's title thereto;

S. D. A., 18 p. 1195; p. 575.

(*c*) that the mortgagor will, so long as the mortgagee is not in possession of the mortgaged property, pay all public charges accruing due in respect of the property;

(*d*) and, where the mortgaged property is a lease for a term of years, that the rent payable under the lease, the conditions contained therein and the contracts binding on the lessee have

paid, performed and observed down to the commencement of the mortgage; and that the mortgagor will, so long as the security exists and the mortgagee is not in possession of the mortgaged property, pay the rent reserved by the lease, or, if the lease be renewed, the renewed 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;

(*e*) and, where the mortgage is a second or subsequent incumbrance on the property, that the mortgagor will pay the interest from time to time accruing due on each prior incumbrance as and when it becomes due, and will at the proper time discharge the principal money due on such prior incumbrance.

Nothing in clause (*c*), or in clause (*d*), so far as it relates to the payment of future rent, applies in the case of an usufructuary mortgage.

Bill II, s. 31: *King* v. *Smith* 2 Hare 243.

65. 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.

Lewin on Trusts, p. 268.

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.

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.

66. In the absence of a contract to the contrary, the mortgagee has, 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 or deposited as hereinafter provided, a right to obtain from the Court an order that the mortgagor shall be absolutely debarred of his right to redeem the property, or an order that the property be sold.

Right to foreclosure or sale.

A suit to obtain an order that a mortgagor shall be absolutely debarred of 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 as such to institute a suit for foreclosure, or an usufructuary mortgagee as such to institute a suit for foreclosure or sale, or a mortgagee by conditional sale as such to institute a suit for sale; or

(*b*) to authorize a mortgagor who holds the mortgagee's rights as his trustee or legal representative and who may sue for a sale of the property to institute a suit for foreclosure; or

(*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

(*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: unless the mortgagees have, with the consent of the mortgagor, severed their interests under the mortgage.

Cases *contra*: Macph. 195, 196.

67. The mortgagee has a right to sue the mortgagor for the mortgage-money in the following cases only:—

Bill II, s. 38 Bill III, s.

Right to sue for mortgage-money.

(*a*) where the mortgagor binds himself to repay the same:

6 W. R. 288.

(*b*) where the mortgagee is deprived of the whole or part of his security by or in consequence of the wrongful act or default of the mortgagor:

Macph. 233; Act XXXIII of 1871, s. 42; 25 W. R. 7 (partial deprivation).

(*c*) where the mortgagee being entitled to possession of the property, the mortgagor fails to deliver the same to him, or to secure the possession thereof to him without disturbance by the mortgagor or any other person.

4 Moo. I. A. 464: Marsh, 209: 7 S. D. A, 47: N. W. P., 1860, p. 28: So in the case of a Kánam mortgage, 2 Mad. 315: 6 W. R. 288 (power to usufructuary mortgagee).

Where, by any cause other than the wrongful act or default of the mortgagor or mortgagee, the mortgaged property has been wholly or partially destroyed, or the security is rendered insufficient as defined in section sixty-five, the mortgagee may require the mortgagor to give him within a reasonable time another sufficient security for his debt, and, if the mortgagor fails so to do, may sue him for the mortgage-money.

68. 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—

Bill II, s. 39: Bill, s. 24: 8 Bom. A. C. J. 142: Muhammadan law, Macph. 2.

Power of sale when invalid.

(*a*) the principal money originally secured is five hundred rupees or upwards; or

(*b*) the mortgagee is the Secretary of State for India in Council; or

(*c*) the mortgaged property or any part thereof is situate within the towns of Calcutta, Madras, Bombay, Karáchí or Rangoon.

Act No. XXVIII of 1866, section 6, is repealed so far as it is inconsistent with this section.

69. 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, shall, for the purposes of the security, be entitled to such accession.

Bill II, s. 41: 11 Bomb. 83: I. L. R. 5 Calc. 196.

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.

Bill I I, s. 38.

70. When the mortgaged property is a lease for a term of years, and the mortgagor 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.

71. When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property, he may spend such money as is necessary—

Rights of mortagagee in possession.

Macph. 109, 113, 252: 1 Bomb. 199, 208: 3 Bomb. A. C. J. 109, 116. N. W. P., 1867, p. 187. 3 W. R. 133.

(*a*) for the due management of the property and the collection of the rents and profits thereof;

(*b*) for its preservation from destruction, forfeiture or sale;

(*c*) for supporting the mortgagor's title to the property;

(*d*) for making his own title thereto good against the mortgagor; and

11 Moo. I. A. 241.

(*e*) 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, and such money to the principal-money, at the rate of interest payable on the principal, and where no such rate is fixed at the rate of nine per cent. per annum.

Where the property is by its nature insurable at ordinary rates, the mortgagee may also, 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 principal-money at the same rate of interest.

23 & 24 Vic., c. 145, s. 11: 3 Dav. 606.

Bill II, s. 45: Bill III, s. 48: Macph. 118, 124: 4 W. R. 270: 10 W. R. 222.

72. Where mortgaged property is sold through failure to pay arrears of revenue or rent due in respect thereof, 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, unless the sale has been occasioned by some default on his part.

Charge on proceeds of revenue-sale.

Bill II, s. 49: Bill III, s. 48: Bill, ss. 35, 36, 37: Report, ss. 31, 33.

73. Any second or other subsequent mortgagee may, at any time after the amount due on the next prior mortgage has become payable, tender such amount to the next prior mortgagee, and such mortgagee is bound to accept such tender and to give a receipt for such amount; and (subject to the provisions of the law for the time being in force regulating the registration of documents) the subsequent mortgagee shall, on obtaining such receipt, acquire, in respect of the property, all the rights and powers of the mortgagee, as such, to whom he has made such tender.

Right of subsequent mortgagee to pay off prior mortgagee.

Bill III, s. 38.

74. Every second or other subsequent mortgagee has, so far as regards redemption, foreclosure and sale of the mortgaged property, the same rights against the prior mortgagee or mortgagees as his mortgagor has against such prior mortgagee or mortgagees, and the same rights against the subsequent mortgagees (if any) as he has against his mortgagor.

Rights of mesne mortgagee against prior and subsequent mortgagees.

Bill III, s. 39.

75. When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property,—

Liabilities of mortgagee in possession.

2 Bomb. 222: Act IX of 1872, s. 151: Fisher, s. 1530.

(*a*) he must manage the property as a person of ordinary prudence would manage it if it were his own;

8 Chan. Div. 427: N. W. P., 1875, p. 100.

(*b*) he must use his best endeavours to collect the rents and profits thereof;

2. Bomb. 231. Macph. 113, 119.

(*c*) he must, 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 of default of payment of which the property may be summarily sold;

9 W. R. 488: 4 Y. & C. Appendix, 507: Fisher, s. 1530.

(*d*) he must, 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 principal-money.

Bill II, s. 44: III, s. 41: Bill, s. 18 altered: Macph. 118, 119, citing 7 N. W. P. 436: 9 N. W. P. 1: Act I of 1877, s. 54.

(*e*) he must not commit any act which is destructive or permanently injurious to the property;

(*f*) where he has insured the whole or any part of the property against loss or damage by fire, he must, in case of such loss or damage, apply any money which he actually receives under the policy, or so much thereof as may be necessary, in reinstating the property;

2 Beng. P. C. 55: 5 W. R. 58, 271, &c.: Macph. 119.

(*g*) he must 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. 53: 10 Beng. 266: N. W. P., 1866, p. 133; *ibid*, 1868, p. 153: When he cultivates, 7 W. R, 244: R. B. Ghose, 262. 2 Moo. I. A. Ca. 1.

(*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*) and (*e*), 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;

(*i*) when the mortgagor tenders, or deposits in manner hereinafter provided, 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.

76. Nothing in section seventy-five, clauses (*b*), (*d*), (*g*) and (*k*), applies to cases where there is a contract between the mortgagee and the mortgagor that the receipts from the mortgaged property shall, so long as the mortgagee is in possession of the property, be taken in lieu of interest on the principal-money, or of such interest and defined portions of the principal.

Priority.

Bill II, s. 46; III, s. 44: Evidence Act, s. 115: N. W. P., 1868, p. 402: 4 Mad. 373: 2 Moo. I. A. 437: 11 W. R. 286: 8 Bom. A. C. J. 50, 55: *Secus* in Guzerat, 11 Bom. Bill II, s. 47: III, s. 25: Bill, s. 34: Report, s. 29.

Postponement of prior mortgagee.

77. Where, through the fraud, misrepresentation 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.

78. If a mortgage made to secure future advances, the performance of an engagement or the balance of a running account expresses the maximum to be secured thereby, a subsequent mortgage of 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 uncertain amount when maximum is expressed.

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: III, s. 46: Bill, s. 38: Report, s. 34: 2 Beng. App. 25: 8 Beng. 463: 11 W. R. 310.

Tacking abolished.

79. 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 seventy-eight, 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.

Fisher 704: Bill II, s. 50: III, s. 47: W. R. 1864, p. 374: 1 W. R. 353: 7 W. R. 483: 12 W. R. 114: Macph. 205.

Marshalling securities.

80. 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, in the absence of a contract to the contrary, 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 acquired for valuable consideration an interest in either property.

Macph. 136.

Bill III, s. 48: Fisher, 700.

Contribution to mortgage-debt.

81. Where several properties, whether of one or several owners, are mortgaged to secure one debt, each property is, in the absence of a contract to the contrary, liable to 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 at the date of the mortgage.

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 is, in the absence of a contract to the contrary, liable to 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.

Fisher 701.

Nothing in this section applies to a property liable under section eighty to the claim of the second mortgagee.

Deposit in Court.

Bill III, s. 28: Beng. Reg. I of 1798, s. 2: Macph. 171.

Power to deposit in Court money due on mortgage.

82. At any time after the principal-money has become payable and before a suit for redemption of the mortgaged property is barred, the mortgagor, or any other person entitled to institute such suit, may deposit, in any Court in which he might have instituted such suit, to the account of the mortgagee, the amount remaining due on the mortgage.

Bill II, s. 25: III, s. 23: Bill, s. 15, clause (*e*): Beng. Reg. I of 1798, s. 2: Macph. 171.

Right to money deposited by mortgagor.

The Court shall thereupon cause written notice of the deposit to be served on the mortgagee, and the mortgagee may, on presenting a petition (verified in manner prescribed by law for the verification of plaints) stating the amount then due on the mortgage, and his willingness to accept the money so deposited in full discharge of such amount, and on depositing in the same Court the mortgage-deed if then in his possession or power, apply for and receive the money, and the mortgage-deed so deposited shall be delivered to the mortgagor or such other person as aforesaid.

9 N. W. P. 1: Macph. 159, 160: Bill III, s. 32.

Cessation of interest.

83. When the mortgagor or such other person as aforesaid has tendered or deposited in Court under section eighty-two the amount remaining due on the mortgage, interest on the principal-money shall cease from the date of the tender or as soon as the mortgagor or such other person as aforesaid has done all that has to be done by him to enable the mortgagee to take such amount out of court, as the case may be.

Nothing in this section or in section eighty-two shall be deemed to deprive the mortgagee of his right to interest when there exists a contract that he shall be entitled to reasonable notice before payment or tender of the mortgage-money.

Suits for Foreclosure, Sale or Redemption.

Bill II, s. 52: III, s. 49: 14 Moo. I. A. 101: 1 W. R. 176: 21 W. R. 428: explained by Macph. 146: Seton 1, 442, see Act X of 1877, s. 32: 5 Bomb. O. C. J. 76 (legal representative of deceased mortgagor): 8 Beng. 104 (purchaser from mortgagor): Marshall 592, claimants of right of redemption, N. W. P. 1868, p. 144.

Parties to suits for foreclosure, sale and redemption.

84. Subject to the provisions of the Code of Civil Procedure, section 437, all persons having an interest in the property comprised in a mortgage must be joined as parties to any suit under this chapter relating to such mortgage: provided that the plaintiff has notice of such interest.

Foreclosure and Sale.

Bill II, s. 53: III, s. 50: Bill, s. 10.

Decree in foreclosure-suit.

85. In a suit for foreclosure, if the plaintiff succeed, the Court shall make 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, if any, awarded to him, 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 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 property; but

that, if the payment is not made on or before the day to be fixed by the Court, the defendant shall be absolutely debarred of all right to redeem the property.

Procedure in case of payment of amount due.

86. If payment is made of such amount and Bill II, s. [illegible] of such subsequent costs as are mentioned in section ninety-three, the defendant shall (if necessary) be put into possession of the mortgaged property.

If such payment is not so made, the plaintiff may

Order absolute for foreclosure.

apply to the Court for an order that the defendant and all persons claiming through or under him be debarred absolutely of all right to redeem the mortgaged property, and the Court shall then pass such order, and may, if necessary, deliver possession of the property to the plaintiff.

W. R. 91.

Power to enlarge time.

Provided that the Court may, upon good cause shewn, and upon such terms, if any, as it thinks fit, from time to time postpone the day appointed for such payment.

On the passing of an order under the second paragraph of this section the debt secured by the mortgage shall be deemed to be discharged.

In the Code of Civil Procedure, schedule IV, No. 129, for the words "Final decree," the words "Decree absolute" shall be substituted.

Bill II, sec. 55.

Decree for sale.

87. In a suit for sale, if the plaintiff succeed, the Court shall pass a decree to the effect mentioned in the first and second paragraphs of section eighty-five, and

Power to decree sale at instance of mortgagee.

also ordering that, in default of the defendant paying 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.

In a suit for foreclosure, if the plaintiff succeed, the Court may at his instance pass a like decree in lieu of a decree for foreclosure.

Bill, s. 21: 15 & 16 Vic. c. 86, s. 49.

Power to decree sale in foreclosure-suit at instance of mortgagor.

When the mortgagee sues only for foreclosure, and not for foreclosure or sale, if the Court consider that he will not be damnified by a sale and if the defendant furnishes such security as the Court thinks sufficient for the full and prompt 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 II, s. 56.

Procedure when defendant pays amount due.

88. If in any case under section eighty-seven the defendant pays to the plaintiff or into court on the day fixed as aforesaid the amount due under the mortgage, the costs, if any, awarded to him and such subsequent costs as are mentioned in section ninety-three, the defendant 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 eighty-seven; and thereupon the defendant's right to redeem and the security shall both be extinguished.

Order absolute for sale.

Bill III, s. 54: Bill, s. 23: Kent IV, 207.

89. 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 legally recoverable from 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: Bill III, s. 55.

90. Besides the mortgagor, any of the following persons may redeem, or institute a suit for redemption of, the mortgaged property:—

Who may sue for redemption.

3 W. R. 230: 6 W. R. 230, &c.: But see 17 W. R. 272.

(*a*) any person (other than the mortgagee of the interest sought to be redeemed) 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;

(*c*) any surety for the payment of the mortgage-debt or any part thereof;

(*d*) the guardian of the property of a minor mortgagor on behalf of such minor;

(*e*) the committee or other legal curator of a lunatic or idiot mortgagor on behalf of such lunatic or idiot;

(*f*) the judgment-creditor of the mortgagor, when he has obtained execution;

Fisher, 768.

(*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: III, s. 56: Bill, s. 25: [illegible] Code, C. P. [illegible] section [illegible] W. R., 1864, p. 207.

91. 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 the mortgage-money and for his costs of the suit, if any, awarded to him, 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 re-transfer 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;

that if such payment is not made on or before the day to be fixed by the Court, the plaintiff shall (unless the mortgage be simple or usufructuary) be absolutely debarred of all right to redeem the property, or (unless the mortgage be by conditional sale) that the property be sold.

92. If payment is made of such amount and of such subsequent costs as are mentioned in section ninety-three, the plaintiff shall, if necessary, be put into possession of the mortgaged property.

Bill II, s. 60.

In case of redemption, possession.

If such payment is not so made, the defendant may (unless the mortgage is simple or usufructuary) apply to the Court for an order that the plaintiff and all persons claiming through or under him be debarred absolutely of all right to redeem, or (unless the mortgage is by conditional sale) for an order that the mortgaged property be sold.

In default, foreclosure or sale.

If he apply for the former order, the Court shall pass an order that the plaintiff and all persons claiming through or under him be absolutely debarred of all right to redeem the mortgaged property, and may, if necessary, deliver possession of the property to the defendant.

If he apply for the latter order, 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, as regards the property affected by the order, both be extinguished:

Provided that the Court may, upon good cause shown, and upon such terms, if any, as it thinks fit, from time to time postpone the day fixed under section ninety-one for payment of the amount due.

Power to enlarge time.

Bill II, s. 65: Bill, s. 30.

93. 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.

Macph. Ldg.

94. Where one of several mortgagors redeems the mortgaged property and obtains possession thereof, he has a charge on the share of each of the other co-mortgagors in the property for his proportion of the costs properly incurred in so redeeming and obtaining possession.

Charge of one of several co-mortgagors who redeems.

Sale of Property subject to prior Mortgage.

Bill II, s. 65: III, s. 60: Bill, s. 32: Report, s. 25, altered: Act X of 1877, s. 295.

95. 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: III, s. 61: Bill, s. 33: See Act X of 1877, s. 295.

96. 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. 'No precise form is required for a mortgage,' 5 Beng. 273, per Couch, C. J.

97. In the case of a mortgage not being a simple mortgage, a mortgage by conditional sale, an usufructuary mortgage, or an English mortgage, or a combination of the first and third, or the second and third, of such forms, 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.

Mortgage not described in section 58, clauses (*b*), (*c*), (*d*) and (*e*).

Attachment of Mortgaged property.

98. Where a mortgagee in execution of a decree for the satisfaction of any claim, whether arising under the mortgage or not, attaches the mortgaged property, he shall not be entitled to bring such property to sale otherwise than by instituting a suit under section sixty-six.

Attachment of mortgaged propety.

Charges.

Bill II, s. 68: III, s. 63: Bill, s. 34.

99. Where immoveable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property; and all the provisions hereinbefore applied to a mortgagor shall, so far as may be, apply to the owner of such property, and the provisions of sections eighty and eighty-one 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.

Charges.

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: III, s. 64: *Swinfen* v. *Swinfen*, 29 Beav. 199: *Adams* v. *Angell*, 5 Chan. D. 634, 645: 7 Mad. 231: 14 W. R. 491: 3 O'Kin. 184: 5 Beng. 463: 11 Bom. 41.

100. Where the owner of a charge or other incumbrance on immoveable property is or becomes absolutely entitled to that property, the charge or incumbrance shall be extinguished, unless he declares, by express words or necessary implication, that it shall continue to subsist, or such continuance would be for his benefit.

Extinguishment of charges.

Notice and Tender.

101. Where the person on or to whom any notice or tender is to be served or made under this chapter does not reside in the district in which the mortgaged property or some part thereof is situate, service or tender on or to an agent holding a general power-of-attorney from such person or otherwise duly authorized to accept such service or tender shall be deemed sufficient.

Service or tender on or to agent.

Where the person or agent on whom such notice should be served cannot be found in the said district, or is unknown to the person required to serve the notice, the latter person may apply to any Court in which a suit might be brought for redemption of the mortgaged property, and such Court shall direct in what manner such notice shall be served, and any notice served in compliance with such direction shall be deemed sufficient.

Where the person or agent to whom such tender should be made cannot be found within the said district, or is unknown to the person desiring to make the tender, the latter person may deposit in such Court as last aforesaid the amount sought to be tendered, and such deposit shall have the effect of a tender of such amount.

102. Where under the provisions of this chapter a notice is to be served on or by, or tender or deposit made or accepted or taken out of Court by, any person, incompetent to contract, such notice may be served or tender or deposit made accepted or taken by the legal curator of the property of such person; but where there is no such curator, and it is requisite or desirable in the interests of such person that a notice should be served or tender or deposit made under the provisions of this chapter, application may be made to any Court in which a suit might be brought for the redemption of the mortgage to appoint a guardian *ad litem* for the purpose of serving or receiving service of such notice, or making or accepting such tender, or making or taking out of Court such deposit, and for the performance of all consequential acts which could or ought to be done by such person if he were competent to contract; and the provisions of chapter XXXI of the Code of Civil Procedure shall, so far as may be, apply to such application and to the parties thereto and to the guardian appointed thereunder.

Notice, &c., to or by person incompetent to contract.

108. The High Court may, from time to time, make rules consistent with this Act for carrying out the provisions contained in this chapter.

Power to make rules.

CHAPTER V.

OF LEASES OF IMMOVEABLE PROPERTY.

104. A lease of immoveable property is a transfer of a right to enjoy such property made for a certain time express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

Lease defined.

The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent.

Lessor, lessee, premium and rent defined.

Bill II, s. 74: III, 68: Bill, s. 46: Report, s. 40; 5 Bomb. A. C. J. 179; 6 *ibid.* 31; 7 *ibid.* 111. and see 1 Beng. F. B. 25. 12 W.R. 190: I.L.R. 2 Calc. 126: 4 Bengal Appendix 66; 13 Beng. 363: N.W.P., 1873, p. 9., Perry 480.

105. In the absence of a contract or local law or usage to the contrary, a lease of immoveable property for agricultural or manufacturing purposes shall be deemed to 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 deemed to 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.

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 to a conspicuous part of the property.

Notice to determine lease.

106. A lease of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered assurance.

Leases how made.

Bill II, s. 71: Bill III, s. 65. All other leases of immoveable property may be made either by assurance or by oral agreement.

107. 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 rules next following, or such of them as are applicable to the property leased:—

Rights and liabilities of lessor and lessee.

A.—Rights and liabilities of the Lessor.

Bill III, s. 66 6 W. R. 314. (*a*) the lessor is bound to disclose to the lessee any defect in the property, with reference to its intended use, of which the former is and the latter is not aware, and which the latter could not with ordinary care discover:

(*b*) 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.

(*c*) the lessor shall be deemed to contract with the lessee that, if the latter pays the rent reserved by the lease and performs the contracts binding on the lessee, he may hold the property leased during the time limited by the lease without interruption:

(*d*) where an arrear of rent is due from any lessee, the lessor may, instead of suing for the arrear, recover the same by distress and sale of the goods found in or upon the property in respect of which the arrear is due or of the produce of such property, but subject to the local law, if any, for the time being in force relating to distresses. 39 (2) altered: cf. IX of 1872, s. 93: 11 W.R. 278: 12 W.R. 149:

B.—Rights and liabilities of the Lessee.

(*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: 8 Beng. 78: 5 Calc. L. R. 33.

(*f*) if by fire, tempest or flood, or violence of an army or of a mob, or other irresistible force, any material part of the property leased be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let, the lease shall, at the option of the lessee, be void:

provided that, if the injury be occasioned by the wrongful act or default of the lessee, he 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 with interest from the rent, or otherwise recover it from the lessor:

(*i*) the lessee may remove, at any time during the continuance of the lease, all things which he has attached to the earth; provided he leaves the property leased in the state in which he received it: *Re Thakoor Chunder Pa-ramanyk*, Beng. F. B. Rulings 595: 8 Beng. 237: 14 Beng. 201, 205: cf. Act XIX of 1863, s. 49: Act XVIII of 1873, s. 42.

(*j*) 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 gather and carry them:

5 S. D. A. 205: 5 M ad. 120, 127. 7 Beng. 152: N. W. P., 1875, p. 181: 13 W. R. 451: 16 W. R. 112: 6 S. D. A. 67: 15 W. R. 449.

(*k*) the lessee may transfer absolutely or by way of mortgage or sub-lease 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 only of such transfer, cease to be subject to any of the liabilities attaching to the lease:

8 Beng. 239: 12 Beng. 82.

nothing in this clause shall be deemed to authorize a tenant having an untransferable 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:

(*l*) the lessee is bound to disclose to the lessor any fact as to the nature or extent of the interest which the lessee is about to take, of which the lessee is, and the lessor is not, aware, and which increases the value of such interest:

See 26 W. R. 94.

(*m*) the lessee is bound to pay or tender, at the proper time and place, the premium or rent to the lessor or his agent in this behalf:

(*n*) 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 the changes caused by reasonable wear and tear or irresistible force, 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 give or leave notice of any defect in such condition, and, when such defect has been caused by any act or default on the part of the lessee, his servants or agents, he is bound to make it good within three months after such notice has been given or left:

(*o*) if the lessee 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, he is bound to give, with reasonable diligence, notice thereof to the lessor:

(*p*) the lessee may use the property leased and its products (if any) as a person of ordinary prudence would use them if they were his own; but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or fell timber, pull down or damage buildings, work mines or quarries not open when the lease was granted, or commit any other act which is destructive or permanently injurious thereto:

(*q*) he must not, without the lessor's consent, erect on the property leased any permanent structure, except for agricultural purposes:

(*r*) on the determination of the lease, the lessee is bound to put the lessor into possession of the property leased.

108. If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, 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:

Rights of lessor's transferee.

Act XI of 1855, s. 1: 4 Anne, c. 16, s. 10.

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.

Bill II, c. 12,

Where only a part of the property leased is transferred by the lessor, he may (subject to the provisions of section thirty-eight) determine what proportion of the premium or rent reserved by the lease is payable in respect of the part so transferred.

Bill II, c. 76; Bill, c. 42,

109. 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 terminable before its expiration, and the lease omits to mention at whose option it is so terminable, the lessee, and not the lessor, shall have such option.

Option to determine lease.

Determination of lease.

110. A lease of immoveable property determines—

Bill II, c. 12, 7 W. R. [illegible]

(*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:

3 Moo. I. A. 261: 16 W. R. [illegible]

(*c*) where the interest of the lessor in the property leased terminates on, or his power to dispose of the same extends only to, the happening of any event—by the happening of such event:

Lease by Tenant for life, 44 Vict., Marshall 180.

(*d*) 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. [illegible] Bull and [illegible] Practice 10 W. R. [illegible]

(*e*) by express surrender; that is to say, in case [illegible]

54 S

deem mortgaged lease, N. W. P., 1869, p. 45. Surrender by one of several joint lessees, 9 W. R. 147.

the lessee yields up his interest under the lease to the lessor, by mutual agreement between them:

(*f*) by implied surrender:

Marshall 250: 16 W.R. 103: 25 W. R. 227.

(*g*) 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 showing his intention to determine the lease:

18 W. R. 465. But see 23 W. R. 448. 25 W. R. 147.

23 W. R. 238, 271.

(*h*) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.

Illustration to clause (f).

A, the lessee, accepts from the lessor a new lease of the property leased, to take effect during the continuance of the existing lease. This is an implied surrender of the former lease, and such lease determines thereupon.

Bill II, s. 77, cl. 1: W. R. F. B. 10: Marshall 25.

111. A forfeiture under section one hundred and ten, clause (*g*), 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:

3 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.

112. A notice given under section one hundred and ten, clause (*h*), is waived, with the express or implied consent of the person to whom it is given, by any act on the part of the person giving it showing an intention to treat the lease as subsisting.

Waiver of notice to quit.

Illustrations.

(*a*). A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires. B tenders, and A accepts, rent which has become due in respect of the property since the expiration of the notice. The notice is waived.

(*b*). A, the lessor, gives B the lessee, notice to quit the property leased. The notice expires, and B remains in possession. A gives to B as lessee a second notice to quit. The first notice is waived.

Bill II, s. 77, cl. 2: N. W. P., 1867, Ex. c. s. 1. Tammaved Puranik v. Rabiya Kupayanda, 2 Bom. 70: 8 W. R. 225, per Peacock, C J.

113. 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.

Act XVIII of 1873, s. 34, cl. (*c*), para. 4.

114. 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, on terms and conditions substantially the same (except as regards the amount of rent) as those of the original lease; 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.

10 W. R. 38. 13 W. R. 29. N. W. P., 1871, p. 63.

Effect of surrender and forfeiture on under-leases.

The forfeiture of such a lease annuls all such under-leases, except where such forfeiture has been procured by the lessor in fraud of the under-lessees.

115. 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 one hundred and seven.

Bill II, s. 78; Bill, s. 47; Report, s. 41; 3 Bom. A. C. J. 27; 2 Beng. 288; 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. 224.

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.

116. None of the provisions of this chapter apply to leases for agricultural purposes, except in so far as the local Government, with the previous sanction of the Governor General in Council, may by notification published in the official Gazette declare all or any of such provisions to be so applicable, together with, or subject to, those of the local law, if any, for the time being in force.

Exemption of leases for agricultural purposes.

Such notification shall not take effect until the expiry of six months from the date of its publication.

CHAPTER VI.

OF EXCHANGES.

117. When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing or both things being money only, the transaction is called an "exchange."

Bill II, s. 21; Bill, s. 48; 1 Mad. 100.

"Exchange" defined.

A transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale.

Bill II, s. 22, cl. 2:

118. In the absence of a contract to the contrary, the party deprived of the thing or part thereof he has received in exchange by reason of any defect in the title of the other party is entitled at his option to compensation or to the return of the thing transferred by him.

Right of party evicted from thing received in exchange.

Bill II, s. 23: Bill, s. 48, para. 2.

119. 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: 1 Morl. 105.

120. On an exchange of money, each party thereby warrants the genuineness of the money given by him.

Exchange of money.

CHAPTER VII.

OF GIFTS.

121. "Gift" is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

"Gift" defined.

Such acceptance must be made during the lifetime of the donor and while he is still capable of giving.

Acceptance when to be made.

L. C. 1581.

If the donee dies before acceptance, the gift is void.

Act III of 1877, s. 17, cl. (*a*).

122. For the purpose of making a gift of immoveable property, the transfer must be effected by registered assurance signed by or on behalf of the donor, and attested by at least two witnesses.

Transfer how effected.

For the purpose of making a gift of moveable property, the transfer may be effected either by a non-testamentary instrument [registered and] signed as aforesaid or by delivery.

Act IX of 1872, s. 90.

Such delivery may be made in the same way as goods sold may be delivered.

123. A gift comprising both existing and future property is void as to the latter.

Gift of existing and future property.

Bourke II, 144.

124. A gift of a divisible thing to two or more donees, of whom one does not accept it, is void as to the interest which he would have taken had he accepted.

Gift to several, of whom one does not accept.

125. The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part at the mere will of the donor is void wholly or in part, as the case may be.

When gift may be suspended or revoked.

A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded.

Save as aforesaid, a gift cannot be revoked. 1 L. R., 2 All. 432.

Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice.

Illustrations.

(*a*). A gives a field to B, reserving to himself, with B's assent, the right to take back the field in case B and his descendants die before A. B dies without descendants in A's lifetime. A may take back the field.

(*b*). A gives a lákh of rupees to B, reserving to himself, with B's assent, the right to take back at pleasure Rs. 10,000 out of the lákh. The gift holds good as to Rs. 90,000, but is void as to Rs. 10,000, which continue to belong to A.

126. Where a gift is in the form of a single transfer to the same person of several things of which one is, and the others are not, burdened by an obligation, the donee can take nothing by the gift unless he accepts it fully.

Act X of 1865, s. 109.

Onerous gifts.

Where a gift is in the form of two or more separate and independent transfers to the same person of several things, the donee is at liberty to accept one of them and refuse the others, although the former may be beneficial and the latter onerous.

Act X of 1865, s. 110.

A donee not competent to contract and accepting property burdened by any obligation is not bound by his acceptance. But if, after becoming competent to contract and being aware of the obligation, he retains the property given, he becomes so bound.

Onerous gift to disqualified person.

Illustrations.

(*a*). A has shares in X, a prosperous joint stock company, and also shares in Y, a joint stock company in difficulties. Heavy calls are expected in respect of the shares in Y. A gives B all his shares in joint stock companies. B refuses to accept the shares in Y. He cannot take the shares in X.

(*b*). A, having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term, and which is more than the house can be let for, gives to B the lease, and also, as a separate and independent transaction, a sum of money. B refuses to accept the lease. He does not by this refusal forfeit the money.

127. Subject to the provisions of section one hundred and twenty-six, where a gift consists of the donor's whole property, the donee is personally liable for all the debts due by the donor at the time of the gift to the extent of the property comprised therein.

Universal donee.

128. Nothing in this chapter relates to gifts of moveable property made in contemplation of death, or shall be deemed to affect any rule of Muhammadan law.

Saving of donations *mortis causâ* and Muhammadan law.

CHAPTER VIII.

OF TRANSFERS OF ACTIONABLE CLAIMS.

Actionable claim.

129. A claim is actionable when the civil Courts recognise it as a ground for relief, whether a suit for its enforcement is or is not actually pending or likely to become necessary.

Transfer of debts.

130. No transfer of 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 is given to him, unless he is a party to such transfer; and every dealing by such debtor or person, not being a party to, and not having received express notice of, a transfer, with the debt or property shall be valid as against such transfer.

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.

Notice to be in writing signed.

131. Every such notice must be in writing signed by the person making the transfer, or by his agent duly authorized in this behalf.

Debtor to give effect to transfer.

132. On receiving such notice, the debtor or person in whom the property is vested shall give effect to the transfer 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 is made is not complete according to the law of such country.

Warranty of solvency of debtor.

133. Where the transferor of a debt warrants the solvency of the debtor, the warranty, in the absence of a contract to the contrary, applies only to his solvency at the time of the transfer, and is limited, where the transfer is made for consideration, to the amount or value of such consideration.

Discharge of person against whom claim is sold.

134. Where an actionable claim is sold, he against whom it is claimed is wholly discharged by paying to the buyer the price and incidental expenses of the sale, with interest on the price from the day that the buyer paid it.

Nothing in the former part of this section applies—

(*a*) where the sale is made to the co-heir or co-proprietor of the claim sold;

(*b*) where it is made to a creditor in payment of what is due to him;

(*c*) where it is made to the possessor of a property subject to the actionable claim;

(*d*) where the judgment of a competent Court has been delivered affirming the claim, or where the claim has been made clear by evidence and is ready for judgment.

Incapacity of officers connected with Courts of justice.

135. No judge, pleader, clerk, bailiff or other officer connected with Courts of justice can buy any actionable claim falling under the jurisdiction of the Court in which he exercises his functions.

Liability of transferee of debt.

136. 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. Bill II, s. 129. *Mangles* v. *Dixon*, 3 H. L. Ca. 702; Fisher, s. 1058.

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.

Mortgaged debt.

137. When a debt is transferred for the purpose of securing 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. Bill II, s. 99, para. 2; Dav. Conv. [illegible] 691, 696.

Saving of negotiable instruments.

138. Save as provided by section one hundred and thirty-seven, nothing in this chapter applies to negotiable instruments. Bill II, s. 100.

THE SCHEDULE.

(*a*). STATUTE.

Year and chapter.	Subject.	Extent of repeal.
27 Hen. VIII, c. 10.	Uses	The whole.
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.

(*b*). ACTS OF THE GOVERNOR GENERAL IN COUNCIL —*contd.*

Number and year.	Subject.	Extent of repeal.
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,
Secretary to the Government of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, MARCH 19, 1881.

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 4th March, 1881, and was referred to a Select Committee:—

No. 5 OF 1881.

A Bill to amend the Indian Penal Code.

Preamble. For the purpose of amending the Indian Penal Code; It is hereby enacted as follows:—

Amendment of section 40, clause 2, of Indian Penal Code. 1. In the second clause of section 40 of the said Code, before the figure "109," the figures "65, 66, 71" shall be inserted.

Amendment of section 64 of same Code. 2. In section 64 of the said Code, for the first twelve words, the following shall be substituted, namely:—

"In every case punishable under any law in force for the time being, with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment,

and in every case punishable under this Code with fine only, in which the offender is sentenced to a fine,"

Amendment of section 67 of same Code. 3. In section 67, after the words "fine only," the words "the imprisonment which the Court imposes in default of payment of the fine shall be simple, and" shall be inserted.

Addition to section 71 of same Code. 4. To section 71 of the said Code, the following clause shall be added:—

"Where anything is 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 offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences."

New Exception to section 214 of same Code. 5. In section 214 of the said Code, for the Exception, the following shall be substituted, namely:—

"*Exception.*—The provisions of sections 213 and 214 do not extend to any case in which the offence may lawfully be compounded."

Addition to section 435 of same Code. 6. In section 435 of the said Code, after the words "or upwards" the following words shall be inserted, namely:—

"or (where the property is agricultural produce) ten rupees or upwards."

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to make six amendments of the Indian Penal Code.

The first is to render the word "offence," as used in sections 65, 66 and 71 (as amended by this Bill), applicable to things punishable under the Code or any special or local law.

The second is to render section 64 (as to sentence of imprisonment on default of payment of fine) applicable to convictions under special and local laws in case of offences punishable both with imprisonment and fine. It corresponds with the first clause of section 309 of Act X of 1872, which will be repealed by the new Code of Criminal Procedure.

The third is to declare that, when an offence is punishable with fine only, the imprisonment in default of payment of the fine shall be simple: this is in accordance with a decision of the Bombay High Court (5 Bom. C. C. 55).

The fourth is to declare, by an addition to section 71, that, when anything is an offence falling within two or more separate definitions, the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences. This corresponds with the latter part of the second clause of section 214 of the present Code of Criminal Procedure; but it is clearly matter of substantive law, and should therefore be placed in the Penal Code.

The fifth is to replace the obscure Exception which now stands in section 214 by the following:—

"*Exception.*—The provisions of sections 213 and 214 do not extend to any case in which the offence may lawfully be compounded."

This will be read with section 345 of the new Code of Criminal Procedure, which declares that certain specified offences, and no others, may be compounded.

The sixth is to render the offence of committing mischief by fire, intending to cause damage to agricultural produce worth ten rupees or upwards, punishable with the severer penalty provided by section 435 of the Code. As the law stands, mischief by fire is cognizable only when committed with intent to cause damage to the amount of Rs. 100 or upwards. But agricultural holdings are generally so small that the total produce of a holding is often less than Rs. 100. The result is that a raiyat may have garnered his crop and lose the whole of it through the act of an incendiary, and yet the offence is only punishable with three months' imprisonment and fine, and may not be investigated by the police without the special order of a Magistrate. An alteration in the paragraph of the second schedule to the new Code of Criminal Procedure, which relates to section 435 of the Penal Code, will render the offence in question cognizable by the police.

WHITLEY STOKES.

The 20th February, 1881.

D. FITZPATRICK,
Secretary to the Government of India.

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 4th March, 1881, and was referred to a Select Committee:—

No. 6 OF 1881.

MERCHANT SHIPPING BILL, 1881.

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A Bill for the further amendment of the law relating to Merchant Shipping.

WHEREAS it is expedient to amend the law relating to investigations into casualties affecting ships and charges against masters, mates and engineers; Preamble.

and whereas it is also expedient to provide, in other respects hereinafter appearing, for the regulation and control of merchant shipping;

It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title. **1.** This Act may be called "The Indian Merchant Shipping Act, 1881;"

Extent. It extends to the whole of British India;

Commencement. and it shall come into force at once.

Repeal of enactments. **2.** The Indian Merchant Shipping Act, 1875, and Act No. XIII of 1878 (*An Act to provide for the recovery in British India of wages due to, and expenses incurred in respect of, certain seamen and apprentices, and to amend the Indian Merchant Shipping Act, 1875, and the Indian Ports Act, 1875*), are hereby repealed.

But all proceedings commenced, officers appointed, powers conferred, investigations held, certificates cancelled or suspended, agreements made and persons authorized under the said Acts or either of them, shall be deemed to have been respectively commenced, appointed, conferred, held, cancelled or suspended, made and authorized under this Act.

Interpretation-clause. **3.** In this Act

Definition of ship: "ship" includes every description of vessel used in navigation not propelled by oars; and

"master." "master" means any person (except a pilot or harbour-master) having for the time being control or charge of a ship.

Saving of powers of certain Admiralty Courts. **4.** Nothing in this Act affects the powers conferred by section two hundred and forty of the Merchant Shipping Act, 1854, or by section eighty of Act No. I of 1859 (*for the amendment of the law relating to Merchant Shipping*), on Courts having admiralty jurisdiction in India.

Exercise of such powers by principal criminal Courts. The powers conferred by the last-mentioned enactment may, at any port in British India where there is no Court having admiralty jurisdiction, be exercised by the principal Court of ordinary criminal jurisdiction.

CHAPTER II.

INVESTIGATIONS INTO CASUALTIES AFFECTING SHIPS, AND CHARGES AGAINST MASTERS, MATES OR ENGINEERS.

Chapter not to apply to certain ships. **5.** Nothing in this chapter shall be deemed to apply to any ship belonging to, or in the service of, Her Majesty or belonging to any foreign Prince or State.

Report of casualties to be made to Local Government. **6.** Whenever any Magistrate, or any officer appointed by the Local Government in this behalf, receives credible information that—

(*a*) any ship has been lost, abandoned, stranded or damaged on or near the coasts of British India; or

(*b*) by reason of any casualty happening to or on board of any ship on or near such coasts, loss of life has ensued; or

(*c*) any ship has caused loss or damage to any other ship on or near such coasts; or

(*d*) any such loss, abandonment, stranding, damage or casualty has happened elsewhere, and any competent witnesses thereof have arrived or are to be found at any place in British India; or

(*e*) any ship is supposed to have been lost, and any evidence can be obtained in British India as to the circumstances under which she proceeded to sea or was last heard of;

he shall forthwith report in writing such information to the Local Government.

In the cases mentioned in clauses (*a*), (*b*) and (*c*), the master, pilot, harbour-master or other person in charge of the ship or (where two ships are concerned) in charge of each ship, at the time of such loss, abandonment, stranding, damage or casualty, and

in cases under clause (*d*), where the ship concerned proceeds direct from the place where such loss, abandonment, stranding, damage or casualty has occurred to any place in British India, the master of such ship at the time she arrives at such place,

shall, on arriving in British India, give immediate notice of such loss, abandonment, stranding, damage or casualty to the nearest Magistrate, or, when he arrives at a port, to the officer appointed at such port as aforesaid.

Any person bound to give notice under this section and wilfully failing to give the same shall be punished with fine which may extend to five hundred rupees, and, in default of payment, to simple imprisonment for a term which may extend to three months.

Power to appoint special Court of Enquiry. **7.** If in any such case a formal investigation into the facts mentioned in section six, clause (*a*), (*b*), (*c*), (*d*) or (*e*), appears to the Local Government to be requisite or expedient, the Local Government (whether such notice be given or not) may appoint a special Court, consisting of not less than two nor more than four persons, and direct such Court to make such investigation, and may fix the place for making the same.

One of such persons shall be a Magistrate acting in or near the place where the investigation is made; another shall be some person conversant with maritime affairs. The other or others (if any) shall be conversant with either maritime or mercantile affairs.

Other Courts authorized to investigate casualties. **8.** Every Court having admiralty jurisdiction in British India, and the principal Court of ordinary criminal jurisdiction at every port of British India where there is no Court having admiralty jurisdiction, is hereby authorized, when so directed by the Local Government, to make the investigations referred to in section seven.

Power to inquire into charges against masters, mates and engineers. **9.** Any Court making an investigation under section seven or section eight may inquire into any charge of incompetency or misconduct arising, in the course of such investigation, against any master, mate or engineer holding a certificate granted, under any enactment for the time being in force, by the Board of Trade or a Local Government, as well as into any charge of a wrongful act or default on his part causing any such loss, abandonment, stranding, damage or casualty as aforesaid.

In every case in which there is reason to believe that any such charge, whether of incompetency or misconduct, or of wrongful act or default, as aforesaid, will arise against any such master, mate or engineer in the course of an investigation, the Court shall, if practicable, before the commencement of such investigation, cause to be furnished to him a copy of the report upon which such investigation has been directed.

Local Government may direct investigation in cases of incompetency or misconduct. **10.** If the Local Government has reason to believe that there are grounds for charging any such master, mate or engineer with incompetency or misconduct, otherwise than in the course of an investigation under section seven or section eight, it may transmit a statement of the case to any Court mentioned in section eight, at or nearest to the place at which it may be convenient for the parties and witnesses to attend, and may direct such Court to make an investigation into such charge.

Before commencing such investigation, the Court shall cause the master, mate or engineer so charged to be furnished with a copy of the statement transmitted by the Local Government.

Person accused to be heard. **11.** For the purpose of an investigation under this chapter into any charge against a master, mate or engineer, the Court may summon him to appear, and shall give him full opportunity of making a defence either in person or otherwise.

Powers of Courts as to evidence and regulating proceedings. **12.** For the purpose of any investigation under this chapter, the Court making the investigation, so far as relates to compelling the attendance and examination of witnesses and the production of documents and the regulation of the proceedings, shall have—

(*a*) if such Court is a special Court—the same powers as are exerciseable by the principal Court of ordinary criminal jurisdiction for the place in which the investigation is made;

(*b*) if such Court is a Court having admiralty jurisdiction or a principal Court of ordinary criminal jurisdiction—the same powers as are exerciseable by such Court in the exercise of such admiralty or criminal jurisdiction (as the case may be).

Assessors. And every Court making any such investigation, other than a special Court, may, if it think fit, constitute as its assessor, for the purposes of the investigation, any person conversant with maritime affairs and willing to act as such assessor.

Such person shall attend during the investigation and deliver his opinion in writing, to be recorded on the proceedings. But the exercise of all powers conferred on the Court by this Act or any other enactment for the time being in force shall rest with the Court.

Power to arrest witnesses and cause entry and detention of vessels. **13.** If any Court making an investigation under this chapter thinks it necessary for obtaining evidence that any person should be arrested, it may issue a warrant for his arrest, and may, for the purpose of effecting such arrest, authorize any officer (subject, nevertheless, to any general or special instructions from the Local Government) to enter any vessel.

Any officer so authorized may, for the purpose of enforcing such entry, call to his aid any officers of police or customs, or any other persons, and may seize and detain the vessel for such time as is reasonably necessary to effect the arrest; and every such officer or other person shall be deemed to be a public servant within the meaning of the Indian Penal Code, section 186.

No person shall be detained by virtue of this section for more than forty-eight hours.

Power to commit for trial. **14.** Whenever, in the course of any such investigation, it appears that any person has committed an offence punishable under any law in force in British India, the Court making the investigation may (subject to such rules consistent with this Act as the High Court may from time to time prescribe) cause him to be arrested, or commit him or hold him to bail to take his trial before the proper Court; and may bind over

Power to bind over persons to give evidence. any person to give evidence at such trial, and may, for the purposes of this section, exercise all the powers of a Magistrate of the first class or of a Presidency Magistrate:

Depositions. And whenever in the course of such trial the testimony of any witness is required in relation to the subject-matter, any deposition previously made by him in relation to the same subject-matter before any Court making an investigation under this chapter shall, if authenticated by the signature of the Magistrate or presiding Judge, be admissible in evidence on proof—

(*a*) that the witness cannot be found within the jurisdiction of the Court before which the trial is held; and

(*b*) that it was made in the presence of the person accused.

A certificate by the Magistrate or presiding Judge that the deposition was made in the presence of the accused shall, unless the contrary be proved, be sufficient evidence that it was so made.

Report by Court to Local Government. **15.** The Court shall, in the case of all investigations under this chapter, transmit to the Local Government a full report of the conclusions at which it has arrived, together with the evidence.

In cases in which, under the Merchant Shipping Acts, 1854 to 1880, the Court is required to send a report to the Board of Trade, such report shall be sent through the Local Government, and the

submission of such report to the Local Government shall be a sufficient compliance with this section.

CHAPTER III.

SUSPENSION AND CANCELLATION OF CERTIFICATES AND GRANT OF FRESH CERTIFICATES.

16. Nothing herein contained shall affect the powers conferred by the Merchant Shipping Acts, 1854 to 1880, on the Courts conducting investigations under sections seven, eight, nine and ten of this Act, to cancel or suspend certificates granted under any of the said Merchant Shipping Acts, or certificates to which the provisions of any such Act have been made applicable under the Merchant Shipping (Colonial) Act, 1869.

Saving of power to cancel and suspend certificates under English Acts.

When any such Court cancels or suspends any such certificate, it may, in its report to the Local Government, advise such Government to grant, without examination, to the holder of such certificate, when such certificate is a certificate as master, a certificate as master or mate; and, when such certificate is a certificate as mate or engineer, a certificate as mate or engineer, as the case may be; and such Local Government, if it thinks fit, and if it is empowered by any enactment of a British Indian legislature for the time being in force to grant such certificate, may grant it under such enactment, but without examination. A certificate so granted shall, except for the purposes of the said Merchant Shipping (Colonial) Act, 1869, have the same effect as if it had been granted after examination.

Power to issue local certificates in lieu of such certificates.

17. Any certificate (whether of competency or service) which has been granted by any Local Government, to any master, mate or engineer, and to which the provisions of the Merchant Shipping (Colonial) Act, 1869, do not apply, may be suspended or cancelled, by that or any other Local Government, in the following cases, that is to say:—

Local Government may suspend or cancel certain certificates—

(*a*) if, upon any investigation made under this Act, the Court reports that the loss, stranding or abandonment of, or damage to, any ship, or loss of life, has been caused by his wrongful act or default, or that he is incompetent, or has been guilty of any gross act of drunkenness, tyranny or other misconduct;

after investigation under this Act;

(*b*) if, upon any investigation made under the provisions of the Merchant Shipping Acts, 1854 to 1880, or upon any investigation made by any Court or tribunal for the time being authorized by the legislative authority in any British possession to make enquiry into charges of incompetency or misconduct on the part of masters, mates or engineers of ships, or as to shipwrecks or other casualties affecting ships, the Court or tribunal reports that such master, mate or engineer is incompetent, or has been guilty of any gross act of misconduct, drunkenness or tyranny, or that the loss, stranding or abandonment of, or damage to, any ship, or loss of life, has been caused by his wrongful act or default;

after investigation under other Acts;

(*c*) if he is proved to have been convicted of any offence which, if committed in British India, would be non-bailable, or, if committed in England, would be a felony: and

after conviction of any offence

(*d*) if (in the case of a master) he has been superseded by the order of any Admiralty Court, or of any Naval Court constituted as provided by the Merchant Shipping Act, 1854, or by any other law for the time being in force:

after supersession.

Provided that, in any case in which an investigation has been made into a charge against any master, mate or engineer, no certificate shall be suspended or cancelled under clause (*a*) unless the Local Government is satisfied that the holder of the certificate has been furnished before the commencement of the investigation with the copy of the report or statement required by section nine or section ten, as the case may be.

18. Every master, mate or engineer whose certificate is cancelled or suspended under section seventeen shall deliver it to the Shipping Master, or to such other person as the Local Government which cancelled or suspended the certificate directs, and in default of such delivery shall, for each offence, be punished with fine which may extend to five hundred rupees.

Master, &c., to deliver up certificate.

19. If the Local Government which cancels or suspends, under section seventeen, a certificate of a master, mate or engineer is not the Local Government that granted the same, the Local Government so cancelling or suspending the certificate shall report the proceedings, and the fact of cancelment or suspension, to the Local Government which granted such certificate.

Report to other Local Governments.

20. Every Local Government cancelling or suspending under section seventeen the certificate of a master, mate or engineer shall, as soon as may be practicable, report to the Board of Trade the fact of such cancellation or suspension.

Report to Board of Trade.

21. Any Local Government may at any time revoke any order of cancelment or suspension which it may have made under section seventeen, or grant, without examination, to any person, whose certificate it has so cancelled, a new certificate of the same or of any lower grade.

Power to revoke cancellation or suspension.

Power to grant new certificate.

A certificate so granted shall, except for the purposes of the said Merchant Shipping (Colonial) Act, 1869, have the same effect as if it had been granted after examination.

A certificate of competency for a Home-trade ship under the said Act No. I of 1859 shall be deemed, for the purposes of this section, to be of a lower grade than a certificate of competency for a foreign-going ship under the same Act.

Every revocation and every grant under this section shall, as soon as may be practicable, be reported to the Board of Trade.

CHAPTER IV.

AGREEMENTS WITH SEAMEN.

22. This chapter shall be read with, and taken as part of, the said Act No. I of 1859.

Chapter to be read with Act I of 1859.

23. The master of every ship, except ships of a burden not exceeding three hundred tons employed only in the Home-trade, shall enter into an agreement with every seaman whom he carries to sea from any port in British India as one of his crew, in the manner hereinafter mentioned.

Masters to enter into agreements with seamen.

24. Every such agreeemnt shall be in a form sanctioned by the Governor General in Council, and shall be dated at the time of the first signature thereof, and shall be signed by the master before any seaman signs the same, and shall contain the following particulars as terms thereof, that is to say:—

Form and contents of Agreement.

(*a*) either the nature and, as far as practicable, the duration of the intended voyage or engagement, or the maximum period of the voyage or engagement, and the places or parts of the world, if any, to which the voyage or engagement is not to extend;

(*b*) the number and description of the crew, specifying how many are engaged as sailors;

(*c*) the time at which each seaman is to be on board or to begin work;

(*d*) the capacity in which each seaman is to serve;

(*e*) the amount of wages which each seaman is to receive;

(*f*) a scale of the provisions which are to be furnished to each seaman; and

(*g*) any regulations as to conduct on board, and as to fines, short allowance of provisions or other lawful punishments for misconduct, which have been sanctioned by the Governor General in Council as regulations proper to be adopted, and which the parties agree to adopt.

And every such agreement shall be so framed as to admit of stipulations to be adopted at the will of the master and seaman in each case (not being inconsistent with the provisions of any enactment for the time being in force relating to Merchant Shipping), as to advance of wages and supply of warm clothing, and may contain any other stipulations which are not contrary to law.

25. In the case of such agreements with lascars or other Native seamen, the scale of the provisions agreed to be furnished to each of such seamen shall not be less than a scale to be from time to time fixed and published by the Local Government with the previous sanction of the Governor General in Council.

Scale of provisions to be furnished to lascars.

Any master entering into an agreement with any lascar or other Native seaman for a scale of provisions less than the scale so fixed and published shall be punished with fine which may extend to two hundred rupees.

26. Whenever it is agreed that the service of any lascar or other Native seaman shall end at any port not in British India, the agreement shall, in addition to the particulars specified in section twenty-four, contain a stipulation that fit employment shall be provided for him on board some other ship bound to the port at which he was shipped, or such other port in British India as may be agreed on; or

Stipulation where lascars are shipped.

that a passage shall be provided for him to some port in British India free of charge, or on such other terms as may be agreed on;

and every such stipulation shall be signed by the owner of the ship, or by the master on his behalf.

EXPLANATION.—In this section the word "seaman" includes also a Native of British India carried to sea from any port in British India as one of the crew of a ship.

27. If the master of any ship belonging to the United Kingdom or any British possession has an agreement with his crew, made in due form according to the law of the place to which such ship belongs, or in which her crew were engaged, and engages a single seaman, not being a lascar or other Native seaman, in any port in British India, such seaman may sign the agreement so made, and it shall not be necessary for him to sign an agreement under this Act.

Forms for British or Colonial ships.

CHAPTER V.

PORT-INSPECTORS.

28. In the Indian Ports Act, 1875, after section eighteen, the following sections shall be inserted, that is to say:—

Addition to Act XII of 1875.

"18A. The Local Government may, from time to time, appoint in any port subject to this Act an officer to be called the Port-inspector, and suspend or remove such officer.

Appointment and powers of Port-inspectors.

"Every officer so appointed shall, subject to the control of the Local Government, have the following powers within the limits of the port for which he is appointed, that is to say:—

"(*a*) he may at any time enter any vessel, and may inspect the same and every part thereof, and the provisions and water provided for the use of the persons on board such vessel, and the medicines and appliances and the accommodation for the seamen;

"(*b*) he may medically examine all or any of the persons on board such vessel;

"(*c*) he may require and enforce the production of the log and any other books, papers or documents which he thinks necessary for the purpose of enquiring into the health and medical condition of the persons on board such vessel;

"(*d*) he may call before him and examine for such purpose all or any of such persons, and may require answers to any inquiries he thinks fit to make;

"(*e*) he may require any persons so examined by him to make and subscribe a declaration of the truth of the statements made by such person.

"18B. The Port-inspector shall, on first entering any vessel after her arrival, inquire whether any lascar or other Native seaman on board such vessel desires to make any complaint against the master or any of the crew thereof.

Port-inspector to inquire into complaints;

"In the event of any such seaman so desiring, the Port-inspector shall hear such complaint and record the particulars thereof in writing, and may, for the purpose of ascertaining the truth of the same, exercise any of the powers mentioned in section 18A.

"The Port-inspector shall forthwith report in writing to the Shipping Master the particulars of any complaint made to him under this section, together with his opinion thereon."

and report the same to Shipping Master.

CHAPTER VI.

MISCELLANEOUS.

29. In cases where any wages or expenses recoverable under section 213 of the Merchant Shipping Act, 1854, or under section 16 of the Merchant Shipping Act Amendment Act, 1855, are, under the same sections, a charge upon any ship, or recoverable from any master, owner or other person, within the jurisdiction of any Court in British India, the Governor General in Council may, from time to time, by notification in the *Gazette of India*, authorize, either generally or specially, such persons as he thinks fit to sue for and recover, in manner in the Merchant Shipping Act, 1854, section 213, provided, such wages or expenses.

Power to appoint persons to sue.

Every person so authorized shall be entitled to sue and recover accordingly in any such Court, and shall be deemed to be a person filling a public office within the meaning of the Indian Evidence Act, 1872, section 57, clause 7.

All suits and proceedings under this section shall be instituted and carried on in the name of the Secretary of State for India in Council.

Suits, &c., to be instituted in name of Secretary of State for India in Council.

30. Sections 9 to 16 (both inclusive) of the said Act No. I of 1859 shall not apply to ships registered under Act No. X of 1841 and trading between ports in India and the coasts of Arabia, when such ships are navigated and manned exclusively by Arabs, lascars, or other Asiatic masters and seamen.

Provisions as to examinations, &c., of masters not to apply to certain ships.

31. In sections 2, 15, 17 and 23 of the said Act No. X of 1841, for the words "on information in any Court of Her Majesty or the East India Company by the Advocates General of the respective Presidencies," "by information as aforesaid," "on information as aforesaid," "upon information as aforesaid," in each of the places where they occur, the following words shall be substituted, namely:—"on conviction before a Presidency Magistrate or a Magistrate of the first class."

Amendment of Act X of 1841, secs. 2, 15, 17 and 23.

STATEMENT OF OBJECTS AND REASONS.

PARAGRAPH 8 of the Report, dated the 20th February, 1880, of the Select Committee on the Bill relating to Merchant Shipping, which afterwards became the Indian Merchant Shipping Act, 1880, ran as follows :—

"8. We have omitted chapters VII and VIII of the Bill as introduced, as we consider that the matters to which they relate would be more fitly dealt with in a Bill to consolidate Act No. IV of 1875 and the sections of Act No. XIII of 1878 by which it is amended."

2. The nature of the contents of these omitted chapters will be learnt from the following paragraphs of the Statement of Objects and Reasons, dated the 29th August, 1879, appended to that Bill :—

"21. Chapter VII, by an addition to the Ports Act, 1875, provides for the appointment of an officer called a 'Port-inspector.' This officer, in addition to performing the duties at present performed by the Health-officer (for the performance of which duties he is by the Bill invested with certain legal powers), is intrusted with the duty of inquiring into any complaints which may be made on the arrival of a ship in port by any of the crew against the master or any others of the crew. This latter provision has been inserted, in compliance with the desire of the Secretary of State, for the protection of lascars or other Oriental seamen when serving on board a European ship.

"22. Chapter VIII makes two amendments of the Indian Merchant Shipping Act, 1875. The first extends the provisions of section 3 of that Act so as to give power to hold Marine Courts of Enquiry in certain cases which are at present unprovided for. This change has been introduced at the request of the local Marine authorities, and is in accordance with the provisions of the English law as recently amended. The other amendment gives the Local Government power to fix a scale of provisions, for less than which it will be penal for a master to contract with any lascar or Native seaman—a provision which has been found to be essential for the protection of such seamen."

3. It is with a view to carry out the suggestion of the Select Committee above quoted that the present Bill has been prepared.

The Bill, however, does more than merely consolidate the provisions of the Acts of 1875 and 1878 and re-enact them with the addition of the points omitted from the Merchant Shipping Bill of 1879.

These Acts of 1875 and 1878 relate in part to the suspension and cancellation of Board of Trade certificates to which the provisions of the Imperial Merchant Shipping Acts apply. An examination of the provisions of our Acts in connection with those of the Imperial Acts shows that our Acts deal with several matters already provided for by Parliament. This is not desirable. Apart from the question which might be raised as to the validity of our law, where that law is not transcribed *verbatim*, it is inconvenient from a practical point of view that double provisions relating to the same subject-matter should exist side by side. In re-enacting, therefore, the provisions of the Acts repealed by the Bill, an endeavour has been made to restrict the provisions of the Bill to matters for which the Imperial Acts do not provide, and on which it is clear we can legislate. This has necessitated the omission of some and the amendment of other provisions of the present law.

4. The opportunity of this Bill has been taken to amend section 26 of Act IV of 1875, so as to provide that, when the service of any lascar is to end at any port not in British India, the agreement between him and the master shall invariably stipulate for his return to British *India*, and not merely for his employment on board some vessel bound to such other port as may be agreed on, possibly not in British India. It is clear that, with the extended employment of Native seamen in the Eastern trade, and the increasing number of Asiatic sailors found in a destitute condition at European ports, Government should, on economical grounds, if for no other reason, devise steps to secure the return of Indian seamen to this country at the expense of the persons who take them away.

5. The 31st section of Act IV of 1875, which confers certain powers on Courts for the trial of pilots constituted under Act XII of 1859, has been excluded from the present Bill, as the matter is one which will be more properly provided for by a separate Bill amending that Act.

WHITLEY STOKES.

The 24th February, 1881.

D. FITZPATRICK,
Secretary to the Government of India.

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 4th March, 1881, and was referred to a Select Committee :—

No. 7 OF 1881.

A Bill to give power to arrest persons whose evidence is needed under Act No. XII of 1859.

Preamble.

WHEREAS it is expedient to empower the Judges holding trials under Act No. XII of 1859 (*An Act to make better provision for the trial of Pilots at the Presidency of Fort William in Bengal for breach of duty*) to arrest persons whose evidence is required on such trials; It is hereby enacted as follows :—

Addition to Act XII of 1859, after section 14.

1. The following section shall be inserted immediately after section 14 of the said Act, namely :—

"15. Whenever the Judge of the said Court thinks it necessary for obtaining evidence that any person should be arrested, he may issue a warrant for his arrest, and may, for the purpose of effecting such arrest, authorize any officer (subject, nevertheless, to any general or special instructions from the Local Government) to enter any vessel.

"Any officer so authorized may, for the purpose of enforcing such entry, call to his aid any officers of police or customs, or any other persons, and may seize and detain the vessel for such time as is reasonably necessary to effect the arrest; and every such officer or other person shall be deemed to be a public servant within the meaning of the Indian Penal Code, section 186.

"No person shall be detained under this section for more than forty-eight hours."

STATEMENT OF OBJECTS AND REASONS.

THE last section of Act IV of 1875, which confers on Courts established for the trial of pilots in Bengal under Act XII of 1859 certain powers for compelling the attendance of witnesses, will be repealed if the Merchant Shipping Bill, which is to be introduced to-day, becomes law. As such a provision is somewhat out of place in a Merchant Shipping Act, it seems better to re-enact it as a section in Act XII of 1859, and the present Bill has accordingly been prepared for this purpose.

WHITLEY STOKES.

The 4th March, 1881.

D. FITZPATRICK,
Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second Publication.]

The following 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 4th March, 1881 :—

WE, the undersigned Members of the Select Committee to which the Bill to consolidate and amend the law relating to the Courts of Small Causes established in the Presidency-towns was referred, have the honour to report that we have considered the Bill and the papers noted in the margin.

From Acting Under Secretary to Government, Bombay, No. 7519, dated 9th November, 1880, and enclosures [Papers No. 1].
„ Chief Secretary to Government, Madras, No. 2624, dated 2nd November 1880, and enclosures [Papers No. 2].
„ Chief Secretary to Government, Madras, No. 2662, dated 17th November, 1880, and enclosure [Papers No. 3].
„ D. Sealy, Esq., Vakíl, High Court, Bombay, dated 26th November, 1880 [Paper No. 4].
Note by Hon'ble J. Sewell White, Judge, High Court, Calcutta, dated 13th December, 1880 [Paper No. 5].
From Secretary to Government, Bengal, No. 67J., dated 7th January, 1881, and enclosures [Papers No. 6].
„ J. Crawford, Esq., Registrar, High Court, Calcutta, No. 970, dated 30th May, 1879 [Papers No. 7].
„ Ditto ditto, No. 279, dated 5th February, 1881 [Papers No. 7].
„ H. J. Stephen, Esq., Barrister-at-law, High Court, Calcutta, dated 10th February, 1881, and enclosure [Papers No. 8].

2. We have added a clause to section 6 of the Bill giving the High Courts the same powers over the Small Cause Courts as they have under the 15th section of the High Courts Act over Courts subject to their appellate jurisdiction.

3. We have altered the section (7) relating to the appointment of the Judges so as to provide that one-third at least of the Judges shall be advocates of a High Court. We think the professional members of the Court should be chosen from the advocates of the High Courts, who may be expected to have acquired some experience of the country.

4. The Bill as introduced made the rank and precedence of the Judges depend on the seniority of their appointment. This would not have answered, as it appears that each seat in the Court has a special rank and salary of its own, and the candidates for appointment are posted to particular seats in the Court with reference to their respective qualifications. The second Judge ought, therefore, always to rank above the third, the third above the fourth, and so on, without any reference to the dates of their appointment, and we have accordingly, in section 8, after providing that the Chief Judge shall be the first in rank, introduced words leaving it to the Local Government to fix the rank of the rest.

5. Another change we have made in the constitution of the Court established by the Bill as introduced, consists in the transfer to the Chief Judge of certain administrative powers (see section 13 and also sections 61 and 62), which, we think, would be more efficiently exercised by a single individual.

6. The only other amendment we need notice in this portion of the Bill is the insertion of a clause in section 13, providing for the appointment of a Registrar and a section (14) empowering the Local Government to invest him with jurisdiction to try suits up to the limit of Rs. 20 in value. This amendment has been made at the instance of the Government of Bengal, and there is a precedent for it in the Mufassal Small Cause Courts Act No. XI of 1865.

7. Turning now to the chapter relating to jurisdiction in respect of suits, the first change we have made will be found in section 18 of the amended Bill (= section 16 of the Bill as introduced). The reasons given for framing that section as it originally stood are thus given in the 7th paragraph of the Statement of Objects and Reasons :—

"Act IX of 1850, in conferring jurisdiction on the Courts up to a value of Rs. 500, confines its exercise to cases of defendants dwelling or carrying on business within the local limits. Act XXVI of 1864, on the other hand, in conferring jurisdiction between the values of Rs. 500 and Rs. 1,000, gives an alternative ground for its exercise, namely, the circumstance of the cause of action having arisen within the local limits. It has been urged by most of the

authorities consulted that the basis of the jurisdiction should be the same in cases of all values. On the other hand, fears have been expressed by some that a power to institute a suit of the lower value against a defendant residing at a distance might be liable to abuse unless some limitation were imposed. The correct view of the matter seems to be that taken by the Judges of the Madras High Court and Mr. Busteed, namely, that in this particular no distinction should be made between the High Court and the Small Cause Court, and accordingly the Bill has been drawn so as to place the jurisdiction of the Small Cause Court in this respect on precisely the same footing as that on which the jurisdiction of the High Court is placed by the Letters Patent."

The objection to the power to institute a suit in the Small Cause Court against a defendant residing at a distance has been again urged, and it is one to which we feel compelled to yield. We have accordingly inserted words requiring the leave of the Court to be obtained when it is proposed to institute a suit against a defendant residing beyond the local limits of the jurisdiction, and we have made this provision applicable to all suits without regard to value. The original scheme of putting the Small Cause Court jurisdiction on the same footing in this particular as the jurisdiction of the High Court being thus broken in upon, we have thought it best to bring the remainder of the section into conformity with the corresponding provisions of the Code of Civil Procedure.

8. In the following section, which excludes certain classes of suits from the jurisdiction of the Small Cause Court, we have omitted the second clause, "suits against the Secretary of State in Council," as it appears to be generally objected to, and we have added the following:—

(1) suits for the specific performance or rescission of contracts generally (such suits are, as regards contracts relating to immoveable property, excluded by the Bill as introduced);
(2) suits for compensation for malicious prosecution;
(3) suits for the cancellation or rectification of instruments;
(4) suits relating to general average and to insurances on sea-going vessels;
(5) suits for compensation in respect of collisions at sea;
(6) suits for compensation for the infringement of a patent, copy-right or trade-mark;
(7) suits for a dissolution of partnership or for an account of partnership transations;
(8) suits for declaratory decrees;
(9) suits in which the plaintiff's claim depends on the decision of a question as to religious rites or ceremonies;
(10) suits for possession of a hereditary office;
(11) suits against Sovereign Princes or Ruling Chiefs, or against Ambassadors or Envoys of Foreign States.

The reasons for excluding these suits are so obvious that it is unnecessary to state them.

9. We have struck out the second clause of section 21 (new numbering), which deprived a plaintiff of costs in certain cases if he elected to institute in the High Court a suit against an officer of the Small Cause Court for a wrong done by him under colour of its process. We think that in all such cases a plaintiff should be allowed a free choice.

10. We have also struck out the latter portion of section 22 (new numbering), which specified the grounds on which a Judge in other cases, in which suits cognizable in the Small Cause Court are instituted in the High Court, may certify for costs, as we think that in such a matter the Judge should be allowed a full discretion.

11. Proceeding next to chapter V relating to procedure in suits, we desire to state that we have most carefully considered the objections urged against the first section of that chapter which applies to the Small Cause Courts a large portion of the Code of Civil Procedure.

Those objections, in so far as they come from the public, proceed chiefly from those classes of persons who most frequently appear as plaintiffs in suits of a very simple description, and we can well understand the apprehension they feel that the application of so large portion of the ordinary procedure may, in suits of that class, give rise to complication and delay. But it must be remembered that the great bulk of the provisions so extended are of such a nature as to be applicable only in exceptional cases, and we think that any one who follows the thread of the provisions applicable to ordinary suits will find the procedure to be extremely simple. Moreover, we find that a considerable portion of the Code has been actually in force for some time past in the Madras Small Cause Court, where the statistics show the amount of work performed by each Judge to be as large as in the Small Cause Courts at Calcutta and Bombay, and we further find that the Judges of the Calcutta Small Cause Court themselves propose to apply with little variation the great bulk of the sections contained in the second schedule to this Bill.

12. We have, however, in deference to the apprehensions which have been expressed, gone through the schedule item by item, and have struck out some portions; among others those requiring copies of the plaint or concise statements to be filed with the plaint, those relating to discovery, those requiring judgments to be in writing, and the whole chapter relating to pauper suits.

We have, moreover, in order to relieve the Judges, inserted in the body of the Bill a section (35) based on section 637 of the Code, empowering the Court to direct that any non-judicial or quasi-judicial act which the Code requires to be done by a Judge shall be done by a ministerial officer, and we think that the procedure as now settled is as simple as it can safely be made, and as the majority of the litigants would desire it to be.

13. We have added a section providing that no decision passed under the Act shall be conclusive, except as to the right to the relief granted or the absence of a right to the relief withheld by it. This provision, which cuts away to a great extent the doctrine of *res judicata*, will no doubt leave it open to persistent parties to litigate a second time questions which may have been already carefully considered and well decided; but we think it better to take the risk of this than to take the risk of having difficult questions of title to property of large value and complicated issues governing extensive transactions finally decided under an Act like this in the first petty case in which they may chance to present themselves.

14. We have extended section 27 (new numbering) to cases in which the plaintiff does not altogether fail in his suit, but fails to recover the full amount of his claim and to cases in which unfounded objections are made to the attachment of property in execution of decree.

15. Section 30 is new. The law, as it at present stands in this country, would appear to be peculiarly indulgent to tenants in the matter of the right to remove what they may have attached to the soil, and yet the holder of a decree of the Small Cause Court is probably precluded (unless he chooses to resort to the High Court) from taking in execution of such decree even some such things as might be taken under a *fieri facias* in England. It has, at all events, been held that though tenants in Calcutta have a right to remove "tiled huts," such huts cannot be taken in execution of decrees of the Small Cause Court. The landlords complain of this as a hardship, and we think not without reason; but the remedy should not, in our opinion, be limited to this particular case, and we have accordingly provided that anything which the tenant would be entitled to remove during his tenancy may be taken in the execution of a decree against him as if it were a moveable.

16. We have at the instance of the Judges of the Calcutta Small Cause Court substituted for the latter portion of section 230 of the Code a section (28) providing that no decree of a Small Cause Court shall be executed after the lapse of three years from the date on which it is passed, unless the judgment-debtor by force or fraud has prevented its execution within the three years.

17. We have, in section 34 of the Bill, restored section 31 of Act IX of 1850, which allows minors to sue for a sum not exceeding Rs. 500 due for wages, or piece-work or for work as a servant, as if they were of full age, but we have, to prevent mistake, expressly limited it to cases where such money is due under section 70 of the Contract Act, the only law, as we believe, under which a minor can now acquire a right to such money.

18. The only other amendment we have to notice in the chapter relating to procedure is the insertion of certain sections (36 to 38) providing for the exercise of the jurisdiction which may be conferred on the Registrar under section 14.

19. We have introduced a new chapter (VI) to include the section providing for a new trial and certain additional sections establishing a mode of having a suit of a value above Rs. 500, re-heard in the High Court, as if it had been instituted in that court. These sections, which have been proposed by Mr. Kennedy, are based on the provisions enacted by the 14th & 15th Vic. c. 57, for the Irish Civil Bill Courts, and they have in our opinion this advantage, that they provide, in cases where there has been a failure of justice, a substitute for an appeal without entailing the necessity of any elaborate record of evidence being kept by the Court below.

20. We have omitted the chapters which would have conferred on the Small Cause Courts jurisdiction in certain classes of insolvency and probate business, as we believe that unless the Court were to hear cases which, owing to their intricacy and difficulty, ought to be removed into the High Court, the saving of time to the High Court would be altogether unimportant. There is no doubt that the High Courts at present dispose of much petty business of these classes, but it is done for the most part in the offices of the Court, and costs the Judges little time or labour.

We may add that, so far as the grant of probates and letters of administration is concerned, we believe that the object in view will be better secured by the extension of the certificate system effected by Act No. IX of 1881.

21. We have confined section 59, which prevents the fees of a legal practitioner being recovered as costs unless his employment is held to be reasonable, to cases where the amount or value in dispute is less than Rs. 20. We do not see why in cases where a larger amount is at stake the ordinary rules as to allowing costs should not apply.

22. Lastly, we have inserted a section (72) to determine the functions of legal practitioners in the Small Cause Court. Its first clause provides that no persons other than advocates, attorneys and vakíls of the High Court and *persons who are now pleaders of the Small Cause Court* shall appear, plead or act in the Small Cause Court. We do not think it desirable to admit an inferior class of legal practitioners, whose business would be confined to the Small Cause Courts, and, accordingly, while we would save the rights of pleaders already admitted, we would bar the admission of any others.

The second clause of the section confines the right to conduct as counsel a suit at the hearing, in the extended jurisdiction now for the first time conferred on the Court, to advocates and vakíls of the High Court, and requires that a barrister so conducting a suit shall be instructed by an attorney or vakíl, or by a pleader of the Small Cause Court. The reasons for this latter requirement are obvious.

The section, it need hardly be mentioned, saves the right of parties to conduct their own cases, and appear for one another, and also the rights of recognized agents.

23. The publication of the Bill, with its Statement of Objects and Reasons, in English, has been reported by the Governments of Madras, Bombay and Bengal. We consider that the changes now made are such as to render its re-publication desirable; and we have accordingly altered the date on which it should come into force to the 1st January, 1882, and recommend that it now be re-published.

The 4th March, 1881.

WHITLEY STOKES.
J. GIBBS.
G. C. PAUL.
JOTINDRA MOHAN TAGORE.

I THINK that the limit in section 22 ought to be reduced from Rs. 2,000 to 1,000. In other respects I agree in the report.

J. PITT KENNEDY.

No. II.

THE PRESIDENCY SMALL CAUSE COURTS BILL, 1880.

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No. II.

A Bill to consolidate and amend the law relating to the Courts of Small Causes established in the Presidency-towns.

WHEREAS it is expedient to consolidate and amend the law relating to the Courts of Small Causes established in the towns of Calcutta, Madras and Bombay; It is hereby enacted as follows:—

Preamble.

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called "The Presidency Small Cause Courts Act, 1881"; and

Commencement.

it shall come into force on the first day of January, 1882.

But nothing herein contained shall affect the provisions of the Army Discipline and Regulation Act, 1879, section 144.

Repeal of enactments.

2. On and from the day on which this Act comes into force, the enactments specified in the first schedule hereto annexed shall be repealed to the extent mentioned therein.

But all Courts constituted and appointments made under any of the said enactments shall, as far as may be, be deemed to have been respectively constituted and made under this Act.

References in previous Acts.

All references to any enactment hereby repealed made in Acts passed prior to the day on which this Act comes into force shall be read, so far as may be practicable, as if made to this Act or the corresponding provisions hereof.

Amendment of Acts.

3. In Act No. XXIII of 1850 (*for securing the Land-Revenue of Calcutta*), section 3, the words "as provided by the said Act" shall be repealed; and for each of the expressions "a Commissioner of the Court for recovery of small debts referred to in the said Act" and "the said Commissioners," the words "the Judges of the Court of Small Causes at Calcutta" shall be substituted.

In the Code of Civil Procedure, section 8, after the word and figures "chapter XXXIX," the words and figures "and by the Presidency Small Cause Courts Act, 1881," shall be inserted.

"Small Cause Court" defined.

4. In this Act, "the Small Cause Court" means the Court of Small Causes constituted under this Act in the town of Calcutta, Madras or Bombay, as the case may be.

CHAPTER II.

CONSTITUTION AND OFFICERS OF THE COURT.

Courts of Small Causes established.

5. There shall be in each of the towns of Calcutta, Madras and Bombay a Court, to be called the Court of Small Causes of Calcutta, Madras or Bombay, as the case may be,

New. See 8 Bom. H. C. Rep. (O. C. J.) 59 and sec. 652 of Act X of 1877.

Court to be deemed under superintendence, &c., of High Court.

6. The Small Cause Court shall be deemed to be a Court subject to the superintendence of the High Court of Judicature at Fort William, Madras or Bombay, as the case may be, within the meaning of the Letters Patent, respectively dated the 28th day of December, 1865, for such High Courts and within the meaning of the Code of Civil Procedure; and the High Court shall have, in respect of the Small Cause Court, the same powers as it has under the 24th & 25th of Vic., chapter 104, section 15, in respect of Courts subject to its appellate jurisdiction.

See Act XXVI of 1864, s. 12: Act IX of 1850, s. 5.

Appointment, suspension and removal of Judges.

7. Subject to the control of the Governor General in Council, the Local Government may, from time to time, by notification in the official Gazette, appoint a person to be Chief Judge, and so many other persons as it thinks fit to be Judges of the Small Cause Court: Provided that not less than one-third of the persons so appointed, including the Chief Judge, shall be advocates of one of the said High Courts.

Act IX of 1850, s. 10.

The Local Government may, by a like notification, suspend and, with the previous sanction of the Governor General in Council, remove any Judge so appointed.

See Act XXVI of 1864, s. 14.

Rank and precedence of Judges.

8. The Chief Judge shall be the first of the Judges in rank and precedence.

Act XVII of 1877, s. 6.

The other Judges shall have rank and precedence as the Local Government may, from time to time, direct.

Act XVII of 1877, s. 119 (Cf. Act IX of 1850, s. 23.)

Delegation of powers of Court to its members.

9. Except as otherwise provided by this or any other law for the time being in force, the Small Cause Court may, with the previous sanction of the High Court, make rules to provide, in such manner as it thinks fit, for the exercise by one or more of its Judges of any powers conferred on the Small Cause Court by this Act or by any other law for the time being in force.

Act XXVI of 1864, s. 14.

Chief Judge to distribute business of Court.

10. Subject to such rules, the Chief Judge may, from time to time, make such arrangements as he thinks fit for the distribution of the business of the Court among the various Judges thereof.

Act XLVI of 1860, s. 99 [illegible]

Procedure in case of difference of opinion.

11. Save as hereinafter otherwise provided, when two or more of the Judges sitting together differ on any question, the opinion of the majority shall prevail; and if the Court is equally divided, the Chief Judge, if he is one of the Judges so differing, or in his absence the Judge first in rank and precedence of the Judges so differing, shall have the casting voice.

Act XVII of 1875, s. 10(3), (Cf. Act IX of 1850, s. 24.)

Seal to be used.

12. The Small Cause Court shall use a seal of such form and dimensions as are for the time being prescribed by the Local Government.

Act IX of 1850, ss. 12-15.

Appointment of Registrar and ministerial officers.

13. The Local Government may, from time to time, appoint an officer to be called the Registrar of the Court, and to be the chief ministerial officer of the Court;

and the Chief Judge may, from time to time, subject to the control of the Local Government, appoint as many clerks, bailiffs and other ministerial officers as may be necessary for the administration of justice by the Court and for the exercise and performance of the powers and duties conferred and imposed on it by this Act or any other law for the time being in force.

Cf. Act IX of 1850, ss. 14-16: Act XVII of 1877, s. 23.

Powers and duties of such officers.

The Registrar and other officers so appointed shall exercise such powers, and discharge such duties, of a ministerial nature as the Chief Judge (subject to the control of the High Court) may, from time to time, by rule, direct.

Act XVII of 1875, s. 70.

The Chief Judge may suspend or remove any Registrar or other officer so appointed; but the removal of any Registrar or officer drawing a monthly salary of one hundred rupees or upwards shall be subject to the orders of the Local Government.

New.

Registrar may be invested with powers of a Judge in suits not exceeding twenty rupees.

14. The Local Government may invest the Registrar with the powers of a Judge under this Act for the trial of suits in which the amount or value of the subject-matter does not exceed twenty rupees. And, subject to the orders of the Chief Judge, any Judge of the Small Cause Court may, whenever he thinks fit, transfer from his own file to the file of the Registrar any suit which the latter is competent to try.

Act IX of 1850, ss. 9 and 17.

Judge or other officer not to practise or trade.

15. No Judge or other officer appointed under this Act shall, during his continuance as such Judge or officer, either by himself or as a partner of any other person, practise or act, either directly or indirectly, as an Advocate, Attorney, Vakíl or other legal practitioner, or be concerned, either on his own account or for any other person, or as the partner of any other person, in any trade or profession.

Any such Judge or officer so practising, acting or concerned shall be deemed to have committed an offence under section 168 of the Indian Penal Code.

Nothing herein contained shall be deemed to prohibit any such Judge or officer from being a member of any company incorporated or registered under Royal Charter, Letters Patent, Act of Parliament or Act of any British Indian Legislature.

CHAPTER III.

LAW ADMINISTERED BY THE COURT.

Cf. Act XVII of 1875. See s. 37 of Act IX of 1850.

Questions arising in suits, &c., under Act to be decided according to law administered by High Court.

16. All questions other than questions relating to procedure or practice which arise in suits or other proceedings under this Act in the Small Cause Court shall be dealt with and determined according to the law for the time being administered by the High Court in the exercise of its ordinary original civil jurisdiction.

CHAPTER IV.

JURISDICTION IN RESPECT OF SUITS.

Act [illegible]

Local limits of jurisdiction of Court.

17. The local limits of the jurisdiction of each of the Small Cause Courts shall be the local limits for the time being of the ordinary original civil jurisdiction of the High Court.

Act IX of 1850, ss. 25 and 33: Cf. Act X of 1877, s. 11.

19 & 20 Vic., c. 106, s. 24.

Letters Patent of 1865, s. 12.

Suits in which Court has jurisdiction.

18. Subject to the exceptions in section nineteen, the Small Cause Court shall have jurisdiction to try all suits of a civil nature—

when the amount or value of the subject-matter does not exceed two thousand rupees: and

(*a*) the cause of action has arisen, either wholly or in part, within the local limits of the jurisdiction of the Small Cause Court, and the leave of the Court has, for reasons to be recorded by it in writing, been given before the institution of the suit; or

(*b*) all the defendants, at the time of the institution of the suit, actually and voluntarily reside, or carry on business, or personally work for gain within such local limits; or

(*c*) any of the defendants, at the time of the institution of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, within such local limits: and either the leave of the Court has been given before the institution of the suit, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution.

Explanation I.—When in any suit the sum claimed is, by a set-off admitted by both parties, reduced to a balance not exceeding two thousand rupees, the Small Cause Court shall have jurisdiction to try such suit.

Explanation II.—Where a person has a permanent dwelling at one place and also a lodging at another place for a temporary purpose only, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary lodging.

Explanation III.—A Corporation or Company shall be deemed to carry on business at its sole or principal office in British India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

See 8 Bom. H. C. Rep. (O. C. J.) 1.

Suits in which Court has no jurisdiction.

19. The Small Cause Court shall have no jurisdiction in—

(*a*) suits concerning the assessment or collection of the revenue;

(*b*) suits concerning any act ordered or done by the Governor General in Council or the Local Government, or by the Governor General or a Governor, or by any Member of the Council of the Governor General or of the Governor of Madras or Bombay, in his official capacity, or by any person by order of the Governor General in Council or the Local Government;

(*c*) suits concerning any act ordered or done by any Judge or judicial officer in the execution of his office, or by any person in pursuance of any judgment or order of any Court or any such Judge or judicial officer;

(*d*) suits for the recovery of immoveable property;

(*e*) suits for the partition of immoveable property;

(*f*) suits for the foreclosure or redemption of a mortgage of immoveable property;

(*g*) suits for the determination of any other right to or interest in immoveable property;

(*h*) suits for the specific performance or rescission of contracts;

(*i*) suits to obtain an injunction;

(*j*) suits for the cancellation or rectification of instruments;

(*k*) suits to enforce a trust;

(*l*) suits relating to general average and to insurances on sea-going vessels;

(*m*) suits for compensation in respect of collisions at sea;

(*n*) suits for compensation for the infringement of a patent, copy-right or trade-mark;

(*o*) suits for a dissolution of partnership or for an account of partnership-transactions;

(*p*) suits for an account of property and its due administration under the decree of the Court;

(*q*) suits for compensation for libel, slander, malicious prosecution, adultery or breach of promise of marriage;

(*r*) suits for the restitution of conjugal rights, for the recovery of a wife, or for a divorce;

(*s*) suits for declaratory decrees;

(*t*) suits in which the plaintiff's claim depends on the decision of a question as to religious rites or ceremonies;

(*u*) suits for possession of a hereditary office;

(*v*) suits against Sovereign Princes or Ruling Chiefs, or against Ambassadors or Envoys of Foreign States;

(*w*) suits on any judgment of a High Court; 19 & 20 Vic., c. 108, s. 37.

(*x*) suits the cognizance whereof by the Small Cause Court is barred by any law for the time being in force.

Act XXVI of 1864, s. 3.

Court may by consent try suits beyond pecuniary limits of jurisdiction.

20. When the parties to a suit which, if the amount or value of the subject-matter thereof did not exceed two thousand rupees, would be cognizable by the Small Cause Court, have entered into an agreement in writing that the Small Cause Court shall have jurisdiction to try such suit, the Court shall have jurisdiction to try the same, although the amount or value of the subject-matter thereof may exceed two thousand rupees.

Every such agreement shall be filed in the Small Cause Court, and, when so filed, the parties to it shall be subject to the jurisdiction of the Court, and shall be bound by its decision in such suit.

Suits by and against officers of Court.

21. All suits to which an officer of the Small Cause Court is, as such, a party, except suits in respect of property taken in execution of its process, or the proceeds or value thereof, may be instituted in the High Court at the election of the plaintiff as if this Act had not been passed.

Costs when plaintiff sues in High Court in other cases cognizable by Small Cause Court.

22. If any suit cognizable by the Small Cause Court, other than a suit to which in section twenty-one it applies, is instituted in the High Court, and if in such suit the plaintiff obtains, in the case of a suit founded on contract, a decree for any matter of an amount or value less than two thousand rupees, and in the case of any other suit, a decree for any matter of an amount or value of less than three hundred rupees, no costs shall be allowed to the plaintiff,

and if in any such suit the plaintiff does not obtain a decree, the defendant shall be entitled to his costs as between attorney and client.

The foregoing rules shall not apply to any suit in which the Judge who tries the same certifies that it was one fit to be brought in the High Court.

CHAPTER V.

PROCEDURE IN SUITS.

Portions of Civil Procedure Code extending to the Court.

23. The chapters and sections of the Code of Civil Procedure specified in the second schedule hereto annexed shall extend, and shall, so far as the same may, in the judgment of the Court, be applicable, be applied, to the Small Cause Court; and the procedure prescribed thereby shall be the procedure followed in the Court in all suits cognizable by it, except where such procedure is inconsistent with the procedure prescribed by any specific provisions of this Act.

Res judicata.

24. Notwithstanding anything contained in section 13 of the Code of Civil Procedure, no decision passed under the provisions of this Act shall be conclusive as to anything except the right at the time of such decision to the relief granted thereby, or the absence of a right at such time to any relief claimed by the plaintiff and withheld by such decision.

Illustrations.

(*a*). A sues B in the Small Cause Court for compensation for damage done by B to a house which A alleges to be his own. B denies that the house is A's. The Court decides that the house is A's, and that he is entitled to Rs. 100 compensation. The decision is conclusive as to A's right to the compensation, but not as to his title to the house, and, if A subsequently sues B for further damage done to the same house, B is not precluded from again questioning A's title.

(*b*). A sues B in the Small Cause Court for an instalment alleged to be due on a bond purporting to be executed by B. B denies the execution of the bond. The Court finds the execution proved, and gives A a decree for the amount of the instalment. A subsequently sues B for a later instalment on the same bond; B is not precluded from again denying the execution.

(*c*). A sues B as in illustration (*b*). B denies the execution of the bond, and the Court, finding that B's signature was forged, dismisses the suit. This does not preclude A from suing again on the bond.

(*d*). A sues B in the Small Cause Court for possession of a horse which A alleges to be his property, and to have been lent to B to use during A's pleasure. B denies that the horse is A's. The Court finds that the horse is A's, and gives him a decree for possession, and A recovers possession of the horse. B, subsequently alleging that the horse is his, sues A for possession of it. The decision in the former suit is no bar to B.

No written statement except in cases of set-off.

25. Except in cases of set-off under the Code of Civil Procedure, section 111, no written statement shall be received unless required by the Court.

Dismissal of documents admitted in evidence.

26. When a period of eight days from the decision of a suit has expired without any application for a new trial or re-hearing of such suit having been made, or, when any such application has been made within such period and such application has been refused, or the new trial or re-hearing (as the case may be) has ended, any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit and placed on the record, shall, unless the document is impounded under section 143 of the Code of Civil Procedure, be entitled to receive back the same:

Provided that a document may be returned at any time before any of such events if the person applying for such return delivers to the proper officer a certified copy of such document to be substituted for the original. Provided also that no document shall be returned which by force of the decree has become void or useless.

On the return of a document which has been admitted in evidence, a receipt shall be given by the party receiving it, in a receipt-book to be kept for the purpose.

Compensation payable by plaintiff to defendant in certain cases.

Act IX of 1850, s. 42.

27. In any suit in which the defendant appears and does not admit the claim, and the plaintiff does not obtain a decree for the full amount of his claim, the Small Cause Court may in its discretion order the plaintiff to pay to the defendant, by way of satisfaction for his trouble and attendance, such sum as it thinks fit.

When any claim preferred, or objection made, under section 278 of the Code of Civil Procedure, is disallowed, the Small Cause Court may in its discretion order the person preferring or making such claim or objection to pay to the decree-holder, or to the judgment-debtor, or to both, by way of satisfaction as aforesaid, such sum or sums as it thinks fit.

Any order under this section may, in default of payment of the amount payable there-under, be enforced by the person in whose favour it is made against the person against whom it is made as if it were a decree of the Court.

Bar to applications for execution of decrees.

28. No application to execute a decree passed under this Act shall be received after the expiration of three years from the date of such decree, unless the judgment-debtor has, within the three years following such date, by force or fraud prevented the execution of such decree.

Decree-holder to accompany officer executing warrant.

29. Whenever the Small Cause Court issues a warrant for the arrest of a judgment-debtor or the attachment of his property, the decree-holder, or some other person on his behalf, shall accompany the officer of the Court entrusted with the execution of such warrant, and shall point out to such officer the judgment-debtor or the property to be attached, as the case may be.

Things attached to immoveable property and removeable by tenant to be deemed moveable in execution.

30. When the judgment-debtor under any decree of the Small Cause Court, is a tenant of immoveable property, anything attached to such property, and which he might before the termination of his tenancy lawfully remove without the permission of his landlord, shall, for the purpose of the execution of such decree, be deemed to be moveable property, and may, if sold in such execution, be severed by the purchaser, but shall not be removed by him from the property until he has done to the property whatever the judgment-debtor would have been bound to do to it if he had removed such thing.

Discharge of judgment-debtor on sufficient security.

31. Whenever any judgment-debtor, who has been arrested in execution of a decree of the Small Cause Court, offers security to the satisfaction of such Court for payment of the amount which he has been ordered to pay and the costs, the Court may order him to be discharged.

Act IX of 1850, s. 71. (See I.L.R. 5 Calc., p. 294.)

Court may in certain cases suspend execution of decree.

32. Whenever it appears to the Small Cause Court that any judgment-debtor under its decree is unable, from sickness or other sufficient cause, to pay the amount of the decree, or, if such Court has ordered the same to be paid in instalments, the amount of any instalment thereof, it may, from time to time, for such time and upon such terms as it thinks fit, suspend the execution of such decree.

Act XI of 1865, s. 20.

Execution of decree of Small Cause Court by other Courts.

33. If the judgment-debtor under any decree of the Small Cause Court has not, within the local limits of its jurisdiction, moveable property sufficient to satisfy the decree, the Court may, on the application of the decree-holder, send the decree for execution—

(*a*) in the case of execution against immoveable property situate within such local limits—to the High Court;

(*b*) in all other cases—to any Civil Court within the local limits of whose jurisdiction such judgment-debtor, or any moveable or immoveable property of such judgment-debtor, may be found.

Procedure when decree transferred.

The procedure prescribed by the Code of Civil Procedure for the execution of decrees by Courts other than those which made them shall be the procedure followed in such cases.

Act IX of 1850 s. 31.

Minors may sue in certain cases as if of full age.

34. Notwithstanding anything contained in the Code of Civil Procedure as applied by this Act, any minor may institute a suit for any sum of money, not exceeding five hundred rupees, which may be due to him under section seventy of the Indian Contract Act, 1872, for wages or piece-work or for work as a servant, in the same manner as if he were of full age.

Act X of 1877, s. 637.

Power to delegate non-judicial duties.

35. Any non-judicial or quasi-judicial act which the Code of Civil Procedure as applied by this Act requires to be done by a Judge, and any act which may be done by a Commissioner appointed to examine and adjust accounts under section 394 of that Code as so applied, may be done by the Registrar of the Small Cause Court or by such other officer of that Court as that Court may, from time to time, appoint in this behalf.

The High Court may, from time to time, by rule declare what shall be deemed to be non-judicial and quasi-judicial acts within the meaning of this section.

Registrar to hear and determine suits like a Judge.

36. The suits cognizable by the Registrar under section fourteen shall be heard and determined by him in like manner in all respects as a Judge of the Court might hear and determine the same:

Proviso.

Provided that, subject to the orders of the Chief Judge, any Judge of the Court may, whenever he thinks fit, transfer to his own file any suit on the file of the Registrar.

Registrar may execute all decrees with the same powers as a Judge.

37. The Registrar may receive applications for the execution of decrees of any value passed by the Court, and may commit and discharge judgment-debtors, and make any order in respect thereof which a Judge of the Court might make under this Act.

New.

Decrees and orders of Registrar to be subject to new trial as if made by a Judge.

38. Every decree and order made by the Registrar in any suit or proceeding shall be subject to the same provisions in regard to new trial as if made by a Judge of the Court.

CHAPTER VI.

NEW TRIALS AND REHEARING.

(Cf. Act XI of 1865, s. 21.) Cls., rule 23.

Judgments and orders of Court final.

Power to order new trial in Small Cause Court.

39. Save as is herein specially provided, every decree and order of the Small Cause Court in a suit shall be final and conclusive; but the Court may, on application of either party, made within eight days from the date of the decree or order in any suit (not being a decree passed under section 522 of the Code of Civil Procedure) order a new trial to be held upon such terms as it thinks reasonable, and may, in the meantime, stay the proceedings.

Application for re-hearing in High Court.

40. Any party may, within eight days after the judgment in any suit in which the amount or value of the subject-matter exceeds five hundred rupees, apply to the High Court for an order that such suit may be re-heard.

Such application shall be supported by affidavits, and, in case the applicant has appeared by advocate, vakil or attorney, by a certificate from the leading Counsel at the hearing that in his opinion there are good grounds for re-hearing the suit, and, if on hearing such application, the High Court is of opinion that there has been a miscarriage or failure of justice, or that there are other good grounds for such re-hearing, the Court shall make an order *ex parte*, on such terms as it thinks fit, for such re-hearing and fix a day for the same, whereof notice shall be given to the opposite party.

The rules contained in sections 545, 546 and 547 of the Code of Civil Procedure relating to staying and executing decrees under appeal, shall apply in the case of applications under this section as if such applications were appeals from the decisions of the Small Cause Court.

Mr. Kennedy's draft, s. 96

Procedure at re-hearing.

41. On the day fixed under section forty or on any other day to which the hearing may be adjourned, the High Court, or some Judge thereof, shall proceed to hear and determine the case as if the same were a suit brought in such High Court in its ordinary original civil jurisdiction, in which the plaintiff in the Small Cause Court was plaintiff, and the defendant in such Court was defendant, and in which written statements had not been ordered to be filed; and, except as herein otherwise provided, all the practice and procedure of such High Court in respect of suits brought in its ordinary original civil jurisdiction, shall be followed in suits re-heard under this section: Provided that there shall not be any appeal from any judgment, decree, or order under this section.

Mr. Kennedy's draft, s. 97.

Execution of decree of High Court.

42. Every decree or order made by any High Court upon any such rehearing may either be executed by such High Court in the same manner as other

decrees or orders of such Court or may, in the discretion of the High Court, be remitted to the Small Cause Court for execution.

CHAPTER VII.

RECOVERY OF POSSESSION OF IMMOVEABLE PROPERTY.

Act IX of 1850, s. 91. 19 & 20 Vic., c. 108, s. 50.

43. When any person has had possession of any immoveable property situate within the local limits of the Small Cause Court's jurisdiction and of which the annual value at a rack-rent does not exceed one thousand rupees, as the tenant, or by permission of, another person, or of some person through whom such other person claims,

Summons against person occupying property without leave.

and such tenancy or permission has been determined or been withdrawn,

and such tenant or occupier or any person holding under or by assignment from him, (hereinafter called the occupant) refuses to deliver up such property in compliance with a request made to him in this behalf by such other person,

such other person (hereinafter called the applicant) may apply to the Small Cause Court for a summons against the occupant, calling upon him to show cause, on a day therein appointed, why he should not be compelled to deliver up the property.

Act IX of 1850, s. 94.

44. The summons shall be served on the occupant in the manner provided by the Code of Civil Procedure for the service of a summons on a defendant.

Service of summons.

Act IX of 1850, ss. 92, 93. 19 & 20 Vic., c. 108, s. 50.

45. If the occupant does not appear at the time appointed and show cause to the contrary, the applicant shall, if the Small Cause Court is satisfied that he is entitled to apply under section forty-three, be entitled to an order addressed to a bailiff of the Court directing him to give possession of the property to the applicant on such day as the Court thinks fit to name in such order.

Order for possession.

Explanation.—If the occupant proves that the tenancy was created or permission granted by virtue of a title which determined previous to the date of the application, he shall be deemed to have shown cause within the meaning of this section.

Act IX of 1850, s. 93.

46. Any such order shall justify the bailiff to whom it is addressed in entering after the hour of six in the morning and before the hour of six in the afternoon upon the property named therein, with such assistants as he thinks necessary, and giving possession of such property to the applicant :

Such order to justify bailiff entering on property and giving possession.

Act IX of 1850, s. 95.

and no suit or prosecution shall be maintainable against any Judge or officer of the Small Cause Court by whom any such order as aforesaid was issued, or against any bailiff or other person by whom the same was executed, or by whom any such summons as aforesaid was served, for the issue, execution or service of any such order or summons, by reason only that the applicant was not entitled to the possession of the property.

Bar to proceedings against Judge or officer for issuing, &c., order or summons.

Act IX of 1850, s. 96.

47. When the applicant, at the time of applying for any such order as aforesaid, was entitled to the possession of such property, neither he nor any person acting in his behalf shall be deemed, on account of any error, defect or irregularity in the mode of proceeding to obtain possession thereunder, to be a trespasser ; but any person aggrieved may bring a suit for the recovery of compensation for any damage which he has sustained by reason of such error, defect or irregularity :

Applicant, if entitled to possession, not to be deemed trespasser for any error in proceedings.

Occupant may sue for compensation.

when no such damage is proved, the suit shall be dismissed ; and when such damage is proved but the amount of the compensation assessed by the Court does not exceed ten rupees, the Court shall award to the plaintiff no more costs than compensation, unless the Judge who tries the case certifies that in his opinion full costs should be awarded to the plaintiff.

Act IX of 1850, s. 98.

48. Nothing herein contained shall be deemed to protect any applicant obtaining possession of any property under this chapter from a suit by any person deeming himself aggrieved thereby, when such applicant was not at the time of applying for such order as aforesaid entitled to the possession of such property.

Liability of applicant obtaining order when not entitled.

Act IX of 1850, s. 97.

And when the applicant was not, at the time of applying for any such order as aforesaid, entitled to the possession of such property, the application for such order, though no possession is taken thereunder, shall be deemed to be an act of trespass committed by the applicant against the occupant.

Application for order in such case an act of trespass.

Act IX of 1850, s. 97.

49. Whenever on an application being made under section forty-three the occupant binds himself, with two sureties, in a bond for such amount as the Small Cause Court thinks reasonable, having regard to the value of the property and the probable costs of the suit next hereinafter mentioned, to institute without delay a suit in the High Court against the applicant for compensation for trespass, and to pay all the costs of such suit in case he does not prosecute the same or in case judgment therein is given for the applicant, the Small Cause Court shall stay the proceedings on such application until such suit is disposed of.

Stay of proceedings on occupant giving security to bring a suit against the applicant.

If the occupant obtains a decree in any such suit against the applicant, such decree shall supersede the order (if any) made under section forty-five.

Nothing contained in section twenty-two shall apply to suits under this section.

Now.

50. In all proceedings under this chapter, the Small Cause Court shall, as far as may be and except as herein otherwise provided, follow the procedure prescribed for a Court of first instance by the Code of Civil Procedure.

Proceedings to be regulated by the Code of Civil Procedure.

Act IX of 1850, s. 99.

51. Recovery of the possession of any immoveable property under this chapter shall be no bar to the institution of a suit in the High Court for trying the title thereto.

Recovery of possession no bar to suit to try title.

CHAPTER VIII.

REFERENCES TO HIGH COURT.

Act XI of 1865, s. 32.

52. If two or more Judges of the Small Cause Court sit together in any suit, or in any proceeding under chapter VII of this Act, and differ in their opinion as to any question of law or usage having the force of law, or the construction of a document, which construction may affect the merits,

Reference when compulsory.

Act XXVI of 1864, s. 7.

or if in any suit or any such proceeding, in which the amount or value of the subject-matter exceeds five hundred rupees, any such question arises, and either party so requires,

(Ordinary references provided for by ch. XLVI, C. P. Code.)

the Small Cause Court shall draw up a statement of the facts of the case, and refer such statement, under section 617 of the Code of Civil Procedure, for the opinion of the High Court, and shall either reserve judgment or give judgment contingent upon such opinion.

Act XXVI of 1864, s. 8.

53. When judgment is given under section fifty-two contingent upon the opinion of the High Court, the party against whom such judgment is given shall at once furnish security, to be approved by the Small Cause Court, for the costs of the reference to the High Court and for the amount of such judgment :

Security to be furnished on such reference by party against whom contingent judgment given.

Act XXVI of 1864, s. 8. See 14 B. L. R., p. 182.

Provided that no security for the amount of such judgment shall be required in any case in which the Judge who tried the case has ordered such amount to be paid into Court, and the same has been paid accordingly.

Act IX of 1860, ss. 19 & 20. Act XXVI of 1864, s. 11.

Unless such security as aforesaid is at once furnished, the party against whom such contingent judgment has been given shall be deemed to have submitted to the same.

If no such security given, party to be deemed to have submitted to judgment.

CHAPTER IX.

FEES AND COSTS.

Act IX of 1850, s. 29. Mr. Kennedy's Bill, s. 22.

Institution-fee.

54. A fee not exceeding—

(*a*) when the amount or value of the subject-matter does not exceed five hundred rupees—the sum of two annas in the rupee on such amount or value,

(*b*) when the amount or value of the subject-matter exceeds five hundred rupees—the sum of sixty-two rupees eight annas, and one anna in the rupee on the excess of such amount or value, over five hundred rupees,

shall be paid on the plaint in every suit, and every application under section forty or section forty-three ; and no such plaint or application shall be received until such fee has been paid.

A fee of ten rupees shall be paid on the filing of every agreement under chapter XXXVIII of the Code of Civil Procedure.

Act IX of 1850, s. 12. Act XXVI of 1864, s. 11.

55. The fees specified in the third and fourth columns of the third Schedule hereto annexed shall be paid previous to the issue in any suit or in any proceeding under chapter VII of this Act of the processes, to which the said columns respectively relate, by the persons on whose behalf such processes are issued, when the amount or value of the subject-matter exceeds the sum specified in the first column, but does not exceed the sum specified in the second column of the said Schedule.

Fees for processes.

Act IX of 1850, s. 20.

56. Whenever any such suit or proceeding is settled by agreement of the parties before the hearing, half the amount of all fees paid up to that time shall be repaid by the Small Cause Court to the parties by whom the same have been respectively paid.

Repayment of half fees on settlement before hearing.

Act IX of 1850, s. 20.

57. The Small Cause Court may, whenever it thinks fit, receive and register suits instituted, and applications under section forty-three made, by poor persons, and may issue processes on behalf of such persons, without payment of the fees mentioned in sections fifty-four and fifty-five, or on a part-payment of such fees.

Fees and costs of poor persons.

Act IX of 1850 s. 2

58. The Local Government may, from time to time, by notification in the official Gazette, vary the amount of the fees payable under sections fifty-four and fifty-five :

Power to vary fees.

Provided that the amount of such fees shall in no case exceed the amount prescribed by the said sections.

Act XXVI of 1864, s. 13.

59. The expense of employing an advocate, vakíl, attorney or other legal practitioner incurred by any party shall not be allowed as costs in any suit or in any proceeding under chapter VII of this Act, in the Small Cause Court, in which the amount or value of the subject-matter does not exceed twenty rupees, unless the Court is of opinion that the employment of such practitioner was under the circumstances reasonable.

Expense of employing legal practitioners.

60. Nothing contained in this chapter shall affect the provisions of sections 3, 5 and 25 of the Court Fees Act, 1870.

Sections 3, 5 and 25 of Court Fees Act, 1870, saved.

CHAPTER X.

MISCONDUCT OF INFERIOR MINISTERIAL OFFICERS.

Act XVII of 1875, s. 70; Act XVII of 1877, s. 36; Act IX of 1850, s. 86.

61. The Chief Judge may, by order, fine, in an amount not exceeding one month's salary, any clerk, bailiff or other inferior ministerial officer of the Court who is guilty of misconduct or neglect in the performance of the duties of his office, and such fine may be deducted from his salary.

Power to fine officers.

Act IX of 1850, s. 85.

62. If any clerk, bailiff or other inferior ministerial officer of the Small Cause Court who is employed as such in the execution of any order or warrant, loses, by neglect, connivance or omission, an opportunity of executing such order or warrant, he shall be liable, by order of the Chief Judge, on the application of the person injured by such neglect, connivance or omission, to pay such sum, not exceeding in any case the sum for which the said order or warrant was issued, as, in the opinion of the Chief Judge, represents the amount of the damage sustained by such person thereby.

Default of bailiff or other officer in execution of order or warrant.

Act IX of 1850, s. 88.

63. If any clerk, bailiff or other inferior ministerial officer of the Small Cause Court is charged with extortion or misconduct while acting under colour of its process, or with not duly paying or accounting for any money levied by him

Extortion or default of officers.

under its authority, the Court may inquire into such charge, and may make such order for the repayment or payment of any money so extorted, or of any money so levied as aforesaid, and of damages and costs, by such officer, as it thinks fit.

64. For the purposes of any inquiry under this chapter, the Small Cause Court shall have all the powers of summoning and enforcing the attendance of witnesses and compelling the production of documents which it possesses in suits under this Act.

Court empowered to summon witnesses, &c.

Act IX of 1850, s. 85.

65. Any order under this chapter for the payment or repayment of money may, in default of payment of the amount payable thereunder, be enforced by the person to whom such amount is payable as if the same were a decree of the Small Cause Court in his favour.

Enforcement of order.

CHAPTER XI.

CONTEMPT OF COURT.

Act X of 1872, s. 485. Act IV of 1877, s. 205. Cf. also draft Code of Criminal Procedure, s. 480.

66. 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 the Small Cause Court, the Court may cause the offender 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 is sooner paid.

Procedure of Court in certain cases of contempt.

67. In every such case the Court shall record the facts constituting the offence, the statement (if any) made by the offender, and 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 when interrupted or insulted was sitting, and the nature of the interruption or insult offered.

Act X of 1872, s. 486. Act IV of 1877, s. 206. Cf. draft Code of Criminal Procedure, s. 482.

68. If the Court considers that a person accused of any offence referred to in section sixty-six 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 if the Court is for any other reason of opinion that the case should not be disposed of under section sixty-six, the Court, after recording the facts constituting the offence and the statement of the accused as hereinbefore provided, may forward the case to a Presidency Magistrate, and may require security to be given for the appearance of such accused person before such Magistrate, or, if sufficient security is not given, may forward him under custody to such Magistrate.

Procedure where Court considers that the case should not be dealt with under section 66.

Such Magistrate shall deal with the accused person in the manner provided by the Presidency Magistrates Act, 1877; and may sentence the offender to punishment as provided in the section of the Indian Penal Code under which he is charged.

Act X of 1872, s. 487. Act IV of 1877, s. 207. Cf. draft Code of Criminal Procedure, s. 484.

69. When the Court has, under section sixty-six or section sixty-eight, sentenced an offender to punishment, or forwarded him to a Presidency 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 the Court, or on apology being made to its satisfaction.

Discharge of offender on submission or apology.

Act X of 1872, ss. 356-364. Act X of 1875, s. 89. Act IV of 1877, s. 141. Cf. draft Code of Criminal Procedure, s. 485. (Also see Act IX of 1850, s. 49.)

70. If any witness before the Small Cause 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, the 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 answer or to produce such document, as the case may be, after which, in the event of his persisting in his refusal, he may be dealt with according to the provisions of section sixty-six or sixty-eight.

Imprisonment or committal of person refusing to answer or produce document.

Draft Code of Criminal Procedure, s. 287.

71. Any person deeming himself aggrived by an order under section sixty-six or section seventy may appeal to the High Court, and the provisions of the Presidency Magistrates Act, 1877, relating to appeals shall, so far as may be, apply to appeals under this section.

Appeal from orders under sections 66 and 70.

CHAPTER XII.

MISCELLANEOUS.

72. No person other than an advocate, vakíl or attorney of the High Court, or a person who is at the time this Act comes into force a pleader of the Small Cause Court, shall appear, plead or act in any suit or proceeding in the Small Cause Court under this Act, and

Who may appear, &c.

no person other than—

(*a*) an advocate of the High Court instructed by a vakíl or attorney of such Court or by a pleader of the Small Cause Court, or

(*b*) a vakíl of the High Court,

shall address the Court or examine witnesses at the hearing of any such suit in which the amount or value of the subject-matter exceeds one thousand rupees.

Nothing in this section shall affect the right of any party to conduct his own case or that of any other party to the suit, or the right of any recognized agent of a party under the Code of Civil Procedure as applied by this Act.

Act X of 1877 s. 636.

73. Notices to produce documents, summonses to witnesses, and all other processes issued in the exercise of any jurisdiction conferred on the Small Cause Court by this Act, except summonses to defendants and writs of execution, may, if the Court by general or special order so directs, be served by such persons as the Court, from time to time, appoints in this behalf.

Persons by whom process may be served.

Act XVII of 1876, s. 60.

74. The Small Cause Court shall keep such registers, books and accounts, and submit to the High Court such statements and returns, as may, subject to the approval of the Local Government, be prescribed by the High Court.

Registers and returns.

Act XI of 1865, s. 58. Letters Patent, s. 43.

75. The Small Cause Court shall comply with such requisitions as may from time to time be made by the Local Government or High Court for records, returns and statements in such form and manner as such Government or Court, as the case may be, thinks fit.

Court to furnish records, &c., called for by Local Government or High Court.

Act XVII of 1875, s. 71. (Cf. Act IX of 1850, s. 23.)

76. The Small Cause Court shall, at the commencement of each year, draw up a list of holidays and vacations to be observed in the Court, and shall submit the same for the approval of the Local Government.

Holidays and vacations.

Such list, when it has received such approval, shall be published in the local official Gazette, and the said holidays and vacations shall be observed accordingly.

Act IX of 1850, s. 35.

77. The Governor General and Members of his Council, the Governors of Fort St. George and Bombay and the members of their respective Councils, the Lieutenant-Governor of Bengal, and the Chief Justices and Judges of the High Courts established under the 24th & 25th of Victoria, chapter 104, shall not be liable to arrest by order of the Small Cause Court.

Certain persons exempt from arrest by Court.

I. L. R. 5, Calc., p. 224.

78. No suit shall lie on any decree of the Small Cause Court.

No suit to lie upon decree of Court.

79. Any person ordered by the Small Cause Court to be imprisoned may be imprisoned in such place as the Local Government, from time to time, appoints in this behalf.

Place of imprisonment.

Act IX of 1850, s. 117.

80. If any person against whom any suit is brought for anything purporting to be done by him under this Act, has, before the institution of the suit, tendered sufficient amends to the plaintiff, the plaintiff shall not recover.

Tender in suit for anything done under Act.

Act IX of 1850, s. 121.

81. All prosecutions for anything purporting to be done under this Act must be commenced within three months after the offence is committed.

Limitation of prosecutions.

THE FIRST SCHEDULE.

(*See section 2.*)

ENACTMENTS REPEALED.

A.—Charters of the Supreme Courts.

Date.		Extent of repeal.
26th March, 1774	Charter of the Supreme Court at Fort William.	Clause 21.
26th December, 1800.	Charter of the Supreme Court at Madras.	Clause 47.
8th December, 1823.	Charter of the Supreme Court at Bombay.	Clause 59.

THE FIRST SCHEDULE—*contd.*

B.—Acts of the Governor General in Council.

Number and year.	Subject or short title.	Extent of repeal.
IX of 1850 ...	For the more easy recovery of small debts and demands in Calcutta, Madras and Bombay.	So much as has not been repealed.
XX of 1857 ...	To amend Act IX of 1850.	The whole.
XXVI of 1864	To extend the jurisdiction of the Courts of Small Causes at Calcutta, Madras and Bombay, and to provide for the appointment of an increased number of Judges of these Courts.	So much as has not been repealed.
X of 1877 ...	The Code of Civil Procedure.	Section eight, para. 2.

C.—Act of the Governor of Bombay in Council.

Number and year.	Subject.	Extent of repeal.
VI of 1864 ...	For the better regulation of the diet-money of persons imprisoned by the Bombay Court of Small Causes.	So much as has not been repealed.

THE SECOND SCHEDULE.

(*See section 23.*)

ENACTMENTS OF CIVIL PROCEDURE CODE REFERRING TO COURTS.

PRELIMINARY: Section 2, Interpretation-clause.

CHAPTER I.—Of the Jurisdiction of the Courts and *Res Judicata*, except section 11.

CHAPTER II.—Of the Place of suing, except sections 15 to 19 (both inclusive), section 20, paragraph 4, sections 22, 23 and 24 and section 25, paragraphs 2 and 3.

CHAPTER III.—Of Parties and their Appearances Applications and Acts, except section 37, clause (*b*) and the last paragraph.

CHAPTER IV.—Of the Frame of the Suit, except section 42 and section 44, rule *a*.

CHAPTER V.—Of the Institution of Suits, except section 53, clause (*g*), section 55, section 57, clause (*b*), and sections 58 and 62.

CHAPTER VI.—Of the Issue and Service of Summons, except, in section 66, the words "and the return to such summons by section 65 have been filed," and sections 69, 85 and 86.

CHAPTER VII.—Of the Appearance of the Parties and Consequence of Non-appearance.

THE SECOND SCHEDULE—*contd.*

CHAPTER VIII.—Of Written Statements and Set-off, except sections 110, 112 and 113.

CHAPTER IX.—Of the Examination of the Parties by the Court, except section 119.

CHAPTER X.—Of Discovery and the Admission, &c., of Documents, sections 128 to 133 (both inclusive), section 135, section 136 (except so far as it relates to interrogatories), section 137 (except the second clause), section 138, section 139 (except the last sentence), section 140 (except the proviso and the last six words), sections 141, 142, 143 and 145.

CHAPTER XI.—Settlement of issues, sections 150 and 151.

CHAPTER XII.—Disposal of the Suit at the first hearing, except sections 154 and 155.

CHAPTER XIII.—Of Adjournments.

CHAPTER XIV.—Of the Summoning and Attendance of Witnesses, except sections 168, 169, 170 and 175.

CHAPTER XV.—Of the Hearing of the Suit and Examination of Witnesses, except sections 182 to 191 (both inclusive).

CHAPTER XVI.—Of Affidavits.

CHAPTER XVII.—Of Judgment and Decree, except sections 200, 201, 202, 204, 207, and 211 to 215 (both inclusive).

CHAPTER XVIII.—Of Costs.

CHAPTER XIX.—Of the Execution of Decrees, section 230, first two clauses, sections 231 to 236 (both inclusive), 243 to 259 (both inclusive), 266 (so far as relates to the attachment of moveable property or decrees therefor), 267 to 272 (both inclusive), 273 (so far as relates to decrees for moveable property), 275 to 303 (both inclusive), 328 to 333 (both inclusive), 336 (except the last three clauses), and 337 to 343 (both inclusive).

THE SECOND SCHEDULE—*concld.*

CHAPTER XXI.—Of the Death, Marriage and Insolvency of Parties.

CHAPTER XXII.—Of the Withdrawal and Adjustment of Suits.

CHAPTER XXIII.—Of Payment into Court.

CHAPTER XXIV.—Of Requiring Security for Costs.

CHAPTER XXV.—Of Commissions, except section 396.

CHAPTER XXVII.—Suits by or against Government, or public officers.

CHAPTER XXVIII.—Suits by Aliens and by and against Foreign and Native Rulers, except section 433.

CHAPTER XXIX.—Suits by and against Corporations and Companies.

CHAPTER XXX.—Suits by and against Trustees, Executors and Administrators.

CHAPTER XXXI.—Suits by and against Minors and Persons of Unsound Mind.

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CHAPTER XXXVIII.—Of Proceedings on Agreement of Parties, except so much of section 527, clause (*b*), as relates to immoveable property.

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(*See Section 55.*)

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When the amount or value of the subject-matter exceeds	But does not exceed	Fee for summons.			Fee for other processes.		
Rs.	Rs.	Rs.	A.	P.	Rs.	A.	P.
0	10	0	2	0	0	2	0
10	20	0	4	0	0	4	0
20	50	0	8	0	0	8	0
50	100	1	0	0	1	0	0
100	200	1	4	0	2	0	0
200	300	1	8	0	3	0	0
300	400	1	12	0	4	0	0
400	500	2	0	0	5	0	0
500	600	2	4	0	6	0	0
600	700	2	8	0	7	0	0
700	800	2	12	0	8	0	0
800	900	3	0	0	9	0	0
900	1,000	3	4	0	10	0	0
1,000	1,100	3	6	0	10	8	0
1,100	1,200	3	8	0	11	0	0
1,200	1,300	3	10	0	11	8	0
1,300	1,400	3	12	0	12	0	0
1,400	1,500	3	14	0	12	8	0
1,500	1,600	4	0	0	13	0	0
1,600	1,700	4	2	0	13	8	0
1,700	1,800	4	4	0	14	0	0
1,800	1,900	4	6	0	14	8	0
1,900	2,000	4	8	0	15	0	0

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second Publication.]

The following third 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 11th March, 1881:—

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 the honour to state that the Report of the Indian Law Commissioners, 1879, was duly communicated to us. We have carefully considered so much of it as relates to that Bill, as well as the papers specified in the annexed list; and, in compliance with the wish of the Secretary of State for India, as expressed in his despatch (Legislative) No. 37, dated 7th October, 1880, we have now the honour to present this our third Report.

We agree generally in the enlargement of the Bill effected by the Law Commissioners, and we shall in this Report refer to the Bill as settled by them, and published in the *Gazette of India* for the 17th and 24th January, 1880.

CHAPTER I.—PRELIMINARY.

We have rendered the definition of "attached to the earth" inapplicable to objects which merely rest upon the earth. And we have amended the definition of "notice" by making it apply expressly to a case where a person wilfully abstains from a search in a register which he ought to have made.

CHAPTER II.—TRANSFERS OF PROPERTY BY ACT OF PARTIES.

This chapter, after declaring what rights are inalienable and by what persons transfers may be made, proceeds to declare restrictions of the transfer of property called for in the interests of society. These restrictions are in substance identical with those contained in the Indian Succession Act, and rights and liabilities arising out of customs or personal laws are sufficiently saved by section 2, clause (*a*).

We have amended section 6 (as to what may be transferred) in these respects:—*First*, we have in the first clause substituted "Act" for "section." The effect will be to place Hindús on the same footing as Europeans as regards the power to make settlements, on marriage or otherwise, on persons not in existence at the date of the transfer. Although, no doubt, it has been laid down that the general principle of the Hindú law is that a donee must be in existence at the time of the gift, such settlements are in accordance with Native usage.

Secondly, we have re-drawn clause (*a*) thus:—

"(*a*) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of the same nature, cannot be transferred: the chance of a Hindú heir succeeding to property in the possession of a Hindú female cannot be transferred to any one except the present or future owner or co-owner of the property affected thereby."

Thirdly, we have made clause (*c*) run thus:—

"(*c*) An easement cannot be transferred apart from the dominant heritage."

Fourthly, we have extended clause (*e*) to rights to sue for harm illegally caused to property.

We think that the power to transfer property to or for the benefit of women, so that they shall not be able, during their marriage, to transfer or charge the same should be confined, as it is now, to women not being Hindús, Muhammadans or Buddhists; and we have altered section 10 accordingly.

It cannot be denied that one school of Muhammadan law does, as stated in the books, permit a settlement on a person, his children and their offspring in perpetuity. But in practice this form of settlement is obsolete, and, if made, the Courts would now refuse to recognise it as valid. We think, therefore, that section 14, which prohibits this kind of perpetuity, may stand unaltered. Baillie, p. 671.

We have shortened and simplified the sections (33, 34) which deal respectively with conditions that a transferee shall perform an act at or before a specified time, and like conditions wherein no such time is specified.

We do not think that the proposition laid down in section 40, as to a Hindú's right to receive maintenance from the profits of immoveable property, can be said to be authoritatively settled, and there are good grounds for questioning it.

We have therefore re-drawn the first clause of section 40 thus :—

"40. Where a third person has a right to receive maintenance or a provision for advancement or marriage from the profits of immoveable property, and such property is transferred with the intention of defeating the right, such right may be enforced against a transferee with notice of such intention, or a gratuitous transferee of the property affected by the right, but not against a transferee for consideration and without notice of the right, nor against such property in his hands."

The remainder of section 40, though suggested by English cases, is, in our opinion, founded on general principles of equity applicable to India, and may, therefore, fitly be left unaltered in the Bill.

Section 41 has been amended so as to bring a benámídár clearly within its operation.

We have confined section 42 to cases of transfers for consideration by persons having authority to revoke the transfer.

To the section (44) dealing with transfer by one co-owner we have added a clause declaring that, when the transferee of a share of a dwelling-house belonging to an undivided family is a stranger, nothing in this section shall be deemed to entitle him to joint possession or other common or part enjoyment of the house.

We have confined section 53 to cases of fraudulent transfer. To provide, as it now does, for fraudulent forfeitures would involve a change in the law the consequences of which cannot easily be foreseen.

CHAPTER III.—SALES OF IMMOVEABLE PROPERTY.

We agree with Sir Henry Maine as to the desirability of rendering the system of transfer of immoveable property a system of public transfer; and we are inclined to go a little further in this direction than seemed good to the Law Commissioners. Thus, we think that in the case of a reversion or other intangible thing, though its value may be less than Rs. 100, the transfer should be made only by registered assurance; and we have altered section 54 accordingly.

As to the duties of the seller, we think that, except where the property is sold subject to incumbrances, he should be bound to discharge all incumbrances on the property existing at the date of the sale; that he should not be bound to deliver the title-deeds till the whole of the purchase-money has been paid. We also think that the Bill may reasonably declare, as it does, that, in the absence of a stipulation to the contrary, the seller shall be deemed to contract that the interest which he assumes to transfer subsists and that he has power to make the transfer; but where he sells in a fiduciary character, we would follow the present practice, and declare simply that he shall be deemed to contract that he has done no act whereby the property is incumbered, or he is hindered from transferring it. We have altered section 55, clauses (*a*) (7), (8), (9), accordingly.

The proposition laid down in clause (*c*) (1), that a purchaser is bound to disclose any fact unknown to the vendor which increases his *interest* in the property, *e. g.*, the actual or imminent death of a prior life-tenant, has been questioned by a high authority. It appears to us in exact accordance with the rule laid down in *Turner* v. *Harvey*, Jac. 169; *Ellard* v. *Lord Llandaff*, 1 Ball & B. 241; and (on the sale of a life-policy) *Jones* v. *Keene*, 2 Moo. & R. 348. We have, however, made a verbal amendment in this clause.

As to the duties of the buyer, we have struck out the clause requiring him to retransfer the property sold, where the ownership has passed before payment of the purchase-money and he fails to pay or tender it. In such case the seller's lien is, we think, sufficient.

As to the buyer's rights, we think that his lien as against the seller for purchase-money paid in anticipation should be available against all persons claiming under the seller with notice of the payment. We have altered the section accordingly.

Where two properties are subject to a common charge and one is sold, the buyer's right as against the seller to have the charge satisfied out of the other property does not depend on whether or not the buyer had notice of the charge. We have, therefore, struck out of section 56 the words relating to notice.

CHAPTER IV.—MORTGAGES.

We think that in the definition of simple mortgage the expression "makes it a collateral security" is likely to give rise to difficulties. We also think that a transaction may be a "mortgage by conditional sale" although accompanied by possession, and in the definition of usufructuary mortgage the words "or agrees to deliver" and "actual" seem unnecessary. We have therefore amended these definitions as follows :—

Simple Mortgage.

"Where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage-money and agrees expressly or impliedly that, in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold and the proceeds of sale to be applied, so far as may be necessary, in payment of what may be due to him on the mortgage, the transaction is called a simple mortgage and the mortgagee a simple mortgagee."

Mortgage by Conditional Sale.

"Where the mortgagor ostensibly sells the mortgaged property on condition that in default of payment of the mortgage-money on a certain date the sale shall become absolute, or

"on condition that on such payment being made, the sale shall become void, or

"on condition that on such payment being made, the buyer shall re-transfer the property to the seller,

"the transaction is called a mortgage by conditional sale and the mortgagee a mortgagee by conditional sale."

Usufructuary Mortgage.

"Where the mortgagor delivers possession of the property to the mortgagee and authorises him to retain such possession until payment of the mortgage-money, and to receive the rents and profits accruing from the property and to appropriate them in lieu of interest or in payment of the mortgage-money, the transaction is called an usufructuary mortgage and the mortgagee an usufructuary mortgagee."

We agree with the Law Commissioners that the requirement of registration will not only discourage fraud and facilitate investigations of title, but that it will also preclude some difficult question of priority. A majority of us, however, think that, where the principal money secured is less than Rs. 100, the assurance need not be registered. And we have altered the Bill accordingly. Our colleague Mr. Stokes dissents from this alteration, as, in his opinion, all incumbrances should appear on the register: those who mortgage their property for small amounts, as a rule, require protection from fraud more than those who mortgage for large amounts, and the changes impending in the working of the law will deprive the requirement of registration of all hardship even in the pettiest cases.

A majority of us are of opinion that equitable mortgages by deposit of title-deeds should be valid when they are made in Calcutta, Madras, Bombay, Rangoon and Karáchí. The practice of raising money on such securities has long been established in those towns, and any attempt to disturb it would cause much inconvenience. Here, again, Mr. Stokes dissents on the grounds (*a*) that such mortgages are opposed to the policy of the registration-law; (*b*) that they lead to evasions of the stamp-duty; (*c*) that they are at variance with the principle of making the system of transfer of immoveable property, as far as possible, a system of public transfer; and (*d*) that, when the amount secured is Rs. 100 or upwards, they would be inconsistent with the general rule in section 58 requiring a written instrument.

We think, with Mr. Justice West, that nothing in the section (59) declaring the mortgagor's right to redeem should invalidate any provision to the effect that, if the time fixed for payment of the principal money has been allowed to pass, or no such time has been fixed, the mortgagee shall be entitled to reasonable notice before payment or tender of such money. In like manner, we think that nothing in section 82 or 83 should deprive the mortgagee of his right to interest where there exists a contract that he shall be entitled to such notice.

We concur with the Law Commissioners in the solution which they have proposed (section 68) of the moot question as to whether a power of sale conferred on the mortgagee is invalid, and as there is no prospect of the High Courts or the Privy Council making an authoritative declaration of the subject, we think it desirable to settle the matter by legislation as soon as possible.

For the section (98) as to the abandonment of his security where a mortgagee attaches and sells the mortgaged property, we have substituted the following :—

"98. Where a mortgagee, in execution of a decree for the satisfaction of any claim, whether arising under the mortgage or not, attaches the mortgaged property, he shall not be entitled to bring such property to sale otherwise than by instituting a suit under section 66."

We think that the High Court should have power to make rules for carrying out the provisions of this chapter.

CHAPTER V.—LEASES.

This chapter will, in our opinion, be of practical use in the case of leases of buildings, gardens and mines. We agree with the Law Commissioners that it should not of itself apply to the relations between zamíndár and raiyat, and we think that the power given to the Local Government by section 115 (now 116) to extend any of the provisions of the chapter to agricultural leases should only be exercised with the sanction of the Governor General in Council, and that the requisite notification should not take effect until the expiry of six months from the date of its publication.

The rule laid down in section 106, clause (*i*), as to the removeability of tenants' fixtures, has been objected to as not in accordance with the laws in force in this country. But it will operate only in the absence of a contract or local usage to the contrary, and will not in practice apply to tenants in husbandry. Moreover, it is impossible to say with certainty what the law of India on the subject really is. The Courts would, therefore, turn for guidance to the Civil law and the law of England. The Civil law permits a tenant to remove all fixtures where this can be effected without material injury to the property, and the strictness of the law of England has been relaxed where the fixtures have been annexed for the purposes of trade or manufacture, ornament, furniture and domestic use or convenience. The clause in question seems to us to represent with reasonable accuracy the rules of the Civil and the English law.

CHAPTER VI.—GIFTS.

We agree with the Law Commissioners that registration should be required in the case of gifts of immoveable property of whatever value. Such gifts are, as a rule, made by a written instrument, and as, under the Registration Act (III of 1877, section 17, clause (*a*)), the registration of such instruments is compulsory, the change of the existing law here proposed is almost nominal.

We have struck out the clause in section 121 (now 122) which is founded on the rule in the Succession Act as to bequests to attesting witnesses. It is, we think, inapplicable to a transaction *inter vivos*, where the donor can give evidence of his intention.

We have also struck out the section (120) which declares that the donor is not bound to warranty. It seems to the majority of us useless as denying what no one in this country would ever assert. Our colleague Mr. Stokes would retain it as precluding a doubt which may reasonably be felt by the Courts (see Burge II, 145).

We have made verbal and other unimportant amendments in sections 11, 25, 36, 37, 51, 59, 61, 64, 80, 81, 90, 91, 99, 101, 106, 126, 133.

The Bill as now settled seems to us a systematic and useful arrangement of the existing law. But we agree with the Law Commissioners that, when the body of substantive civil law enacted for India is recast in a more compact and convenient form than that of a series of fragmentary portions from time to time passed by the legislature, the chapters on Sale, Mortgage, Lease and Exchange contained in the present Bill will probably be placed in close connection with the rules contained in the Contract Act. Till then they may fitly be left in a law containing what the Contract Act does not contain, namely, general rules regulating the transmission of property between living persons.

We do not think that these rules, as now amended, will substantially alter or add to the existing law, or that they will invade or displace the functions of the Judges of the existing Courts. We, therefore, recommend that the Bill be passed. Drawn originally in England by the former Indian Law Commissioners, it was revised by Sir A. Hobhouse and introduced into the Council of the Governor General in June, 1877. It has since been twice circulated to the Local Governments for opinion and publication, and twice reported on by Select Committees, in February, 1878, and February, 1879. It was then carefully revised by the late Indian Law Commission. It has now been again revised by us. We think, therefore, of this Bill, as of the Bill dealing with negotiable instruments, that it is not now likely to be improved without the experience to be gained from its actual working. We recommend, however, that it should be republished in the *Gazette of India* with this Report; and, in obedience to the orders of the Secretary of State, it must also be sent home to him, published in the local Gazettes, and translated into the vernacular languages.

Our hon'ble colleagues Messrs. Grant and Paul have not been able to attend our meetings, and do not, therefore, sign this report.

WHITLEY STOKES.
J. PITT KENNEDY.
B. W. COLVIN.
JOTÍNDRA MOHAN TAGORE.

The 11th March, 1881.

LIST OF PAPERS.

From Secretary to Government, North-Western Provinces and Oudh, to Secretary to Government of India, Department of Revenue, Agriculture and Commerce, No. 722A, dated 8th October, 1878, and enclosure [Papers No. 34].
„ Acting Chief Secretary to Government, Madras, No. 467, dated 7th March, 1879, and enclosures [Papers No. 35].
„ Hon'ble H. S. Cunningham, dated 31st March, 1879 [Paper No. 36].
„ Registrar, High Court, Calcutta, No. 494, dated 24th March, 1879 [Paper No. 37].
„ Secretary for Birár to Resident, Haidarábád, No. 1, dated 8th April, 1879 [Paper No. 38].
„ Hon'ble G. H. P. Evans, dated 11th April, 1879 [Paper No. 39].
„ Officiating Secretary to Government, Bengal, No. 1947, dated 21st April, 1879, and enclosures [Papers No. 40].
„ Acting Under Secretary to Government, Bombay, No. 2348, dated 18th April, 1879, and enclosures [Papers No. 41].
„ Secretary to Government, Panjáb, No. 1705, dated 1st May, 1879, and enclosures [Papers No. 42].
„ Secretary for Birár to Resident, Haidarábád, No. 4, dated 30th April, 1879, and enclosure (Papers No. 43].
„ Officiating Secretary to Chief Commissioner, Mysore, No. 1086—3J, dated 5th May, 1879, and enclosures [Papers No. 44].
„ Officiating Secretary to Chief Commissioner, Central Provinces, No. 2044—98, dated 9th May, 1879, and enclosures [Papers No. 45].
„ Officiating First Assistant Resident, Haidarábád, No. 2P, dated 10th May, 1879 [Paper No. 46].
„ Secretary to Government, North-Western Provinces and Oudh, No. 367, dated 10th May, 1879, and enclosures [Papers No. 47].
„ Secretary to Government, North-Western Provinces and Oudh, No. 416, dated 21st May, 1879, and enclosures [Papers No. 48].
Memorandum by Pandit Lákhsmí Náráyana, Pleader, High Court, North-Western Provinces, dated 29th May, 1879 [Paper No. 49].

From Chief Commissioner, Ajmer-Merwára, No. 403, dated 29th May, 1879, and enclosures [Papers No. 50].
„ Secretary to Chief Commissioner, Assam, No. 643, dated 19th April, 1879, and enclosures [Papers No. 51].
„ Secretary to Government, Panjáb, No. 255C, dated 20th June, 1879, and enclosures [Papers No. 52].
„ Acting Chief Secretary to Government, Madras, No. 1320, dated 6th June, 1879, and enclosures [Papers No. 53].
„ Acting Under Secretary to Government, Bombay, No. 3720, dated 25th June, 1879, and enclosures [Papers No. 54].
„ R. Kristnaswamy Ráo, Acting Subordinate Judge, Madura, dated 28th June, 1879 [Paper No. 55].
„ J. Crawfurd, Esq., Registrar, High Court, Calcutta, No. 1123, dated 27th June, 1879 [Paper No. 56].
„ Acting Chief Secretary to Government, Madras, No. 1558, dated 2nd July, 1879, and enclosures [Papers No. 57].
„ Secretary to Government, North-Western Provinces and Oudh, No. 857, dated 23rd October, 1879, and enclosures [Papers No. 58].
„ Officiating Secretary to Chief Commissioner, British Burma, No. 4389—111, dated 20th December, 1879, and enclosures [Papers No. 59].
Note by Hon'ble Whitley Stokes, dated 8th December, 1880.

No. V.

TRANSFER OF PROPERTY BILL, 1881.

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No. V.

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.

1. This Act may be called "The Transfer of Property Act, 1881": Short title. It extends to the whole of British India; Extent. and it shall come into force on the first day of *March*, 1882. Commencement. Bill, s. 1: Bill II, s. 1: Bill III, 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. Bill, s. 2: Bill II, s. 1: Bill III, s. 2.

(*a*) the provisions of any enactment not hereby expressly repealed: Saving of certain enactments, incidents, rights, liabilities, &c. Act IX of 1872, s. 1.

(*b*) any terms or incidents of any contract or constitution of property which are consistent with the provisions of this Act, and are allowed by the law for the time being in force:

(*c*) any right or liability arising out of a custom or personal law consistent with this Act, or out of a legal relation constituted before this Act comes into force, or any relief in respect of any such right or liability: 4 Beng. L. R. 219.

(*d*) any transfer by operation of law or by decree or order of a Court of competent jurisdiction. I. L. R., Bom., 241.

3. In this Act, unless there be something repugnant in the subject or context,— Interpretation-clause. Bill, s. 3: Bill II, s. 1: Bill III, s. 3. Report, N. W. P., para. 159.

the "ownership" of a thing is the right of one or more persons to possess and use it to the exclusion of others. Such ownership is either absolute or qualified. The thing of which there may be ownership is called "property": "ownership": "property":

"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 to or in immoveable property: "assurance": Act III of 1877, s. 1 (4).

"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":

"attached to the earth" means—

(*a*) rooted in the earth, as in the case of trees and shrubs;

(*b*) imbedded in the earth, as in the case of walls or buildings; or

(*c*) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached:

See ss. 8, 107.

See Contract Act, s. 229, as to agent: 4 Cal. 212: v. 11 Beng. 54 P. C.

and a person is said to have "notice" of a fact when he actually knows that fact, or when but for wilful abstention from an inquiry or search which he ought to have made, or gross negligence, he would have known it, or when information of the fact is given to or obtained by his agent under the circumstances mentioned in the Indian Contract Act, section 229.

"notice":

Bill III, s. 4.

4. The chapters and sections of this Act which relate to contracts shall be taken as part of the Indian Contract Act, 1872.

Enactments relating to contracts to be taken as part of Act IX of 1872.

CHAPTER II.

OF TRANSFERS OF PROPERTY BY ACT OF PARTIES.

(*A*).—*Transfer of Property, whether moveable or immoveable.*

5. In the following sections "transfer" means an act by which one living person conveys to another, or to himself and another, in present or in future, the ownership of property or an interest therein, and "to transfer" is to perform such act.

"Transfer" defined.

6. The ownership of property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force:—

What may be transferred.

Carlton v. Leighton, 3 Mac. Cf. Act X of 1877, s. 266, clause (*d*).

(*a*) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred. The chance of a Hindú heir succeeding to property in the possession of a Hindú female cannot be transferred to any one except the present or future owner or co-owner of the property affected thereby.

Gray v. Fenton, 5 Exch. 615.

(*b*) A mere right of re-entry for breach of a condition subsequent cannot be transferred to any one except the owner of the property affected thereby.

(*c*) An easement cannot be transferred apart from the dominant heritage.

(*d*) An interest in property restricted in its enjoyment to the owner personally cannot be transferred by him.

(*e*) A mere right to sue for compensation for a fraud or for harm illegally caused cannot be transferred.

(*f*) A public office cannot be transferred, nor can the salary of a public officer whether before or after it has become payable.

Cf. 11 & 12 Vic., c. 21, s. 7.

(*g*) Stipends allowed to military and civil pensioners of Government and political pensions cannot be transferred.

(*h*) No transfer can be made (1) in so far as it is opposed to the nature of the interest affected thereby, or (2) for an illegal purpose, or (3) to a person legally disqualified to be transferee.

7. Every person competent to contract and entitled to transferable property, or authorized to dispose of transferable property not his own, is competent to transfer such property either wholly or in part and either absolutely or conditionally, in the circumstances, to the extent and in the manner allowed and prescribed by any law for the time being in force.

Bill, s. 4; Bill III, s. 5; Report, s. 4.

Persons competent to transfer.

8. Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in such property, and in the legal incidents thereof.

Bill, s. 10; Bill III, s. 6; Report, s. 10; v. last clause, Report, s. 6; 2 W. R. 125 (buildings); 14 W. R. 379. N.-W. P., 1870, p. 251; 24 W. R. 330 (trees), "everything grown on it," Morley N. S. 259.

Operation of transfer.

Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth;

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, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows and all other things provided for permanent use therewith;

and, where the property is a debt or other actionable claim, the securities therefor, but not arrears of interest accrued before the transfer;

and, where the property is money or other property yielding income, the interest or income thereof accruing after the ownership passes.

9. A transfer may be made without writing in every case in which a writing is not expressly required by law.

7 Exch., p. 581.

Oral transfer.

10. Where a transfer is subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property transferred, the condition or limitation is void except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him: provided that property may be transferred to or for the benefit of a woman (not being a Hindú, Muhammadan or Buddhist), so that she shall not have power during her marriage to transfer or charge the same or her beneficial interest therein.

Report, s. 4; L. R. 3 Chan. D. 148, 285.

Condition restraining alienation.

Act X of 1865, s. 125.

11. Where on a transfer of property an interest is created absolutely in favour of any person, but the terms of the transfer direct that such interest shall be applied or enjoyed in a particular manner, he shall be entitled to receive and dispose of such interest as if there were no such direction.

Restriction repugnant to interest created.

Nothing in this section shall be deemed to affect the right to restrain for the beneficial enjoyment of one piece of immoveable property, the enjoyment of another piece of such property, or to compel the enjoyment thereof in a particular manner.

Report, s. 48: See Act X of 1865, s. 107.

12. Where property is transferred subject to a condition or limitation making any interest therein reserved or given to or for the benefit of any person to cease on his becoming insolvent or endeavouring to transfer or dispose of the same, such condition or limitation is void.

Condition making interest determinable on insolvency or attempted alienation.

Nothing in this section applies to a condition in a lease for the benefit of the lessor or those claiming under him.

Act X of 1865, s. 100. Report, s. 49.

13. Where on a transfer of property an interest is created for the benefit of a person not in existence at the date of the transfer, subject to a prior interest created by the same transfer, the interest created for the benefit of such person shall not take effect, unless it extends to the whole of the remaining interest of the transferor in the property.

Transfer for benefit of person not in existence at date of transfer, subject to prior transfer.

Illustration.

A transfers property of which he is the owner to B in trust for A and his intended wife successively for their lives, and after the death of the survivor for the eldest son of the intended marriage for life, and after his death for his second son. The interest so created for the benefit of the eldest son does not take effect, because it does not extend to the whole of A's remaining interest in the property.

Report, s. 50, Succession Act, s. 101.

14. No transfer can operate to create an interest which is to take effect after the life-time of one or more persons living at the date of such transfer, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the interest created is to belong.

Rule against perpetuity.

Report, s. 51: Bentinck v. Duke of Portland, 7 Chan. D. 693.

15. If on a transfer of property an interest is created for the benefit of a class of persons with regard to some of whom such interest fails by reason of any of the rules contained in sections thirteen and fourteen, such interest fails as regards the whole class.

Transfer to class some of whom come under sections 13 and 14.

Report, s. 52.

16. Where an interest fails by reason of any of the rules contained in sections thirteen, fourteen and fifteen, any interest created in the same transaction and intended to take effect after or upon failure of such prior interest also fails.

Transfer to take effect on failure of prior transfer.

17. The restrictions in sections fourteen, fifteen and sixteen shall not apply to property transferred for the benefit of the public in the advancement of religion, knowledge, commerce, health, safety or any other object beneficial to mankind.

Transfer in perpetuity for benefit of public.

Act X of 1865, s. 104: Report, s. 53.

18. Where the terms of a transfer of property direct that the income arising therefrom shall be accumulated, such direction shall be void, and the property shall be disposed of as if no accumulation had been directed.

Direction for accumulation.

Donaldson v. Donaldson, I. R. 3 Chan. Div. 743.

Exception.—Where the property is immoveable or where accumulation is directed to be made from the date of the transfer, the direction shall be valid in respect only of the income arising from the property within one year next following such date; and at the end of the year such property and income shall be disposed of respectively as if the period during which the accumulation has been directed to be made had elapsed.

Report, ss. 56, 57, altered.

19. Where, on a transfer of property, an interest is created in favour of a person without specifying the time when it is to take effect, or in terms specifying that it is to take effect, forthwith or on the happening of an event which must happen, such interest is vested, unless a contrary intention appears from the terms of the transfer.

Vested interest.

A vested interest is not defeated by the death of the transferee before he obtains possession.

Explanation.—An intention that an interest shall not be vested is not to be inferred merely from a provision whereby the enjoyment thereof is postponed, or whereby a prior interest in the same property is given or reserved to some other person, or whereby income arising from the property is directed to be accumulated until the time of enjoyment arrives, or from a provision that if a particular event shall happen the interest shall pass to another person.

Report, s. 58, altered.

20. Where, on a transfer of property, an interest is created for the benefit of a person not then living, he acquires upon his birth, unless a contrary intention appear from the terms of the transfer, a vested interest, although he may not be entitled to the enjoyment thereof immediately on his birth.

Transfer for benefit of person not then living.

Act X of 1865, s. 107: Report, s. 59: IX, 72-33.

21. Where, on a transfer of property, an interest is created in favour of a person to take effect only on the happening of a specified uncertain event, or if a specified uncertain event shall not happen, such person thereby acquires a contingent interest in the property. Such interest becomes a vested interest, in the former case, on the happening of the event, in the latter, when the happening of the event becomes impossible.

Contingent interest.

Exception.—Where under a transfer a person becomes entitled to an interest in property upon attaining a particular age, and the transferor also gives to him absolutely the income to arise from

such interest before he reaches that age, or directs the income or so much thereof as may be necessary to be applied for his benefit, such interest is not contingent,

Act X of 1865, s. 108: Report, s. 60.

Transfer to members of a class who attain a particular age.

22. Where, on a transfer of property, an interest is created in favour of such members only of a class as shall attain a particular age, such interest does not vest in any member of the class who has not attained that age.

Act X of 1865, s. 111: Report, s. 61.

Transfer contingent on happening of specified uncertain event.

23. Where, on a transfer of property, an interest therein is to accrue to a specified person if a specified uncertain event shall happen, and no time is mentioned for the occurrence of that event, the interest fails unless such event happens before, or at the same time as, the intermediate or precedent interest ceases to exist.

Act X of 1865, s. 112.

Transfer to such of certain persons as survive at some period not specified.

24. Where, on a transfer of property, an interest therein is to accrue to such of certain persons as shall be surviving at some period, but the exact period is not specified, the interest shall go to such of them as shall be alive when the intermediate or precedent interest ceases to exist, unless a contrary intention appears from the terms of the transfer.

Illustration.

A transfers property to B for life, and after his death to C and D, equally to be divided between them, or to the survivor of them. C dies during the life of B. D survives B. At B's death the property passes to D.

Act X of 1865, s. 113: Act X of 1865, s. 114, expanded with reference to Act IX of 1872, s. 23.

Conditional transfer.

25. An interest created on a transfer of property and dependent upon a condition fails if the fulfilment of the condition is impossible, or is forbidden by law, or is of such a nature that if permitted, it would defeat the provisions of any law, or is fraudulent, or involves or implies injury to the person or property of another, or the Court regards it as immoral or opposed to pubic policy.

Illustrations.

(*a*). A lets a farm to B on condition that he shall walk a hundred miles in an hour. The lease is void.

(*b*). A gives Rs. 500 to B on condition that he shall marry A's daughter, C. At the date of the transfer C was dead. The transfer is void.

(*c*). A transfers Rs. 500 to B on condition that she shall murder C. The transfer is void.

(*d*). A transfers Rs. 500 to his niece C if she will desert her husband. The transfer is void.

Act X of 1865, s. 115.

Fulfilment of condition precedent.

26. Where the terms of a transfer of property impose a condition to be fulfilled before a person can take an interest in the property, the condition shall be deemed to have been fulfilled if it has been substantially complied with.

Illustrations.

(*a*). A transfers Rs. 5,000 to B on condition that he shal marry with the consent of C, D and E. E dies. B marries with the consent of C and D. B has fulfilled the condition.

(*b*). A transfers Rs. 5,000 to B on condition that he shall marry with the consent of C, D and E. B marries without the consent of C, D and E, but obtains their consent after the marriage. B has not fulfilled the condition.

Act X of 1865, s. 116.

Conditional transfer to one person coupled with transfer to another on failure of prior transfer.

27. Where, on a transfer of propery, an interest is created in favour of one person, and by the same transaction an ulterior disposition of the same interest is made in favour of another if the prior interest under the transfer shall fail, the ulterior disposition shall take effect upon the failure of the prior disposition, although the failure may not have occurred in the manner contemplated by the transferor.

Act X of 1865, s. 117.

But where the intention of the parties to the transaction is that the ulterior disposition shall take effect only in the event of the prior disposition failing in a particular manner, the ulterior disposition shall not take effect unless the prior disposition fails in that manner.

Illustrations.

(*a*). A transfers Rs. 500 to B on condition that he shall execute a certain lease within three months after A's death, and if he should neglect to do so, to C. B dies in A's lifetime. The transfer to C takes effect.

(*b*). A transfers property to his wife; but in case she should die in his life time, transfers to B that which he had transferred to her. A and his wife perish together, under circumstances which make it impossible to prove that she died before him. The transfer to B does not take effect.

Act X of 1865, s. 118.

Ulterior transfer conditional on happening or not happening of specified event.

28. On a transfer of property an interest may be created to accrue to any person with the condition superadded that in case a specified uncertain event shall happen, such interest shall pass to another person; or that in case a specified uncertain event shall not happen, such interest shall pass to another person. In each case the dispositions are subject to the rules contained in sections ten, twelve, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five and twenty-seven.

Act X of 1865, s. 119.

Fulfilment of condition subsequent.

29. An ulterior disposition of the kind contemplated by the last preceding section cannot take effect unless the condition is strictly fulfilled.

Illustration.

A transfers Rs. 500 to B, to be paid to him on his attaining his majority or marrying, with a proviso that, if B dies a minor or marries without C's consent, the Rs. 500 shall go to D. B marries when only 17 years of age, without C's consent. The transfer to D takes effect.

Act X of 1865, s. 120.

Prior disposition not affected by invalidity of ulterior disposition.

30. If the ulterior disposition is not valid, the prior disposition is not affected by it.

Illustration.

A transfers a farm to B for her life, and, if she do not desert her husband, to C. B is entitled to the farm during her life as if no condition had been inserted.

Act X of 1865, s. 121.

Condition that transfer shall cease to have effect in case specified uncertain event happens or does not happen.

31. Subject to the provisions of section twelve, on a transfer of property an interest may be created with the condition superadded that it shall cease to exist in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.

Illustrations.

(*a*). A transfers a farm to B for his life, with a proviso that, in case B cuts down a certain wood, the transfer shall cease to have any effect. B cuts down the wood. He loses his life-interest in the farm.

(*b*). A transfers a farm to B, provided that, if B shall not go to England within three years after the date of the transfer, his interest in the farm shall cease. A does not go to England within the term prescribed. His interest in the farm ceases.

Act X of 1865, s. 122.

Such condition must not be invalid.

32. In order that a condition that an interest shall cease to exist may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of the creation of an interest.

Act X of 1865, s. 124.

Condition that transferee shall perform act at or before specified time.

33. Where, on a transfer of property, an interest is created subject to a condition that the person taking it shall perform a certain act at or before a specified time, and the transferor has at the time of creating the interest made an ulterior disposition thereof in favour of himself or of another, if the act be not performed within such time, the prior disposition ceases to have effect if the act is not performed within such time, or if the person benefited by the prior disposition renders the performance of the act impossible within the time specified. But where the transferor has not made any such ulterior disposition thereof, the transfer is, at the option of the transferor, voidable so far as regards such interest, if time is of the essence of the condition; but if it is not of the essence of the contract, the transfer shall not be so voidable.

When such intention is apparent, the circumstance that the interest has actually been enjoyed under the prior disposition does not affect the operation of the condition.

Transfer conditional on performance of act, no time being specified for performance.

34. Where, on a transfer of property, an interest is created subject to a condition that the person taking it shall perform a certain act, but no time is specified for the performance of the act, the condition is broken when he renders impossible, permanently or for an indefinite period, the performance of the condition.

Transfer conditional on performance of act, time being specified.

35. Where an act is to be performed by a person either as a condition to be fulfilled before an interest created on a transfer is enjoyed by him, or as a condition on the non-fulfilment of which the interest is to pass from him to another person, and a time is specified for the performance of the act, if such performance within the specified time is prevented by the fraud of a person who would be directly benefited by non-fulfilment of the condition, such further time shall as against him be allowed for performing the act as shall be requisite to make up for the delay caused by such fraud. But if no time is specified for the performance of the act, then if its performance is, by the fraud of a person interested in the non-fulfilment of the condition rendered impossible or indefinitely postponed, the condition shall as against him be deemed to have been fulfilled.

Election.

Draft, s. 62 added to.

Election when necessary.

36. Where a person professes to transfer property which he has no right to transfer, and as part of the same transaction confers any benefit on the owner of the property, such owner must elect either to confirm such transfer or to dissent from it; and in the latter case he shall relinquish the benefit so conferred, and the benefit so relinquished shall revert to the transferor or his representative as if it had not been disposed of,

Act X of 1865, s. 168.

subject nevertheless,

where the transfer is gratuitous and the transferor has before the election died or otherwise become incapable of making a fresh transfer,

and in all cases where the transfer is for consideration,

to the charge of making good to the disappointed transferee the amount or value of the property attempted to be transferred to him.

Illustration.

The farm of Sultánpur is the property of C and worth Rs. 800. A by an instrument of gift professes to transfer it to B, giving by the same instrument Rs. 1,000 to C. C elects to retain the farm. He forfeits the gift of Rs. 1,000.

In the same case, A dies before the election. His representative must out of the Rs. 1,000 pay Rs. 800 to B.

Act X of 1865, s. 169.

The rule in the first paragraph of this section applies whether the transferor does or does not believe that which he professes to transfer to be his own.

Act X of 1865, s. 171.

A person taking no benefit directly under a transaction, but deriving a benefit under it indirectly, need not elect.

Act X of 1865, s. 172.

A person who in his one capacity takes a benefit under the transaction may in another dissent therefrom.

Exception to the last preceding four rules.—Where a particular benefit is expressed to be conferred on the owner of the property which the transferor professes to transfer expressed to be in lieu of that property, if such owner claim that he must relinquish the particular benefit, but he is not bound to relinquish any other benefit conferred upon him by the same transaction.

Act X of 1865, s. 173.

Acceptance of the benefit by the person on whom it is conferred constitutes an election by him to confirm the transfer, if he is aware of his duty to elect and of those circumstances which would influence the judgment of a reasonable man in making an election, or if he waives enquiry into the circumstances.

Act X of 1865, s. 174.

Such knowledge or waiver shall, in the absence of evidence to the contrary, be presumed, if the person on whom the benefit has been conferred has enjoyed it for two years without doing any act to express dissent.

Act X of 1865, s. 175.

Such knowledge or waiver may be inferred from any act of his which renders it impossible to

place the persons interested in the property professed to be transferred in the same condition as if such act had not been done.

Illustration.

A transfers to B an estate to which C is entitled, and to C a coal-mine. C takes possession of the mine and exhausts it. He has thereby confirmed the transfer of the estate to B.

Act X of 1865, s. 176. If he does not within one year after the date of the transfer signify to the transferor or his representatives his intention to confirm or to dissent from the transfer, the transferor or his representatives may, upon the expiration of that period, require him to make his election; and if he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the transfer.

Act X of 1865, s. 167. In case of disability, the election shall be postponed until the disability ceases, or until the election is made by some competent authority.

Apportionment.

Draft, s. 64: Bill III, s. 86.

37. In the absence of a contract to the contrary, all rents, annuities, pensions, dividends and other periodical payments in the nature of income shall, upon the transfer of the interest of the person entitled to receive such payments, be deemed, as between the transferor and the transferee, to accrue due from day to day, and to be apportionable accordingly, but to be payable on the days appointed for the payment thereof.

Apportionment of periodical payments on determination of interest of person entitled.

Severance of Obligation relating to property.

38. When in consequence of a transfer property is divided and held in several shares, and thereupon the benefit of any obligation relating to the property as a whole passes from one to several owners of the property, the corresponding duty shall, in the absence of a contract to the contrary amongst the owners, be performed in favour of each of such owners in proportion to the value of his share in the property, provided that the duty can be severed and that the severance does not substantially increase the burden of the obligation; but if the duty cannot be severed, or if the severance would substantially increase the burden of the obligation, the duty shall be performed for the benefit of such one of the several owners as they shall jointly designate for that purpose:

Satisfaction of right arising in favour of several persons in consequence of a transfer.

Provided that no person on whom the burden of the obligation lies shall be answerable for failure to discharge it in manner provided by this section, unless and until he has had reasonable notice of the severance.

Illustrations.

(*a*). A sells to B, C and D land situate in a village and leased to E at an annual rent of Rs. 30 and delivery of one fat sheep, B having provided half the purchase-money and C and D one quarter each. E having notice of this must pay Rs. 15 to B, Rs. 7½ to C and Rs 7½ to D, and must deliver the sheep according to the joint direction of B, C and D.

(*b*). Each house in the village being bound to provide ten days' labour each year on a dyke to prevent inundation, E had agreed as a term of his lease to perform this work for A. B, C and D severally require E to perform the ten days' work due on account of the house of each. E is not bound to do more than ten days' work in all, according to such directions as B, C and D may join in giving.

B.—Transfer of Immoveable Property.

Bill III, s. 7.

39. Where any person authorized only under circumstances in their nature variable to dispose of immoveable property transfers such property for consideration, alleging the existence of such circumstances, they shall, as between the transferee on the one part and the transferor and other persons (if any) affected by the transfer on the other part, be deemed to have existed, if the transferee, after using reasonable care to ascertain the existence of such circumstances, has acted in good faith.

Transfer by person authorized only under certain circumstances to transfer.

Illustration.

A, a Hindú widow, whose husband has left collateral heirs, agrees, for purposes neither religious nor charitable, to sell a field, part of the property held by her as such, to B. B satisfies himself by reasonable enquiry that the income of the property is insufficient for A's maintenance, and that the sale of the field is necessary, and, acting in good faith, buys the field. As between B on the one part and A and the collateral heirs on the other part, a necessity for the sale shall be deemed to have existed.

Wilson *v.* Hare, L. R. 1 Ch. Richards *v.* Renell, 7 Ch. Div. 224. Maclean *v.* Mackay, L. R. 5 P. (32). S. A. 135 of 1877.

40. Where a third person has a right to receive maintenance or a provision for advancement or marriage from the profits of immoveable property, and such property is transferred with the intention of defeating such right, the right may be enforced against the transferee, if he has notice of such intention or if the transfer is gratuitous; but not against a transferee for consideration and without notice of the right, nor against such property in his hands.

Transfer of land where third person is entitled to maintenance,

Illustrations.

(*a*). A, a Hindú, transfers Sultánpur to his sister-in-law B, in lieu of her claim against him for maintenance in virtue of his having succeeded to her deceased husband's property, and agrees with her that if she is dispossessed of Sultánpur, A will transfer to her an equal area out of such of several other specified villages in his possession as she may elect. A sells the specified villages to C, who buys in good faith, without notice of the agreement. B is dispossessed of Sultánpur. She has no claim on the villages transferred to C.

(*b*). A, a Hindú widow, is entitled to maintenance out of the share of her deceased husband in Basaoli, which has passed to his brother B. B sells Basaoli to C, who has notice that there is no other property to satisfy A's claim. A may claim maintenance out of Basaoli in the hands of C.

Where for the more beneficial enjoyment of his own immoveable property a third person has, independently of any interest in the immoveable property of another, a right to restrain the enjoyment of the latter property or to compel its enjoyment in a particular manner, or

or has a right to restrain its enjoyment,

where a third person is entitled to the benefit of an obligation arising out of contract and annexed to the ownership of immoveable property, but not amounting to an interest therein or easement thereon,

or is entitled to benefit of obligation not amounting to interest or easement.

such right or obligation may be enforced against a transferee with notice thereof or a gratuitous transferee of the property affected thereby, but not against a transferee for consideration and without notice of the right or obligation, nor against such property in his hands.

Illustration.

A contracts to sell Sultánpur to B. While the contract is still in force he sells Sultánpur to C, who has notice of the contract. B may enforce the contract against C to the same extent as against A.

Bill III, s. 7: Act IX of 1872, s. 108, excepn. 2.

41. Where with the consent, express or implied, of the persons interested in immoveable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorized to make it: provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith.

Transfer by ostensible owner.

Illustrations.

(*a*). A, one of two co-proprietors of village land, leaves his village, and with his consent the land is registered by the Revenue-officer in the name of B, the other co-proprietor. After ten years B sells a portion of the land to C, who takes reasonable care to ascertain that B had power to make the transfer and acts in good faith. A is not entitled to have the sale set aside.

(*b*). A buys land and causes it to be transferred to his servant B to hold on his behalf, and also causes it to be entered in the revenue register in B's name. C, having ascertained that B is the registered owner of the land and pays the revenue due in respect thereof, buys the land in good faith from B. A cannot impeach the sale.

Bill III, s. 10A, para. 2.

42. Where a person having authority to revoke a transfer of any immoveable property, transfers the property for consideration, such transfer operates in favour of the transferee (subject to any condition attached to the exercise of the authority) as a revocation of the former transfer to the extent of the authority.

Transfer by person having authority to revoke transfer.

Illustration.

A lets a house to B and reserves power to revoke the lease if in the opinion of a specified surveyor B should make a use of it detrimental to its value. Afterwards A, thinking that such a use has been made, lets the house to C. This operates as a revocation of B's lease subject to the opinion of the surveyor as to B's use of the house having been detrimental to its value.

43. Where a person erroneously represents that he is authorized to transfer certain immoveable property, and assumes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property, at any time during which the contract of transfer subsists.

Transfer by unauthorized person who subsequently acquires interest in property transferred.

Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.

Illustration.

A, a Hindú, who has separated from his father B, sells to C three fields, X, Y and Z. Of these Z does not belong to A, it having been retained by B on the partition; but on B's dying A obtains Z as heir. C, not having rescinded the contract of sale, may require A to deliver Z to him.

Bill III, s. 9.

44. Where one of two or more co-owners of immoveable property legally competent in that behalf transfers his share of such property or any interest therein, the transferee acquires as to such share or interest, and so far as is necessary to give effect to the transfer, the transferor's right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same, but subject to the conditions and liabilities affecting, at the date of the transfer, the share or interest so transferred.

Transfer by one co-owner.

Where the transferee of a share of a dwelling-house belonging to an undivided family is a stranger nothing in this section shall be deemed to entitle him to joint-possession or other common or part enjoyment of the house.

Bill III, s. 13.

45. Where property is transferred for consideration to two or more persons, and such consideration is paid out of a fund belonging to them in common, they are in the absence of a contract to the contrary, respectively entitled to interests in such property identical, as nearly as may be, with the interests to which they were respectively entitled to the fund; and where such consideration is paid out of separate funds belonging to them respectively, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property in proportion to the shares of the consideration which they respectively advanced.

Joint transfer for consideration.

In the absence of evidence as to the interests in the fund to which they were respectively entitled, or as to the shares which they respectively advanced, such persons shall be presumed to be equally interested in the property.

Illustration.

A and B are the sons and C the grandson of a Hindú who has died leaving property. C's father D has also died. A partition has been made after which A and B have reunited. C remains severed in interest, his share being one-third. The separate property of D is of the same value. The whole fund belonging to A, B and C is expended in buying an estate, X. A and B take one moiety of X as joint estate and C takes the other moiety as separate property.

46. Where a transfer of immoveable property is made for consideration by persons having distinct interests therein, the transferors are, in the absence of a contract to the contrary, entitled to share in the consideration equally, where their interests in the property transferred were of equal value, and, where such interests were of unequal value, proportionately to the value of their respective interests.

Transfer for consideration by persons having distinct interests.

Illustrations.

(*a*). A, owing a moiety, and B and C, each a quarter share of mauza Sultánpur, exchange an eighth share of that mauza for a quarter share of mauza Lálpura. There being no agreement to the contrary, A is entitled to an eighth share in Lálpura, and B and C each to a sixteenth share in that mauza.

(*b*). A being entitled to a life interest in mauza Atrali and B and C to the reversion, sell the mauza for Rs. 1,000. A's life interest is ascertained to be worth Rs. 600, the reversion Rs. 400. A is entitled to receive Rs. 600 out of the purchase money, B and C to receive Rs. 400.

47. Where several co-owners of immoveable property transfer a share therein without specifying that the transfer is to take effect on any particular share or shares of the transferors, the transfer, as among such transferors, takes effect on such shares equally where the shares were equal, and where they were unequal, proportionately to the extent of such shares.

Transfer by co-owners of share in common property.

Illustration.

A, the owner of an eight annas share, and B and C, each the owner of a four annas share, in mauza Sultánpur, transfer a two-anna share in the mauza to D, without specifying from which of their several shares the transfer is made. To give effect to the transfer one anna share is taken from the share of A, and half an anna share from each of the shares of B and C.

48. Where a person purports to create by transfer at different times rights in or over the same immoveable property, and such rights cannot all exist or be exercised to their full extent together, each later created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created.

Priority of rights created by transfer.

Bill III, ss. 37, 38.

49. Where immoveable property is transferred for consideration, and such property or any part thereof is at the date of the transfer insured against loss or damage by fire, the transferee, in case of such loss or damage, may, in the absence of a contract to the contrary, require any money which the transferor actually receives under the policy, or so much thereof as may be necessary, to be applied in reinstating the property.

Transferee's right under policy.

Bill III, s. 8: Act X 1855, s. 1.

50. 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 such property, 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.

Illustration.

A lets a field to B at a rent of Rs. 50, and then transfers the field to C. B, having no notice of the transfer, in good faith pays the rent to A. B is not chargeable with the rent so paid.

51. When the transferee of immoveable property makes any improvement on the property, believing in good faith that he is absolutely entitled thereto, and he is subsequently evicted therefrom by any person having a better title, the transferee or his representative in interest has a right to require the person causing the eviction either to have the value of the improvement estimated and paid or secured to the transferee, or to sell his interest in the property to the transferee at the then market value thereof irrespective of the value of such improvement.

Improvements made by *bonâ fide* holders under defective titles.

The amount to be paid or secured in respect of such improvement shall be the estimated value thereof at the time of the eviction.

When under the circumstances aforesaid the transferee has planted or sown on the property crops which are growing when he is evicted therefrom, he is entitled to such crops and to free ingress and egress to gather and carry them.

Bill III, s. 10: 8 Beng. 478: 7 Mad. 111: 11 Bom. 24, 63, 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. 308, 309: 5 W. R. P. C. 63: 8 Bom. A. C. J. 61:

52. 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 contentious suit or proceeding in which any right to immoveable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

Transfer of property pending suit relating thereto.

Bill III, s. 10A: Cf. Act I of 1877, s. 35.

53. Every transfer of immoveable property made with intent to defraud prior or subsequent transferees thereof for consideration, or co-owners or other persons having an interest in such property, or to defeat or delay the creditors of the transferor, is voidable at the option of any person so defrauded, defeated or delayed.

Fraudulent transfer.

Where the effect of any transfer of immoveable property is to defraud, defeat or delay any such person, and such transfer is made gratuitously or for a grossly inadequate consideration, the transfer may be presumed to have been made with such intent as aforesaid.

Nothing contained in this section shall impair the rights of any transferee in good faith and for consideration.

CHAPTER III.

OF SALES OF IMMOVEABLE PROPERTY.

54. "Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

"Sale" defined.

Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered assurance.

Sale how made.

In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered assurance or by delivery of the property.

Bill II, s. 11: 14 Beng. 307, 312: N. W. P., 1866, p. 87. Consider 12 Suth. W. R. P., C. 6: as to delivery of assurance, W. R. 1864, p. 222: 5 W. R. 248: Morley N. S. 358.

Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Right to redeem, N. W. P., 1868, p. 376.

A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties.

Contract for sale.

Bill III, s. 14.

It does not, of itself, create any interest in or charge on such property.

Bill, s. 11: Bill II, s. 11: Bill III, s. 12: Report, s. 14.

55. In the absence of a contract to the contrary, the buyer and the seller of immoveable property respectively are subject to the liabilities, and have the rights, mentioned in the rules next following, or such of them as are applicable to the property sold :

Rights and liabilities of buyer and seller.

(*a*). The seller is bound—

Bill III, s. 13 (a).

(1) to disclose to the buyer any defect in the property of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover ;

Bill III, s. 12 (c).

(2) to produce to the buyer on his request for examination all documents of title relating to the property which are in the seller's possession or power ;

Bill III, s. 13 (d).

(3) to 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 III, s. 13 (e).

(4) on payment or tender of the amount due in respect of the price, to execute a proper assurance of the property when the buyer tenders it to him for execution at a proper time and place, and, where the property is, or forms part of, a revenue-paying estate, to present an application to the proper officer for the requisite alteration of the revenue-register ;

(5) between the date of the contract of sale and the delivery of the property, to take as much care of the property and all documents of title relating thereto which are in his possession, as an owner of ordinary prudence would take of such property and documents ;

(6) to give, on being so required, the buyer, or such person as he directs, such possession of the property as its nature admits ;

Bill III, s. 13 (g).

(7) to pay all public charges and rent accrued due in respect of the property up to the date of the sale, the interest on all incumbrances on such property due on such date ; and, except where the property is sold subject to incumbrances, to discharge all incumbrances on the property then existing ; and

(8) and the seller shall be deemed to contract that the interest which he assumes to transfer to the buyer subsists and that he has power to transfer the same :

Bill III, s. 12 (f).

provided that, where the sale is made by a person in a fiduciary character, he shall be deemed to contract that he has done no act whereby the property is incumbered or whereby he is hindered from transferring it.

(9) Where the whole of the purchase-money has been paid to the seller, he is also bound to deliver to the buyer all documents of title relating thereto which are in the seller's possession or power :

Bill III, s. 12 (i).

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 ;

(*b*) The seller is entitled—

Bill III, s. 13 (b).

(1) to the rents and profits of the property till the ownership thereof passes to the buyer ;

Bill III, s. 13 (c).

(2) where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a charge upon the property in the hands of the buyer for the amount of the purchase-money, or any part thereof remaining unpaid, and for interest on such amount or part.

(*c*). The buyer is bound—

Bill III, s. 13 (h).

(1) to disclose to the seller any fact as to the nature or extent of the seller's interest in the property of which the buyer is aware, but of which he has reason to believe that the seller is not aware, and which increases the value of such interest ;

Bill III, s. 13 (i).

(2) to pay or tender, at the time and place of completing the transfer, the purchase-money to the seller or such person as he directs : provided that, where the property is sold free from incumbrances, the buyer may retain out of the purchase-money the amount of the incumbrances on the property existing at the date of the transfer, and shall pay the amount so retained to the persons entitled thereto ;

Bill III, s. 13 (j).

(3) where the ownership of the property has passed to the buyer, to bear any loss arising from

the destruction, injury or decrease in value of the property not caused by the seller;

Bill III, s. 15. (4) where the ownership of the property has passed to the buyer, as between himself and the seller, to pay all public charges and rent which may become payable in respect of the property, the principal moneys due on the incumbrances subject to which the property is sold, and the interest thereon afterwards accruing due.

(*d*). The buyer is entitled—

Bill III, s. 12 (c). (1) where the ownership of the property has passed to him, to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof;

Bill III, s. 12 (c). (2) unless he has improperly declined to accept delivery of the property, to a charge on the property as against the seller and all persons claiming under him with notice of the payment, to the extent of the seller's interest on the property, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery and for interest on such amount; and when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission.

Bill III, s. 13. An omission to make such disclosures as are mentioned in this section, paragraph (*a*), clause (1), and paragraph (*c*), clause (1), is fraudulent.

Bill III, s. 19. **56.** Where 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.

Sale of one of two properties subject to a common charge.

CHAPTER IV.

OF MORTGAGES OF IMMOVEABLE PROPERTY AND CHARGES.

Bill II, s. 25: Bill III, s. 21: Act XVIII of 1866, s. 19: 13 B. L. R. 146, n. 24.

57. (*a*). A mortgage is the transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.

"Mortgage," "mortgagor" and "mortgagee" defined.

The transferor is called a mortgagor, the transferee a mortgagee; the principal-money and interest of which payment is secured for the time being are called the mortgage-money, the interest transferred is called the mortgaged property, and the instrument (if any) by which the transfer is effected is called a mortgage-deed.

(*b*). Where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage-money and agrees, expressly or impliedly, that, in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold and the proceeds of sale to be applied, so far as may be necessary, in payment of the mortgage-money, the transaction is called a simple mortgage and the mortgagee a simple mortgagee.

Simple mortgage.

Moo. I. A. 275, 306. Colebs. Dig. B. i, c. III, t. 96.

(*c*). Where the mortgagor ostensibly sells the mortgaged property—

Mortgage by conditional sale.

on condition that on default of payment of the mortgage-money on a certain date the sale shall become absolute, or

on condition that on such payment being made the sale shall become void, or

on condition that on such payment being made the buyer shall transfer the property to the seller,

the transaction is called a mortgage by conditional sale and the mortgagee a mortgagee by conditional sale.

(*d*). Where the mortgagor delivers possession of the mortgaged property to the mortgagee and authorises him to retain such possession until payment of the mortgage-money, and to receive the rents and profits accruing from the property and to appropriate them in lieu of interest or in payment of the mortgage-money, the transaction is called an usufructuary mortgage and the mortgagee an usufructuary mortgagee.

Usufructuary mortgage.

Macph. 8 13: 59: R. B. Ghose 318, 319: 2 Moo. I. A. 487.

(*e*). Where the mortgagor binds himself to repay the mortgage-money on a certain date, and transfers the mortgaged property absolutely to the mortgagee, but subject to a condition that he will re-transfer it to the mortgagor upon payment of the mortgage-money as agreed, the transaction is called an English mortgage.

English mortgage.

Bill II, s. 26: Bill III, s. 22: See Macph. 58: R. B. Ghose 64.

58. Where the principal money secured is one hundred rupees or upwards, a mortgage can be effected only by registered assurance signed by the mortgagor and attested by at least two witnesses.

Mortgage when to be by assurance.

Where the principal money secured is less than one hundred rupees, a mortgage may be effected either by assurance signed and attested as aforesaid or by delivery of the property.

Nothing in this section shall be deemed to render invalid mortgages made in the towns of Calcutta, Madras, Bombay, Karáchí and Rangoon, by delivery to a creditor or his agent of documents of title to immoveable property, with intent to create a security thereon.

Rights and Liabilities of Mortgagor.

Bill II, s. 28: Bill, s. 15: 3 Bom. 4[illegible]: 6 Beng. 4[illegible]: 3 Mad. 3[illegible]: 7 Mad. 3[illegible]: 14 Ves. 3[illegible]:

59. At any time after the principal money has become payable, the mortgagor, or, where there are more mortgagors than one, any of the mortgagors, has a right, on payment or tender, at a proper time and place, of

Right of mortgagor to redeem.

13 Beng. 205: N. W. P., 1868, p. 204: Bomb., 237: no redemption before expiration of period named. Redemption after fixed time has expired, 9 Bom. 69. See 7 Ben. 186 (P.C.)

the mortgage-money, to require the mortgagee (*a*) to deliver the mortgage-deed, if any, (*b*) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor, and (*c*) at the cost of the mortgagor either to re-transfer the mortgaged property to him or to such person as he may direct, or to execute and (where the mortgage has been effected by registered assurance) to have registered 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 right conferred by this section has not been extinguished by act of the parties or by order of a Court.

The right conferred by this section is called a right to redeem, and a suit to enforce it is called a suit for redemption.

Nothing in this section shall be deemed to render invalid any provision to the effect that, if the time fixed for payment of the principal money has been allowed to pass or no such time has been fixed, the mortgagee shall be entitled to reasonable notice before payment or tender of such money.

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. 92: N. W. P., 1873, p. 148: 2 B. Ghose 198: 15 Bengal 303.

Nothing in this section shall entitle a person interested in a share only of the mortgaged property to redeem his own share only, on payment of a proportionate part of the amount remaining due on the mortgage, except where a mortgagee, or, if there are more mortgagees than one, all such mortgagees, has or have acquired, in whole or in part, the share of a mortgagee.

Redemption of portion of mortgaged property.

Bill II, s. 33: Bill III, s. 23: Contra, Bom. A. C. J. 90. But see 2 B. L. R. O. C. 230, 231.

60. If the owner of two or more properties makes separate mortgages on them by separate assurances, each mortgage may, in the absence of a contract to the contrary, be dealt with irrespectively of the other, though the mortgages are made 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.

Bill III, s. 28, clause (*c*).

61. In the case of a usufructuary mortgage, the mortgagor has a right to recover possession of the property—

Right of usufructuary mortgagor to recover possession.

(*a*) where the mortgagee is authorized to pay himself the mortgage-money from the rents and profits of the property,—when such money is paid;

(*b*) where the mortgagee is authorized to pay himself from such rents and profits the interest of the principal money,—when the term (if any) prescribed for the payment of the mortgage-money has expired and the mortgagor pays or tenders to the mortgagee the principal money or deposits it in Court as hereinafter provided.

Bill II, s. 35: 10 Bom. 369; 11 Bomb. 32: I. L. R. 5 Calc. 198.

62. Where mortgaged property in possession of the mortgagee has, during the continuance of the mortgage, received any accession, the mortgagor, upon redemption, shall, in the absence of a contract to the contrary, be entitled as against the mortgagee to such accession.

Accession to mortgaged property.

Where such accession has been acquired at the cost of the mortgagee, and is capable of separate possession or enjoyment without detriment to the principal property, the mortgagor desiring to take the accession must pay to the mortgagee the cost of acquiring it. If such separate possession or enjoyment is not possible, the accession must be delivered with the property, the mortgagor being liable in the case of an acquisition necessary to preserve the property from destruction, forfeiture or sale, or made with his assent, to pay the proper cost thereof, as an addition to the principal money, at the same rate of interest.

Accession acquired in virtue of transferred ownership.

In the case last mentioned the profits, if any, arising from the accession shall be credited to the mortgagor.

Where the mortgage is usufructuary and the accession has been acquired at the cost of the mortgagee, the profits, if any, arising from the accession shall, in the absence of a contract to the contrary, be set off against interest, if any, payable on the money so expended.

Illustration.

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 on payment of their cost.

10 Bom; 369, 371, and see N. W. P., 1866, p 261.

63. Where the mortgaged property is a lease for a term of years, and the mortgagee obtains a renewal of the lease, the mortgagor, upon redemption, shall, in the absence of a contract by him to the contrary, have the benefit of the new lease.

Renewal of mortgaged lease.

Bill II, s. 36:

64. In the absence of a contract to the contrary, the mortgagor shall be deemed to contract with the mortgagee,

Implied contracts by mortgagor.

N. W. P., 1867, p. 1[illegible]

(*a*) that the interest which the mortgagor assumes to transfer to the mortgagee subsists, and that the mortgagor has power to transfer the same;

(*b*) that the mortgagor will defend, or, if the mortgagee be in possession of the mortgaged property, enable him to defend, the mortgagor's title thereto;

S. D. A., 1[illegible] p. 1[illegible] p. 575.

(*c*) that the mortgagor will, so long as the mortgagee is not in possession of the mortgaged property, pay all public charges accruing due in respect of the property;

(*d*) and, where the mortgaged property is a lease for a term of years, that the rent payable under the lease, the conditions contained therein, and the contracts binding on the lessee have been

paid, performed and observed down to the commencement of the mortgage; and that the mortgagor will, so long as the security exists and the mortgagee is not in possession of the mortgaged property, pay the rent reserved by the lease, or, if the lease be renewed, the renewed 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;

(*e*) and, where the mortgage is a second or subsequent incumbrance on the property, that the mortgagor will pay the interest from time to time accruing due on each prior incumbrance as and when it becomes due, and will at the proper time discharge the principal money due on such prior incumbrance.

Nothing in clause (*c*), or in clause (*d*), so far as it relates to the payment of future rent, applies in the case of an usufructuary mortgage.

Bill II, s. 31: *King* v. *Smith* 2 Hare 243.

65. 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, 144.

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.

Lewin on Trusts, p. 283.

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.

66. In the absence of a contract to the contrary, the mortgagee has, 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 or deposited as hereinafter provided, a right to obtain from the Court an order that the mortgagor shall be absolutely debarred of his right to redeem the property, or an order that the property be sold.

Right to foreclosure or sale.

A suit to obtain an order that a mortgagor shall be absolutely debarred of his right to redeem the mortgaged property is called a suit for foreclosure.

Nothing in this section shall be deemed—

Simple mortgagee, R. W. P., 1880, p. 164: Usufructuary, N. W. P., 1875, p. 55.

(*a*) to authorize a simple mortgagee as such to institute a suit for foreclosure, or an usufructuary mortgagee as such to institute a suit for foreclosure or sale, or a mortgagee by conditional sale as such to institute a suit for sale; or

Fishr 518, 557: Qy. as to conditional mortgagees.

(*b*) to authorize a mortgagor who holds the mortgagee's rights as his trustee or legal representative and who may sue for a sale of the property to institute a suit for foreclosure; or

(*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

(*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: unless the mortgagees have, with the consent of the mortgagor, severed their interests under the mortgage.

Cases *contra*, Macph. 195, 196.

67. The mortgagee has a right to sue the mortgagor for the mortgage-money in the following cases only:—

Bill II, s. 38: Bill III, s. 34.

Right to sue for mortgage-money.

(*a*) where the mortgagor binds himself to repay the same:

6 W. R. 288.

(*b*) where the mortgagee is deprived of the whole or part of his security by or in consequence of the wrongful act or default of the mortgagor:

Macph. 256: Act XXXIII of 1871, s. 46: 25 W. R. 7 (partial deprivation).

(*c*) where the mortgagee being entitled to possession of the property, the mortgagor fails to deliver the same to him, or to secure the possession thereof to him without disturbance by the mortgagor or any other person.

4 Moo. I. A. 464: Marsh, 209: 7 S. D. A. 47 N. W. P., 1860, p. 28: So in the case of a Kánam mortgage, 2 Mad. 315: 6 W. R. 283 (power to usufructuary mortgagee).

Where, by any cause other than the wrongful act or default of the mortgagor or mortgagee, the mortgaged property has been wholly or partially destroyed, or the security is rendered insufficient as defined in section sixty-five, the mortgagee may require the mortgagor to give him within a reasonable time another sufficient security for his debt, and, if the mortgagor fails so to do, may sue him for the mortgage-money.

Bill II, s. 39: Bill, s. 24: 8 Bom. A. C. J. 142: Muhammadan law, Macph. 2.

68. 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*—

Power of sale when invalid.

(*a*) the principal money originally secured is five hundred rupees or upwards; or

(*b*) the mortgagee is the Secretary of State for India in Council; or

(*c*) the mortgaged property or any part thereof is situate within the towns of Calcutta, Madras, Bombay, Karáchí or Rangoon.

Act No. XXVIII of 1866, section 6, is repealed so far as it is inconsistent with this section.

Bill II, s. 40: 11 Bomb. 33: I. L. R. 5 Calc. 198.

69. 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, shall, for the purposes of the security, be entitled to such accession.

Accession to mortgaged property.

Illustrations.

(*a*). A mortgagee 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.

Bill I I, s. 38.

70. When the mortgaged property is a lease for a term of years, and the mortgagor 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.

71. When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property, he may spend such money as is necessary—

Rights of mortagagee in possession.

Macph. 109, 113, 252: 1 Bomb. 199, 203: 6 Bomb. A. C. J. 109, 116.

(*a*) for the due management of the property and the collection of the rents and profits thereof;

N. W. P., 1867, p. 187.

(*b*) for its preservation from destruction, forfeiture or sale;

1 W. R. 133.

(*c*) for supporting the mortgagor's title to the property;

(*d*) for making his own title thereto good against the mortgagor; and

11 Moo. I. A. 241.

(*e*) 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, and such money to the principal-money, at the rate of interest payable on the principal, and where no such rate is fixed at the rate of nine per cent. per annum.

23 & 24 Vic, c. 145, s. 11: 2 Dav. 606.

Where the property is by its nature insurable at ordinary rates, the mortgagee may also, 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 principal-money at the same rate of interest.

Bill II, s. 45: Bill III, s. 42: Macph. 113, 244: 1 W. R. 270: 16 W. R. 222.

72. Where mortgaged property is sold through failure to pay arrears of revenue or rent due in respect thereof, 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, unless the sale has been occasioned by some default on his part.

Charge on proceeds of revenue-sale.

Bill II, s. 49: Bill III, s. 43: Bill, ss. 35, 36, 37: Report, ss. 31, 32.

73. Any second or other subsequent mortgagee may, at any time after the amount due on the next prior mortgage has become payable, tender such amount to the next prior mortgagee, and such mortgagee is bound to accept such tender and to give a receipt for such amount; and (subject to the provisions of the law for the time being in force regulating the registration of documents) the subsequent mortgagee shall, on obtaining such receipt, acquire, in respect of the property, all the rights and powers of the mortgagee, as such, to whom he has made such tender.

Right of subsequent mortgagee to pay off prior mortgagee.

Bill III, s. 44.

74. Every second or other subsequent mortgagee has, so far as regards redemption, foreclosure and sale of the mortgaged property, the same rights against the prior mortgagee or mortgagees as his mortgagor has against such prior mortgagee or mortgagees, and the same rights against the subsequent mortgagees (if any) as he has against his mortgagor.

Rights of mesne mortgagee against prior and subsequent mortgagees.

Bill III, s. 39.

75. When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property,—

Liabilities of mortgagee in possession.

2 Bomb. 228: Act IX of 1872, s. 151: Fisher, s. 1530.

(*a*) he must manage the property as a person of ordinary prudence would manage it if it were his own;

8 Chan. Div. 427: N. W. P., 1875, p. 100.

(*b*) he must use his best endeavours to collect the rents and profits thereof;

2. Bomb. 231.

(*c*) he must, 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 of default of payment of which the property may be summarily sold;

Macph. 113, 119.

9 W. R. 488: 4 Y. & C. Appendix, 607: Fisher, s. 1580.

(*d*) he must, 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 principal-money.

Bill II, s. 44: III, s. 41: Bill, s. 18 altered: Macph. 118, 119, citing 7 N. W. P. 436: 9 N. W. P. 1 Act I of 1877, s. 9.

(*e*) he must not commit any act which is destructive or permanently injurious to the property;

(*f*) where he has insured the whole or any part of the property against loss or damage by fire, he must, in case of such loss or damage, apply any money which he actually receives under the policy, or so much thereof as may be necessary, in reinstating the property;

2 Beng. P. C. 56: 5 W. R. 88: 271, Ecur: Macph. 219.

(*g*) he must 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. 53: 10 Beng. 396: N. W. P., 1866, p. 189: *ibid*, 1868, p. 153: When he becomes trustee, 7 W. R. 244: R. B. Ghose, 282.

(*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*) and (*e*), 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 Mad. 1: 4 Cal. 1.

(*i*) when the mortgagor tenders, or deposits in manner hereinafter provided, the amount for the

Macph. 160.

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.

76. Nothing in section seventy-five, clauses (*b*), (*d*), (*g*) and (*h*), applies to cases where there is a contract between the mortgagee and the mortgagor that the receipts from the mortgaged property shall, so long as the mortgagee is in possession of the property, be taken in lieu of interest on the principal-money, or of such interest and defined portions of the principal.

Priority.

Bill II, s. 46; III, s. 44: Evidence Act, s. 115: N. W. P., 1868, p. 402: 4 Mad. 373: 2 Moo. I. A. 487: 11 W. R. 286: 2 Bom. A. C. J. 50, 55: Seeta in Gunput, 12 Bom. Bill II, s. 47; III, s. 25: Bill, s. 34: Report, s. 29.

Postponement of prior mortgagee.

77. Where, through the fraud, misrepresentation 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.

Mortgage to secure uncertain amount when maximum is expressed.

78. If a mortgage made to secure future advances, the performance of an engagement or the balance of a running account expresses the maximum to be secured thereby, a subsequent mortgage of 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. 46; III, s. 44: Bill, s. 38: Report, s. 34: 2 Beng. App. 45: 6 Beng. 463: 11 W. R. 310.

Tacking abolished.

79. 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 seventy-eight, 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.

Fisher 704: Bill II, s. 50: III, s. 47: W. R. 1864, p. 374: 1 W. R. 353: 7 W. R. 483: 12 W. R. 114: Macph. 205. Macph. 136.

Marshalling securities.

80. 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, in the absence of a contract to the contrary, 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 acquired for valuable consideration an interest in either property.

Bill III, s. 48: Fisher 700.

Contribution to mortgage-debt.

81. Where several properties, whether of one or several owners, are mortgaged to secure one debt, each property is, in the absence of a contract to the contrary, liable to 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 at the date of the mortgage.

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 is, in the absence of a contract to the contrary, liable to 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.

Fisher 701.

Nothing in this section applies to a property liable under section eighty to the claim of the second mortgagee.

Deposit in Court.

Bill III, s. 38: Beng. Reg. 1 of 1798, s. 2: Macph. 171.

Power to deposit in Court money due on mortgage.

82. At any time after the principal-money has become payable and before a suit for redemption of the mortgaged property is barred, the mortgagor, or any other person entitled to institute such suit, may deposit, in any Court in which he might have instituted such suit, to the account of the mortgagee, the amount remaining due on the mortgage.

Bill II, s. 55: III, s. 23: Bill, s. 15, clause (*c*): Beng. Reg. 1 of 1798, s. 2: Macph. 171.

Right to money deposited by mortgagor.

The Court shall thereupon cause written notice of the deposit to be served on the mortgagee, and the mortgagee may, on presenting a petition (verified in manner prescribed by law for the verification of plaints) stating the amount then due on the mortgage, and his willingness to accept the money so deposited in full discharge of such amount, and on depositing in the same Court the mortgage-deed if then in his possession or power, apply for and receive the money, and the mortgage-deed so deposited shall be delivered to the mortgagor or such other person as aforesaid.

9 N. W. P. 1: Macph. 159, 160 Bill III, s. 32.

Cessation of interest.

83. When the mortgagor or such other person as aforesaid has tendered or deposited in Court under section eighty-two the amount remaining due on the mortgage, interest on the principal-money shall cease from the date of the tender or as soon as the mortgagor or such other person as aforesaid has done all that has to be done by him to enable the mortgagee to take such amount out of court, as the case may be.

Nothing in this section or in section eighty-two shall be deemed to deprive the mortgagee of his right to interest when there exists a contract that he shall be entitled to reasonable notice before payment or tender of the mortgage-money.

Suits for Foreclosure, Sale or Redemption.

Bill II, s. 52: III, s. 49: 14 Moo. I. A. 101: 1 W. R. 176: 21 W. R. 423: explained by Macph. 146: Seton 1, 442, see Act X of 1877, s. 32: 5 Bomb. O. C. J. 76 (legal representative of deceased mortgagor): 8 Beng. 104 (purchaser from mortgagor): Marshall 193, claimants of right of redemption, N. W. P. 1868, p. 144.

Parties to suits for foreclosure, sale and redemption.

84. Subject to the provisions of the Code of Civil Procedure, section 437, all persons having an interest in the property comprised in a mortgage must be joined as parties to any suit under this chapter relating to such mortgage: provided that the plaintiff has notice of such interest.

Bill II, s. 53: III, s. 50: Bill, s. 19.

Foreclosure and Sale.

Decree in foreclosure-suit.

85. In a suit for foreclosure, if the plaintiff succeed, the Court shall make 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, if any, awarded to him, 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 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 property; but

that, if the payment is not made on or before the day to be fixed by the Court, the defendant shall be absolutely debarred of all right to redeem the property.

Bill II, sec. 55.

Decree for sale.

87. In a suit for sale, if the plaintiff succeed, the Court shall pass a decree to the effect mentioned in the first and second paragraphs of section eighty-five, and also ordering that, in default of the defendant paying 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.

In a suit for foreclosure, if the plaintiff succeed, the Court may at his instance pass a like decree in lieu of a decree for foreclosure.

Bill, s. 21: 15 & 16 Vic. c. 86, s. 48.

Power to decree sale in foreclosure-suit at instance of mortgagor.

When the mortgagee sues only for foreclosure, and not for foreclosure or sale, if the Court consider that he will not be damnified by a sale and if the defendant furnishes such security as the Court thinks sufficient for the full and prompt 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 II, s. 56.

Procedure when defendant pays amount due.

88. If in any case under section eighty-seven the defendant pays to the plaintiff or into court on the day fixed as aforesaid the amount due under the mortgage, the costs, if any, awarded to him and such subsequent costs as are mentioned in section ninety-three, the defendant 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

Bill II, s. 54.

Procedure in case of payment of amount due.

86. If payment is made of such amount and of such subsequent costs as are mentioned in section ninety-three, the defendant shall (if necessary) be put into possession of the mortgaged property.

If such payment is not so made, the plaintiff may

Order absolute for foreclosure.

apply to the Court for an order that the defendant and all persons claiming through or under him be debarred absolutely of all right to redeem the mortgaged property, and the Court shall then pass such order, and may, if necessary, deliver possession of the property to the plaintiff.

W. R. 91.

Power to enlarge time.

Provided that the Court may, upon good cause shewn, and upon such terms, if any, as it thinks fit, from time to time postpone the day appointed for such payment.

On the passing of an order under the second paragraph of this section the debt secured by the mortgage shall be deemed to be discharged.

In the Code of Civil Procedure, schedule IV, No. 129, for the words "Final decree," the words "Decree absolute" shall be substituted.

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 eighty-seven; and thereupon the defendant's right to redeem and the security shall both be extinguished.

Order absolute for sale.

Bill III, s. 54: Bill, s. 23: Kent IV, 207.

89. 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 legally recoverable from 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: Bill III, s. 55.

90. Besides the mortgagor, any of the following persons may redeem, or institute a suit for redemption of, the mortgaged property:—

Who may sue for redemption.

(*a*) any person (other than the mortgagee of the interest sought to be redeemed) having any interest in or charge upon the property;

3 W. R. 230: 6 W. R. 230, &c.: But see 17 W. R. 272.

(*b*) any person having any interest in, or charge upon, the right to redeem the property;

(*c*) any surety for the payment of the mortgage-debt or any part thereof;

(*d*) the guardian of the property of a minor mortgagor on behalf of such minor;

(*e*) the committee or other legal curator of a lunatic or idiot mortgagor on behalf of such lunatic or idiot;

(*f*) the judgment-creditor of the mortgagor, when he has obtained execution;

Fisher, 768.

(*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: III, s. 56: Bill, s. 25: See Code, C. P., section 461. N. W. P., 1870, p. 207.

91. 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 the mortgage-money and for his costs of the suit, if any, awarded to him, 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 re-transfer 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;

that if such payment is not made on or before the day to be fixed by the Court, the plaintiff shall (unless the mortgage be simple or usufructuary) be absolutely debarred of all right to redeem the property, or (unless the mortgage be by conditional sale) that the property be sold.

92. If payment is made of such amount and of such subsequent costs as are mentioned in section ninety-three, the plaintiff shall, if necessary, be put into possession of the mortgaged property.

Bill II, s. 60.

In case of redemption, possession.

If such payment is not so made, the defendant may (unless the mortgage is simple or usufructuary) apply to the Court for an order that the plaintiff and all persons claiming through or under him be debarred absolutely of all right to redeem, or (unless the mortgage is by conditional sale) for an order that the mortgaged property be sold.

In default, foreclosure or sale.

If he apply for the former order, the Court shall pass an order that the plaintiff and all persons claiming through or under him be absolutely debarred of all right to redeem the mortgaged property, and may, if necessary, deliver possession of the property to the defendant.

If he apply for the latter order, 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, as regards the property affected by the order, both be extinguished:

Provided that the Court may, upon good cause shown, and upon such terms, if any, as it thinks fit, from time to time postpone the day fixed under section ninety-one for payment of the amount due.

Power to enlarge time.

93. 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. 65: Bill, s. 30.

Costs of mortgagee subsequent to decree.

94. Where one of several mortgagors redeems the mortgaged property and obtains possession thereof, he has a charge on the share of each of the other co-mortgagors in the property for his proportion of the costs properly incurred in so redeeming and obtaining possession.

Macph. 145.

Charge of one of several co-mortgagors who redeems.

Sale of Property subject to prior Mortgage.

Bill II, s. 65: III, s. 60: Bill, s. 32: Report, s. 25, altered: Act X of 1877, s. 295.

95. 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: III, s. 61: Bill, s. 33: See Act X of 1877, s. 295.

96. 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. 'No precise form is required for a mortgage,' 5 Beng. 272, per Couch, C. J.

97. In the case of a mortgage not being a simple mortgage, a mortgage by conditional sale, an usufructuary mortgage, or an English mortgage, or a combination of the first and third, or the second and third, of such forms, 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.

Mortgage not described in section 58, clauses (*b*), (*c*), (*d*) and (*e*).

Attachment of Mortgaged property.

98. Where a mortgagee in execution of a decree for the satisfaction of any claim, whether arising under the mortgage or not, attaches the mortgaged property, he shall not be entitled to bring such property to sale otherwise than by instituting a suit under section sixty-six.

Attachment of mortgaged propety.

Charges.

Bill II, s. 68: III, s. 68: Bill, s. 41.

99. Where immoveable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property; and all the provisions hereinbefore applied to a mortgagor shall, so far as may be, apply to the owner of such property, and the provisions of sections eighty and eighty-one 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.

Charges.

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: III, s. 64: *Swinfen* v. *Swinfen*, 29 Beav. 199: *Adams* v. *Angell*, 5 Chan. D. 634, 645: 7 Mad. 231: 14 W. R. 491: 3 O'Kin. 184: 5 Beng. 463: 11 Bom. 41.

100. Where the owner of a charge or other incumbrance on immoveable property is or becomes absolutely entitled to that property, the charge or incumbrance shall be extinguished, unless he declares, by express words or necessary implication, that it shall continue to subsist, or such continuance would be for his benefit.

Extinguishment of charges.

Notice and Tender.

101. Where the person on or to whom any notice or tender is to be served or made under this chapter does not reside in the district in which the mortgaged property or some part thereof is situate, service or tender on or to an agent holding a general power-of-attorney from such person or otherwise duly authorized to accept such service or tender shall be deemed sufficient.

Service or tender on or to agent.

Where the person or agent on whom such notice should be served cannot be found in the said district, or is unknown to the person required to serve the notice, the latter person may apply to any Court in which a suit might be brought for redemption of the mortgaged property, and such Court shall direct in what manner such notice shall be served, and any notice served in compliance with such direction shall be deemed sufficient.

Where the person or agent to whom such tender should be made cannot be found within the said district, or is unknown to the person desiring to make the tender, the latter person may deposit in such Court as last aforesaid the amount sought to be tendered, and such deposit shall have the effect of a tender of such amount.

102. Where under the provisions of this chapter a notice is to be served on or by, or tender or deposit made or accepted or taken out of Court by, any person, incompetent to contract, such notice may be served or tender or deposit made accepted or taken by the legal curator of the property of such person; but where there is no such curator, and it is requisite or desirable in the interests of such person that a notice should be served or tender or deposit made under the provisions of this chapter, application may be made to any Court in which a suit might be brought for the redemption of the mortgage to appoint a guardian *ad litem* for the purpose of serving or receiving service of such notice, or making or accepting such tender, or making or taking out of Court such deposit, and for the performance of all consequential acts which could or ought to be done by such person if he were competent to contract; and the provisions of chapter XXXI of the Code of Civil Procedure shall, so far as may be, apply to such application and to the parties thereto and to the guardian appointed thereunder.

Notice, &c., to or by person incompetent to contract.

103. The High Court may, from time to time, make rules consistent with this Act for carrying out the provisions contained in this chapter.

Power to make rules.

CHAPTER V.

OF LEASES OF IMMOVEABLE PROPERTY.

104. A lease of immoveable property is a transfer of a right to enjoy such property made for a certain time express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

Lease defined.

The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent.

Lessor, lessee, premium and rent defined.

Bill II, s. 74: III, 68: Bill, s. 46: Report, s. 40: 5 Bomb. A. C. J. 179; 6 *ibid.* 31; 7 *ibid.* 111. and see 1 Beng. P. R. 25. 12 W. R. 190: 1 L. R. 3 Calc. [illegible] 11 Beng. 268: N. W. P., 1878, p. 9., Perry 480.

105. In the absence of a contract or local law or usage to the contrary, a lease of immoveable property for agricultural or manufacturing purposes shall be deemed to 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 deemed to 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.

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 to a conspicuous part of the property.

Notice to determine lease.

106. A lease of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered assurance.

Leases how made.

Bill II, s. 71: Bill III, s. 65. All other leases of immoveable property may be made either by assurance or by oral agreement.

107. 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 rules next following, or such of them as are applicable to the property leased:—

Rights and liabilities of lessor and lessee.

A.—Rights and liabilities of the Lessor.

Bill III, s. 66 6 W. R. 314. (*a*) the lessor is bound to disclose to the lessee any defect in the property, with reference to its intended use, of which the former is and the latter is not aware, and which the latter could not with ordinary care discover:

(*b*) 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.

(*c*) the lessor shall be deemed to contract with the lessee that, if the latter pays the rent reserved by the lease and performs the contracts binding on the lessee, he may hold the property leased during the time limited by the lease without interruption:

(*d*) where an arrear of rent is due from any lessee, the lessor may, instead of suing for the arrear, recover the same by distress and sale of the goods found in or upon the property in respect of which the arrear is due or of the produce of such property, but subject to the local law, if any, for the time being in force relating to distresses.

39 (2) altered: cf. IX of 1872, s. 93: 11 W.R. 228: 12 W. R. 149:

B.—Rights and liabilities of the Lessee.

(*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:

8 Beng. 73: 5 Calc. L. R. 33.

(*f*) if by fire, tempest or flood, or violence of an army or of a mob, or other irresistible force, any material part of the property leased be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let, the lease shall, at the option of the lessee, be void:

provided that, if the injury be occasioned by the wrongful act or default of the lessee, he 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 with interest from the rent, or otherwise recover it from the lessor:

(*i*) the lessee may remove, at any time during the continuance of the lease, all things which he has attached to the earth; provided he leaves the property leased in the state in which he received it:

Ex Thakoor Chunder Pa-ramanick, Beng. F. B. Rulings 595: 8 Beng. 237: 14 Beng. 201, 205:

(*j*) 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 gather and carry them:

cf. Act XIX of 1863, s. 46: Act XVIII of 1873, s. 49.

5 S. D. A. 205: 5 M ad. 120, 277. 7 Beng. 152: N. W. P., 1875, p. 181: 12 W. R. 451: 16 W. R. 112: 6 S. D. A. 67: 15 W. R. 449.

(*k*) the lessee may transfer absolutely or by way of mortgage or sub-lease 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 only of such transfer, cease to be subject to any of the liabilities attaching to the lease:

8 Beng. 239: 12 Beng. 82.

nothing in this clause shall be deemed to authorize a tenant having an untransferable 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:

(*l*) the lessee is bound to disclose to the lessor any fact as to the nature or extent of the interest which the lessee is about to take, of which the lessee is, and the lessor is not, aware, and which increases the value of such interest:

See 23 W. R. 34.

(*m*) the lessee is bound to pay or tender, at the proper time and place, the premium or rent to the lessor or his agent in this behalf:

(*n*) 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 the changes caused by reasonable wear and tear or irresistible force, 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 give or leave notice of any defect in such condition, and, when such defect has been caused by any act or default on the part of the lessee, his servants or agents, he is bound to make it good within three months after such notice has been given or left:

(*o*) if the lessee 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, he is bound to give, with reasonable diligence, notice thereof to the lessor:

3 Beng. 401, 418: 8 Beng. Appendix 70: 10 Beng. App. 41. and v. 6 S. D. A. 305: 16 W. R. 360, 17 W. R. 416: 20 W. R. 253: W. R. 86, (1864) 93: 3 Ch. Ca. 526. 6 Beng. 443: 14 & 15 Vic. c. 99. s. 2.

(*p*) the lessee may use the property leased and its products (if any) as a person of ordinary prudence would use them if they were his own; but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or fell timber, pull down or damage buildings, work mines or quarries not open when the lease was granted, or commit any other act which is destructive or permanently injurious thereto:

(*q*) he must not, without the lessor's consent, erect on the property leased any permanent structure, except for agricultural purposes:

(*r*) on the determination of the lease, the lessee is bound to put the lessor into possession of the property leased.

108. If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, 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:

14 W. R. 83. 24 W. R 68.

Rights of lessor's transferee.

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 (subject to the provisions of section thirty-eight) determine what proportion of the premium or rent reserved by the lease is payable in respect of the part so transferred.

Bill II, s. 72.

109. 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 terminable before its expiration, and the lease omits to mention at whose option it is so terminable, the lessee, and not the lessor, shall have such option.

Option to determine lease.

110. A lease of immoveable property determines—

Determination of lease.

Bill II, s. 76: 7 W. R. 252.

(*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:

3 Moo. I. A. 261: 16 W. R. 142.

(*c*) where the interest of the lessor in the property leased terminates on, or his power to dispose of the same extends only to, the happening of any event—by the happening of such event:

Lease by Hindu widow, Marshall 166.

(*d*) 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. 130. But see per Pearson, Ch. 10 W. R. [illegible]

(*e*) by express surrender; that is to say, in case

Surrender of right to re-

the lessee yields up his interest under the lease to the lessor, by mutual agreement between them:

(*f*) by implied surrender:

(*g*) 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 showing his intention to determine the lease:

(*h*) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.

Illustration to clause (f).

A, the lessee, accepts from the lessor a new lease of the property leased, to take effect during the continuance of the existing lease. This is an implied surrender of the former lease, and such lease determines thereupon.

111. A forfeiture under section one hundred and ten, clause (*g*), 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:

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.

112. A notice given under section one hundred and ten, clause (*h*), is waived, with the express or implied consent of the person to whom it is given, by any act on the part of the person giving it showing an intention to treat the lease as subsisting.

Waiver of notice to quit.

Illustrations.

(*a*). A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires. B tenders, and A accepts, rent which has become due in respect of the property since the expiration of the notice. The notice is waived.

(*b*). A, the lessor, gives B the lessee, notice to quit the property leased. The notice expires, and B remains in possession. A gives to B as lessee a second notice to quit. The first notice is waived.

113. 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.

114. 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, on terms and conditions substantially the same (except as regards the amount of rent) as those of the original lease; 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, except where such forfeiture has been procured by the lessor in fraud of the under-lessees.

115. 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 one hundred and seven.

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.

116. None of the provisions of this chapter apply to leases for agricultural purposes, except in so far as the local Government, with the previous sanction of the Governor General in Council, may by notification published in the official Gazette declare all or any of such provisions to be so applicable, together with, or subject to, those of the local law, if any, for the time being in force.

Exemption of leases for agricultural purposes.

Such notification shall not take effect until the expiry of six months from the date of its publication.

CHAPTER VI.

OF EXCHANGES.

117. When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing or both things being money only, the transaction is called an "exchange."

"Exchange" defined.

A transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale.

118. In the [illegible] a contract to the consideration, the party deprived of the thing or part thereof he has received in exchange defect in the title of the other his option to compensation or of the thing transferred by him.

[illegible]

119. 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.

120. On an exchange of money, each party thereby warrants the genuineness of the money given by him.

Exchange of money.

CHAPTER VII.

OF GIFTS.

121. "Gift" is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

"Gift" defined.

Such acceptance must be made during the lifetime of the donor and while he is still capable of giving.

Acceptance when to be made.

If the donee dies before acceptance, the gift is void.

122. For the purpose of making a gift of immoveable property, the transfer must be effected by registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.

Transfer how effected.

For the purpose of making a gift of moveable property, the transfer may be effected either by a non-testamentary instrument [registered and] signed as aforesaid or by delivery.

Such delivery may be made in the same way as goods sold may be delivered.

123. A gift comprising both existing and future property is void as to the latter.

Gift of existing and future property.

124. A gift of a divisible thing to two or more donees, of whom one does not accept it, is void as to the interest which he would have taken had he accepted.

Gift to several, of whom one does not accept.

125. The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor the gift shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part at the mere will of the donor is void wholly or in part, as the case may be.

A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded.

Save as aforesaid, a gift cannot be revoked.

Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice.

Illustrations.

(*a*). A gives a field to B, reserving to himself, with B's assent, the right to take back the field in case B and his descendants die before A. B dies without descendants in A's lifetime. A may take back the field.

(*b*). A gives a lákh of rupees to B, reserving to himself, with B's assent, the right to take back at pleasure Rs. 10,000 out of the lákh. The gift holds good as to Rs. 90,000, but is void as to Rs. 10,000, which continue to belong to A.

126. Where a gift is in the form of a single transfer to the same person of several things of which one is, and the others are not, burdened by an obligation, the donee can take nothing by the gift unless he accepts it fully.

Onerous gifts.

Where a gift is in the form of two or more separate and independent transfers to the same person of several things, the donee is at liberty to accept one of them and refuse the others, although the former may be beneficial and the latter onerous.

A donee not competent to contract and accepting property burdened by any obligation is not bound by his acceptance. But if, after becoming competent to contract and being aware of the obligation, he retains the property given, he becomes so bound.

Onerous gift to disqualified person.

Illustrations.

(*a*). A has shares in X, a prosperous joint stock company, and also shares in Y, a joint stock company in difficulties. Heavy calls are expected in respect of the shares in Y. A gives B all his shares in joint stock companies. B refuses to accept the shares in Y. He cannot take the shares in X.

(*b*). A, having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term, and which is more than the house can be let for, gives to B the lease, and also, as a separate and independent transaction, a sum of money. B refuses to accept the lease. He does not by this refusal forfeit the money.

127. Subject to the provisions of section one hundred and twenty-six, where a gift consists of the donor's whole property, the donee is personally liable for all the debts due by the donor at the time of the gift to the extent of the property comprised therein.

Universal donee.

128. Nothing in this chapter relates to gifts of moveable property made in contemplation of death, or shall be deemed to affect any rule of Muhammadan law.

Saving of donations *mortis causâ* and Muhammadan law.

CHAPTER VIII.

OF TRANSFERS OF ACTIONABLE CLAIMS.

Actionable claim.

129. A claim is actionable when the civil Courts recognise it as a ground for relief, whether a suit for its enforcement is or is not actually pending or likely to become necessary.

Bill II, s. 136: Bill, s. 99: Report, s. 99: 36 & 37 Vic., c. 66, s. 25(b): 1 Mad. 150: See 6 W. R. 320; and see 10 W. R. 474, cited Macph. 198.

Transfer of debts.

130. No transfer of 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 is given to him, unless he is a party to such transfer; and every dealing by such debtor or person, not being a party to, and not having received express notice of, a transfer, with the debt or property shall be valid as against such transfer.

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.

Notice to be in writing signed.

131. Every such notice must be in writing signed by the person making the transfer, or by his agent duly authorized in this behalf.

Bill II, s. 138: Fisher, 116: Mulad v. Ramlal 10 Jur. N. S. 1165.

Debtor to give effect to transfer.

132. On receiving such notice, the debtor or person in whom the property is vested shall give effect to the transfer 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 is made is not complete according to the law of such country.

Warranty of solvency of debtor.

133. Where the transferor of a debt warrants the solvency of the debtor, the warranty, in the absence of a contract to the contrary, applies only to his solvency at the time of the transfer, and is limited, where the transfer is made for consideration, to the amount or value of such consideration.

134. Where an actionable claim is sold, he against whom it is claimed is wholly discharged by paying to the buyer the [illegible] of the sale, with interest on the same from the day that the buyer paid it.

Nothing in the former part of this section applies—

(*a*) where the sale is made to the co-heir or co-proprietor of the claim sold;

(*b*) where it is made to a creditor in payment of what is due to him;

(*c*) where it is made to the possessor of a property subject to the actionable claim;

(*d*) where the judgment of a competent Court has been delivered affirming the claim, or where the claim has been made clear by evidence and is ready for judgment.

Incapacity of officers connected with Courts of justice.

135. No judge, pleader, clerk, bailiff or other officer connected with Courts of justice can buy any actionable claim falling under the jurisdiction of the Court in which he exercises his functions.

Bill II, s. 139: *Mangles v. Dixon*, 3 H. L. Ca. 702: Fisher, s. 1058.

Liability of transferee of debt.

136. 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.

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, Pars. 2, Dav. Conv. II, 601, 609.

Mortgaged debt.

137. When a debt is transferred for the purpose of securing 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.

Bill II, s. 140.

Saving of negotiable instruments.

138. Save as provided by section one hundred and thirty-seven, nothing in this chapter applies to negotiable instruments.

THE SCHEDULE.

(*a*). STATUTE.

Year and chapter.	Subject.	Extent of repeal.
27 Hen. VIII, c. 10.	Uses	The whole.
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.

(*b*). ACTS OF THE GOVERNOR GENERAL IN COUNCIL —*contd.*

Number and year.	Subject.	Extent of repeal.
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,
Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[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 11th March, 1881:—

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, together with the part of the report of the late Indian Law Commission which deals with the Bill as settled in March, 1879.

From Chief Secretary to Government, Bombay, No. 1635, dated 25th March, 1879 [Paper No. 22].
„ J. W. Best, Esq., District and Sessions Judge, South Kanára, No. 8, dated 3rd April, 1879 [Paper No. 23].
„ Officiating Secretary to Chief Commissioner, Mysore, No. 751—11, dated 26th April, 1879 [Paper No. 24].
„ Secretary for Birár to Resident Haidarábád, No. 6, dated 5th May, 1879 [Paper No. 25].
„ Secretary to Chief Commissioner, Assam, No. 755, dated 2nd May, 1879 [Paper No. 26].
„ Acting Chief Secretary to Government, Bombay, No. 2629, dated 19th May, 1879 [Paper No 27].
„ Chief Commissioner, Ajmer and Merwára, No. 388, dated 21st May, 1879, and enclosure [Papers No. 28].
„ Assistant Secretary to Chief Commissioner, Central Provinces, No. 2222—113, dated 19th May, 1879 [Paper No. 29].
Translation of Memorial from Dabí Pershád and others, zamíndárs, Raipur, No. 8, dated 3rd May, 1879 [Paper No. 30].
From Under Secretary to Government, Bengal, No. 1234—516 LR, dated 27th May, 1879, and enclosure [Papers No. 31].
„ Secretary to Government, Panjáb, No. 160C, dated 19th June, 1879, and enclosures [Papers No. 32].
„ Acting Chief Secretary to Government, Madras, No. 1322, dated 6th June, 1879, and enclosures [Papers No. 33].
„ Certain inhabitants of Elás, Broach District, dated 15th June, 1879 [Paper No. 34].
„ Acting Chief Secretary to Government, Madras, No. 1387, dated 13th June, 1879, and enclosures [Papers No. 35].
„ Acting Chief Secretary to Government, Madras, No. 1401, dated 16th June, 1879, and enclosures [Papers No. 36].
„ Acting Chief Secretary to Government, Madras, No. 1508, dated 26th June, 1879, and enclosures [Papers No. 37].
„ Officiating Secretary to Chief Commissioner, British Burma, No. 310, dated 10th July, 1879 [Paper No. 34].
„ Secretary to Government, North-Western Provinces and Oudh, No. 1709, dated 4th August, 1879, and enclosures [Papers No. 39].
Note by D. Fitzpatrick, Esq., Secretary to the Government of India, Legislative Department, dated 22nd January, 1881, and enclosures [Papers No. 40].

2. We have carefully considered the alternative drafts proposed by Sir C. Turner and Mr. Justice West, but we cannot recommend either of them for adoption. Sir C. Turner's has the advantage of simplifying the measure in certain respects, but this advantage is gained by leaving it to the Courts to decide questions of great importance and difficulty at their mere discretion and without any rules to guide them.

3. We think that the Bill submitted to the Law Commission will answer its purposes, subject only to two alterations in substance, namely, the substitution of one simple rule for the several rules originally proposed for determining the manner in which newly formed land, to which it is admitted the riparian owners are entitled, should be distributed among them, and a modification of the definition of frontage.

4. As regards the former, it seems to us that the rules laid down by the Bill as last settled for deciding disputes between competing riparian owners and dividing the new land between them would be likely to give rise to difficulties in practice.

These rules are different for rivers on the one hand, and the sea and lakes on the other; and again, for islands, for land formed on the bank and for abandoned river-beds. These distinctions not only make the law more complicated, but, further, may give rise to questions for the solution of which that Bill does not altogether provide. Again, in some instances (sections 4 and 6), they merely postpone the evil day by leaving important difficulties to be disposed of by rules to be made hereafter by the Local Governments. Further, they greatly complicate the question by making its solution depend on the "thread of the stream," a line or combination of lines which it would often be hard to determine, and which might, when determined, turn out to be of a very irregular shape; and, as regards the particular matter of the normals to be drawn under sections 7 and 9, it appears that cases would sometimes present themselves in practice in which no such normals could be drawn.

5. To avoid these difficulties we propose to substitute for the original provisions of the Bill on this point, two rules which will cover all cases in which two or more riparian owners may be conceived to have claims to a new formation. The first of these rules is intended to apply to all cases in which new land is formed on a bank by imperceptible increments; the second to all other formations to which riparian owners may have a claim.

6. The former class of cases appears to us to be simple enough. We conceive that, when land is formed by imperceptible degrees on a portion of the bank belonging to a single proprietor, he should take that land in whatever direction and to whatever extent it may grow. It is only when the formation, or any portion of it, springs from a nucleus at the point of junction of two frontages that any question can arise, and we have (section 4) provided that in this case the dividing line shall be the bisector of the angle between the two frontages.

7. The cases to be dealt with by the second rule, on the contrary, may present every variety of complication, but we think they may be provided for by a rule which is capable of being simply expressed, which would generally be easy to apply, and about the application of which there would never be any serious difficulty, and which, moreover, would make as fair a division of the new land as can be hoped for in a class of cases for which, in the absence of anything in the way of a definite principle to guide us, we must be content with a somewhat rough-and-ready rule.

The rule we propose (section 6) is that each particle of the new formation shall belong to that one of the riparian owners who can show a point in his frontage nearest to it; provided that, when the line dividing the portion of the land to which one owner is entitled from the portion to which another is entitled is an arc of a curve, the chord of such arc shall be substituted for the arc. The dividing line given by this rule will be different according to the relative positions of the two competing frontages, but it will be one which it will be always easy to draw.

In ordinary cases it will be the bisector of the angle between the frontages, or, in the case of holdings on opposite sides of a river with parallel frontages, a line parallel to the frontages and equidistant from both; in others it will be the perpendicular erected at the middle point of the line connecting the extremities of the frontages; and in others, again, it will be the chord of a parabola. As this last line might at first sight be supposed to present some difficulty, we think it well to explain that the chord can be drawn without describing the parabola, and by a person altogether ignorant of the nature and properties of that curve. It is, in fact, simply the right line connecting two points which could be fixed by any patwárí or amín without the slightest difficulty. We may add, as regards the substitution of the chord for the arc in this case, that it not only simplifies the problem, but also makes what we believe, would, by most persons be considered a fairer division of the land.

8. Coming now to the definition of "frontage," it has been pointed out to us by Mr. Elliot that the original definition would, under the Bill as last settled, sometimes lead to anomalous results, as, for example, when a riparian holding extended completely round the concave face of a sharp curve in a river, in which case the frontage might approach within a few yards of the opposite bank or even cut off a considerable portion of it. These anomalies would be increased rather than diminished under the new rule for the division of the land now adopted, and we have accordingly been compelled to seek for a new definition.

The object of introducing the "frontage" is to substitute right lines for the irregularly shaped bank of the river, and thus to simplify the application of our rules: the defect of the original definition is that, in requiring a single right line to be substituted for the entire riparian boundary of each holding, the artificial riparian boundaries thus obtained in some cases deviate too widely from the real boundaries; and the remedy appears to be to declare that in such cases, instead of the single line, a series of two, or, if necessary, more, lines following more closely the real line of the bank shall be adopted. For this we have attempted to provide in the directions given in schedule II for drawing a frontage.

9. We have struck out the definition of "owner," as we think that the Courts may be trusted to determine who in a given case is the riparian proprietor, and we have also omitted the definitions of "thread of the stream," as the expression does not occur in the body of the Bill as now settled.

10. We think that the Bill should save local customs not only in the Panjáb but in all other territories to which it is to apply. We have accordingly excluded the section effecting this saving to the whole of British India; but we have omitted the proviso annexed to it in the Bill, as settled by the Select Committee in March, 1879, as the matter to which it relates is one falling outside the scope of the present Bill.

11. The Bill, No. II, together with the Preliminary Report of the Select Committee, has been published in English in Bombay, the North-Western Provinces, the Panjáb, the Central Provinces and British Burma, and in vernacular in Bombay, the Panjáb and the Central Provinces. We do not propose that any further step should be taken in respect to the Bill until it has been published in the Gazette and circulated to Local Governments with a view to obtaining opinions on it in its new form. It must also, by order of the Secretary of State, be re-translated into the Native languages and sent home to him for consideration. In fact, having regard to the complication and difficulty of the subject, we should prefer to have our present proposals treated as suggestions thrown out for discussion rather than as furnishing a final solution of the questions at issue.

The 11th March, 1881.

WHITLEY STOKES.
RIVERS THOMPSON.
J. PITT KENNEDY.
G. C. PAUL.
B. W. COLVIN.

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 11th March, 1881, and was referred to a Select Committee:—

No. 9 OF 1881.

A Bill to amend the Dekkhan Agriculturists' Relief Act, 1879, and for other purposes.

WHEREAS it is expedient to amend, in manner hereinafter appearing, the Dekkhan Agriculturists' Relief Act, 1879, and to give effect to the registration of certain instruments executed before the said Act came into force and required to be registered under section 71 of the same Act; It is hereby enacted as follows:—

Preamble.

Short title. Commencement.

1. This Act may be called "The Dekkhan Agriculturists' Relief Act, 1881:" and shall come into force at once.

"Section."

2. In this Act "section" means a section of the Dekkhan Agriculturists' Relief Act, 1879.

Repeal of last 14 words of section 2.

3. In section two the last fourteen words shall be repealed.

Amendment of section 19.

4. In section nineteen, first clause, for the words "there is no other claim against him," the words "the other debts (if any) due by him do not, taken together with such sum, amount to fifty rupees" shall be substituted; and to the same clause the words "of such sum" shall be added.

Addition to section 38.

5. To section thirty-eight, the following shall be added:—

"The expression 'officer of Police' in this section shall not be deemed to include a Police Patel appointed under Bombay Act No. VIII of 1867, (*for the Regulation of the Village Police in the Presidency of Bombay*)."

Amendment of section 48.

6. In section forty-eight after the word "suit" the words "or application" shall be inserted.

Addition to section 56.

7. To section fifty-six the following shall be added, namely,—

"or apply to any instrument which is not executed by an agriculturist otherwise than as a surety."

New section substituted for section 57.

8. For section fifty-seven the following section shall be substituted:—

"57. When any persons desire to execute any instrument to which section fifty-six applies, all the intending parties to such instrument shall appear before the Village Registrar appointed for the area in which the agriculturist, or when there are several agriculturists executing the instrument, any one of such agriculturists, resides, and such Registrar, after satisfying himself in such manner as he deems fit as to the identity of the intending executants and receiving from the intending parties the fee (if any) prescribed by the Local Government in this behalf, and the stamp (if any) which may be required by law, shall write the instrument, or cause the same to be written under his superintendence, and after reading the same aloud, or causing it to be so read in the hearing of the intending parties, shall require the intending executants to execute it in his presence.

Such instruments to be written by, or under the superintendence of, a Village Registrar and executed in his presence.

"Every instrument so written and executed shall at the time of execution be attested by the Village Registrar, and also, if any of the executants thereof is unable to read such instrument, by two respectable witnesses.

Attestation of such instruments.

"For the purposes of this section every executant of any such instrument shall appear in person before the Village Registrar, but every other party thereto may appear either in person or by any agent, being his relative, servant or dependent, whom he has duly furnished with a power of attorney authorizing him to appear and act on his behalf."

Amendment of section 58.

8. In section fifty-eight for the words "parties to any instrument have executed it," the words "intending executants have executed any instrument" shall be substituted.

New section substituted for section 71.

9. For section seventy-one the following section shall be substituted:—

"71. No instrument executed before the first day of November, 1879, and purporting to create any mortgage, lien or charge of, or upon, any immoveable property belonging to an agri-

All mortgages executed before the 1st November, 1879, to be produced before, and marked by, Village Registrar.

culturist, shall be received in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon by any such person or by any public officer unless such instrument has, before the first day of November, 1881, been produced before the Village Registrar appointed for the area in which the agriculturist, or where there are several such agriculturists, any one of the agriculturists, to whom such property belongs, resides, and been marked by such Registrar in such manner as the Local Government may by rule prescribe:

"Provided that nothing in this section shall—

"(*a*) apply to an instrument purporting to create a mortgage, lien or charge in favour of the Government or of any officer of the Government in his official capacity; or

"(*b*) prevent the admission of any instrument in evidence in any criminal proceeding."

Amendment of section 72.

10. In section seventy-two the words "against an agriculturist" shall be omitted, and in the same section after the word "money," the words "from a person who at the time when the cause of action arose was an agriculturist" shall be inserted.

New section substituted for section 75.

11. For section seventy-five the following section shall be substituted:—

Additional power to make rules.

"75. The Local Government may, from time to time, make rules:—

"(*a*) for defining more precisely what classes of persons shall be deemed to be agriculturists for the purposes of this Act;

"(*b*) generally for carrying out the provisions of this Act."

Certain instruments to be deemed produced before Village Registrar and marked under section 71.

12. Every instrument described in section seventy-one, as amended by this Act, which, before the passing of this Act, has been registered by a Village Registrar in accordance with rules prescribed in this behalf by the Inspector General of Registration, with the previous sanction of the Local Government, shall be deemed to have been duly produced before the Village Registrar and marked by him under the provisions of that section.

STATEMENT OF OBJECTS AND REASONS.

THE Bombay Government have brought to notice difficulties in the working of the Dekkhan Agriculturists' Relief Act, for the removal of which it appears necessary to make certain amendments in that Act, and to carry out those amendments this Bill has been prepared.

The first amendment provided for is in section 2 of the Act. That section enacts in effect that every agriculturist shall be deemed for the purposes of the Act to reside where he works as such. This rule is found to give rise to difficulty in the case of agriculturists holding land in more than one place, and it is accordingly proposed to repeal it altogether.

2. The first portion of section 19 of the Act confers on the Courts power to discharge an insolvent who owes a sum of less than fifty rupees under a decree, and against whom there is no other claim; but it makes no provision for the case of an insolvent judgment-debtor, against whom there are other claims, but of amounts so trifling that, taken with the amount of the decree, they do not amount to fifty rupees. There appears to be no reason why this latter case should not be treated on the same footing as the former, the insolvency chapter of the Bill being equally inapplicable to both, and the Bill accordingly amends the Act so as to give power to discharge the judgment-debtor from the balance due under the decree in either case.

3. Section 38 of the Act prohibits the appointment of "an officer of police" as a conciliator. A doubt has arisen as to whether a police patel is to be deemed an officer of police within the meaning of this provision, and at the instance of the local Government an explanation has been added to the section to show that he is not.

4. The amendment proposed in section 48 of the Act merely corrects an oversight in drafting.

5. The addition which it is proposed to make to section 56 of the Act, is intended to dispense with the necessity of having an instrument executed before the Village Registrar, merely because a party executing it *as a surety* is an agriculturist.

The changes made in sections 57 and 58 are intended merely to make the meaning clearer.

6. The new section, which it is proposed to substitute for section 71 of the Bill, differs materially from the original one, though the object of both is the same, *viz.*, to prevent the fabrication of mortgage deeds purporting to have been executed before the Act came into force.

The section as it now stands in the Act aims at effecting this object by requiring all existing mortgage deeds to be registered before a certain date under the Indian Registration Act; but it has been found that the practical difficulties in the way of such registration are so great that it is necessary to abandon this procedure and substitute for it the simpler expedient proposed by the Bill, of requiring such deeds to be merely produced before and marked by the Village Registrar before a certain date.

7. Section 72 of the Act, which prescribes periods of limitation longer than the ordinary periods for certain suits against agriculturists, applies in every case in which the defendant is an agriculturist at the time the suit is instituted. This would, in some cases, where the defendant had become an agriculturist shortly before the institution of the suit, lead to anomalous results.

To prevent this the Bill amends the section, so that it will apply only when the defendant was an agriculturist at the time the cause of action arose.

8. Difficulties having arisen as to the construction of the definition of "agriculturist," section 75 of the Act, which gives the Local Government a power to make rules, has been recast so as to admit of rules being made, among other matters, to define more precisely what classes of persons shall be deemed to be agriculturists for the purposes of the Act.

9. Section 12 of the Bill is intended to put mortgage deeds, executed before the Act came into force, and registered under a system of questionable legality established by the Local Government, on the same footing as if they had been marked by the Registrar under the new section 71.

The 8th March, 1881.

J. GIBBS.
D. FITZPATRICK,
Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third Publication.]

The following 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 4th March, 1881:—

WE, the undersigned Members of the Select Committee to which the Bill to consolidate and amend the law relating to the Courts of Small Causes established in the Presidency-towns was referred, have the honour to report that we have considered the Bill and the papers noted in the margin.

From Acting Under Secretary to Government, Bombay, No. 7519, dated 9th November, 1880, and enclosures [Papers No. 1].
„ Chief Secretary to Government, Madras, No. 2624, dated 2nd November 1880, and enclosures [Papers No. 2].
„ Chief Secretary to Government, Madras, No. 2662, dated 17th November, 1880, and enclosure [Papers No. 3].
„ D. Sealy, Esq., Vakil, High Court, Bombay, dated 26th November, 1880 [Paper No. 4].
Note by Hon'ble J. Sewell White, Judge, High Court, Calcutta, dated 13th December, 1880 [Paper No. 5].
From Secretary to Government, Bengal, No. 67J., dated 7th January, 1881, and enclosures [Papers No. 6].
„ J. Crawford, Esq., Registrar, High Court, Calcutta, No. 970, dated 30th May, 1879 [Papers No. 7].
„ Ditto ditto, No. 279, dated 5th February, 1881 [Papers No. 7].
„ H. J. Stephen, Esq., Barrister-at-law, High Court, Calcutta, dated 10th February, 1881, and enclosure [Papers No. 8].

2. We have added a clause to section 6 of the Bill giving the High Courts the same powers over the Small Cause Courts as they have under the 15th section of the High Courts Act over Courts subject to their appellate jurisdiction.

3. We have altered the section (7) relating to the appointment of the Judges so as to provide that one-third at least of the Judges shall be advocates of a High Court. We think the professional members of the Court should be chosen from the advocates of the High Courts, who may be expected to have acquired some experience of the country.

4. The Bill as introduced made the rank and precedence of the Judges depend on the seniority of their appointment. This would not have answered, as it appears that each seat in the Court has a special rank and salary of its own, and the candidates for appointment are posted to particular seats in the Court with reference to their respective qualifications. The second Judge ought, therefore, always to rank above the third, the third above the fourth, and so on, without any reference to the dates of their appointment, and we have accordingly, in section 8, after providing that the Chief Judge shall be the first in rank, introduced words leaving it to the Local Government to fix the rank of the rest.

5. Another change we have made in the constitution of the Court established by the Bill as introduced, consists in the transfer to the Chief Judge of certain administrative powers (see section 13 and also sections 61 and 62), which, we think, would be more efficiently exercised by a single individual.

6. The only other amendment we need notice in this portion of the Bill is the insertion of a clause in section 13, providing for the appointment of a Registrar and a section (14) empowering the Local Government to invest him with jurisdiction to try suits up to the limit of Rs. 20 in value. This amendment has been made at the instance of the Government of Bengal, and there is a precedent for it in the Mufassal Small Cause Courts Act No. XI of 1865.

7. Turning now to the chapter relating to jurisdiction in respect of suits, the first change we have made will be found in section 18 of the amended Bill (= section 16 of the Bill as introduced). The reasons given for framing that section as it originally stood are thus given in the 7th paragraph of the Statement of Objects and Reasons:—

"Act IX of 1850, in conferring jurisdiction on the Courts up to a value of Rs. 500, confines its exercise to cases of defendants dwelling or carrying on business within the local limits. Act XXVI of 1864, on the other hand, in conferring jurisdiction between the values of Rs. 500 and Rs. 1,000, gives an alternative ground for its exercise, namely, the circumstance of the cause of action having arisen within the local limits. It has been urged by most of the

authorities consulted that the basis of the jurisdiction should be the same in cases of all values. On the other hand, fears have been expressed by some that a power to institute a suit of the lower value against a defendant residing at a distance might be liable to abuse unless some limitation were imposed. The correct view of the matter seems to be that taken by the Judges of the Madras High Court and Mr. Busteed, namely, that in this particular no distinction should be made between the High Court and the Small Cause Court, and accordingly the Bill has been drawn so as to place the jurisdiction of the Small Cause Court in this respect on precisely the same footing as that on which the jurisdiction of the High Court is placed by the Letters Patent."

The objection to the power to institute a suit in the Small Cause Court against a defendant residing at a distance has been again urged, and it is one to which we feel compelled to yield. We have accordingly inserted words requiring the leave of the Court to be obtained when it is proposed to institute a suit against a defendant residing beyond the local limits of the jurisdiction, and we have made this provision applicable to all suits without regard to value. The original scheme of putting the Small Cause Court jurisdiction on the same footing in this particular as the jurisdiction of the High Court being thus broken in upon, we have thought it best to bring the remainder of the section into conformity with the corresponding provisions of the Code of Civil Procedure.

8. In the following section, which excludes certain classes of suits from the jurisdiction of the Small Cause Court, we have omitted the second clause, "suits against the Secretary of State in Council," as it appears to be generally objected to, and we have added the following:—

(1) suits for the specific performance or rescission of contracts generally (such suits are, as regards contracts relating to immoveable property, excluded by the Bill as introduced);
(2) suits for compensation for malicious prosecution;
(3) suits for the cancellation or rectification of instruments;
(4) suits relating to general average and to insurances on sea-going vessels;
(5) suits for compensation in respect of collisions at sea;
(6) suits for compensation for the infringement of a patent, copy-right or trade-mark;
(7) suits for a dissolution of partnership or for an account of partnership transations;
(8) suits for declaratory decrees;
(9) suits in which the plaintiff's claim depends on the decision of a question as to religious rites or ceremonies;
(10) suits for possession of a hereditary office;
(11) suits against Sovereign Princes or Ruling Chiefs, or against Ambassadors or Envoys of Foreign States.

The reasons for excluding these suits are so obvious that it is unnecessary to state them.

9. We have struck out the second clause of section 21 (new numbering), which deprived a plaintiff of costs in certain cases if he elected to institute in the High Court a suit against an officer of the Small Cause Court for a wrong done by him under colour of its process. We think that in all such cases a plaintiff should be allowed a free choice.

10. We have also struck out the latter portion of section 22 (new numbering), which specified the grounds on which a Judge in other cases, in which suits cognizable in the Small Cause Court are instituted in the High Court, may certify for costs, as we think that in such a matter the Judge should be allowed a full discretion.

11. Proceeding next to chapter V relating to procedure in suits, we desire to state that we have most carefully considered the objections urged against the first section of that chapter which applies to the Small Cause Courts a large portion of the Code of Civil Procedure.

Those objections, in so far as they come from the public, proceed chiefly from those classes of persons who most frequently appear as plaintiffs in suits of a very simple description, and we can well understand the apprehension they feel that the application of so large portion of the ordinary procedure may, in suits of that class, give rise to complication and delay. But it must be remembered that the great bulk of the provisions so extended are of such a nature as to be applicable only in exceptional cases, and we think that any one who follows the thread of the provisions applicable to ordinary suits will find the procedure to be extremely simple. Moreover, we find that a considerable portion of the Code has been actually in force for some time past in the Madras Small Cause Court, where the statistics show the amount of work performed by each Judge to be as large as in the Small Cause Courts at Calcutta and Bombay, and we further find that the Judges of the Calcutta Small Cause Court themselves propose to apply with little variation the great bulk of the sections contained in the second schedule to this Bill.

12. We have, however, in deference to the apprehensions which have been expressed, gone through the schedule item by item, and have struck out some portions; among others those requiring copies of the plaint or concise statements to be filed with the plaint, those relating to discovery, those requiring judgments to be in writing, and the whole chapter relating to pauper suits.

We have, moreover, in order to relieve the Judges, inserted in the body of the Bill a section (35) based on section 637 of the Code, empowering the Court to direct that any non-judicial or quasi-judicial act which the Code requires to be done by a Judge shall be done by a ministerial officer, and we think that the procedure as now settled is as simple as it can safely be made, and as the majority of the litigants would desire it to be.

13. We have added a section providing that no decision passed under the Act shall be conclusive, except as to the right to the relief granted or the absence of a right to the relief withheld by it. This provision, which cuts away to a great extent the doctrine of *res judicata*, will no doubt leave it open to persistent parties to litigate a second time questions which may have been already carefully considered and well decided; but we think it better to take the risk of this than to take the risk of having difficult questions of title to property of large value and complicated issues governing extensive transactions finally decided under an Act like this in the first petty case in which they may chance to present themselves.

14. We have extended section 27 (new numbering) to cases in which the plaintiff does not altogether fail in his suit, but fails to recover the full amount of his claim and to cases in which unfounded objections are made to the attachment of property in execution of decree.

15. Section 30 is new. The law, as it at present stands in this country, would appear to be peculiarly indulgent to tenants in the matter of the right to remove what they may have attached to the soil, and yet the holder of a decree of the Small Cause Court is probably precluded (unless he chooses to resort to the High Court) from taking in execution of such decree even some such things as might be taken under a *fieri facias* in England. It has, at all events, been held that though tenants in Calcutta have a right to remove "tiled huts," such huts cannot be taken in execution of decrees of the Small Cause Court. The landlords complain of this as a hardship, and we think not without reason; but the remedy should not, in our opinion, be limited to this particular case, and we have accordingly provided that anything which the tenant would be entitled to remove during his tenancy may be taken in the execution of a decree against him as if it were a moveable.

16. We have at the instance of the Judges of the Calcutta Small Cause Court substituted for the latter portion of section 230 of the Code a section (28) providing that no decree of a Small Cause Court shall be executed after the lapse of three years from the date on which it is passed, unless the judgment-debtor by force or fraud has prevented its execution within the three years.

17. We have, in section 34 of the Bill, restored section 31 of Act IX of 1850, which allows minors to sue for a sum not exceeding Rs. 500 due for wages, or piece-work or for work as a servant, as if they were of full age, but we have, to prevent mistake, expressly limited it to cases where such money is due under section 70 of the Contract Act, the only law, as we believe, under which a minor can now acquire a right to such money.

18. The only other amendment we have to notice in the chapter relating to procedure is the insertion of certain sections (36 to 38) providing for the exercise of the jurisdiction which may be conferred on the Registrar under section 14.

19. We have introduced a new chapter (VI) to include the section providing for a new trial and certain additional sections establishing a mode of having a suit of a value above Rs. 500, re-heard in the High Court, as if it had been instituted in that court. These sections, which have been proposed by Mr. Kennedy, are based on the provisions enacted by the 14th & 15th Vic. c. 57, for the Irish Civil Bill Courts, and they have in our opinion this advantage, that they provide, in cases where there has been a failure of justice, a substitute for an appeal without entailing the necessity of any elaborate record of evidence being kept by the Court below.

20. We have omitted the chapters which would have conferred on the Small Cause Courts jurisdiction in certain classes of insolvency and probate business, as we believe that unless the Court were to hear cases which, owing to their intricacy and difficulty, ought to be removed into the High Court, the saving of time to the High Court would be altogether unimportant. There is no doubt that the High Courts at present dispose of much petty business of these classes, but it is done for the most part in the offices of the Court, and costs the Judges little time or labour.

We may add that, so far as the grant of probates and letters of administration is concerned, we believe that the object in view will be better secured by the extension of the certificate system effected by Act No. IX of 1881.

21. We have confined section 59, which prevents the fees of a legal practitioner being recovered as costs unless his employment is held to be reasonable, to cases where the amount or value in dispute is less than Rs. 20. We do not see why in cases where a larger amount is at stake the ordinary rules as to allowing costs should not apply.

22. Lastly, we have inserted a section (72) to determine the functions of legal practitioners in the Small Cause Court. Its first clause provides that no persons other than advocates, attorneys and vakíls of the High Court and *persons who are now pleaders of the Small Cause Court* shall appear, plead or act in the Small Cause Court. We do not think it desirable to admit an inferior class of legal practitioners, whose business would be confined to the Small Cause Courts, and, accordingly, while we would save the rights of pleaders already admitted, we would bar the admission of any others.

The second clause of the section confines the right to conduct as counsel a suit at the hearing, in the extended jurisdiction now for the first time conferred on the Court, to advocates and vakíls of the High Court, and requires that a barrister so conducting a suit shall be instructed by an attorney or vakíl, or by a pleader of the Small Cause Court. The reasons for this latter requirement are obvious.

The section, it need hardly be mentioned, saves the right of parties to conduct their own cases, and appear for one another, and also the rights of recognized agents.

23. The publication of the Bill, with its Statement of Objects and Reasons, in English, has been reported by the Governments of Madras, Bombay and Bengal. We consider that the changes now made are such as to render its re-publication desirable; and we have accordingly altered the date on which it should come into force to the 1st January, 1882, and recommend that it now be re-published.

The 4th March, 1881.

WHITLEY STOKES.
J. GIBBS.
G. C. PAUL.
JOTINDRA MOHAN TAGORE.

I THINK that the limit in section 22 ought to be reduced from Rs. 2,000 to 1,000. In other respects I agree in the report.

J. PITT KENNEDY.

No. II.

THE PRESIDENCY SMALL CAUSE COURTS BILL, 1880.

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No. II.

A Bill to consolidate and amend the law relating to the Courts of Small Causes established in the Presidency-towns.

WHEREAS it is expedient to consolidate and amend the law relating to the Courts of Small Causes established in the towns of Calcutta, Madras and Bombay; It is hereby enacted as follows:— Preamble.

CHAPTER I.

PRELIMINARY.

Short title. 1. This Act may be called "The Presidency Small Cause Courts Act, 1881"; and it shall come into force on the first day of January, 1882. Commencement.

But nothing herein contained shall affect the provisions of the Army Discipline and Regulation Act, 1879, section 144.

Repeal of enactments. 2. On and from the day on which this Act comes into force, the enactments specified in the first schedule hereto annexed shall be repealed to the extent mentioned therein.

But all Courts constituted and appointments made under any of the said enactments shall, as far as may be, be deemed to have been respectively constituted and made under this Act.

References in previous Acts. All references to any enactment hereby repealed made in Acts passed prior to the day on which this Act comes into force shall be read, so far as may be practicable, as if made to this Act or the corresponding provisions hereof. For references see Act V of 1871, s. 14: Act XVIII of 1879, s. 3.

Amendment of Acts. 3. In Act No. XXIII of 1850 (*for securing the Land-Revenue of Calcutta*), section 3, the words "as provided by the said Act" shall be repealed; and for each of the expressions "a Commissioner of the Court for recovery of small debts referred to in the said Act" and "the said Commissioners," the words "the Judges of the Court of Small Causes at Calcutta" shall be substituted.

In the Code of Civil Procedure, section 8, after the word and figures "chapter XXXIX," the words and figures "and by the Presidency Small Cause Courts Act, 1881," shall be inserted.

"Small Cause Court" defined. 4. In this Act, "the Small Cause Court" means the Court of Small Causes constituted under this Act in the town of Calcutta, Madras or Bombay, as the case may be.

CHAPTER II.

CONSTITUTION AND OFFICERS OF THE COURT.

Courts of Small Causes established. 5. There shall be in each of the towns of Calcutta, Madras and Bombay a Court, to be called the Court of Small Causes of Calcutta, Madras or Bombay, as the case may be.

New. See 8 Bom. H. C. Rep. (O. C. J.) 59 and sec. 652 of Act X of 1877.

Court to be deemed under superintendence, &c., of High Court.

6. The Small Cause Court shall be deemed to be a Court subject to the superintendence of the High Court of Judicature at Fort William, Madras or Bombay, as the case may be, within the meaning of the Letters Patent, respectively dated the 28th day of December, 1865, for such High Courts and within the meaning of the Code of Civil Procedure; and the High Court shall have, in respect of the Small Cause Court, the same powers as it has under the 24th & 25th of Vic., chapter 104, section 15, in respect of Courts subject to its appellate jurisdiction.

See Act XXVI of 1864, s. 12: Act IX of 1850, s. 6.

Appointment, suspension and removal of Judges.

7. Subject to the control of the Governor General in Council, the Local Government may, from time to time, by notification in the official Gazette, appoint a person to be Chief Judge, and so many other persons as it thinks fit to be Judges of the Small Cause Court: Provided that not less than one-third of the persons so appointed, including the Chief Judge, shall be advocates of one of the said High Courts.

Act IX of 1850, s. 10.

The Local Government may, by a like notification, suspend and, with the previous sanction of the Governor General in Council, remove any Judge so appointed.

See Act XXVI of 1864, s. 14.

Rank and precedence of Judges.

8. The Chief Judge shall be the first of the Judges in rank and precedence.

Act XVII of 1877, s. 6.

The other Judges shall have rank and precedence as the Local Government may, from time to time, direct.

Act XVII of 1877, s. 119. (Cf. Act IX of 1850, s. 23.)

Delegation of powers of Court to its members.

9. Except as otherwise provided by this or any other law for the time being in force, the Small Cause Court may, with the previous sanction of the High Court, make rules to provide, in such manner as it thinks fit, for the exercise by one or more of its Judges of any powers conferred on the Small Cause Court by this Act or by any other law for the time being in force.

Act XXVI of 1864, s. 14.

Chief Judge to distribute business of Court.

10. Subject to such rules, the Chief Judge may, from time to time, make such arrangements as he thinks fit for the distribution of the business of the Court among the various Judges thereof.

Act XI of 1869, s. 38.

Procedure in case of difference of opinion.

11. Save as hereinafter otherwise provided, when two or more of the Judges sitting together differ on any question, the opinion of the majority shall prevail; and if the Court is equally divided, the Chief Judge, if he is one of the Judges so differing, or in his absence the Judge first in rank and precedence of the Judges so differing, shall have the casting voice.

Act XVII of 1875, s. 10(*b*). (Cf. Act IX of 1850, s. 24.)

Seal to be used.

12. The Small Cause Court shall use a seal of such form and dimensions as are for the time being prescribed by the Local Government.

Act IX of 1850, ss. 13-15.

Appointment of Registrar and ministerial officers.

13. The Local Government may, from time to time, appoint an officer to be called the Registrar of the Court, and to be the chief ministerial officer of the Court;

and the Chief Judge may, from time to time, subject to the control of the Local Government, appoint as many clerks, bailiffs and other ministerial officers as may be necessary for the administration of justice by the Court and for the exercise and performance of the powers and duties conferred and imposed on it by this Act or any other law for the time being in force.

Powers and duties of such officers.

The Registrar and other officers so appointed shall exercise such powers, and discharge such duties, of a ministerial nature as the Chief Judge (subject to the control of the High Court) may, from time to time, by rule, direct.

Cf. Act IX of 1850, ss. 14-16: Act XVII of 1877, s. 23.

Act XVII of 1875, s. 70.

The Chief Judge may suspend or remove any Registrar or other officer so appointed; but the removal of any Registrar or officer drawing a monthly salary of one hundred rupees or upwards shall be subject to the orders of the Local Government.

Registrar may be invested with powers of a Judge in suits not exceeding twenty rupees.

New.

14. The Local Government may invest the Registrar with the powers of a Judge under this Act for the trial of suits in which the amount or value of the subject-matter does not exceed twenty rupees. And, subject to the orders of the Chief Judge, any Judge of the Small Cause Court may, whenever he thinks fit, transfer from his own file to the file of the Registrar any suit which the latter is competent to try.

Judge or other officer not to practise or trade.

Act IX of 1850, ss. 9 and 17.

15. No Judge or other officer appointed under this Act shall, during his continuance as such Judge or officer, either by himself or as a partner of any other person, practise or act, either directly or indirectly, as an Advocate, Attorney, Vakíl or other legal praetitioner, or be concerned, either on his own account or for any other person, or as the partner of any other person, in any trade or profession.

Any such Judge or officer so practising, acting or concerned shall be deemed to have committed an offence under section 168 of the Indian Penal Code.

Nothing herein contained shall be deemed to prohibit any such Judge or officer from being a member of any company incorporated or registered under Royal Charter, Letters Patent, Act of Parliament or Act of any British Indian Legislature.

CHAPTER III.

LAW ADMINISTERED BY THE COURT.

Questions arising in suits, &c., under Act to be decided according to law administered by High Court.

Cf. Act XV of 1875. See s. 37 of Act IX of 1850.

16. All questions other than questions relating to procedure or practice which arise in suits or other proceedings under this Act in the Small Cause Court shall be dealt with and determined according to the law for the time being administered by the High Court in the exercise of its ordinary original civil jurisdiction.

CHAPTER IV.

JURISDICTION IN RESPECT OF SUITS.

Local limits of jurisdiction of Court.

Act IX of 1850, s. 5.

17. The local limits of the jurisdiction of each of the Small Cause Courts shall be the local limits for the time being of the ordinary original civil jurisdiction of the High Court.

Act IX of 1850, ss. 25 and 32: Cf. Act X of 1877, s. 11.

19 & 20 Vic., c. 106, s. 24.

Suits in which Court has jurisdiction.

18. Subject to the exceptions in section nineteen, the Small Cause Court shall have jurisdiction to try all suits of a civil nature—

when the amount or value of the subject-matter does not exceed two thousand rupees: and

Letters Patent of 1865, s. 12.

(*a*) the cause of action has arisen, either wholly or in part, within the local limits of the jurisdiction of the Small Cause Court, and the leave of the Court has, for reasons to be recorded by it in writing, been given before the institution of the suit; or

(*b*) all the defendants, at the time of the institution of the suit, actually and voluntarily reside, or carry on business, or personally work for gain within such local limits; or

(*c*) any of the defendants, at the time of the institution of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, within such local limits: and either the leave of the Court has been given before the institution of the suit, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution.

Explanation I.—When in any suit the sum claimed is, by a set-off admitted by both parties, reduced to a balance not exceeding two thousand rupees, the Small Cause Court shall have jurisdiction to try such suit.

Explanation II.—Where a person has a permanent dwelling at one place and also a lodging at another place for a temporary purpose only, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary lodging.

Explanation III.—A Corporation or Company shall be deemed to carry on business at its sole or principal office in British India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

Act IX of 1850, s. 25.

Suits in which Court has no jurisdiction.

19. The Small Cause Court shall have no jurisdiction in—

See 5 Bom. H. C. Rep. (O. C. J.) 1.

(*a*) suits concerning the assessment or collection of the revenue;

(*b*) suits concerning any act ordered or done by the Governor General in Council or the Local Government, or by the Governor General or a Governor, or by any Member of the Council of the Governor General or of the Governor of Madras or Bombay, in his official capacity, or by any person by order of the Governor General in Council or the Local Government;

(*c*) suits concerning any act ordered or done by any Judge or judicial officer in the execution of his office, or by any person in pursuance of any judgment or order of any Court or any such Judge or judicial officer;

Act X of 1877, s. 16, cls. (*a*) to (*d*).

(*d*) suits for the recovery of immoveable property;

(*e*) suits for the partition of immoveable property;

(*f*) suits for the foreclosure or redemption of a mortgage of immoveable property;

(*g*) suits for the determination of any other right to or interest in immoveable property;

(*h*) suits for the specific performance or rescission of contracts;

(*i*) suits to obtain an injunction;

(*j*) suits for the cancellation or rectification of instruments;

(*k*) suits to enforce a trust;

(*l*) suits relating to general average and to insurances on sea-going vessels;

(*m*) suits for compensation in respect of collisions at sea;

(*n*) suits for compensation for the infringement of a patent, copy-right or trade-mark;

(*o*) suits for a dissolution of partnership or for an account of partnership-transactions;

(*p*) suits for an account of property and its due administration under the decree of the Court;

(*q*) suits for compensation for libel, slander, malicious prosecution, adultery or breach of promise of marriage;

(*r*) suits for the restitution of conjugal rights, for the recovery of a wife, or for a divorce;

(*s*) suits for declaratory decrees;

(*t*) suits in which the plaintiff's claim depends on the decision of a question as to religious rites or ceremonies;

(*u*) suits for possession of a hereditary office;

(*v*) suits against Sovereign Princes or Ruling Chiefs, or against Ambassadors or Envoys of Foreign States;

(*w*) suits on any judgment of a High Court; 19 & 20 Vic., c. 108, s. 27.

(*x*) suits the cognizance whereof by the Small Cause Court is barred by any law for the time being in force.

Court may by consent try suits beyond pecuniary limits of jurisdiction.

Act XXVI of 1864, s. 3.

20. When the parties to a suit which, if the amount or value of the subject-matter thereof did not exceed two thousand rupees, would be cognizable by the Small Cause Court, have entered into an agreement in writing that the Small Cause Court shall have jurisdiction to try such suit, the Court shall have jurisdiction to try the same, although the amount or value of the subject-matter thereof may exceed two thousand rupees.

Every such agreement shall be filed in the Small Cause Court, and, when so filed, the parties to it shall be subject to the jurisdiction of the Court, and shall be bound by its decision in such suit.

Suits by and against officers of Court.

Act IX of 1850, s. 100.

21. All suits to which an officer of the Small Cause Court is, as such, a party, except suits in respect of property taken in execution of its process, or the proceeds or value thereof, may be instituted in the High Court at the election of the plaintiff as if this Act had not been passed.

Costs when plaintiff sues in High Court in other cases cognizable by Small Cause Court.

Act IX of 1850, s. 103. Act XXVI of 1864, s. 9.

22. If any suit cognizable by the Small Cause Court, other than a suit to which in section twenty-one applies, is instituted in the High Court, and if in such suit the plaintiff obtains, in the case of a suit founded on contract, a decree for any matter of an amount or value less than two thousand rupees, and in the case of any other suit a decree for any matter of an amount or value of less than three hundred rupees, no costs shall be allowed to the plaintiff;

and if in any such suit the plaintiff does not obtain a decree, the defendant shall be entitled to his costs as between attorney and client.

The foregoing rules shall not apply to any suit in which the Judge who tries the same certifies that it was one fit to be brought in the High Court.

CHAPTER V.

PROCEDURE IN SUITS.

Portions of Civil Procedure Code extending to the Court.

23. The chapters and sections of the Code of Civil Procedure specified in the second schedule hereto annexed shall extend, and shall, so far as the same may, in the judgment of the Court, be applicable, be applied, to the Small Cause Court; and the procedure prescribed thereby shall be the procedure followed in the Court in all suits cognizable by it, except where such procedure is inconsistent with the procedure prescribed by any specific provisions of this Act.

Res judicata.

24. Notwithstanding anything contained in section 13 of the Code of Civil Procedure, no decision passed under the provisions of this Act shall be conclusive as to anything except the right at the time of such decision to the relief granted thereby, or the absence of a right at such time to any relief claimed by the plaintiff and withheld by such decision.

Illustrations.

(*a*). A sues B in the Small Cause Court for compensation for damage done by B to a house which A alleges to be his own. B denies that the house is A's. The Court decides that the house is A's, and that he is entitled to Rs. 100 compensation. The decision is conclusive as to A's right to the compensation, but not as to his title to the house, and, if A subsequently sues B for further damage done to the same house, B is not precluded from again questioning A's title.

(*b*). A sues B in the Small Cause Court for an instalment alleged to be due on a bond purporting to be executed by B. B denies the execution of the bond. The Court finds the execution proved, and gives A a decree for the amount of the instalment. A subsequently sues B for a later instalment on the same bond; B is not precluded from again denying the execution.

(*c*). A sues B as in illustration (*b*). B denies the execution of the bond, and the Court, finding that B's signature was forged, dismisses the suit. This does not preclude A from suing again on the bond.

(*d*). A sues B in the Small Cause Court for possession of a horse which A alleges to be his property, and to have been lent to B to use during A's pleasure. B denies that the horse is A's. The Court finds that the horse is A's, and gives him a decree for possession, and A recovers possession of the horse. B, subsequently alleging that the horse is his, sues A for possession of it. The decision in the former suit is no bar to B.

No written statement except in cases of set-off.

25. Except in cases of set-off under the Code of Civil Procedure, section 111, no written statement shall be received unless required by the Court.

Return of documents admitted in evidence.

26. When a period of eight days from the decision of a suit has expired without any application for a new trial or re-hearing of such suit having been made, or, when any such application has been made within such period and such application has been refused, or the new trial or re-hearing (as the case may be) has ended, any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit and placed on the record, shall, unless the document is impounded under section 143 of the Code of Civil Procedure, be entitled to receive back the same:

Provided that a document may be returned at any time before any of such events if the person applying for such return delivers to the proper officer a certified copy of such document to be substituted for the original. Provided also that no document shall be returned which by force of the decree has become void or useless.

On the return of a document which has been admitted in evidence, a receipt shall be given by the party receiving it, in a receipt-book to be kept for the purpose.

Compensation payable by plaintiff to defendant in certain cases.

27. In any suit in which the defendant appears and does not admit the claim, and the plaintiff does not obtain a decree for the full amount of his claim, the Small Cause Court may in its discretion order the plaintiff to pay to the defendant, by way of satisfaction for his trouble and attendance, such sum as it thinks fit. Act IX of 1850, s. 43.

When any claim preferred, or objection made, under section 278 of the Code of Civil Procedure, is disallowed, the Small Cause Court may in its discretion order the person preferring or making such claim or objection to pay to the decree-holder, or to the judgment-debtor, or to both, by way of satisfaction as aforesaid, such sum or sums as it thinks fit.

Any order under this section may, in default of payment of the amount payable there-under, be enforced by the person in whose favour it is made against the person against whom it is made as if it were a decree of the Court.

Bar to applications for execution of decrees.

28. No application to execute a decree passed under this Act shall be received after the expiration of three years from the date of such decree, unless the judgment-debtor has, within the three years following such date, by force or fraud prevented the execution of such decree.

Decree-holder to accompany officer executing warrant.

29. Whenever the Small Cause Court issues a warrant for the arrest of a judgment-debtor or the attachment of his property, the decree-holder, or some other person on his behalf, shall accompany the officer of the Court entrusted with the execution of such warrant, and shall point out to such officer the judgment-debtor or the property to be attached, as the case may be.

Things attached to immoveable property and removeable by tenant to be deemed moveable in execution.

30. When the judgment-debtor under any decree of the Small Cause Court, is a tenant of immoveable property, anything attached to such property, and which he might before the termination of his tenancy lawfully remove without the permission of his landlord, shall, for the purpose of the execution of such decree, be deemed to be moveable property, and may, if sold in such execution, be severed by the purchaser, but shall not be removed by him from the property until he has done to the property whatever the judgment-debtor would have been bound to do to it if he had removed such thing.

Discharge of judgment-debtor on sufficient security.

31. Whenever any judgment-debtor, who has been arrested in execution of a decree of the Small Cause Court, offers security to the satisfaction of such Court for payment of Act IX of 1850, s. 60.

the amount which he has been ordered to pay and the costs, the Court may order him to be discharged.

Act IX of 1850, s. 71. (See I.L.R. 5 Calc., p. 294.)

Court may in certain cases suspend execution of decree.

32. Whenever it appears to the Small Cause Court that any judgment-debtor under its decree is unable, from sickness or other sufficient cause, to pay the amount of the decree, or, if such Court has ordered the same to be paid in instalments, the amount of any instalment thereof, it may, from time to time, for such time and upon such terms as it thinks fit, suspend the execution of such decree.

Act XI of 1865, s. 20.

Execution of decree of Small Cause Court by other Courts.

33. If the judgment-debtor under any decree of the Small Cause Court has not, within the local limits of its jurisdiction, moveable property sufficient to satisfy the decree, the Court may, on the application of the decree-holder, send the decree for execution—

(*a*) in the case of execution against immoveable property situate within such local limits—to the High Court;

(*b*) in all other cases—to any Civil Court within the local limits of whose jurisdiction such judgment-debtor, or any moveable or immoveable property of such judgment-debtor, may be found.

Procedure when decree transferred.

The procedure prescribed by the Code of Civil Procedure for the execution of decrees by Courts other than those which made them shall be the procedure followed in such cases.

Act IX of 1850 s. 31.

Minors may sue in certain cases as if of full age.

34. Notwithstanding anything contained in the Code of Civil Procedure as applied by this Act, any minor may institute a suit for any sum of money, not exceeding five hundred rupees, which may be due to him under section seventy of the Indian Contract Act, 1872, for wages or piece-work or for work as a servant, in the same manner as if he were of full age.

Act X of 1877, s. 637.

Power to delegate non-judicial duties.

35. Any non-judicial or quasi-judicial act which the Code of Civil Procedure as applied by this Act requires to be done by a Judge, and any act which may be done by a Commissioner appointed to examine and adjust accounts under section 394 of that Code as so applied, may be done by the Registrar of the Small Cause Court or by such other officer of that Court as that Court may, from time to time, appoint in this behalf.

The High Court may, from time to time, by rule declare what shall be deemed to be non-judicial and quasi-judicial acts within the meaning of this section.

Registrar to hear and determine suits like a Judge.

36. The suits cognizable by the Registrar under section fourteen shall be heard and determined by him in like manner in all respects as a Judge of the Court might hear and determine the same:

Proviso.

Provided that, subject to the orders of the Chief Judge any Judge of the Court may, whenever he thinks fit, transfer to his own file any suit on the file of the Registrar.

Registrar may execute decrees in the same powers as a Judge.

37. The Registrar may receive applications for the execution of decrees of any value passed by the Court, and may conduct and discharge judgment-debtors, and make any order in respect thereof which a Judge of the Court might make under this Act.

New.

Decrees and orders of Registrar to be subject to new trial as if made by a Judge.

38. Every decree and order made by the Registrar in any suit or proceeding shall be subject to the same provisions in regard to new trial as if made by a Judge of the Court.

CHAPTER VI.

NEW TRIALS AND REHEARING.

(Cf. Act XI of 1865, s. 21.) Cls., rule 28.

Judgments and orders of Court final.

39. Save as is herein specially provided, every decree and order of the Small Cause Court in a suit shall be final and conclusive;

but the Court may, on application of either party, made within eight days from the date of the decree or order in any suit (not being a decree passed under section 522 of the Code of Civil Procedure) order a new trial to be held upon such terms as it thinks reasonable, and may, in the meantime, stay the proceedings.

Power to order new trial in Small Cause Court.

Application for re-hearing in High Court.

40. Any party may, within eight days after the judgment in any suit in which the amount or value of the subject-matter exceeds five hundred rupees, apply to the High Court for an order that such suit may be re-heard.

Such application shall be supported by affidavits, and, in case the applicant has appeared by advocate, vakil or attorney, by a certificate from the leading Counsel at the hearing that in his opinion there are good grounds for re-hearing the suit, and, if on hearing such application, the High Court is of opinion that there are sufficient grounds for re-hearing, or that there are other good grounds for such re-hearing, the Court shall make an order *ex parte*, on such terms as it thinks fit, for such re-hearing and fix a day for the same, whereof notice shall be given to the opposite party.

The rules contained in sections 545, 546 and 547 of the Code of Civil Procedure relating to staying and executing decrees under appeal, shall apply in the case of applications under this section as if such applications were appeals from the decisions of the Small Cause Court.

Mr. Kennedy's Act, s. 98.

Procedure at re-hearing.

41. On the day fixed under section forty or on any other day to which the hearing may be adjourned, the High Court, or some Judge thereof, shall proceed to hear and determine the case as if the same were a suit brought in such High Court in its ordinary original civil jurisdiction, in which the plaintiff in the Small Cause Court was plaintiff, and the defendant in such Court was defendant, and in which written statements had not been ordered to be filed, except as herein otherwise provided. The practice and procedure of such High Court in suits brought in its ordinary original civil jurisdiction, shall be followed in such case under this section. Provided that [illegible] any appeal [illegible] under this section.

Execution of decrees by High Court.

42. Every decree or order made by any Judge of such High Court, s. 97. Court upon any such [illegible] may either be executed by such High Court in the same manner as other

decrees or orders of such Court or may, in the discretion of the High Court, be remitted to the Small Cause Court for execution.

CHAPTER VII.

RECOVERY OF POSSESSION OF IMMOVEABLE PROPERTY.

Act IX of 1850, s. 91. 19 & 20 Vic., c. 108, s. 50.

43. When any person has had possession of any immoveable property situate within the local limits of the Small Cause Court's jurisdiction and of which the annual value at a rack-rent does not exceed one thousand rupees, as the tenant, or by permission of, another person, or of some person through whom such other person claims,

Summons against person occupying property without leave.

and such tenancy or permission has been determined or been withdrawn,

and such tenant or occupier or any person holding under or by assignment from him, (hereinafter called the occupant) refuses to deliver up such property in compliance with a request made to him in this behalf by such other person,

such other person (hereinafter called the applicant) may apply to the Small Cause Court for a summons against the occupant, calling upon him to show cause, on a day therein appointed, why he should not be compelled to deliver up the property.

Act IX of 1850, s. 94.

44. The summons shall be served on the occupant in the manner provided by the Code of Civil Procedure for the service of a summons on a defendant.

Service of summons.

Act IX of 1850, ss. 92, 93. 19 & 20 Vic., c. 108, s. 50.

45. If the occupant does not appear at the time appointed and show cause to the contrary, the applicant shall, if the Small Cause Court is satisfied that he is entitled to apply under section forty-three, be entitled to an order addressed to a bailiff of the Court directing him to give possession of the property to the applicant on such day as the Court thinks fit to name in such order.

Order for possession.

Explanation.—If the occupant proves that the tenancy was created or permission granted by virtue of a title which determined previous to the date of the application, he shall be deemed to have shown cause within the meaning of this section.

Act IX of 1850, s. 96.

46. Any such order shall justify the bailiff to whom it is addressed in entering after the hour of six in the morning and before the hour of six in the afternoon upon the property named therein, with such assistants as he thinks necessary, and giving possession of such property to the applicant:

Such order to justify bailiff entering on property and giving possession.

Act IX of 1850, s. 95.

and no suit or prosecution shall be maintainable against any Judge or officer of the Small Cause Court by whom any such order as aforesaid was issued, or against any bailiff or other person by whom the same was executed, or by whom any such summons as aforesaid was served, for the issue, execution or service of any such order or summons, by reason only that the applicant was not entitled to the possession of the property.

Bar to proceedings against Judge or officer for issuing, &c., order or summons.

Act IX of 1850, s. 96.

47. When the applicant, at the time of applying for any such order as aforesaid, was entitled to the possession of such property, neither he nor any person acting in his behalf shall be deemed, on account of any error, defect or irregularity in the mode of proceeding to obtain possession thereunder, to be a trespasser; but any person aggrieved may bring a suit for the recovery of compensation for any damage which he has sustained by reason of such error, defect or irregularity:

Applicant, if entitled to possession, not to be deemed trespasser for any error in proceedings.

Occupant may sue for compensation.

when no such damage is proved, the suit shall be dismissed; and when such damage is proved but the amount of the compensation assessed by the Court does not exceed ten rupees, the Court shall award to the plaintiff no more costs than compensation, unless the Judge who tries the case certifies that in his opinion full costs should be awarded to the plaintiff.

Act, IX of 1850 s. 93.

48. Nothing herein contained shall be deemed to protect any applicant obtaining possession of any property under this chapter from a suit by any person deeming himself aggrieved thereby, when such applicant was not at the time of applying for such order as aforesaid entitled to the possession of such property.

Liability of applicant obtaining order when not entitled.

Act IX 1850, s. 97.

And when the applicant was not, at the time of applying for any such order as aforesaid, entitled to the possession of such property, the application for such order, though no possession is taken thereunder, shall be deemed to be an act of trespass committed by the applicant against the occupant.

Application for order in such case an act of trespass.

Act IX 1850, s. 97.

49. Whenever on an application being made under section forty-three the occupant binds himself, with two sureties, in a bond for such amount as the Small Cause Court thinks reasonable, having regard to the value of the property and the probable costs of the suit next hereinafter mentioned, to institute without delay a suit in the High Court against the applicant for compensation for trespass, and to pay all the costs of such suit in case he does not prosecute the same or in case judgment therein is given for the applicant, the Small Cause Court shall stay the proceedings on such application until such suit is disposed of.

Stay of proceedings on occupant giving security to bring a suit against the applicant.

If the occupant obtains a decree in any such suit against the applicant, such decree shall supersede the order (if any) made under section forty-five.

Nothing contained in section twenty-two shall apply to suits under this section.

New.

50. In all proceedings under this chapter, the Small Cause Court shall, as far as may be and except as herein otherwise provided, follow the procedure prescribed for a Court of first instance by the Code of Civil Procedure.

Proceedings to be regulated by the Code of Civil Procedure.

Act IX of 1850, s. 98.

51. Recovery of the possession of any immoveable property under this chapter shall be no bar to the institution of a suit in the High Court for trying the title thereto.

Recovery of possession no bar to suit to try title.

CHAPTER VIII.

REFERENCES TO HIGH COURT.

Act XI of 1865, s. 32.

52. If two or more Judges of the Small Cause Court sit together in any suit, or in any proceeding under chapter VII of this Act, and differ in their opinion as to any question of law or usage having the force of law, or the construction of a document, which construction may affect the merits,

Reference when compulsory.

Act XXVI of 1864, s. 7.

or if in any suit or any such proceeding, in which the amount or value of the subject-matter exceeds five hundred rupees, any such question arises, and either party so requires,

(Ordinary references provided for by Ch. XLVI, C. P. Code.)

the Small Cause Court shall draw up a statement of the facts of the case, and refer such statement, under section 617 of the Code of Civil Procedure, for the opinion of the High Court, and shall either reserve judgment or give judgment contingent upon such opinion.

Act XXVI of 1864, s. 8.

53. When judgment is given under section fifty-two contingent upon the opinion of the High Court, the party against whom such judgment is given shall at once furnish security, to be approved by the Small Cause Court, for the costs of the reference to the High Court and for the amount of such judgment:

Security to be furnished on such reference by party against whom contingent judgment given.

Act XXVI of 1864, s. 8. See 14 B. L. R., p. 182.

Provided that no security for the amount of such judgment shall be required in any case in which the Judge who tried the case has ordered such amount to be paid into Court, and the same has been paid accordingly.

Unless such security as aforesaid is at once furnished, the party against whom such contingent judgment has been given shall be deemed to have submitted to the same.

If no such security given, party to be deemed to have submitted to judgment.

Act IX of 1850, ss. 19 & 20. Act XXVI of 1864, s. 11.

CHAPTER IX.

FEES AND COSTS.

Act IX of 1850, s. 20 Mr. Kennedy's Bill, s. 92.

Institution-fee.

54. A fee not exceeding—

(*a*) when the amount or value of the subject-matter does not exceed five hundred rupees—the sum of two annas in the rupee on such amount or value,

(*b*) when the amount or value of the subject-matter exceeds five hundred rupees—the sum of sixty-two rupees eight annas, and one anna in the rupee on the excess of such amount or value, over five hundred rupees,

shall be paid on the plaint in every suit, and every application under section forty or section forty-three; and no such plaint or application shall be received until such fee has been paid.

A fee of ten rupees shall be paid on the filing of every agreement under chapter XXXVIII of the Code of Civil Procedure.

Act IX of 1850, s. 20. Act XXVI of 1864, s. 12.

55. The fees specified in the third and fourth columns of the third Schedule hereto annexed shall be paid previous to the issue in any suit or in any proceeding under chapter VII of this Act of the processes, to which the said columns respectively relate, by the persons on whose behalf such processes are issued, when the amount or value of the subject-matter exceeds the sum specified in the first column, but does not exceed the sum specified in the second column of the said Schedule.

Fees for processes.

Act IX of 1850, s. 20.

56. Whenever any such suit or proceeding is settled by agreement of the parties before the hearing, half the amount of all fees paid up to that time shall be repaid by the Small Cause Court to the parties by whom the same have been respectively paid.

Repayment of half fees on settlement before hearing.

Act IX of 1850, s. 20.

57. The Small Cause Court may, whenever it thinks fit, receive and register suits instituted, and applications under section forty-three made, by poor persons, and may issue processes on behalf of such persons, without payment of the fees mentioned in sections fifty-four and fifty-five, or on a part-payment of such fees.

Fees and costs of poor persons.

Act IX of 1850, s. 20.

58. The Local Government may, from time to time, by notification in the official Gazette, vary the amount of the fees payable under sections fifty-four and fifty-five:

Power to vary fees.

Provided that the amount of such fees shall in no case exceed the amount prescribed by the said sections.

Act XXVI of 1864, s. 18.

59. The expense of employing an advocate, vakil, attorney or other legal practitioner incurred by any party shall not be allowed as costs in any suit or in any proceeding under chapter VII of this Act, in the Small Cause Court, in which the amount or value of the subject-matter does not exceed twenty rupees, unless the Court is of opinion that the employment of such practitioner was under the circumstances reasonable.

Expense of employing legal practitioners.

60. Nothing contained in this chapter shall affect the provisions of sections 3, 5 and 25 of the Court Fees Act, 1870.

Sections 3, 5 and 25 of Court Fees Act, 1870, saved.

CHAPTER X.

MISCONDUCT OF INFERIOR MINISTERIAL OFFICERS.

Act XVII of 1875, s. 7; Act XVII of 1877, s. 26; Act X of 1880, s. 26.

61. The Chief Judge may, by order, fine, in an amount not exceeding one month's salary, any clerk, bailiff or other inferior ministerial officer of the Court who is guilty of misconduct or neglect in the performance of the duties of his office, and such fine may be deducted from his salary.

Power to fine officers.

Act IX of 1850, s. 20.

62. If any clerk, bailiff or other inferior ministerial officer of the Small Cause Court who is employed as such in the execution of any order or warrant, loses, by neglect, connivance or omission, an opportunity of executing such order or warrant, he shall be liable, by order of the Chief Judge, on the application of the person injured by such neglect, connivance or omission, to pay such sum, not exceeding in any case the sum for which the said order or warrant was issued, as, in the opinion of the Chief Judge, represents the amount of the damage sustained by such person thereby.

Default of bailiff or other officer in execution of order or warrant.

Act IX of 1850, s. 20.

63. If any clerk, bailiff or other inferior ministerial officer of the Small Cause Court is charged with extortion or misconduct while acting under colour of its process, or with not duly paying or accounting for any money levied by him

Extortion or default of officers.

under its authority, the Court may inquire into such charge, and may make such order for the repayment or payment of any money so extorted, or of any money so levied as aforesaid, and of damages and costs, by such officer, as it thinks fit.

64. For the purposes of any inquiry under this chapter, the Small Cause Court shall have all the powers of summoning and enforcing the attendance of witnesses and compelling the production of documents which it possesses in suits under this Act.

Court empowered to summon witnesses, &c.

65. Any order under this chapter for the payment or repayment of money may, in default of payment of the amount payable thereunder, be enforced by the person to whom such amount is payable as if the same were a decree of the Small Cause Court in his favour.

Enforcement of order.

CHAPTER XI.

CONTEMPT OF COURT.

66. 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 the Small Cause Court, the Court may cause the offender 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 is sooner paid.

Procedure of Court in certain cases of contempt.

67. In every such case the Court shall record the facts constituting the offence, the statement (if any) made by the offender, and 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 when interrupted or insulted was sitting, and the nature of the interruption or insult offered.

68. If the Court considers that a person accused of any offence referred to in section sixty-six 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 if the Court is for any other reason of opinion that the case should not be disposed of under section sixty-six, the Court, after recording the facts constituting the offence and the statement of the accused as hereinbefore provided, may forward the case to a Presidency Magistrate, and may require security to be given for the appearance of such accused person before such Magistrate, or, if sufficient security is not given, may forward him under custody to such Magistrate.

Procedure when Court considers that the case should not be dealt with under section 66.

Such Magistrate shall deal with the accused person in the manner provided by the Presidency Magistrates Act, 1877; and may sentence the offender to punishment as provided in the section of the Indian Penal Code under which he is charged.

69. When the Court has, under section sixty-six or section sixty-eight, sentenced an offender to punishment, or forwarded him to a Presidency 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 the Court, or on apology being made to its satisfaction.

Act X of 1872, s. 487. Act IV of 1877, s. 207. Cf. draft Code of Criminal Procedure, s. 484.

Discharge of offender on submission or apology.

70. If any witness before the Small Cause 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, the 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 answer or to produce such document, as the case may be, after which, in the event of his persisting in his refusal, he may be dealt with according to the provisions of section sixty-six or sixty-eight.

Act X of 1872, s. 484. Act IV of 1877, s. 141. Cf. draft Code of Criminal Procedure, s. 485. (Also see Act IX of 1850, s. 29.)

Imprisonment or committal of person refusing to answer or produce document.

71. Any person deeming himself aggrived by an order under section sixty-six or section seventy may appeal to the High Court, and the provisions of the Presidency Magistrates Act, 1877, relating to appeals shall, so far as may be, apply to appeals under this section.

Draft Code of Criminal Procedure, s. 287.

Appeal from orders under sections 66 and 70.

CHAPTER XII.

MISCELLANEOUS.

72. No person other than an advocate, vakil or attorney of the High Court, or a person who is at the time this Act comes into force a pleader of the Small Cause Court, shall appear, plead or act in any suit or proceeding in the Small Cause Court under this Act, and no person other than—

(*a*) an advocate of the High Court instructed by a vakil or attorney of such Court or by a pleader of the Small Cause Court, or

(*b*) a vakil of the High Court,

shall address the Court or examine witnesses at the hearing of any such suit in which the amount or value of the subject-matter exceeds one thousand rupees.

Who may appear, &c.

Nothing in this section shall affect the right of any party to conduct his own case or that of any other party to the suit, or the right of any recognized agent of a party under the Code of Civil Procedure as applied by this Act.

73. Notices to produce documents, summonses to witnesses, and all other processes issued in the exercise of any jurisdiction conferred on the Small Cause Court by this Act, except summonses to defendants and writs of execution, may, if the Court by general or special order so directs, be served by such persons as the Court, from time to time, appoints in this behalf.

Act X of 1877 s. 636.

Persons by whom process may be served.

74. The Small Cause Court shall keep such registers, books and accounts, and submit to the High Court such statements and returns, as may,

Act XVII of 1875, s. 4.

Registers and returns.

subject to the approval of the Local Government, be prescribed by the High Court.

Act XI of 1865, s. 53. Letters Patent, s. 43.

75. The Small Cause Court shall comply with such requisitions as may from time to time be made by the Local Government or High Court for records, returns and statements in such form and manner as such Government or Court, as the case may be, thinks fit.

Court to furnish records, &c., called for by Local Government or High Court.

Act XVII of 1875, s. 71. (Cf. Act IX of 1850, s. 29.)

76. The Small Cause Court shall, at the commencement of each year, draw up a list of holidays and vacations to be observed in the Court, and shall submit the same for the approval of the Local Government.

Holidays and vacations.

Such list, when it has received such approval, shall be published in the local official Gazette, and the said holidays and vacations shall be observed accordingly.

Act IX of 1850, s. 36.

77. The Governor General and Members of his Council, the Governors of Fort St. George and Bombay and the members of their respective Councils, the Lieutenant-Governor of Bengal, and the Chief Justices and Judges of the High Courts established under the 24th & 25th of Victoria, chapter 104, shall not be liable to arrest by order of the Small Cause Court.

Certain persons exempt from arrest by Court.

I. L. R. 5, Calc., p. 224.

78. No suit shall lie on any decree of the Small Cause Court.

No suit to lie upon decree of Court.

79. Any person ordered by the Small Cause Court to be imprisoned may be imprisoned in such place as the Local Government, from time to time, appoints in this behalf.

Place of imprisonment.

Act IX of 1850, s. 111.

80. If any person against whom any suit is brought for anything purporting to be done by him under this Act, has, before the institution of the suit, tendered sufficient amends to the plaintiff, the plaintiff shall not recover.

Tender in suit for anything done under Act.

Act IX of 1850, s. 111.

81. All prosecutions for anything purporting to be done under this Act must be commenced within three months after the offence is committed.

Limitation of prosecutions.

THE FIRST SCHEDULE.

(*See section 2.*)

ENACTMENTS REPEALED.

A.—Charters of the Supreme Courts.

Date.		Extent of repeal.
26th March, 1774	Charter of the Supreme Court at Fort William.	Clause 21.
26th December, 1800.	Charter of the Supreme Court at Madras.	Clause 47.
8th December, 1823.	Charter of the Supreme Court at Bombay.	Clause 59.

THE FIRST SCHEDULE—*contd.*

B.—Acts of the Governor General in Council.

Number and year.	Subject or short title.	Extent of repeal.
IX of 1850 ...	For the more easy recovery of small debts and demands in Calcutta, Madras and Bombay.	So much as has not been repealed.
XX of 1857 ...	To amend Act IX of 1850.	The whole.
XXVI of 1864	To extend the jurisdiction of the Courts of Small Causes at Calcutta, Madras and Bombay, and to provide for the appointment of an increased number of Judges of these Courts.	So much as has not been repealed.
X of 1877 ...	The Code of Civil Procedure.	Section eight, para. 2.

C.—Act of the Governor of Bombay in Council.

Number and year.	Subject.	Extent of repeal.
VI of 1864 ...	For the better regulation of the diet-money of persons imprisoned by the Bombay Court of Small Causes.	So much as has not been repealed.

THE SECOND SCHEDULE.

(*See section 23.*)

PORTIONS OF CIVIL PROCEDURE CODE EXTENDING TO COURT.

PRELIMINARY.: Section 2, Interpretation-clause.

CHAPTER I.—Of the Jurisdiction of the Courts and *Res Judicata*, except section 11.

CHAPTER II.—Of the Place of suing, except sections 15 to 19 (both inclusive), section 20, paragraph 4, sections 22, 23 and 24 and section 25, paragraphs 2 and 3.

CHAPTER III.—Of Parties and their Appearances Applications and Acts, except section 37, clause (*b*) and the last paragraph.

CHAPTER IV.—Of the Frame of the Suit, except section 42 and section 44, rule *a*.

CHAPTER V.—Of the Institution of Suits, except section 53, clause (*e*), section 55, section 57, clause (*b*), and sections 58 and 62.

CHAPTER VI.—Of the Issue and Service of Summons, except, in section 64, the words "and the copies or concise statements required by section 58 have been filed," and sections 65, 66 and 86.

CHAPTER VII.—Of the Appearance of the Parties and Consequence of Non-appearance.

THE SECOND SCHEDULE—*contd.*

CHAPTER VIII.—Of Written Statements and Set-off, except sections 110, 112 and 113.

CHAPTER IX.—Of the Examination of the Parties by the Court, except section 119.

CHAPTER X.—Of Discovery and the Admission, &c., of Documents, sections 128 to 133 (both inclusive), section 135, section 136 (except so far as it relates to interrogatories), section 137 (except the second clause), section 138, section 139 (except the last sentence), section 140 (except the proviso and the last six words), sections 141, 142, 143 and 145.

CHAPTER XI.—Settlement of issues, sections 150 and 151.

CHAPTER XII.—Disposal of the Suit at the first hearing, except sections 154 and 155.

CHAPTER XIII.—Of Adjournments.

CHAPTER XIV.—Of the Summoning and Attendance of Witnesses, except sections 168, 169, 170 and 175.

CHAPTER XV.—Of the Hearing of the Suit and Examination of Witnesses, except sections 182 to 191 (both inclusive).

CHAPTER XVI.—Of Affidavits.

CHAPTER XVII.—Of Judgment and Decree, except sections 200, 201, 202, 204, 207, and 211 to 215 (both inclusive).

CHAPTER XVIII.—Of Costs.

CHAPTER XIX.—Of the Execution of Decrees, section 230, first two clauses, sections 231 to 236 (both inclusive), 243 to 259 (both inclusive), 266 (so far as relates to the attachment of moveable property or decrees therefor), 267 to 272 (both inclusive), 273 (so far as relates to decrees for moveable property), 275 to 308 (both inclusive), 328 to 333 (both inclusive), 336 (except the last three clauses), and 337 to 343 (both inclusive).

THE SECOND SCHEDULE—*concld.*

CHAPTER XXI.—Of the Death, Marriage and Insolvency of Parties.

CHAPTER XXII.—Of the Withdrawal and Adjustment of Suits.

CHAPTER XXIII.—Of Payment into Court.

CHAPTER XXIV.—Of Requiring Security for Costs.

CHAPTER XXV.—Of Commissions, except section 396.

CHAPTER XXVII.—Suits by or against Government, or public officers.

CHAPTER XXVIII.—Suits by Aliens and by and against Foreign and Native Rulers, except section 433.

CHAPTER XXIX.—Suits by and against Corporations and Companies.

CHAPTER XXX.—Suits by and against Trustees, Executors and Administrators.

CHAPTER XXXI.—Suits by and against Minors and Persons of Unsound Mind.

CHAPTER XXXII.—Suits by and against Military Men.

CHAPTER XXXIII.—Interpleader.

CHAPTER XXXIV.—Of Arrest and Attachment before Judgment, except as regards the attachment of immoveable property.

CHAPTER XXXV.—Interlocutory orders, sections 498, 499, 500 and 502.

CHAPTER XXXVI.—Appointment of Receivers, section 503.

CHAPTER XXXVII.—Reference to Arbitration, except the provisions of section 522 as to appeals.

CHAPTER XXXVIII.—Of Proceedings on Agreement of Parties, except so much of section 527, clause (*b*), as relates to immoveable property.

CHAPTER XLVI.—Of Reference to and Revision by High Court.

CHAPTER XLIX.—Miscellaneous, sections 640 to 651 (both inclusive).

THE THIRD SCHEDULE.

(*See Section 55.*)

FEES FOR SUMMONSES AND OTHER PROCESSES.

When the amount or value of the subject-matter exceeds	But does not exceed	Fee for summons.			Fee for other processes.		
Rs.	Rs.	Rs.	A.	P.	Rs.	A.	P.
0	10	0	2	0	0	2	0
10	20	0	4	0	0	4	0
20	50	0	8	0	0	8	0
50	100	1	0	0	1	0	0
100	200	1	4	0	2	0	0
200	300	1	8	0	3	0	0
300	400	1	12	0	4	0	0
400	500	2	0	0	5	0	0
500	600	2	4	0	6	0	0
600	700	2	8	0	7	0	0
700	800	2	12	0	8	0	0
800	900	3	0	0	9	0	0
900	1,000	3	4	0	10	0	0
1,000	1,100	3	6	0	10	8	0
1,100	1,200	3	8	0	11	0	0
1,200	1,300	3	10	0	11	8	0
1,300	1,400	3	12	0	12	0	0
1,400	1,500	3	14	0	12	8	0
1,500	1,600	4	0	0	13	0	0
1,600	1,700	4	2	0	13	8	0
1,700	1,800	4	4	0	14	0	0
1,800	1,900	4	6	0	14	8	0
1,900	2,000	4	8	0	15	0	0

D. FITZPATRICK,
Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third Publication.]

The following third 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 11th March, 1881:—

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 the honour to state that the Report of the Indian Law Commissioners, 1879, was duly communicated to us. We have carefully considered so much of it as relates to that Bill, as well as the papers specified in the annexed list; and, in compliance with the wish of the Secretary of State for India, as expressed in his despatch (Legislative) No. 37, dated 7th October, 1880, we have now the honour to present this our third Report.

We agree generally in the enlargement of the Bill effected by the Law Commissioners, and we shall in this Report refer to the Bill as settled by them, and published in the *Gazette of India* for the 17th and 24th January, 1880.

CHAPTER I.—PRELIMINARY.

We have rendered the definition of "attached to the earth" inapplicable to objects which merely rest upon the earth. And we have amended the definition of "notice" by making it apply expressly to a case where a person wilfully abstains from a search in a register which he ought to have made.

CHAPTER II.—TRANSFERS OF PROPERTY BY ACT OF PARTIES.

This chapter, after declaring what rights are inalienable and by what persons transfers may be made, proceeds to declare restrictions of the transfer of property called for in the interests of society. These restrictions are in substance identical with those contained in the Indian Succession Act, and rights and liabilities arising out of customs or personal laws are sufficiently saved by section 2, clause (*a*).

We have amended section 6 (as to what may be transferred) in these respects:—*First*, we have in the first clause substituted "Act" for "section." The effect will be to place Hindús on the same footing as Europeans as regards the power to make settlements, on marriage or otherwise, on persons not in existence at the date of the transfer. Although, no doubt, it has been laid down that the general principle of the Hindú law is that a donee must be in existence at the time of the gift, such settlements are in accordance with Native usage.

Secondly, we have re-drawn clause (*a*) thus:—

"(*a*) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of the same nature, cannot be transferred: the chance of a Hindú heir succeeding to property in the possession of a Hindú female cannot be transferred to any one except the present or future owner or co-owner of the property affected thereby."

Thirdly, we have made clause (*c*) run thus:—

"(*c*) An easement cannot be transferred apart from the dominant heritage."

Fourthly, we have extended clause (*e*) to rights to sue for harm illegally caused to property.

We think that the power to transfer property to or for the benefit of women, so that they shall not be able, during their marriage, to transfer or charge the same should be confined, as it is now, to women not being Hindús, Muhammadans or Buddhists; and we have altered section 10 accordingly.

It cannot be denied that one school of Muhammadan law does, as stated in the books, permit a settlement on a person, his children and their offspring in perpetuity. But in practice this form of settlement is obsolete, and, if made, the Courts would now refuse to recognise it as valid. We think, therefore, that section 14, which prohibits this kind of perpetuity, may stand unaltered. Baillie, p. 57

We have shortened and simplified the sections (33, 34) which deal respectively with conditions that a transferee shall perform an act at or before a specified time, and like conditions wherein no such time is specified.

We do not think that the proposition laid down in section 40, as to a Hindú's right to receive maintenance from the profits of immoveable property, can be said to be authoritatively settled, and there are good grounds for questioning it.

We have therefore re-drawn the first clause of section 40 thus:—

"40. Where a third person has a right to receive maintenance or a provision for advancement or marriage from the profits of immoveable property, and such property is transferred with the intention of defeating the right, such right may be enforced against a transferee with notice of such intention, or a gratuitous transferee of the property affected by the right, but not against a transferee for consideration and without notice of the right, nor against such property in his hands."

The remainder of section 40, though suggested by English cases, is, in our opinion, founded on general principles of equity applicable to India, and may, therefore, fitly be left unaltered in the Bill.

Section 41 has been amended so as to bring a benámidár clearly within its operation.

We have confined section 42 to cases of transfers for consideration by persons having authority to revoke the transfer.

To the section (44) dealing with transfer by one co-owner we have added a clause declaring that, when the transferee of a share of a dwelling-house belonging to an undivided family is a stranger, nothing in this section shall be deemed to entitle him to joint possession or other common or part enjoyment of the house.

We have confined section 53 to cases of fraudulent transfer. To provide, as it now does, for fraudulent forfeitures would involve a change in the law the consequences of which cannot easily be foreseen.

CHAPTER III.—SALES OF IMMOVEABLE PROPERTY.

We agree with Sir Henry Maine as to the desirability of rendering the system of transfer of immoveable property a system of public transfer; and we are inclined to go a little further in this direction than seemed good to the Law Commissioners. Thus, we think that in the case of a reversion or other intangible thing, though its value may be less than Rs. 100, the transfer should be made only by registered assurance; and we have altered section 54 accordingly.

As to the duties of the seller, we think that, except where the property is sold subject to incumbrances, he should be bound to discharge all incumbrances on the property existing at the date of the sale; that he should not be bound to deliver the title-deeds till the whole of the purchase-money has been paid. We also think that the Bill may reasonably declare, as it does, that, in the absence of a stipulation to the contrary, the seller shall be deemed to contract that the interest which he assumes to transfer subsists and that he has power to make the transfer; but where he sells in a fiduciary character, we would follow the present practice, and declare simply that he shall be deemed to contract that he has done no act whereby the property is incumbered, or he is hindered from transferring it. We have altered section 55, clauses (*a*) (7), (8), (9), accordingly.

The proposition laid down in clause (*c*) (1), that a purchaser is bound to disclose any fact unknown to the vendor which increases his *interest* in the property, *e. g.*, the actual or imminent death of a prior life-tenant, has been questioned by a high authority. It appears to us in exact accordance with the rule laid down in *Turner* v. *Harvey*, Jac. 169; *Ellard* v. *Lord Llandaff*, 1 Ball & B. 241; and (on the sale of a life-policy) *Jones* v. *Keene*, 2 Moo. & R. 348. We have, however, made a verbal amendment in this clause.

As to the duties of the buyer, we have struck out the clause requiring him to retransfer the property sold, where the ownership has passed before payment of the purchase-money and he fails to pay or tender it. In such case the seller's lien is, we think, sufficient.

As to the buyer's rights, we think that his lien as against the seller for purchase-money paid in anticipation should be available against all persons claiming under the seller with notice of the payment. We have altered the section accordingly.

Where two properties are subject to a common charge and one is sold, the buyer's right as against the seller to have the charge satisfied out of the other property does not depend on whether or not the buyer had notice of the charge. We have, therefore, struck out of section 56 the words relating to notice.

CHAPTER IV.—MORTGAGES.

We think that in the definition of simple mortgage the expression "makes it a collateral security" is likely to give rise to difficulties. We also think that a transaction may be a "mortgage by conditional sale" although accompanied by possession, and in the definition of usufructuary mortgage the words "or agrees to deliver" and "actual" seem unnecessary. We have therefore amended these definitions as follows:—

Simple Mortgage.

"Where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage-money and agrees expressly or impliedly that, in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold and the proceeds of sale to be applied, so far as may be necessary, in payment of what may be due to him on the mortgage, the transaction is called a simple mortgage and the mortgagee a simple mortgagee."

Mortgage by Conditional Sale.

"Where the mortgagor ostensibly sells the mortgaged property on condition that in default of payment of the mortgage-money on a certain date the sale shall become absolute, or

"on condition that on such payment being made, the sale shall become void, or

"on condition that on such payment being made, the buyer shall re-transfer the property to the seller,

"the transaction is called a mortgage by conditional sale and the mortgagee a mortgagee by conditional sale."

Usufructuary Mortgage.

"Where the mortgagor delivers possession of the property to the mortgagee and authorises him to retain such possession until payment of the mortgage-money, and to receive the rents and profits accruing from the property and to appropriate them in lieu of interest or in payment of the mortgage-money, the transaction is called an usufructuary mortgage and the mortgagee an usufructuary mortgagee."

We agree with the Law Commissioners that the requirement of registration will not only discourage fraud and facilitate investigations of title, but that it will also preclude some difficult question of priority. A majority of us, however, think that where the principal money secured is less than Rs. 100, the assurance need not be registered. And we have altered the Bill accordingly. Our colleague Mr. Stokes dissents from this alteration, as, in his opinion, all incumbrances should appear on the register: those who mortgage their property for small amounts, as a rule, require protection from fraud more than those who mortgage for large amounts, and the changes impending in the working of the law will deprive the requirement of registration of all hardship even in the pettiest cases.

A majority of us are of opinion that equitable mortgages by deposit of title-deeds should be valid when they are made in Calcutta, Madras, Bombay, Rangoon and Karáchí. The practice of raising money on such securities has long been established in those towns, and any attempt to disturb it would cause much inconvenience. Here, again, Mr. Stokes dissents on the grounds (*a*) that such mortgages are opposed to the policy of the registration-law; (*b*) that they lead to evasions of the stamp-duty; (*c*) that they are at variance with the principle of making the system of transfer of immoveable property, as far as possible, a system of public transfer; and (*d*) that, when the amount secured is Rs. 100 or upwards, they would be inconsistent with the general rule in section 58 requiring a written instrument.

We think, with Mr. Justice West, that nothing in the section (59) declaring the mortgagor's right to redeem should invalidate any provision to the effect that, if the time fixed for payment of the principal money has been allowed to pass, or no such time has been fixed, the mortgagee shall be entitled to reasonable notice before payment or tender of such money. In like manner, we think that nothing in section 82 or 84 should deprive the mortgagee of his right to interest where there exists a contract that he shall be entitled to such notice.

We concur with the Law Commissioners in the solution which they have proposed (section 68) of the moot question as to whether a power of sale conferred on the mortgagee is invalid, and as there is no prospect of the High Courts or the Privy Council making an authoritative declaration on the subject, we think it desirable to settle the matter by legislation as soon as possible.

For the section (98) as to the abandonment of his security where a mortgagee attaches and sells the mortgaged property, we have substituted the following:—

"98. Where a mortgagee, in execution of a decree for the satisfaction of any claim, whether arising under the mortgage or not, attaches the mortgaged property, he shall not be entitled to bring such property to sale otherwise than by instituting a suit under section 66."

We think that the High Court should have power to make rules for carrying out the provisions of this chapter.

CHAPTER V.—LEASES.

This chapter will, in our opinion, be of practical use in the case of leases of buildings, gardens and mines. We agree with the Law Commissioners that it should not of itself apply to the relations between zamíndár and raiyat, and we think that the power given to the Local Government by section 115 (now 116) to extend any of the provisions of the chapter to agricultural leases should only be exercised with the sanction of the Governor General in Council, and that the requisite notification should not take effect until the expiry of six months from the date of its publication.

The rule laid down in section 106, clause (*i*), as to the removeability of tenants' fixtures, has been objected to as not in accordance with the laws in force in this country. But it will operate only in the absence of a contract or local usage to the contrary, and will not in practice apply to tenants in husbandry. Moreover, it is impossible to say with certainty what the law of India on the subject really is. The Courts would, therefore, turn for guidance to the Civil law and the law of England. The Civil law permits a tenant to remove all fixtures where this can be effected without material injury to the property, and the strictness of the law of England has been relaxed where the fixtures have been annexed for the purposes of trade or manufacture, ornament, furniture and domestic use or convenience. The clause in question seems to us to represent with reasonable accuracy the rules of the Civil and the English law.

CHAPTER VI.—GIFTS.

We agree with the Law Commissioners that registration should be required in the case of gifts of immoveable property of whatever value. Such gifts are, as a rule, made by a written instrument, and as, under the Registration Act (III of 1877, section 17, clause (*a*)), the registration of such instruments is compulsory, the change of the existing law here proposed is almost nominal.

We have struck out the clause in section 121 (now 122) which is founded on the rule in the Succession Act as to bequests to attesting witnesses. It is, we think, inapplicable to a transaction *inter vivos*, where the donor can give evidence of his intention.

We have also struck out the section (120) which declares that the donor is not bound to warranty. It seems to the majority of us useless as denying what no one in this country would ever assert. Our colleague Mr. Stokes would retain it as precluding a doubt which may reasonably be felt by the Courts (see Burge II, 145).

We have made verbal and other unimportant amendments in sections 11, 25, 36, 37, 51, 59, 61, 64, 80, 81, 90, 91, 99, 101, 106, 126, 133.

The Bill as now settled seems to us a systematic and useful arrangement of the existing law. But we agree with the Law Commissioners that, when the body of substantive civil law enacted for India is recast in a more compact and convenient form than that of a series of fragmentary portions from time to time passed by the legislature, the chapters on Sale, Mortgage, Lease and Exchange contained in the present Bill will probably be placed in close connection with the rules contained in the Contract Act. Till then they may fitly be left in a law containing what the Contract Act does not contain, namely, general rules regulating the transmission of property between living persons.

We do not think that these rules, as now amended, will substantially alter or add to the existing law, or that they will invade or displace the functions of the Judges of the existing Courts. We, therefore, recommend that the Bill be passed. Drawn originally in England by the former Indian Law Commissioners, it was revised by Sir A. Hobhouse and introduced into the Council of the Governor General in June, 1877. It has since been twice circulated to the Local Governments for opinion and publication, and twice reported on by Select Committees, in February, 1878, and February, 1879. It was then carefully revised by the late Indian Law Commission. It has now been again revised by us. We think, therefore, of this Bill, as of the Bill dealing with negotiable instruments, that it is not now likely to be improved without the experience to be gained from its actual working. We recommend, however, that it should be republished in the *Gazette of India* with this Report; and, in obedience to the orders of the Secretary of State, it must also be sent home to him, published in the local Gazettes, and translated into the vernacular languages.

Our hon'ble colleagues Messrs. Grant and Paul have not been able to attend our meetings, and do not, therefore, sign this report.

WHITLEY STOKES.
J. PITT KENNEDY.
B. W. COLVIN.
JOTÍNDRA MOHAN TAGORE.

The 11th March, 1881.

LIST OF PAPERS.

From Secretary to Government, North-Western Provinces and Oudh, to Secretary to Government of India, Department of Revenue, Agriculture and Commerce, No. 722A, dated 8th October, 1878, and enclosure [Papers No. 34].

„ Acting Chief Secretary to Government, Madras, No. 467, dated 7th March, 1879, and enclosures [Papers No. 35].

„ Hon'ble H. S. Cunningham, dated 31st March, 1879 [Paper No. 36].

„ Registrar, High Court, Calcutta, No. 494, dated 24th March, 1879 [Paper No. 37].

„ Secretary for Birár to Resident, Haidarábád, No. 1, dated 8th April, 1879 [Paper No. 38].

„ Hon'ble G. H. P. Evans, dated 11th April, 1879 [Paper No. 39].

„ Officiating Secretary to Government, Bengal, No. 1947, dated 21st April, 1879, and enclosures [Papers No. 40].

„ Acting Under Secretary to Government, Bombay, No. 2348, dated 18th April, 1879, and enclosures [Papers No. 41].

„ Secretary to Government, Panjáb, No. 1705, dated 1st May, 1879, and enclosures [Papers No. 42].

„ Secretary for Birár to Resident, Haidarábád, No. 4, dated 30th April, 1879, and enclosure [Papers No. 43].

„ Officiating Secretary to Chief Commissioner, Mysore, No. 1086—8J, dated 5th May, 1879, and enclosures [Papers No. 44].

„ Officiating Secretary to Chief Commissioner, Central Provinces, No. 2044—98, dated 9th May, 1879, and enclosures [Papers No. 45].

„ Officiating First Assistant Resident, Haidarábád, No. 2P, dated 10th May, 1879 [Paper No. 46].

„ Secretary to Government, North-Western Provinces and Oudh, No. 367, dated 10th May, 1879, and enclosures [Papers No. 47].

„ Secretary to Government, North-Western Provinces and Oudh, No. 410, dated 21st May, 1879, and enclosures [Papers No. 48].

Memorandum by Pandit Lákhsmí Náráyana, Pleader, High Court, North-Western Provinces, dated 29th May, 1879 [Paper No. 49].

From Chief Commissioner, Ajmer-Merwára, No. 403, dated 29th May, 1879, and enclosures [Papers No. 50].
„ Secretary to Chief Commissioner, Assam, No. 643, dated 19th April, 1879, and enclosures [Papers No. 51].
„ Secretary to Government, Panjáb, No. 255C, dated 20th June, 1879, and enclosures [Papers No. 52].
„ Acting Chief Secretary to Government, Madras, No. 1320, dated 6th June, 1879, and enclosures [Papers No. 53].
„ Acting Under Secretary to Government, Bombay, No. 3720, dated 25th June, 1879, and enclosures [Papers No. 54].
„ R. Kristnaswamy Rão, Acting Subordinate Judge, Madura, dated 28th June, 1879 [Paper No. 55].
„ J. Crawfurd, Esq., Registrar, High Court, Calcutta, No. 1123, dated 27th June, 1879 [Paper No. 56].
„ Acting Chief Secretary to Government, Madras, No. 1558, dated 2nd July, 1879, and enclosures [Papers No. 57].
„ Secretary to Government, North-Western Provinces and Oudh, No. 857, dated 23rd October, 1879, and enclosures [Papers No. 58].
„ Officiating Secretary to Chief Commissioner, British Burma, No. 4389—111, dated 20th December, 1879, and enclosures [Papers No. 59].

Note by Hon'ble Whitley Stokes, dated 8th December, 1880.

No. V.

TRANSFER OF PROPERTY BILL, 1881.

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THE SCHEDULE.

No. V.

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.

Short title. Extent. Commencement.

1. This Act may be called "The Transfer of Property Act, 1881": It extends to the whole of British India; and it shall come into force on the first day of *March*, 1882. Bill, s. 1: Bill II, s. 1: Bill III, 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— Bill, s. 2: Bill II, s. 1: Bill III, s. 2.

Saving of certain enactments, incidents, rights, liabilities, &c.

(*a*) the provisions of any enactment not hereby expressly repealed: Act IX of 1872, s. 1.

(*b*) any terms or incidents of any contract or constitution of property which are consistent with the provisions of this Act, and are allowed by the law for the time being in force:

(*c*) any right or liability arising out of a custom or personal law consistent with this Act, or out of a legal relation constituted before this Act comes into force, or any relief in respect of any such right or liability: 4 Beng. A. C. 219.

(*d*) any transfer by operation of law or by decree or order of a Court of competent jurisdiction. I. L. R., 2 Bom., 331.

Interpretation-clause.

3. In this Act, unless there be something repugnant in the subject or context,— Bill, s. 3: Bill II, s. 1: Bill III, s. 3: Report, s. 2. N. Y. Code, para. 150.

"ownership":

the "ownership" of a thing is the right of one or more persons to possess and use it to the exclusion of others. Such ownership is either absolute or qualified. The thing of which there may be ownership is called "property":

"property":

"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 to or in immoveable property: Act III of 1877, s. 3.

"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":

"attached to the earth" means—

(a) rooted in the earth, as in the case of trees and shrubs;

See ss. 3, 107.

(b) imbedded in the earth, as in the case of walls or buildings; or

(c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached:

See Contract Act, s. 229, as to agent: 4 Cal. 212: s. 11 Beng. 54 P. C.

"notice":

and a person is said to have "notice" of a fact when he actually knows that fact, or when but for wilful abstention from an inquiry or search which he ought to have made, or gross negligence, he would have known it, or when information of the fact is given to or obtained by his agent under the circumstances mentioned in the Indian Contract Act, section 229.

Bill III, s. 4.

4. The chapters and sections of this Act which relate to contracts shall be taken as part of the Indian Contract Act, 1872.

Enactments relating to contracts to be taken as part of Act IX of 1872.

CHAPTER II.

OF TRANSFERS OF PROPERTY BY ACT OF PARTIES.

(A).—*Transfer of Property, whether moveable or immoveable.*

5. In the following sections "transfer" means an act by which one living person conveys to another, or to himself and another, in present or in future, the ownership of property or an interest therein, and "to transfer" is to perform such act.

"Transfer" defined.

6. The ownership of property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force:—

What may be transferred.

Cf. Lethbridge, 9 Mad. Ct. Act X of 1877, s. 266, clause (3).

(a) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred. The chance of a Hindú heir succeeding to property in the possession of a Hindú female cannot be transferred to any one except the present or future owner or co-owner of the property affected thereby.

Smith v. Pugh, Ferrer, 2 Atk. 189.

(b) A mere right of re-entry for breach of a condition subsequent cannot be transferred to any one except the owner of the property affected thereby.

(c) An easement cannot be transferred apart from the dominant heritage.

(d) An interest in property restricted in its enjoyment to the owner personally cannot be transferred by him.

(e) A mere right to sue for compensation for a fraud or for harm illegally caused cannot be transferred.

(f) A public office cannot be transferred, nor can the salary of a public officer whether before or after it has become payable.

Cf. 11 & 12 Vic., c. 21, 27.

(g) Stipends allowed to military and civil pensioners of Government and political pensions cannot be transferred.

(h) No transfer can be made (1) in so far as it is opposed to the nature of the interest affected thereby, or (2) for an illegal purpose, or (3) to a person legally disqualified to be transferree.

Bill, s. 4: Bill III, s. 5 Report, s. 4.

7. Every person competent to contract and entitled to transferable property, or authorized to dispose of transferable property not his own, is competent to transfer such property either wholly or in part and either absolutely or conditionally, in the circumstances, to the extent and in the manner allowed and prescribed by any law for the time being in force.

Persons competent to transfer.

Bill, s. 10: Bill III, s. 6: Report, s. 10: s. last clause. Report, s. 6: 2 W. R. 126 (buildings): 14 W. R. 978. N.-W. P., 1870, p. 251: 24 W. R. 380 (trees), "everything grown on it," Morley N. S. 360.

8. Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in such property, and in the legal incidents thereof.

Operation of transfer.

Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth;

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, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows and all other things provided for permanent use therewith;

and, where the property is a debt or other actionable claim, the securities therefor, but not arrears of interest accrued before the transfer;

and, where the property is money or other property yielding income, the interest or income thereof accruing after the ownership passes.

7 Exch., s. 581.

9. A transfer may be made without writing in every case in which a writing is not expressly required by law.

Oral transfer.

Report, s. L. R. 9 Chan. D. 148, 265.

10. Where a transfer is subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property transferred, the condition or limitation is void except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him: provided that property may be transferred to or for the benefit of a woman (not being a Hindú, Muhammadan or Buddhist), so that she shall not have power during her marriage to transfer or charge the same or her beneficial interest therein.

Condition restraining alienation.

Act X of 1865, s. 125.

11. Where on a transfer of property an interest is created absolutely in favour of any person, but the terms of the transfer direct that such interest shall be applied or enjoyed in a particular manner, he shall be entitled to receive and dispose of such interest as if there were no such direction.

Restriction repugnant to interest created.

Nothing in this section shall be deemed to affect the right to restrain for the beneficial enjoyment of one piece of immoveable property, the enjoyment of another piece of such property, or to compel the enjoyment thereof in a particular manner.

Report, s. 48: See Act X of 1865, s. 107.

12. Where property is transferred subject to a condition or limitation making any interest therein reserved or given to or for the benefit of any person to cease on his becoming insolvent or endeavouring to transfer or dispose of the same, such condition or limitation is void.

Condition making interest determinable on insolvency or attempted alienation.

Nothing in this section applies to a condition in a lease for the benefit of the lessor or those claiming under him.

Act X of 1865, s. 100. Report, s. 49.

13. Where on a transfer of property an interest is created for the benefit of a person not in existence at the date of the transfer, subject to a prior interest created by the same transfer, the interest created for the benefit of such person shall not take effect, unless it extends to the whole of the remaining interest of the transferor in the property.

Transfer for benefit of person not in existence at date of transfer, subject to prior transfer.

Illustration.

A transfers property of which he is the owner to B in trust for A and his intended wife successively for their lives, and after the death of the survivor for the eldest son of the intended marriage for life, and after his death for his second son. The interest so created for the benefit of the eldest son does not take effect, because it does not extend to the whole of A's remaining interest in the property.

Report, s. 50, Succession Act, s. 101.

14. No transfer can operate to create an interest which is to take effect after the life-time of one or more persons living at the date of such transfer, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the interest created is to belong.

Rule against perpetuity.

Report, s. 51: *Bentinck v. Duke of Portland*, 7 Chan. D. 693.

15. If on a transfer of property an interest is created for the benefit of a class of persons with regard to some of whom such interest fails by reason of any of the rules contained in sections thirteen and fourteen, such interest fails as regards the whole class.

Transfer to class some of whom come under sections 13 and 14.

Report, s. 52.

16. Where an interest fails by reason of any of the rules contained in sections thirteen, fourteen and fifteen, any interest created in the same transaction and intended to take effect after or upon failure of such prior interest also fails.

Transfer to take effect on failure of prior transfer.

17. The restrictions in sections fourteen, fifteen and sixteen shall not apply to property transferred for the benefit of the public in the advancement of religion, knowledge, commerce, health, safety or any other object beneficial to mankind.

Transfer in perpetuity for benefit of public.

Act X of 1865, s. 104: Report, s. 53.

18. Where the terms of a transfer of property direct that the income arising therefrom shall be accumulated, such direction shall be void, and the property shall be disposed of as if no accumulation had been directed.

Direction for accumulation.

Donaldson v. Donaldson, L. R. 3 Chan. Div. 743.

Exception.—Where the property is immoveable or where accumulation is directed to be made from the date of the transfer, the direction shall be valid in respect only of the income arising from the property within one year next following such date; and at the end of the year such property and income shall be disposed of respectively as if the period during which the accumulation has been directed to be made had elapsed.

Report, ss. 56, 57, altered.

19. Where, on a transfer of property, an interest is created in favour of a person without specifying the time when it is to take effect, or in terms specifying that it is to take effect, forthwith or on the happening of an event which must happen, such interest is vested, unless a contrary intention appears from the terms of the transfer.

Vested interest.

A vested interest is not defeated by the death of the transferee before he obtains possession.

Explanation.—An intention that an interest shall not be vested is not to be inferred merely from a provision whereby the enjoyment thereof is postponed, or whereby a prior interest in the same property is given or reserved to some other person, or whereby income arising from the property is directed to be accumulated until the time of enjoyment arrives, or from a provision that if a particular event shall happen the interest shall pass to another person.

Report, s. 58, altered.

20. Where, on a transfer of property, an interest is created for the benefit of a person not then living, he acquires upon his birth, unless a contrary intention appear from the terms of the transfer, a vested interest, although he may not be entitled to the enjoyment thereof immediately on his birth.

Transfer for benefit of person not then living.

Act X of 1865, s. 107: Report, s. 60, IX, 72-32.

21. Where, on a transfer of property, an interest is created in favour of a person to take effect only on the happening of a specified uncertain event, or if a specified uncertain event shall not happen, such person thereby acquires a contingent interest in the property. Such interest becomes a vested interest, in the former case, on the happening of the event, in the latter, when the happening of the event becomes impossible.

Contingent interest.

Exception.—Where under a transfer a person becomes entitled to an interest in property upon attaining a particular age, and the transferor also gives to him absolutely the income to arise from

such interest before he reaches that age, or directs the income or so much thereof as may be necessary to be applied for his benefit, such interest is not contingent.

Act X of 1865, s. 108: Report, s. 60.

Transfer to members of a class who attain a particular age.

22. Where, on a transfer of property, an interest is created in favour of such members only of a class as shall attain a particular age, such interest does not vest in any member of the class who has not attained that age.

Act X of 1865, s. 111: Report, s. 61.

Transfer contingent on happening of specified uncertain event.

23. Where, on a transfer of property, an interest therein is to accrue to a specified person if a specified uncertain event shall happen, and no time is mentioned for the occurrence of that event, the interest fails unless such event happens before, or at the same time as, the intermediate or precedent interest ceases to exist.

Act X of 1865, s. 112.

Transfer to such of certain persons as survive at some period not specified.

24. Where, on a transfer of property, an interest therein is to accrue to such of certain persons as shall be surviving at some period, but the exact period is not specified, the interest shall go to such of them as shall be alive when the intermediate or precedent interest ceases to exist, unless a contrary intention appears from the terms of the transfer.

Illustration.

A transfers property to B for life, and after his death to C and D, equally to be divided between them, or to the survivor of them. C dies during the life of B. D survives B. At B's death the property passes to D.

Act X of 1865, s. 113: Act X of 1865, s. 114, expanded with reference to Act IX of 1872, s. 23.

Conditional transfer.

25. An interest created on a transfer of property and dependent upon a condition fails if the fulfilment of the condition is impossible, or is forbidden by law, or is of such a nature that if permitted, it would defeat the provisions of any law, or is fraudulent, or involves or implies injury to the person or property of another, or the Court regards it as immoral or opposed to pubic policy.

Illustrations.

(*a*). A lets a farm to B on condition that he shall walk a hundred miles in an hour. The lease is void.

(*b*). A gives Rs. 500 to B on condition that he shall marry A's daughter, C. At the date of the transfer C was dead. The transfer is void.

(*c*). A transfers Rs. 500 to B on condition that she shall murder C. The transfer is void.

(*d*). A transfers Rs. 500 to his niece C if she will desert her husband. The transfer is void.

Act X of 1865, s. 115.

Fulfilment of condition precedent.

26. Where the terms of a transfer of property impose a condition to be fulfilled before a person can take an interest in the property, the condition shall be deemed to have been fulfilled if it has been substantially complied with.

Illustrations.

(*a*). A transfers Rs. 5,000 to B on condition that he shal marry with the consent of C, D and E. E dies. B marries with the consent of C and D. B has fulfilled the condition.

(*b*). A transfers Rs. 5,000 to B on condition that he shall marry with the consent of C, D and E. B marries without the consent of C, D and E, but obtains their consent after the marriage. B has not fulfilled the condition.

Act X of s. 116.

Conditional transfer to one person coupled with transfer to another on failure of prior transfer.

27. Where, on a transfer of propery, an interest is created in favour of one person, and by the same transaction an ulterior disposition of the same interest is made in favour of another if the prior interest under the transfer shall fail, the ulterior disposition shall take effect upon the failure of the prior disposition, although the failure may not have occurred in the manner contemplated by the transferor.

Act X of s. 117.

But where the intention of the parties to the transaction is that the ulterior disposition shall take effect only in the event of the prior disposition failing in a particular manner, the ulterior disposition shall not take effect unless the prior disposition fails in that manner.

Illustrations.

(*a*). A transfers Rs. 500 to B on condition that he shall execute a certain lease within three months after A's death, and if he should neglect to do so, to C. B dies in A's lifetime. The transfer to C takes effect.

(*b*). A transfers property to his wife; but in case she should die in his life-time, transfers to B that which he had transferred to her. A and his wife perish together, under circumstances which make it impossible to prove that she died before him. The transfer to B does not take effect.

Act X of s. 118.

Ulterior transfer conditional on happening or not happening of specified event.

28. On a transfer of property an interest may be created to accrue to any person with the condition superadded that in case a specified uncertain event shall happen, such interest shall pass to another person; or that in case a specified uncertain event shall not happen, such interest shall pass to another person. In each case the dispositions are subject to the rules contained in sections ten, twelve, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five and twenty-seven.

Act X of s. 119.

Fulfilment of condition subsequent.

29. An ulterior disposition of the kind contemplated by the last preceding section cannot take effect unless the condition is strictly fulfilled.

Illustration.

A transfers Rs. 500 to B, to be paid to him on his attaining his majority or marrying, with a proviso that, if B dies a minor or marries without C's consent, the Rs. 500 shall go to D. B marries when only 17 years of age, without C's consent. The transfer to D takes effect.

Act X of s. 120.

Prior disposition not affected by invalidity of ulterior disposition.

30. If the ulterior disposition is not valid, the prior disposition is not affected by it.

Illustration.

A transfers a farm to B for her life, and, if she do not desert her husband, to C. B is entitled to the farm during her life as if no condition had been inserted.

Act X of s. 121.

Condition that transfer shall cease to have effect in case specified uncertain event happens or does not happen.

31. Subject to the provisions of section twelve, on a transfer of property an interest may be created with the condition superadded that it shall cease to exist in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.

Illustrations.

(*a*). A transfers a farm to B for his life, with a proviso that, in case B cuts down a certain wood, the transfer shall cease to have any effect. B cuts down the wood. He loses his life-interest in the farm.

(*b*). A transfers a farm to B, provided that, if B shall not go to England within three years after the date of the transfer, his interest in the farm shall cease. A does not go to England within the term prescribed. His interest in the farm ceases.

Act X of 1865, s. 122.

Such condition must not be invalid.

32. In order that a condition that an interest shall cease to exist may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of the creation of an interest.

Act X of 1865, s. 124.

Condition that transferee shall perform act at or before specified time.

33. Where, on a transfer of property, an interest is created subject to a condition that the person taking it shall perform a certain act at or before a specified time, and the transferor has at the time of creating the interest made an ulterior disposition thereof in favour of himself or of another, if the act be not performed within such time, the prior disposition ceases to have effect if the act is not performed within such time, or if the person benefited by the prior disposition renders the performance of the act impossible within the time specified. But where the transferor has not made any such ulterior disposition thereof, the transfer is, at the option of the transferor, voidable so far as regards such interest, if time is of the essence of the condition; but if it is not of the essence of the contract, the transfer shall not be so voidable.

When such intention is apparent, the circumstance that the interest has actually been enjoyed under the prior disposition does not affect the operation of the condition.

Transfer conditional on performance of act, no time being specified for performance.

34. Where, on a transfer of property, an interest is created subject to a condition that the person taking it shall perform a certain act, but no time is specified for the performance of the act, the condition is broken when he renders impossible, permanently or for an indefinite period, the performance of the condition.

Transfer conditional on performance of act, time being specified.

35. Where an act is to be performed by a person either as a condition to be fulfilled before an interest created on a transfer is enjoyed by him, or as a condition on the non-fulfilment of which the interest is to pass from him to another person, and a time is specified for the performance of the act, if such performance within the specified time is prevented by the fraud of a person who would be directly benefited by non-fulfilment of the condition, such further time shall as against him be allowed for performing the act as shall be requisite to make up for the delay caused by such fraud. But if no time is specified for the performance of the act, then if its performance is, by the fraud of a person interested in the non-fulfilment of the condition rendered impossible or indefinitely postponed, the condition shall as against him be deemed to have been fulfilled.

Election.

Draft, s. 62 added to.

Election when necessary.

36. Where a person professes to transfer property which he has no right to transfer, and as part of the same transaction confers any benefit on the owner of the property, such owner must elect either to confirm such transfer or to dissent from it; and in the latter case he shall relinquish the benefit so conferred, and the benefit so relinquished shall revert to the transferor or his representative as if it had not been disposed of,

Act X of 1865, s. 168.

subject nevertheless,

where the transfer is gratuitous and the transferor has before the election died or otherwise become incapable of making a fresh transfer,

and in all cases where the transfer is for consideration,

to the charge of making good to the disappointed transferee the amount or value of the property attempted to be transferred to him.

Illustration.

The farm of Sultánpur is the property of C and worth Rs. 800. A by an instrument of gift professes to transfer it to B, giving by the same instrument Rs. 1,000 to C. C elects to retain the farm. He forfeits the gift of Rs. 1,000.

In the same case, A dies before the election. His representative must out of the Rs. 1,000 pay Rs. 800 to B.

Act X of 1865, s. 169.

The rule in the first paragraph of this section applies whether the transferor does or does not believe that which he professes to transfer to be his own.

Act X of 1865, s. 171.

A person taking no benefit directly under a transaction, but deriving a benefit under it indirectly, need not elect.

Act X of 1865, s. 172.

A person who in his one capacity takes a benefit under the transaction may in another dissent therefrom.

Exception to the last preceding four rules.—Where a particular benefit is expressed to be conferred on the owner of the property which the transferor professes to transfer expressed to be in lieu of that property, if such owner claim that he must relinquish the particular benefit, but he is not bound to relinquish any other benefit conferred upon him by the same transaction.

Act X of 1865, s. 173.

Acceptance of the benefit by the person on whom it is conferred constitutes an election by him to confirm the transfer, if he is aware of his duty to elect and of those circumstances which would influence the judgment of a reasonable man in making an election, or if he waives enquiry into the circumstances.

Act X of 1865, s. 174.

Such knowledge or waiver shall, in the absence of evidence to the contrary, be presumed, if the person on whom the benefit has been conferred has enjoyed it for two years without doing any act to express dissent.

Act X of 1865, s. 175.

Such knowledge or waiver may be inferred from any act of his which renders it impossible to

place the persons interested in the property professed to be transferred in the same condition as if such act had not been done.

Illustration.

A transfers to B an estate to which to C is entitled, and to C a coal-mine. C takes possession of the mine and exhausts it. He has thereby confirmed the transfer of the estate to B.

Act X of 1865, s. 176. If he does not within one year after the date of the transfer signify to the transferor or his representatives his intention to confirm or to dissent from the transfer, the transferor or his representatives may, upon the expiration of that period, require him to make his election; and if he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the transfer.

Act X of 1865, s. 167. In case of disability, the election shall be postponed until the disability ceases, or until the election is made by some competent authority.

Apportionment.

Draft, s. 64: Bill III, s. 86. **37.** In the absence of a contract to the contrary, all rents, annuities, pensions, dividends and other periodical payments in the nature of income shall, upon the transfer of the interest of the person entitled to receive such payments, be deemed, as between the transferor and the transferee, to accrue due from day to day, and to be apportionable accordingly, but to be payable on the days appointed for the payment thereof.

Apportionment of periodical payments on determination of interest of person entitled.

Severance of Obligation relating to property.

38. When in consequence of a transfer property is divided and held in several shares, and thereupon the benefit of any obligation relating to the property as a whole passes from one to several owners of the property, the corresponding duty shall, in the absence of a contract to the contrary amongst the owners, be performed in favour of each of such owners in proportion to the value of his share in the property, provided that the duty can be severed and that the severance does not substantially increase the burden of the obligation; but if the duty cannot be severed, or if the severance would substantially increase the burden of the obligation, the duty shall be performed for the benefit of such one of the several owners as they shall jointly designate for that purpose:

Provided that no person on whom the burden of the obligation lies shall be answerable for failure to discharge it in manner provided by this section, unless and until he has had reasonable notice of the severance.

Satisfaction of right arising in favour of several persons in consequence of a transfer.

Illustrations.

(*a*). A sells to B, C and D land situate in a village and leased to E at an annual rent of Rs. 90 and delivery of one fat sheep, B having provided half the purchase-money and C and D one quarter each. E having notice of this must pay Rs. 15 to B, Rs. 7½ to C and Rs. 7½ to D, and must deliver the sheep according to the joint direction of B, C and D.

(*b*). Each house in the village being bound to provide ten days' labour each year on a dyke to prevent inundation, E had agreed as a term of his lease to perform this work for A. B, C and D severally require E to perform the ten days' work due on account of the house of each. E is not bound to do more than ten days' work in all, according to such directions as B, C and D may join in giving.

B.—Transfer of Immoveable Property.

Bill III, s. 7. **39.** Where any person authorized only under circumstances in their nature variable to dispose of immoveable property transfers such property for consideration, alleging the existence of such circumstances, they shall, as between the transferee on the one part and the transferor and other persons (if any) affected by the transfer on the other part, be deemed to have existed, if the transferee, after using reasonable care to ascertain the existence of such circumstances, has acted in good faith.

Transfer by person authorized only under certain circumstances to transfer.

Illustration.

A, a Hindú widow, whose husband has left collateral heirs, agrees, for purposes neither religious nor charitable, to sell a field, part of the property held by her as such, to B. B satisfies himself by reasonable enquiry that the income of the property is insufficient for A's maintenance, and that the sale of the field is necessary, and, acting in good faith, buys the field. As between B on the one part and A and the collateral heirs on the other part, a necessity for the sale shall be deemed to have existed.

Wilson *v.* Hare, L. R. 2 Ch. Richards *v.* Revell, 7 Ch. Div. 224. Maclean *v.* Mackay, L. R. 5 P. (32) S. A. 135 of 1877. **40.** Where a third person has a right to receive maintenance or a provision for advancement or marriage from the profits of immoveable property, and such property is transferred with the intention of defeating such right, the right may be enforced against the transferee, if he has notice of such intention or if the transfer is gratuitous; but not against a transferee for consideration and without notice of the right, nor against such property in his hands.

Transfer of land where third person is entitled to maintenance.

Illustrations.

(*a*). A, a Hindú, transfers Sultánpur to his sister-in-law B, in lieu of her claim against him for maintenance in virtue of his having succeeded to her deceased husband's property, and agrees with her that if she is dispossessed of Sultánpur, A will transfer to her an equal area out of such of several other specified villages in his possession as she may elect. A sells the specified villages to C, who buys in good faith, without notice of the agreement. B is dispossessed of Sultánpur. She has no claim on the villages transferred to C.

(*b*). A, a Hindú widow, is entitled to maintenance out of the share of her deceased husband in Basauli, which has passed to his brother B. B sells Basauli to C, who has notice that there is no other property to satisfy A's claim. A may claim maintenance out of Basauli in the hands of C.

Where for the more beneficial enjoyment of his own immoveable property a third person has, independently of any interest in the immoveable property of another, a right to restrain the enjoyment of the latter property or to compel its enjoyment in a particular manner, or

or has a right to restrain its enjoyment,

where a third person is entitled to the benefit of an obligation arising out of contract and annexed to the ownership of immoveable property, but not amounting to an interest therein or easement thereon,

or is entitled to benefit of obligation not amounting to interest or easement.

such right or obligation may be enforced against a transferee with notice thereof or a gratuitous transferee of the property affected thereby, but not against a transferee for consideration and without notice of the right or obligation, nor against such property in his hands.

Illustration.

A contracts to sell Sultánpur to B. While the contract is still in force he sells Sultánpur to C, who has notice of the contract. B may enforce the contract against C to the same extent as against A.

Bill III, s. 9, Act IX of 1872, s. 108, exception 2. **41.** Where with the consent, express or implied, of the persons interested in immoveable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorized to make it: provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith.

Transfer by ostensible owner.

Illustrations.

(*a*). A, one of two co-proprietors of village land, leaves his village, and with his consent the land is registered by the Revenue-officer in the name of B, the other co-proprietor. After ten years B sells a portion of the land to C, who takes reasonable care to ascertain that B had power to make the transfer and acts in good faith. A is not entitled to have the sale set aside.

(*b*). A buys land and causes it to be transferred to his servant B to hold on his behalf, and also causes it to be entered in the revenue register in B's name. C, having ascertained that B is the registered owner of the land and pays the revenue due in respect thereof, buys the land in good faith from B. A cannot impeach the sale.

Bill III, s. 10A, para. 2. **42.** Where a person having authority to revoke a transfer of any immoveable property, transfers the property for consideration, such transfer operates in favour of the transferee (subject to any condition attached to the exercise of the authority) as a revocation of the former transfer to the extent of the authority.

Transfer by person having authority to revoke former transfer.

Illustration.

A lets a house to B and reserves power to revoke the lease if in the opinion of a specified surveyor B should make a use of it detrimental to its value. Afterwards A, thinking that such a use has been made, lets the house to C. This operates as a revocation of B's lease subject to the opinion of the surveyor as to B's use of the house having been detrimental to its value.

43. Where a person erroneously represents that he is authorized to transfer certain immoveable property, and assumes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property, at any time during which the contract of transfer subsists.

Transfer by unauthorized person who subsequently acquires interest in property transferred.

Nothing in this section shall impair the right of a transferee in good faith for consideration without notice of the existence of the said option.

Illustration.

A, a Hindú who has separated from his father B, sells to C three fields, X, Y and Z. Of these Z does not belong to A, it having been retained by B on the partition; but on B's dying A obtains Z as heir. C, not having rescinded the contract of sale, may require A to deliver Z to him.

Bill III, s. 9. **44.** Where one of two or more co-owners of immoveable property legally competent in that behalf transfers his share of such property or any interest therein, the transferee acquires as to such share or interest, and so far as is necessary to give effect to the transfer, the transferor's right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same, but subject to the conditions and liabilities affecting, at the date of the transfer, the share or interest so transferred.

Transfer by one co-owner.

Where the transferee of a share of a dwelling-house belonging to an undivided family is a stranger nothing in this section shall be deemed to entitle him to joint-possession or other common or part enjoyment of the house.

Bill III, s. 13. **45.** Where property is transferred for consideration to two or more persons, and such consideration is paid out of a fund belonging to them in common, they are in the absence of a contract to the contrary, respectively entitled to interests in such property identical, as nearly as may be, with the interests to which they were respectively entitled to the fund; and where such consideration is paid out of separate funds belonging to them respectively, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property in proportion to the shares of the consideration which they respectively advanced.

Joint transfer for consideration.

In the absence of evidence as to the interests in the fund to which they were respectively entitled, or as to the shares which they respectively advanced, [illegible] entitled in the property.

Illustration.

A and B are the sons and C the grandson of a Hindú who has died leaving property. C's father D has also died. A partition has been made after which A and B have reunited. C remains severed in interest, his share being one-third. The separate property of D is of the same value. The whole fund belonging to A, B and C is expended in buying an estate, X. A and B take one moiety of X as joint estate and C takes the other moiety as separate property.

46. Where a transfer of immoveable property is made for consideration by persons having distinct interests therein, the transferors are, in the absence of a contract to the contrary, entitled to share in the consideration equally, where their interests in the property transferred were of equal value, and, where such interests were of unequal value, proportionately to the value of their respective interests.

Transfer for consideration by persons having distinct interests.

Illustrations.

(*a*). A, owing a moiety, and B and C, each a quarter share of mauza Sultánpur, exchange an eighth share in that mauza for a quarter share of mauza [illegible] there being no agreement to the contrary. A [illegible] eighth share in Lálpura, and B and C [illegible] share in that mauza.

(*b*). A being entitled to a life interest in mauza Atrali and B and C to the reversion, sell the mauza for Rs. 1,000. A's life interest is ascertained to be worth Rs. 600, the reversion Rs. 400. A is entitled to receive Rs. 600 out of the purchase money, B and C to receive Rs. 400.

47. Where several co-owners of immoveable property transfer a share therein without specifying that the transfer is to take effect on any particular share or shares of the transferors, the transfer, as among such transferors, takes effect on such shares equally where the shares were equal, and where they were unequal, proportionately to the extent of such shares.

Transfer by co-owners of share in common property.

Illustration.

A, the owner of an eight annas share, and B and C, each the owner of a four annas share, in mauza Sultánpur, transfer a two-anna share in the mauza to D, without specifying from which of their several shares the transfer is made. To give effect to the transfer one anna share is taken from the share of A, and half an anna share from each of the shares of B and C.

48. Where a person purports to create by transfer at different times rights in or over the same immoveable property, and such rights cannot all exist or be exercised to their full extent together, each later created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created.

Priority of rights created by transfer.

Bill III, ss. 17, 20.

49. Where immoveable property is transferred for consideration, and such property or any part thereof is at the date of the transfer insured against loss or damage by fire, the transferee, in case of such loss or damage, may, in the absence of a contract to the contrary, require any money which the transferor actually receives under the policy, or so much thereof as may be necessary, to be applied in reinstating the property.

Transferee's right under policy.

Bill III, s. 8; 1865, s. 1.

50. 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 such property, 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.

Illustration.

A lets a field to B at a rent of Rs. 50, and then transfers the field to D. B having no notice of the transfer, in good faith pays the rent to A. B is not chargeable with the rent so paid.

Act VI of 1868, s. 3; 2 Bom. 344.

51. When the transferee of immoveable property makes any improvement on the property, believing in good faith that he is absolutely entitled thereto, and he is subsequently evicted therefrom by any person having a better title, the transferee or his representative in interest has a right to require the person causing the eviction either to have the value of the improvement estimated and paid or secured to the transferee, or to sell his interest in the property to the transferee at the then market value thereof irrespective of the value of such improvement.

Improvements made by bona fide possessor under defective title.

The amount to be paid or secured in respect of such improvement shall be the estimated value thereof at the time of the eviction.

When under the circumstances aforesaid the transferee has planted or sown on the property crops which are growing when he is evicted therefrom, he is entitled to such crops and to free ingress and egress to gather and carry them.

Bill III, s. 10: 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. 308, 309: 5 W. R. P. C. 63: 8 Bom. A. C. J. 61:

52. 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 contentious suit or proceeding in which any right to immoveable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

Transfer of property pending suit relating thereto.

Bill III, s. 10A: Cf. Act I of 1877, s. 35.

53. Every transfer of immoveable property made with intent to defraud prior or subsequent transferees thereof for consideration, or co-owners or other persons having an interest in such property, or to defeat or delay the creditors of the transferor, is voidable at the option of any person so defrauded, defeated or delayed.

Fraudulent transfer.

Where the effect of any transfer of immoveable property is to defraud, defeat or delay any such person, and such transfer is made gratuitously or for a grossly inadequate consideration, the transfer may be presumed to have been made with such intent as aforesaid.

Nothing contained in this section shall impair the rights of any transferee in good faith and for consideration.

CHAPTER III.

OF SALES OF IMMOVEABLE PROPERTY.

54. "Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

"Sale" defined.

Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered assurance.

Sale how made.

In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered assurance or by delivery of the property.

Bill III, s. 11: 14 Beng. 807, 812: N. W. P., 1866, p. 87. Consider 12 Suth. W. R. 8, C. 6: as to delivery of assurance, W. R. 1864, p. 222: 5 W. R. 248: Morley N. S. 358.

Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Right to redeem, N. W. P., 1868, p. 278.

A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties.

Contract for sale.

Bill III, s. 14.

It does not, of itself, create any interest in or charge on such property.

Bill, s. 11: Bill III, s. 11: Bill III, s. 12: Report, s. 14.

55. In the absence of a contract to the contrary, the buyer and the seller of immoveable property respectively are subject to the liabilities, and have the rights, mentioned in the rules next following, or such of them as are applicable to the property sold:

Rights and liabilities of buyer and seller.

Bill III, s. 13 (*a*).

(*a*). The seller is bound—

(1) to disclose to the buyer any defect in the property of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover;

Bill III, s. 12 (*a*).

(2) to produce to the buyer on his request for examination all documents of title relating to the property which are in the seller's possession or power;

Bill III, s. 13 (*a*).

(3) to 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 III, s. 13 (*b*).

(4) on payment or tender of the amount due in respect of the price, to execute a proper assurance of the property when the buyer tenders it to him for execution at a proper time and place, and, where the property is, or forms part of, a revenue-paying estate, to present an application to the proper officer for the requisite alteration of the revenue-register;

New.

(5) between the date of the contract of sale and the delivery of the property, to take as much care of the property and all documents of title relating thereto which are in his possession, as an owner of ordinary prudence would take of such property and documents;

(6) to give, on being so required, the buyer, or such person as he directs, such possession of the property as its nature admits;

Bill III, s. 13 (*b*).

(7) to pay all public charges and rent accrued due in respect of the property up to the date of the sale, the interest on all incumbrances on such property due on such date, and, except where the property is sold subject to incumbrances, to discharge on or before that date all incumbrances on the property then existing;

(8) and the seller shall be deemed to contract that the interest which he assumes to transfer to the buyer subsists and that he has power to transfer the same:

Bill III, s. 12 (*f*).

provided that, where the sale is made by a person in a fiduciary character, he shall be deemed to contract that he has done no act whereby the property is incumbered or whereby he is hindered from transferring it.

(9) Where the whole of the purchase-money has been paid to the seller, he is also bound to deliver to the buyer all documents of title relating thereto which are in the seller's possession or power:

Bill III, s. 12 (*f*).

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;

(*b*) The seller is entitled—

Bill III, s. 13 (*b*).

(1) to the rents and profits of the property till the ownership thereof passes to the buyer;

(2) where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a charge upon the property in the hands of the buyer for the amount of the purchase-money, or any part thereof remaining unpaid, and for interest on such amount or part.

(*c*). The buyer is bound—

(1) to disclose to the seller any fact as to the nature or extent of the seller's interest in the property of which the buyer is aware, but of which he has reason to believe that the seller is not aware, and which increases the value of such interest;

(2) to pay or tender, at the time and place of completing the transfer, the purchase-money to the seller or such person as he directs: provided that, where the property is sold free from incumbrances, the buyer may retain out of the purchase-money the amount of the incumbrances on the property existing at the date of the transfer, and shall pay the amount so retained to the persons entitled thereto;

(3) where the ownership of the property has passed to the buyer,

the destruction, injury or decrease in value of the property not caused by the seller;

Bill III, s. 15. (4) where the ownership of the property has passed to the buyer, as between himself and the seller, to pay all public charges and rent which may become payable in respect of the property, the principal moneys due on the incumbrances subject to which the property is sold, and the interest thereon afterwards accruing due.

(*d*). The buyer is entitled—

Bill III, s. 12 (*c*). (1) where the ownership of the property has passed to him, to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof;

Bill III, s. 12 (*c*). (2) unless he has improperly declined to accept delivery of the property, to a charge on the property as against the seller and all persons claiming under him with notice of the payment, to the extent of the seller's interest on the property, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery and for interest on such amount; and when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission.

Bill III, s. 13. An omission to make such disclosures as are mentioned in this section, paragraph (*a*), clause (1), and paragraph (*c*), clause (1), is fraudulent.

Bill III, s. 19. **56.** Where 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.

Sale of one of two properties subject to a common charge.

CHAPTER IV.

OF MORTGAGES OF IMMOVEABLE PROPERTY AND CHARGES.

57. (*a*). A mortgage is the transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.

"Mortgage," "mortgagor" and "mortgagee" defined.

The transferor is called a mortgagor, the transferee a mortgagee; the principal-money and interest of which payment is secured for the time being are called the mortgage-money, the interest transferred is called the mortgaged property, and the instrument (if any) by which the transfer is effected is called a mortgage-deed.

(*b*). Where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage-money and agrees, expressly or impliedly, that, in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold and the proceeds of sale to be applied, so far as may be necessary, in payment of the mortgage-money, the transaction is called a simple mortgage and the mortgagee a simple mortgagee.

Simple mortgage.

Moo. I. A. 275, 306. Colebs. Dig. B. i, c. III, t, 96.

(*c*). Where the mortgagor ostensibly sells the mortgaged property—

Mortgage by conditional sale.

on condition that on default of payment of the mortgage-money on a certain date the sale shall become absolute, or

on condition that on such payment being made the sale shall become void, or

on condition that on such payment being made the buyer shall transfer the property to the seller,

the transaction is called a mortgage by conditional sale and the mortgagee a mortgagee by conditional sale.

(*d*). Where the mortgagor delivers possession of the mortgaged property to the mortgagee and authorises him to retain such possession until payment of the mortgage-money, and to receive the rents and profits accruing from the property and to appropriate them in lieu of interest or in payment of the mortgage-money, the transaction is called an usufructuary mortgage and the mortgagee an usufructuary mortgagee.

Usufructuary mortgage.

(*e*). Where the mortgagor binds himself to repay the mortgage-money on a certain date, and transfers the mortgaged property absolutely to the mortgagee, but subject to a condition that he will re-transfer it to the mortgagor upon payment of the mortgage-money as agreed, the transaction is called an English mortgage.

Macph. 8 12, 59: R. B. Ghose 218, 219: 2 Moo. I. A. 487.

English mortgage.

58. Where the principal money secured is one hundred rupees or upwards, a mortgage can be effected only by registered assurance signed by the mortgagor and attested by at least two witnesses.

Bill II, s. 26: Bill III, s. 22: See Macph. 59: R. B. Ghose 64.

Mortgage when to be by assurance.

Where the principal money secured is less than one hundred rupees, a mortgage may be effected either by assurance signed and attested as aforesaid or by delivery of the property.

Nothing in this section shall be deemed to render invalid mortgages made in the towns of Calcutta, Madras, Bombay, Karáchí and Rangoon, by delivery to a creditor or his agent of documents of title to immoveable property, with intent to create a security thereon.

Rights and Liabilities of Mortgagor.

59. At any time after the principal money has become payable, the mortgagor, or, where there are more mortgagors than one, any of the mortgagors, has a right, on payment or tender, at a proper time and place, of

Bill II, s. 28: Bill, s. 15: 5 Beng. 480: 6 Beng. 563: 7 Mad. 490: 7 Mad. 494: 14 Cal. Rep.

Right of mortgagor to redeem.

13 Beng. 205: N. W. P., 1868, p. 204: Bomb., 237: no redemption before expiration of period named. Redemption after fixed time has expired, 9 Bom. 69. See 7 Ben. 136 (P.C.)

the mortgage-money, to require the mortgagee (*a*) to deliver the mortgage-deed, if any, (*b*) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor, and (*c*) at the cost of the mortgagor either to re-transfer the mortgaged property to him or to such person as he may direct, or to execute and (where the mortgage has been effected by registered assurance) to have registered 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 right conferred by this section has not been extinguished by act of the parties or by order of a Court.

The right conferred by this section is called a right to redeem, and a suit to enforce it is called a suit for redemption.

Nothing in this section shall be deemed to render invalid any provision to the effect that, if the time fixed for payment of the principal money has been allowed to pass or no such time has been fixed, the mortgagee shall be entitled to reasonable notice before payment or tender of such money.

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. 92: N. W. P., 1873, p. 148: R. B. Ghose 198: 15 Bengal 308.

Redemption of portion of mortgaged property.

Nothing in this section shall entitle a person interested in a share only of the mortgaged property to redeem his own share only, on payment of a proportionate part of the amount remaining due on the mortgage, except where a mortgagee, or, if there are more mortgagees than one, all such mortgagees, has or have acquired, in whole or in part, the share of a mortgagee.

Bill II, s. 33: Bill, s. 39: *Contra*, 6, Bom. A. C. J. 90. But see R. B. G. 330, 331.

Right to redeem one of two properties separately mortgaged.

60. If the owner of two or more properties makes separate mortgages on them by separate assurances, each mortgage may, in the absence of a contract to the contrary, be dealt with irrespectively of the other, though the mortgages are made in favour of the same mortgagee.

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.

Bill III, s. 23, clause (*c*).

Right of usufructuary mortgagor to recover possession.

61. In the case of a usufructuary mortgage, the mortgagor has a right to recover possession of the property—

(*a*) where the mortgagee is authorized to pay himself the mortgage-money from the rents and profits of the property,—when such money is paid;

(*b*) where the mortgagee is authorized to pay himself from such rents and profits the interest of the principal money,—when the term (if any) prescribed for the payment of the mortgage-money has expired and the mortgagor pays or tenders to the mortgagee the principal money or deposits it in Court as hereinafter provided.

Bill III, s. 25: 10 Bom. 369; 11 Bomb. 32: I. L. R. 5 Calc. 198.

Accession to mortgaged property.

62. Where mortgaged property in possession of the mortgagee has, during the continuance of the mortgage, received any accession, the mortgagor, upon redemption, shall, in the absence of a contract to the contrary, be entitled as against the mortgagee to such accession.

Accession acquired in virtue of transferred ownership.

Where such accession has been acquired at the cost of the mortgagee, and is capable of separate possession or enjoyment without detriment to the principal property, the mortgagor desiring to take the accession must pay to the mortgagee the cost of acquiring it. If such separate possession or enjoyment is not possible, the accession must be delivered with the property, the mortgagor being liable in the case of an acquisition necessary to preserve the property from destruction, forfeiture or sale, or made with his assent, to pay the proper cost thereof, as an addition to the principal money, at the same rate of interest.

In the case last mentioned the profits, if any, arising from the accession shall be credited to the mortgagor.

Where the mortgage is usufructuary and the accession has been acquired at the cost of the mortgagee, the profits, if any, arising from the accession shall, in the absence of a contract to the contrary, be set off against interest, if any, payable on the money so expended.

Illustration.

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 on payment of their cost.

10 Bom. 369, 371, and see N. W. P., 1866, p. 353.

Renewal of mortgaged lease.

63. Where the mortgaged property is a lease for a term of years, and the mortgagee obtains a renewal of the lease, the mortgagor, upon redemption, shall, in the absence of a contract by him to the contrary, have the benefit of the new lease.

Bill II, s. 34.

Implied contracts by mortgagor.

64. In the absence of a contract to the contrary, the mortgagor shall be deemed to contract with the mortgagee,

Bill II, s. 36, N. W. P., 1867, p. 130.

(*a*) that the interest which the mortgagor assumes to transfer to the mortgagee subsists, and that the mortgagor has power to transfer the same;

S. D. A., 1857, p. 1195; 1858, p. 676.

(*b*) that the mortgagor will defend, or, if the mortgagee be in possession of the mortgaged property, enable him to defend, the mortgagor's title thereto;

(*c*) that the mortgagor will, so long as the mortgagee is not in possession of the mortgaged property, pay all public charges accruing due in respect of the property;

(*d*) and, where the mortgaged property is a lease for a term of years, that the rent payable under the lease, the conditions contained therein, and the contracts binding on the lessee have been

paid, performed and observed down to the commencement of the mortgage; and that the mortgagor will, so long as the security exists and the mortgagee is not in possession of the mortgaged property, pay the rent reserved by the lease, or, if the lease be renewed, the renewed 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;

(*e*) and, where the mortgage is a second or subsequent incumbrance on the property, that the mortgagor will pay the interest from time to time accruing due on each prior incumbrance as and when it becomes due, and will at the proper time discharge the principal money due on such prior incumbrance.

Nothing in clause (*c*), or in clause (*d*), so far as it relates to the payment of future rent, applies in the case of an usufructuary mortgage.

Bill II, s. 31: *King* v. *Smith* 2 Hare 243.

65. 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.

Lewin on Trusts, p. 263.

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.

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.

66. In the absence of a contract to the contrary, the mortgagee has, 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 or deposited as hereinafter provided, a right to obtain from the Court an order that the mortgagor shall be absolutely debarred of his right to redeem the property, or an order that the property be sold.

Right to foreclosure or sale.

A suit to obtain an order that a mortgagor shall be absolutely debarred of 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. 90.

(*a*) to authorize a simple mortgagee as such to institute a suit for foreclosure, or an usufructuary mortgagee as such to institute a suit for foreclosure or sale, or a mortgagee by conditional sale as such to institute a suit for sale; or

Bailey 318, 319: Right to consolidate mortgages.

(*b*) to authorize a mortgagor who holds the mortgagee's rights as his trustee or legal representative and who may sue for a sale of the property to institute a suit for foreclosure; or

(*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

(*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: unless the mortgagees have, with the consent of the mortgagor, severed their interests under the mortgage.

Cases *contra*, Macph. 195, 196.

67. The mortgagee has a right to sue the mortgagor for the mortgage-money in the following cases only:—

Bill II, s. 38; Bill III, s. 34.

Right to sue for mortgage-money.

(*a*) where the mortgagor binds himself to repay the same:

6 W. R. 283.

(*b*) where the mortgagee is deprived of the whole or part of his security by or in consequence of the wrongful act or default of the mortgagor:

Macph. 233: Act XXVIII of 1871, s. 46: 25 W. R. 7 (partial deprivation).

(*c*) where the mortgagee being entitled to possession of the property, the mortgagor fails to deliver the same to him, or to secure the possession thereof to him without disturbance by the mortgagor or any other person.

4 Moo. I. A. 464: Marsh, 209: 7 S. D. A. 47: N. W. P., 1860, p. 28: So in the case of a Khoja mortgage, 2 Mad. 315: 6 W. R. 283 (power to usufructuary mortgagee).

Where, by any cause other than the wrongful act or default of the mortgagor or mortgagee, the mortgaged property has been wholly or partially destroyed, or the security is rendered insufficient as defined in section sixty-five, the mortgagee may require the mortgagor to give him within a reasonable time another sufficient security for his debt, and, if the mortgagor fails so to do, may sue him for the mortgage-money.

68. 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—

Bill II, s. 39; Bill, s. 24: 8 Bom. A. C. J. 142: Muhammadan law, Macph. 2.

Power of sale when invalid.

(*a*) the principal money originally secured is five hundred rupees or upwards; or

(*b*) the mortgagee is the Secretary of State for India in Council; or

(*c*) the mortgaged property or any part thereof is situate within the towns of Calcutta, Madras, Bombay, Karáchí or Rangoon.

Act No. XXVIII of 1866, section 6, is repealed so far as it is inconsistent with this section.

69. 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, shall, for the purposes of the security, be entitled to such accession.

Bill II, s. 41; 11 Bomb. 82; I. L. R. 5 Calc. 198.

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.

Bill III, s. 38.

70. When the mortgaged property is a lease for a term of years, and the mortgagor 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.

71. When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property, he may spend such money as is necessary—

Rights of mortgagee in possession.

Macph. 109, 113, 252: 1 Bomb. 199, 203: 7 Bomb. A. C. J. 109, 116. N. W. P., 1867, p. 187. 1 W. R. 133.

(*a*) for the due management of the property and the collection of the rents and profits thereof;

(*b*) for its preservation from destruction, forfeiture or sale;

(*c*) for supporting the mortgagor's title to the property;

(*d*) for making his own title thereto good against the mortgagor; and

11 Moo. I. A. 241.

(*e*) 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, and such money to the principal-money, at the rate of interest payable on the principal, and where no such rate is fixed at the rate of nine per cent. per annum.

28 & 24 Vic., c. 145, s. 11: 2 Dav. 606.

Where the property is by its nature insurable at ordinary rates, the mortgagee may also, 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 principal-money at the same rate of interest.

Bill II, s. 45: Bill III, s. 42: Macph. 113, 224: 1 W. R. 270: 12 W. R. 229.

72. Where mortgaged property is sold through failure to pay arrears of revenue or rent due in respect thereof, 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, unless the sale has been occasioned by some default on his part.

Charge on proceeds of revenue-sale.

Bill II, s. 49: Bill III, s. 43: Bill, ss. 35, 36, 37: Regist., ss. 31, 32.

73. Any second or other subsequent mortgagee may, at any time after the amount due on the next prior mortgage has become payable, tender such amount to the next prior mortgagee, and such mortgagee is bound to accept such tender and to give a receipt for such amount; and (subject to the provisions of the law for the time being in force regulating the registration of documents) the subsequent mortgagee shall, on obtaining such receipt, acquire, in respect of the property, all the rights and powers of the mortgagee, as such, to whom he has made such tender.

Right of subsequent mortgagee to pay off prior mortgagee.

Bill III, s. 43.

74. Every second or other subsequent mortgagee has, so far as regards redemption, foreclosure and sale of the mortgaged property, the same rights against the prior mortgagee or mortgagees as his mortgagor has against such prior mortgagee or mortgagees, and the same rights against the subsequent mortgagees (if any) as he has against his mortgagor.

Rights of mortgagee as against prior and subsequent mortgagees.

Bill III, s. 39.

75. When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property,—

Liabilities of mortgagee in possession.

2 Bomb. 222: Act IX of 1872, s. 151: Fisher, s. 1530.

(*a*) he must manage the property as a person of ordinary prudence would manage it if it were his own;

8 Chan. Div. 427: N. W. P., 1875, p. 100.

(*b*) he must use his best endeavours to collect the rents and profits thereof;

2. Bomb. 231.

(*c*) he must, 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 of default of payment of which the property may be summarily sold;

Macph. 113, 119.

9 W. R. 438; 4 Y. & C. Appendix, 507: Fisher, s. 1530.

(*d*) he must, 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 principal-money.

Bill II, s. 44: III, s. 41: Bill, s. 18 altered: Macph. 118, 119, citing 7 N. W. P. 436: 9 N. W. P. 1: Act I of 1877, s. 9.

(*e*) he must not commit any act which is destructive or permanently injurious to the property;

2 Bomb. A. C. 55: 5 W. R. 271, etc.: Macph. 110.

(*f*) where he has insured the whole or any part of the property against loss or damage by fire, he must, in case of such loss or damage, apply any money which he actually receives under the policy, or so much thereof as may be necessary, in reinstating the property;

6 Bomb. A. C. J. 196: 12 Bomb. 88: 10 Beng. 339: N. W. P., 1868, p. 133: *ibid*, 1869, p. 153: When he can insist on doing so, 2 W. R. 244: R. B. Ghose, 146: 1 Bom. 199: 2 Bom. A. C. 190.

(*g*) he must 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;

(*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*) and (*e*), 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;

(*i*) when the mortgagor tenders, or deposits in the manner hereinafter provided, 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.

76. Nothing in section seventy-five, clauses (*b*), (*d*), (*g*) and (*h*), applies to cases where there is a contract between the mortgagee and the mortgagor that the receipts from the mortgaged property shall, so long as the mortgagee is in possession of the property, be taken in lieu of interest on the principal-money, or of such interest and defined portions of the principal.

Priority.

Bill II, s. 46; III, s. 44: Evidence Act, s. 115: N. W. P., 1868, p. 402: 4 Mad. 378: 2 Moo. I. A. 487: 11 W. R. 286: 6 Bom. A. C. J. 60, 55: Note in Gha... 13 Bom. Bill II, s. 47: III, s. 25: 10... 34: Report, s. 29.

Postponement of prior mortgagee.

77. Where, through the fraud, misrepresentation 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.

78. If a mortgage made to secure future advances, the performance of an engagement or the balance of a running account expresses the maximum to be secured thereby, a subsequent mortgage of 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 uncertain amount when maximum is expressed.

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: III, s. 46: Bill, s. 38: Report, s. 34: 2 Beng. App. 48: 4 Beng. 463: 12 W. R. 310.

79. No mortgagee paying off a prior mortgage, [illegible] 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 seventy-eight, 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.

Fisher 704: Bill II, s. 50: III, s. 47: W. R. 1864, p. 374: 1 W. R. 353: 7 W. R. 483: 12 W. R. 114: Macph. 205.

Marshalling securities.

80. 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, in the absence of a contract to the contrary, 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 acquired for valuable consideration an interest in either property.

Macph. 136.

Bill III, s. 48: Fisher 700.

Contribution to mortgage-debt.

81. Where several properties, whether of one or several owners, are mortgaged to secure one debt, each property is, in the absence of a contract to the contrary, liable to 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 at the date of the mortgage.

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 is, in the absence of a contract to the contrary, liable to 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 eighty to the claim of the second mortgagee.

Fisher 701.

Deposit in Court.

Bill III, s. 33: Beng. Reg. I of 1798, s. 2: Macph. 171.

Power to deposit in Court money due on mortgage.

82. At any time after the principal-money has become payable and before a suit for redemption of the mortgaged property is barred, the mortgagor, or any other person entitled to institute such suit, may deposit, in any Court in which he might have instituted such suit, to the account of the mortgagee, the amount remaining due on the mortgage.

Bill II, s. 35: III, s. 33: Bill, s. 18, clause (*e*): Beng. Reg. I of 1798, s. 2: Macph. 171.

Right to money deposited by mortgagor.

The Court shall thereupon cause written notice of the deposit to be served on the mortgagee, and the mortgagee may, on presenting a petition (verified in manner prescribed by law for the verification of plaints) stating the amount then due on the mortgage, and his willingness to accept the money so deposited in full discharge of such amount, and on depositing in the same Court the mortgage-deed if then in his possession or power, apply for and receive the money, and the mortgage-deed so deposited shall be delivered to the mortgagor or such other person as aforesaid.

9 N. W. P. 1: Macph. 159, 160: Bill III, s. 32.

Cessation of interest.

83. When the mortgagor or such other person as aforesaid has tendered or deposited in Court under section eighty-two the amount remaining due on the mortgage, interest on the principal-money shall cease from the date of the tender or as soon as the mortgagor or such other person as aforesaid has done all that has to be done by him to enable the mortgagee to take such amount out of court, as the case may be.

Nothing in this section or in section eighty-two shall be deemed to deprive the mortgagee of his right to interest when there exists a contract that he shall be entitled to reasonable notice before payment or tender of the mortgage-money.

Suits for Foreclosure, Sale or Redemption.

Bill II, s. 52: III, s. 49: 14 Moo. I. A. 101: 1 W. R. 176: 21 W. R. 428: explained by Macph. 146: Seton 1, 442, see Act X of 1877, s. 32: 5 Bomb. O. C. J. 76 (legal representative of deceased mortgagor): 8 Beng. 104 (purchaser from mortgagee): Marshall 223, claimants of right of redemption, N. W. P. 1868, p. 144.

Parties to suits for foreclosure, sal and redemption.

84. Subject to the provisions of the Code of Civil Procedure, section 437, all persons having an interest in the property comprised in a mortgage must be joined as parties to any suit under this chapter relating to such mortgage: provided that the plaintiff has notice of such interest.

Foreclosure and Sale.

Bill II, s. 53: III, s. 50: Bill, s. 19

Decree in foreclosure-suit.

85. In a suit for foreclosure, if the plaintiff succeed, the Court shall make 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, if any, awarded to him, 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 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 property; but

that, if the payment is not made on or before the day to be fixed by the Court, the defendant shall be absolutely debarred of all right to redeem the property.

Bill II, s. 56.

Procedure in case of payment of amount due.

86. If payment is made of such amount and of such subsequent costs as are mentioned in section ninety-three, the defendant shall (if necessary) be put into possession of the mortgaged property.

If such payment is not so made, the plaintiff may apply to the Court for an order that the defendant and all persons claiming through or under him be debarred absolutely of all right to redeem the mortgaged property, and the Court shall then pass such order, and may, if necessary, deliver possession of the property to the plaintiff.

Order absolute for foreclosure.

Provided that the Court may, upon good cause shewn, and upon such terms, if any, as it thinks fit, from time to time postpone the day appointed for such payment.

W. R. 91.

Power to enlarge time.

On the passing of an order under the second paragraph of this section the debt secured by the mortgage shall be deemed to be discharged.

In the Code of Civil Procedure, schedule IV, No. 129, for the words "Final decree," the words "Decree absolute" shall be substituted.

Bill II, sec. 55.

Decree for sale.

87. In a suit for sale, if the plaintiff succeed, the Court shall pass a decree to the effect mentioned in the first and second paragraphs of section eighty-five, and also ordering that, in default of the defendant paying 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.

In a suit for foreclosure, if the plaintiff succeed, the Court may at his instance pass a like decree in lieu of a decree for foreclosure.

Bill, s. 21: 15 & 16 Vic. c. 86, s. [illegible]

Power to decree sale in foreclosure-suit at instance of mortgagor.

When the mortgagee sues only for foreclosure, and not for foreclosure or sale, if the Court consider that he will not be damnified by a sale and if the defendant furnishes such security as the Court thinks sufficient for the full and prompt 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 II, s. 56.

Procedure when defendant pays amount due.

88. If in any case under section eighty-seven the defendant pays to the plaintiff or into court on the day fixed as aforesaid the amount due under the mortgage, the costs, if any, awarded to him and such subsequent costs as are mentioned in section ninety-three, the defendant 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 eighty-seven; and thereupon the defendant's right to redeem and the security shall both be extinguished.

Order absolute for sale.

Bill III, s. 54; Bill, s. 28; Stat. IV, 307.

89. 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 legally recoverable from 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; Bill III, s. 55.

90. Besides the mortgagor, any of the following persons may redeem, or institute a suit for redemption of, the mortgaged property:—

Who may sue for redemption.

(*a*) any person (other than the mortgagee of the interest sought to be redeemed) 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;

(*c*) any surety for the payment of the mortgage-debt or any part thereof;

(*d*) the guardian of the property of a minor mortgagor on behalf of such minor;

(*e*) the committee or other legal curator of a lunatic or idiot mortgagor on behalf of such lunatic or idiot;

(*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.

91. 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 the mortgage-money and for his costs of the suit, if any, awarded to him, 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 re-transfer 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;

that if such payment is not made on or before the day to be fixed by the Court, the plaintiff shall (unless the mortgage be simple or usufructuary) be absolutely debarred of all right to redeem the property, or (unless the mortgage be by conditional sale) that the property be sold.

92. If payment is made of such amount and of such subsequent costs as are mentioned in section ninety-three, the plaintiff shall, if necessary, be put into possession of the mortgaged property.

Bill

In case of redemption, possession.

If such payment is not so made, the defendant may (unless the mortgage is simple or usufructuary) apply to the Court for an order that the plaintiff and all persons claiming through or under him be debarred absolutely of all right to redeem, or (unless the mortgage is by conditional sale) for an order that the mortgaged property be sold.

In default, foreclosure or sale.

If he apply for the former order, the Court shall pass an order that the plaintiff and all persons claiming through or under him be absolutely debarred of all right to redeem the mortgaged property, and may, if necessary, deliver possession of the property to the defendant.

If he apply for the latter order, 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 sale) be dealt with as is mentioned in section eighty-seven, 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, as regards the property affected by the order, both be extinguished:

Provided that the Court may, upon good cause shown, and upon such terms, if any, as it thinks fit, from time to time postpone the day fixed under section ninety-one for payment of the amount due.

Power to enlarge time.

93. 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.

94. Where one of several mortgagors redeems the mortgaged property and obtains possession thereof, he has a charge on the share of each of the other co-mortgagors in the property for his proportion of the costs properly incurred in so redeeming and obtaining possession.

Charge of one of several co-mortgagors who redeems.

Sale of Property subject to prior Mortgage.

95. 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.

Application of proceeds.

96. Such proceeds shall be brought into Court and applied as follows:—

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.

97. In the case of a mortgage not being a simple mortgage, a mortgage by conditional sale, an usufructuary mortgage, or an English mortgage, or a combination of the first and third, or the second and third, of such forms, 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.

Mortgage not described in section 56, clauses (*b*), (*c*), (*d*) and (*e*).

Attachment of Mortgaged property.

98. Where a mortgagee in execution of a decree for the satisfaction of any claim, whether arising under the mortgage or not, attaches the mortgaged property, he shall not be entitled to bring such property to sale otherwise than by instituting a suit under section sixty-six.

Attachment of mortgaged property.

Charges.

99. Where immoveable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property; and all the provisions hereinbefore applicable to a mortgagee shall, so far as may be, apply to the owner of such property, and the provisions of sections eighty and eighty-one and all the provisions hereinafter 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.

Charges.

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.

100. Where the owner of a charge or other incumbrance on immoveable property is or becomes absolutely entitled to that property, the charge or incumbrance shall be extinguished, unless he declares, by express words or necessary implication, that it shall continue to subsist, or such continuance would be for his benefit.

Bill II, s. 69; III, s. 56; *Swinfen* v. *Swinfen*, 29 Beav. 199; *Adams* v. *Angell*, 5 Chan. D. 634, 645; 7 Mad. 221; 14 W. R. 491; 3 O'Kin. 134; 5 Beng. 405; 11 Bom. 81.

Extinguishment of charges.

Notice and Tender.

101. Where the person on or to whom any notice or tender is to be served or made under this chapter does not reside in the district in which the mortgaged property or some part thereof is situate, service or tender on or to an agent holding a general power-of-attorney from such person or otherwise duly authorized to accept such service or tender shall be deemed sufficient.

Service or tender on or to agent.

Where the person or agent on whom such notice should be served cannot be found in the said district, or is unknown to the person required to serve the notice, the latter person may apply to any Court in which a suit might be brought for redemption of the mortgaged property, and such Court shall direct in what manner such notice shall be served, and any notice served in compliance with such direction shall be deemed sufficient.

Where the person or agent to whom such tender should be made cannot be found within the said district, or is unknown to the person desiring to make the tender, the latter person may deposit in such Court and such amount the amounts ought to be tendered, and such deposit shall have the effect of a tender of such amount.

102. Where under the provisions of this chapter a notice is to be served on or by, or tender or deposit made or accepted or taken out of Court by, any person, incompetent to contract, such notice may be served or tender or deposit made accepted or taken by the legal curator of the property of such person; but where there is no such curator, and it is requisite or desirable in the interests of such person that a notice should be served or tender or deposit made under the provisions of this chapter, application may be made to any Court in which a suit might be brought for the redemption of the mortgage to appoint a guardian *ad litem* for the purpose of serving or receiving service of such notice, or making or accepting such tender, or making or taking out of Court such deposit, and for the performance of all consequential acts which could or ought to be done by such person if he were competent to contract; and the provisions of chapter XXXI of the Code of Civil Procedure shall, so far as may be, apply to such application and to the parties thereto and to the guardian appointed thereunder.

Notice, &c., to or by person incompetent to contract.

103. The High Court may, from time to time, make rules consistent with this Act for carrying out the provisions contained in this chapter.

Power to make rules.

CHAPTER V.

OF LEASES OF IMMOVEABLE PROPERTY.

104. A lease of immoveable property is a transfer of a right to enjoy such property made for a certain time express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

Lease defined.

The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent.

Lessor, lessee, premium and rent defined.

Bill II, s. 74: III, 68: Bill, s. 46: Report, s. 40; 8 Bomb. 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. 166: 4 Bengal Appendix 86; 13 Beng. 363: N.W.P., 1873, p. 9., Perry 480.

105. In the absence of a contract or local law or usage to the contrary, a lease of immoveable property for agricultural or manufacturing purposes shall be deemed to 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 deemed to 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.

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 to a conspicuous part of the property.

Notice to determine lease.

106. A lease of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered assurance.

Leases how made.

Bill II, s. 71: Bill III, s. 65. All other leases of immoveable property may be made either by assurance or by oral agreement.

107. 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 rules next following, or such of them as are applicable to the property leased:—

Rights and liabilities of lessor and lessee.

A.—Rights and liabilities of the Lessor.

Bill III, s. 66 4 W. R. 314. (*a*) the lessor is bound to disclose to the lessee any defect in the property, with reference to its intended use, of which the former is and the latter is not aware, and which the latter could not with ordinary care discover:

6 Beng. Appendix 44: 20 (3); 15 W. R. 280; 23 W. R. 121. (*b*) the lessor is bound on the lessee's request to put him in possession of the property leased:

(*c*) the lessor shall be deemed to contract with the lessee that, if the latter pays the rent reserved by the lease and performs the contracts binding on the lessee, he may hold the property leased during the time limited by the lease without interruption:

39 (2) altered: cf. IX of 1872, s. 93: 11 W. R. 278: 12 W. R. 149: (*d*) where an arrear of rent is due from any lessee, the lessor may, instead of suing for the arrear, recover the same by distress and sale of the goods found in or upon the property in respect of which the arrear is due or of the produce of such property, but subject to the local law, if any, for the time being in force relating to distresses.

B.—Rights and liabilities of the Lessee.

8 Beng. 7 5 Calc. L. R. 33. (*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 irresistible force, any material part of the property leased be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let, the lease shall, at the option of the lessee, be void:

provided that, if the injury be occasioned by the wrongful act or default of the lessee, he 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 with interest from the rent, or otherwise recover it from the lessor:

Re Thakoor Chunder Paramanick, Beng. F. B. Rulings 295: 8 Beng. 327: 14 Beng. 205: cf. Act XIX of 1868, s. 42: Act XVIII of 1873, s. 42. (*i*) the lessee may remove, at any time during the continuance of the lease, all things which he has attached to the earth; provided he leaves the property leased in the state in which he received it:

(*j*) 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 gather and carry them:

5 S. D. A. 205: 5 M. 120, 277. 7 Beng. 152: N. W. P., 1875, p. 181: 12 W. R. 451: 16 W. R. 112: 6 S. D. A. 67: 15 W. R. 449. (*k*) the lessee may transfer absolutely or by way of mortgage or sub-lease 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 only of such transfer, cease to be subject to any of the liabilities attaching to the lease:

8 Beng. 289: 12 Beng. 82. nothing in this clause shall be deemed to authorize a tenant having an untransferable 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:

(*l*) the lessee is bound to disclose to the lessor any fact as to the nature or extent of the interest which the lessee is about to take, of which the lessee is, and the lessor is not, aware, and which increases the value of such interest:

See 23 W. R. 34. (*m*) the lessee is bound to pay or tender, at the proper time and place, the premium or rent to the lessor or his agent in this behalf:

(*n*) 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 the changes caused by reasonable wear and tear or irresistible force, 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 give or leave notice of any defect in such condition, and, when such defect has been caused by any act or default on the part of the lessee, his servants or agents, he is bound to make it good within three months after such notice has been given or left:

(*o*) if the lessee 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, he is bound to give, with reasonable diligence, notice thereof to the lessor:

6 Beng. 401, 416: 8 Beng. Appendix 70: 10 Beng. App. 41. and v. 5 S. D. A. 205: 15 W. R. 360: 17 W. R. 416: 25 W. R. 206: W. R. Sp. (Act X) 106: 6 Mad. Div. 438: 9 Beng. 249: 14 & 15 Vic. c. 99, s. 3. (*p*) the lessee may use the property leased and its products (if any) as a person of ordinary prudence would use them if they were his own; but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or fell timber, pull down or damage buildings, work mines or quarries not open when the lease was granted, or commit any other act which is destructive or permanently injurious thereto:

(*q*) he must not, without the lessor's consent, erect on the property leased any permanent structure, except for agricultural purposes:

(*r*) on the determination of the lease, the lessee is bound to put the lessor into possession of the property leased.

108. If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, 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:

14 W. R. 33. 24 W. R. 66.

Rights of lessor's transferee.

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 (subject to the provisions of section thirty-eight) determine what proportion of the premium or rent reserved by the lease is payable in respect of the part so transferred.

Bill II, s. 72.

109. 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 terminable before its expiration, and the lease omits to mention at whose option it is so terminable, the lessee, and not the lessor, shall have such option.

Option to determine lease.

110. A lease of immoveable property determines—

Bill II, s. 76 7 W. R. 383.

Determination of lease.

(*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:

3 Moo. I. A. 261: 16 W. R. 147

(*c*) where the interest of the lessor in the property leased terminates on, or his power to dispose of the same extends only to, the happening of any event—by the happening of such event:

Lease by Hindú widow, Marshall 166.

(*d*) 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. 88.

(*e*) by express surrender; that is to say, in case the lessee's right to re-

Surrender

deem mortgaged lease, N. W. P., 1869, p. 45
Surrender by one of several joint lessees, 9 W. R. 147.

the lessee yields up his interest under the lease to the lessor, by mutual agreement between them:

(*f*) by implied surrender:

Marshall 250; 16 W.R. 103; 25 W. R. 227.

(*g*) 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 showing his intention to determine the lease:

18 W. R. 466. But see 22 W. R. 448. 25 W. R. 147.

(*h*) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.

Illustration to clause (*f*).

A, the lessee, accepts from the lessor a new lease of the property leased, to take effect during the continuance of the existing lease. This is an implied surrender of the former lease, and such lease determines thereupon.

33 W. R. 238, 271.

Bill II, s. 77, cl. 1: W. R. F. B. 10: Marshall 25.

111. A forfeiture under section one hundred and ten, clause (*g*), 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 Ben. 72.

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.

112. A notice given under section one hundred and ten, clause (*h*), is waived, with the express or implied consent of the person to whom it is given, by any act on the part of the person giving it showing an intention to treat the lease as subsisting.

Waiver of notice to quit.

Illustrations.

(*a*). A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires. B tenders, and A accepts, rent which has become due in respect of the property since the expiration of the notice. The notice is waived.

(*b*). A, the lessor, gives B the lessee, notice to quit the property leased. The notice expires, and B remains in possession. A gives to B as lessee a second notice to quit. The first notice is waived.

Bill II, s. 77, cl. 2: N. W. P. 1867, Ed. 0, p. 1: Unreported Pertabi v. Radha: Rep. 1868, p. 8: Short No. 3 N. W. P. 325, per Pemock, C.J.

113. 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.

Act XVIII of 1873, s. 34, cl. (*e*), para. 1.

10 W. R. 384; 13 W. R. 281; N. W. P., 1871, p. 68.

114. 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, on terms and conditions substantially the same (except as regards the amount of rent) as those of the original lease; 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, except where such forfeiture has been procured by the lessor in fraud of the under-lessees.

Bill II, s. 78; Bill, s. 47; Report, s. 41; 3 Bom. A. C. J. 27; 2 Beng. 263; N. W. P., 1870, p. 204; 7 W. R. 153; 16 W. R. 188; 22 W. R. 394; 548; 23 W. R. 271; 25 W. R. 234.

115. 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 one hundred and seven.

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.

116. None of the provisions of this chapter apply to leases for agricultural purposes, except in so far as the local Government, with the previous sanction of the Governor General in Council, may by notification published in the official Gazette declare all or any of such provisions to be so applicable, together with, or subject to, those of the local law, if any, for the time being in force.

Exemption of leases for agricultural purposes.

Such notification shall not take effect until the expiry of six months from the date of its publication.

CHAPTER VI.

OF EXCHANGES.

Bill II, s. 91; Bill, s. 43; 1 Mad. 180.

117. When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing or both things being money only, the transaction is called an "exchange."

"Exchange" defined.

A transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale.

Bill II, s. 22, cl. 2:

118. In the absence of a contract to the contrary, the party deprived of the thing or part thereof he has received in exchange by reason of any defect in the title of the other party is entitled at his option to compensation or to the return of the thing transferred by him.

Right of party evicted from thing received in exchange.

Bill II, s. 23: Bill, s. 48, para. 2.

119. 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: 1 Mozl. 105.

120. On an exchange of money, each party thereby warrants the genuineness of the money given by him.

Exchange of money.

CHAPTER VII.

OF GIFTS.

121. "Gift" is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

"Gift" defined.

Such acceptance must be made during the lifetime of the donor and while he is still capable of giving.

Acceptance when to be made.

L. C. 1581.

If the donee dies before acceptance, the gift is void.

Act III of 1879, s. 17, cl. (*a*).

122. For the purpose of making a gift of immoveable property, the transfer must be effected by registered assurance signed by or on behalf of the donor, and attested by at least two witnesses.

Transfer how effected.

For the purpose of making a gift of moveable property, the transfer may be effected either by a non-testamentary instrument [registered and] signed as aforesaid or by delivery.

Act IX of 1872, s. 90.

Such delivery may be made in the same way as goods sold may be delivered.

123. A gift comprising both existing and future property is void as to the latter.

Gift of existing and future property.

Bargo II, 144.

124. A gift of a divisible thing to two or more donees, of whom one does not accept it, is void as to the interest which he would have taken had he accepted.

Gift to several, of whom one does not accept.

125. The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part at the mere will of the donor is void wholly or in part, as the case may be.

When gift may be suspended or revoked.

A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded.

Save as aforesaid, a gift cannot be revoked. 1 L. R., 2 All. 432.

Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice.

Illustrations.

(*a*). A gives a field to B, reserving to himself, with B's assent, the right to take back the field in case B and his descendants die before A. B dies without descendants in A's lifetime. A may take back the field.

(*b*). A gives a lákh of rupees to B, reserving to himself, with B's assent, the right to take back at pleasure Rs. 10,000 out of the lákh. The gift holds good as to Rs. 90,000, but is void as to Rs. 10,000, which continue to belong to A.

Act X of 1865, s. 109.

126. Where a gift is in the form of a single transfer to the same person of several things of which one is, and the others are not, burdened by an obligation, the donee can take nothing by the gift unless he accepts it fully.

Onerous gifts.

Act X of 1865, s. 110.

Where a gift is in the form of two or more separate and independent transfers to the same person of several things, the donee is at liberty to accept one of them and refuse the others, although the former may be beneficial and the latter onerous.

A donee not competent to contract and accepting property burdened by any obligation is not bound by his acceptance. But if, after becoming competent to contract and being aware of the obligation, he retains the property given, he becomes so bound.

Onerous gift to disqualified person.

Illustrations.

(*a*). A has shares in X, a prosperous joint stock company, and also shares in Y, a joint stock company in difficulties. Heavy calls are expected in respect of the shares in Y. A gives B all his shares in joint stock companies. B refuses to accept the shares in Y. He cannot take the shares in X.

(*b*). A, having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term, and which is more than the house can be let for, gives to B the lease, and also, as a separate and independent transaction, a sum of money. B refuses to accept the lease. He does not by this refusal forfeit the money.

127. Subject to the provisions of section one hundred and twenty-six, where a gift consists of the donor's whole property, the donee is personally liable for all the debts due by the donor at the time of the gift to the extent of the property comprised therein.

Universal donee.

128. Nothing in this chapter relates to gifts of moveable property made in contemplation of death, or shall be deemed to affect any rule of Muhammadan law.

Saving of donations *mortis causâ* and Muhammadan law.

CHAPTER VIII.

OF TRANSFERS OF ACTIONABLE CLAIMS.

129. A claim is actionable when the civil Courts recognise it as a ground for relief, whether a suit for its enforcement is or is not actually pending or likely to become necessary.

Actionable claim.

Bill II, s. 136: Bill, s. 99: Report, s. 99: 36 & 37 Vic., c. 66, s. 25(*b*): 1 Mad. 150: See 5 W. R. 280: But see 10 N. W. P. 474, cited Macph. 122.

130. No transfer of 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 is given to him, unless he is a party to such transfer; and every dealing by such debtor or person, not being a party to, and not having received express notice of, a transfer, with the debt or property shall be valid as against such transfer.

Transfer of debts.

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.

131. Every such notice must be in writing signed by the person making the transfer, or by his agent duly authorized in this behalf.

Notice to be in writing signed.

Bill II, s. 138: Fisher, 116: *Sichel v. Raphael* 10 Jur. N. S. 1165.

132. On receiving such notice, the debtor or person in whom the property is vested shall give effect to the transfer 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 is made is not complete according to the law of such country.

Debtor to give effect to transfer.

133. Where the transferor of a debt warrants the solvency of the debtor, the warranty, in the absence of a contract to the contrary, applies only to his solvency at the time of the transfer, and is limited, where the transfer is made for consideration, to the amount or value of such consideration.

Warranty of solvency of debtor.

134. Where an actionable claim is sold, he against whom it is claimed is wholly discharged by paying to the buyer the price and incidental expenses of the sale, with interest on the price from the day that the buyer paid it.

Discharge of person against whom claim is sold.

Nothing in the former part of this section applies—

(*a*) where the sale is made to the co-heir or co-proprietor of the claim sold;

(*b*) where it is made to a creditor in payment of what is due to him;

(*c*) where it is made to the possessor of a property subject to the actionable claim;

(*d*) where the judgment of a competent Court has been delivered affirming the claim, or where the claim has been made clear by evidence and is ready for judgment.

135. No judge, pleader, clerk, bailiff or other officer connected with Courts of justice can buy any actionable claim falling under the jurisdiction of the Court in which he exercises his functions.

Incapacity of officers connected with Courts of justice.

136. 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.

Bill II, s. 139: *Mangles v. Dixon*, 3 H. L. Ca. 702: Fisher, s. 1058.

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.

137. When a debt is transferred for the purpose of securing 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.

Bill II, s. 67, para. 2: Dav. Conv. II, 691, 693.

Mortgaged debt.

138. Save as provided by section one hundred and thirty-seven, nothing in this chapter applies to negotiable instruments.

Bill II, s. 140.

Saving of negotiable instruments.

THE SCHEDULE.

(*a*). STATUTE.

Year and chapter.	Subject.	Extent of repeal.
27 Hen. VIII, c. 10.	Uses	The whole.
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.

(*b*). ACTS OF THE GOVERNOR GENERAL IN COUNCIL—*contd.*

Number and year.	Subject.	Extent of repeal.
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,
Secretary to the Government of India.

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 11th March, 1881:—

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, together with the part of the report of the late Indian Law Commission which deals with the Bill as settled in March, 1879.

From Chief Secretary to Government, Bombay, No. 1635, dated 25th March, 1879 [Paper No. 22].
„ J. W. Best, Esq., District and Sessions Judge, South Kanára, No. 8, dated 3rd April, 1879 [Paper No. 23].
„ Officiating Secretary to Chief Commissioner, Mysore, No. 751—11, dated 26th April, 1879 [Paper No. 24].
„ Secretary for Birár to Resident Haidarábád, No. 6, dated 5th May, 1879 [Paper No. 25].
„ Secretary to Chief Commissioner, Assam, No. 755, dated 2nd May, 1879 [Paper No. 26].
„ Acting Chief Secretary to Government, Bombay, No. 2629, dated 19th May, 1879 [Paper No 27].
„ Chief Commissioner, Ajmer and Merwára, No. 388, dated 21st May, 1879, and enclosure [Papers No. 28].
„ Assistant Secretary to Chief Commissioner, Central Provinces, No. 2222—113, dated 19th May, 1879 [Paper No. 29].
Translation of Memorial from Dabí Pershád and others, zamíndárs, Raipur, No. 8, dated 3rd May, 1879 [Paper No. 30].
From Under Secretary to Government, Bengal, No. 1234—516 LR, dated 27th May, 1879, and enclosure [Papers No. 31].
„ Secretary to Government, Panjáb, No. 1600, dated 19th June, 1879, and enclosures [Papers No. 32].
„ Acting Chief Secretary to Government, Madras, No. 1322, dated 6th June, 1879, and enclosures [Papers No. 33].
„ Certain inhabitants of Elás, Broach District, dated 15th June, 1879 [Paper No. 34].
„ Acting Chief Secretary to Government, Madras, No. 1387, dated 13th June, 1879, and enclosures [Papers No. 35].
„ Acting Chief Secretary to Government, Madras, No. 1401, dated 16th June, 1879, and enclosures [Papers No. 36].
„ Acting Chief Secretary to Government, Madras, No. 1508, dated 26th June, 1879, and enclosures [Papers No. 37].
„ Officiating Secretary to Chief Commissioner, British Burma, No. 310, dated 10th July, 1879 [Paper No. 34].
„ Secretary to Government, North-Western Provinces and Oudh, No. 1709, dated 4th August, 1879, and enclosures [Papers No. 39].
Note by D. Fitzpatrick, Esq., Secretary to the Government of India, Legislative Department, dated 22nd January, 1881, and enclosures [Papers No. 40].

2. We have carefully considered the alternative drafts proposed by Sir C. Turner and Mr. Justice West, but we cannot recommend either of them for adoption. Sir C. Turner's has the advantage of simplifying the measure in certain respects, but this advantage is gained by leaving it to the Courts to decide questions of great importance and difficulty at their mere discretion and without any rules to guide them.

3. We think that the Bill submitted to the Law Commission will answer its purposes, subject only to two alterations in substance, namely, the substitution of one simple rule for the several rules originally proposed for determining the manner in which newly formed land, to which it is admitted the riparian owners are entitled, should be distributed among them, and a modification of the definition of frontage.

4. As regards the former, it seems to us that the rules laid down by the Bill as last settled for deciding disputes between competing riparian owners and dividing the new land between them would be likely to give rise to difficulties in practice.

These rules are different for rivers on the one hand, and the sea and lakes on the other; and again, for islands, for land formed on the bank and for abandoned river-beds. These distinctions not only make the law more complicated, but, further, may give rise to questions for the solution of which that Bill does not altogether provide. Again, in some instances (sections 4 and 6), they merely postpone the evil day by leaving important difficulties to be disposed of by rules to be made hereafter by the Local Governments. Further, they greatly complicate the question by making its solution depend on the "thread of the stream," a line or combination of lines which it would often be hard to determine, and which might, when determined, turn out to be of a very irregular shape; and, as regards the particular matter of the normals to be drawn under sections 7 and 9, it appears that cases would sometimes present themselves in practice in which no such normals could be drawn.

5. To avoid these difficulties we propose to substitute for the original provisions of the Bill on this point, two rules which will cover all cases in which two or more riparian owners may be conceived to have claims to a new formation. The first of these rules is intended to apply to all cases in which new land is formed on a bank by imperceptible increments; the second to all other formations to which riparian owners may have a claim.

6. The former class of cases appears to us to be simple enough. We conceive that, when land is formed by imperceptible degrees on a portion of the bank belonging to a single proprietor, he should take that land in whatever direction and to whatever extent it may grow. It is only when the formation, or any portion of it, springs from a nucleus at the point of junction of two frontages that any question can arise, and we have (section 4) provided that in this case the dividing line shall be the bisector of the angle between the two frontages.

7. The cases to be dealt with by the second rule, on the contrary, may present every variety of complication, but we think they may be provided for by a rule which is capable of being simply expressed, which would generally be easy to apply, and about the application of which there would never be any serious difficulty, and which, moreover, would make as fair a division of the new land as can be hoped for in a class of cases for which, in the absence of anything in the way of a definite principle to guide us, we must be content with a somewhat rough-and-ready rule.

The rule we propose (section 6) is that each particle of the new formation shall belong to that one of the riparian owners who can show a point in his frontage nearest to it; provided that, when the line dividing the portion of the land to which one owner is entitled from the portion to which another is entitled is an arc of a curve, the chord of such arc shall be substituted for the arc. The dividing line given by this rule will be different according to the relative positions of the two competing frontages, but it will be one which it will be always easy to draw.

In ordinary cases it will be the bisector of the angle between the frontages, or, in the case of holdings on opposite sides of a river with parallel frontages, a line parallel to the frontages and equidistant from both; in others it will be the perpendicular erected at the middle point of the line connecting the extremities of the frontages; and in others, again, it will be the chord of a parabola. As this last line might at first sight be supposed to present some difficulty, we think it well to explain that the chord can be drawn without describing the parabola, and by a person altogether ignorant of the nature and properties of that curve. It is, in fact, simply the right line connecting two points which could be fixed by any patwárí or amín without the slightest difficulty. We may add, as regards the substitution of the chord for the arc in this case, that it not only simplifies the problem, but also makes what we believe, would, by most persons be considered a fairer division of the land.

8. Coming now to the definition of "frontage," it has been pointed out to us by Mr. Elliot that the original definition would, under the Bill as last settled, sometimes lead to anomalous results, as, for example, when a riparian holding extended completely round the concave face of a sharp curve in a river, in which case the frontage might approach within a few yards of the opposite bank or even cut off a considerable portion of it. These anomalies would be increased rather than diminished under the new rule for the division of the land now adopted, and we have accordingly been compelled to seek for a new definition.

The object of introducing the "frontage" is to substitute right lines for the irregularly shaped bank of the river, and thus to simplify the application of our rules: the defect of the original definition is that, in requiring a single right line to be substituted for the entire riparian boundary of each holding, the artificial riparian boundaries thus obtained in some cases deviate too widely from the real boundaries; and the remedy appears to be to declare that in such cases, instead of the single line, a series of two, or, if necessary, more, lines following more closely the real line of the bank shall be adopted. For this we have attempted to provide in the directions given in schedule II for drawing a frontage.

9. We have struck out the definition of "owner," as we think that the Courts may be trusted to determine who in a given case is the riparian proprietor, and we have also omitted the definitions of "thread of the stream," as the expression does not occur in the body of the Bill as now settled.

10. We think that the Bill should save local customs not only in the Panjáb but in all other territories to which it is to apply. We have accordingly excluded the section effecting this saving to the whole of British India; but we have omitted the proviso annexed to it in the Bill, as settled by the Select Committee in March, 1879, as the matter to which it relates is one falling outside the scope of the present Bill.

11. The Bill, No. II, together with the Preliminary Report of the Select Committee, has been published in English in Bombay, the North-Western Provinces, the Panjáb, the Central Provinces and British Burma, and in vernacular in Bombay, the Panjáb and the Central Provinces. We do not propose that any further step should be taken in respect to the Bill until it has been published in the Gazette and circulated to Local Governments with a view to obtaining opinions on it in its new form. It must also, by order of the Secretary of State, be re-translated into the Native languages and sent home to him for consideration. In fact, having regard to the complication and difficulty of the subject, we should prefer to have our present proposals treated as suggestions thrown out for discussion rather than as furnishing a final solution of the questions at issue.

The 11th March, 1881.

WHITLEY STOKES.
RIVERS THOMPSON.
J. PITT KENNEDY.
G. C. PAUL.
R. W. COLVIN.

No. III.

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, 1882:"

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

Commencement. and it shall come into force on the *first* day of *March*, 1882.

Repeal of enactments. 2. The Acts, Regulation and Rules mentioned in the first 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—

W. R. 231: 4 W. R. 41: 4 W. R. 352. "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:

"frontage" used with reference to a holding means the line or lines determined for such holding in the manner prescribed in the second schedule hereto annexed:

8 W. R. 95: 6 Ben. 848. 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 Abandoned River-beds.

Right to alluvial land formed on bank or shore. 4. Where from natural causes land is formed, by imperceptible degrees, on the bank or shore of a river, the sea or a lake, either by accumulation of material or by recession of the river, sea or lake, the owner of the bank or shore is entitled to the land so formed.

When the formation takes place at the junction of two holdings, each owner shall be entitled to so much of the formation as lies on his side of a line drawn through the point of junction and bisecting the angle between the two frontages at that point.

Ben. Act IV of 1868, s. 4. Right to islands where neither channel is 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.

Islands where one or both channels fordable. 6. 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, and is separated from the bank or banks by a fordable channel or fordable channels:

and where from natural causes any land is formed, otherwise than by imperceptible degrees, on the bank of a river, the sea or a lake, either by accumulation of material or by recession of the river, sea or lake,

Land formed by perceptible degrees.

and where a river suddenly abandons its bed, Su 18

each particle of the island or land so formed, or the river-bed so abandoned, shall belong to that one of the riparian owners who can show a point on the frontage of his holding nearest to such particle:

Provided that when the channel separating an island so formed in a river from one bank is fordable and the channel separating such island from the other bank is not fordable, the owners of the former bank shall alone be entitled as such to the island:

Provided also that when the line dividing the formation to which one owner is entitled under this section from the formation to which another owner is entitled under this section is an arc of a curve, the chord of such arc shall be substituted therefor.

III.—Miscellaneous.

Power to declare where tidal rivers end. 7. The Local Government may, from time to time, 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 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.

Savings. 8. 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;

(*h*) affect the right of the Government or a private owner—

to land formed on a site which is proved to belong to the Government or such owner, or

to the ancient bed of a river which is proved to have belonged to the Government or such owner immediately before its abandonment.

Reg. XI of 1825, s. 2. 28 Geo. I.A. 1: Central Oudh Talookdars No. 9.

Local usage saved.

9. 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.

e. g., islands not formed from natural causes.

Right of Crown to alluvial lands, &c., not hereinbefore provided for.

10. All land and islands formed, and all river-beds abandoned, as mentioned respectively in sections four and five, and not vesting under any of the provisions hereinbefore contained, shall vest in the Government.

THE FIRST SCHEDULE.

(*a*). ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

Number and year.	Subject.	Extent of repeal.
XV of 1879...	Panjab 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 LI 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.

THE SECOND SCHEDULE.

Rules for determining the frontage of a holding.

DRAW a right line connecting the extreme points of the riparian boundary of the holding, and take that as the frontage except—

(*a*) where such line or any portion of it lies altogether outside the riparian boundary of the holding, and any point on such line or portion, measuring along a perpendicular to it erected at such point, is further from such boundary than from the riparian boundary of any other holding; or

(*b*) where such line or any portion of it lies altogether within the riparian boundary of the holding, and there is any point on the portion of such boundary cut off by it so situated that right lines drawn from it to the extremities of such line or portion, as the case may be, contain an angle of less than 160°,

in either of which cases the line or portion of the line, as the case may be, must be rejected, and other lines substituted for it as follows:—

2. When the line or any portion of it is rejected on the ground mentioned in paragraph (*a*), the lines to be substituted for it are to be determined as follows:—

Erect a perpendicular to it at its middle point: connect its extremities with the point where such perpendicular intersects the riparian boundary, and take those connecting lines as the frontage along that portion of the boundary, unless it should be found that there is a point on either of them which, measuring along the perpendicular to it erected at such point, is further from the riparian boundary of the holding than from the riparian boundary of any other holding, in which case that line must be rejected, a perpendicular to it erected at its middle point, and right lines drawn from its extremities to the point where that perpendicular intersects the riparian boundary of the holding, and so on, repeating the process, until such a series of right lines is obtained that no point on any one of them, measuring along the perpendicular erected to it at such point, will be further from the riparian boundary of the holding than from the riparian boundary of any other holding.

3. Where any line or portion of a line is rejected on the ground stated in paragraph (*b*), the lines to be substituted for it are to be determined as follows:—

Erect a perpendicular to it at its middle point: connect its extremities with the point where such perpendicular intersects the riparian boundary, and take those connecting lines as the frontage along that portion of the boundary, unless it should be found that right lines drawn from the extremities of either of them to any point on the portion of the boundary cut off by it contain an angle of less than 160°, in which case that connecting line must be rejected, a perpendicular erected at its middle point, its extremities connected with the point where such perpendicular intersects the boundary, and so on, repeating the process, until such a series of right lines is obtained that the right lines connecting the extremities of any one of them with any point on the portion of the boundary cut off by it will, in no case, be less than 160°.

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

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, APRIL 2, 1881.

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 14th March, 1881:—

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 have the honour to report that we have considered the Bill and the papers noted in the margin, together with the part of the report of the late Indian Law Commission which deals with the Bill as settled in March, 1879.

From Chief Secretary to Government, Bombay, No. 1635, dated 25th March, 1879 [Paper No. 22].
" J. W. Best, Esq., District and Sessions Judge, South Kanára, No. 6, dated 3rd April, 1879 [Paper No. 23].
" Officiating Secretary to Chief Commissioner, Mysore, No. 701—11, dated 26th April, 1879 [Paper No. 24].
" Secretary for Berár to Resident, Haidarábád, No. 6, dated 5th May, 1879 [Paper No. 25].
" Secretary to Chief Commissioner, Assam, No. 752, dated 2nd May, 1879 [Paper No. 26].
" Acting Chief Secretary to Government, Bombay, No. 2629, dated 19th May, 1879 [Paper No. 27].
" Chief Commissioner, Ajmer and Merwára, No. 388, dated 21st May, 1879, and enclosure [Papers No. 28].
" Assistant Secretary to Chief Commissioner, Central Provinces, No. 2222—113, dated 19th May, 1879 [Paper No. 29].
Translation of Memorial from Dabí Pershád and others, zamíndárs, Raipur, No. 8, dated 3rd May, 1879 [Paper No. 30].
From Under Secretary to Government, Bengal, No. 1234—516 LR, dated 27th May, 1879, and enclosure [Papers No. 31].
" Secretary to Government, Panjáb, No. 160C, dated 10th June, 1879, and enclosures [Papers No. 32].
" Acting Chief Secretary to Government, Madras, No. 1322, dated 6th June, 1879, and enclosures [Papers No. 33].
" Certain inhabitants of Elás, Broach District, dated 15th June, 1879 [Paper No. 34].
" Acting Chief Secretary to Government, Madras, No. 1387, dated 13th June, 1879, and enclosures [Papers No. 35].
" Acting Chief Secretary to Government, Madras, No. 1401, dated 16th June, 1879, and enclosures [Papers No. 36].
" Acting Chief Secretary to Government, Madras, No. 1508, dated 26th June, 1879, and enclosures [Papers No. 37].
" Officiating Secretary to Chief Commissioner, British Burma, No. 310, dated 10th July, 1879 [Paper No. 38].
" Secretary to Government, North-Western Provinces and Oudh, No. 1709, dated 4th August, 1879, and enclosures [Papers No. 39].
Note by H. Fitzpatrick, Esq., Secretary to the Government of India, Legislative Department, dated 22nd January, 1881, and enclosures [Papers No. 40].

2. We have carefully considered the alternative drafts proposed by Sir C. Turner and Mr. Justice West, but we cannot recommend either of them for adoption. Sir C. Turner's has the advantage of simplifying the measure in certain respects, but this advantage is gained by leaving it to the Courts to decide questions of great importance and difficulty at their mere discretion and without any rules to guide them.

3. We think that the Bill submitted to the Law Commission will answer its purposes, subject only to two alterations in substance, namely, the substitution of one simple rule for the several rules originally proposed for determining the manner in which newly formed land, to which it is admitted the riparian owners are entitled, should be distributed among them, and a modification of the [illegible]on of frontage.

4. As regards the former, it seems to us that the rules laid down by the Bill as last settled for deciding disputes between competing riparian owners and dividing the new land between them would be likely to give rise to difficulties in practice.

These rules are different for rivers on the one hand, and the sea and lakes on the other; and again, for islands, for land formed on the bank and for abandoned river-beds. These distinctions not only make the law more complicated, but, further, may give rise to questio[illegible] the solution of which that Bill does not altogether provide. Again, in some instan[illegible] tions 4 and 6), they merely postpone the evil day by leaving important difficult[illegible] posed of by rules to be made hereafter by the Local Governments. E[illegible]

plicate the question by making its solution depend on the "thread of the stream," a line or combination of lines which it would often be hard to determine, and which might, when determined, turn out to be of a very irregular shape; and, as regards the particular matter of the normals to be drawn under sections 7 and 9, it appears that cases would sometimes present themselves in practice in which no such normals could be drawn.

5. To avoid these difficulties we propose to substitute for the original provisions of the Bill on this point, two rules which will cover all cases in which two or more riparian owners may be conceived to have claims to a new formation. The first of these rules is intended to apply to all cases in which new land is formed on a bank by imperceptible increments; the second to all other formations to which riparian owners may have a claim.

6. The former class of cases appears to us to be simple enough. We conceive that, when land is formed by imperceptible degrees on a portion of the bank belonging to a single proprietor, he should take that land in whatever direction and to whatever extent it may grow. It is only when the formation, or any portion of it, springs from a nucleus at the point of junction of two frontages that any question can arise, and we have (section 4) provided that in this case the dividing line shall be the bisector of the angle between the two frontages.

7. The cases to be dealt with by the second rule, on the contrary, may present every variety of complication, but we think they may be provided for by a rule which is capable of being simply expressed, which would generally be easy to apply, and about the application of which there would never be any serious difficulty, and which, moreover, would make as fair a division of the new land as can be hoped for in a class of cases for which, in the absence of anything in the way of a definite principle to guide us, we must be content with a somewhat rough-and-ready rule.

The rule we propose (section 6) is that each particle of the new formation shall belong to that one of the riparian owners who can show a point in his frontage nearest to it; provided that, when the line dividing the portion of the land to which one owner is entitled from the portion to which another is entitled is an arc of a curve, the chord of such arc shall be substituted for the arc. The dividing line given by this rule will be different according to the relative positions of the two competing frontages, but it will be one which it will be always easy to draw.

In ordinary cases it will be the bisector of the angle between the frontages, or, in the case of holdings on opposite sides of a river with parallel frontages, a line parallel to the frontages and equidistant from both; in others it will be the perpendicular erected at the middle point of the line connecting the extremities of the frontages; and in others, again, it will be the chord of a parabola. As this last line might at first sight be supposed to present some difficulty, we think it well to explain that the [illegible] being the parabola, and by a person altogether ignorant of the nature and properties of that curve. It is, in fact, simply the right line connecting two points which could be fixed by any patwárí or amín without the slightest difficulty. We may add, as regards the substitution of the chord for the arc in this case, that it not only simplifies the problem, but also makes what we believe, would, by most persons be considered a fairer division of the land.

8. Coming now to the definition of "frontage," it has been pointed out to us by MR. ELLIOT that the original definition would, under the Bill as last settled, sometimes lead to anomalous results, as, for example, when a riparian holding extended completely round the concave face of a sharp curve in a river, in which case the frontage might approach within a few yards of the opposite bank or even cut off a considerable portion of it. These anomalies would be increased rather than diminished under the new rule for the division of the land now adopted, and we have accordingly been compelled to seek for a new definition.

The object of introducing the "frontage" is to substitute right lines for the irregularly shaped bank of the river, and thus to simplify the application of our rules: the defect of the original definition is that, in requiring a single right line to be substituted for the entire riparian boundary of each holding, the artificial riparian boundaries thus obtained in some cases deviate too widely from the real boundaries; and the remedy appears to be to declare that in such cases, instead of the single line, a series of two, or, if necessary, more, lines following more closely the real line of the bank shall be adopted. For this we have attempted to provide in the directions given in schedule II for drawing a frontage.

9. We have struck out the definition of "owner," as we think that the Courts may be trusted to determine who in a given case is the riparian proprietor, and we have also omitted the definitions of "thread of the stream," as the expression does not occur in the body of the Bill as now settled.

10. We think that the Bill should save local customs not only in the Panjáb but in all other territories to which it is to apply. We have accordingly excluded the section effecting this saving as the whole of British India; but we have omitted the proviso annexed to it in the Bill, as settled by the Select Committee in March, 1879, as the matter to which it relates is one falling outside the scope of the present Bill.

11. The Bill, No. II, together with the Preliminary Report of the Select Committee, has been published in English in Bombay, the North-Western Provinces, the Panjáb, the Central Provinces and British Burma, and in vernacular in Bombay, the Panjáb and the Central Provinces. We do not propose that any further step should be taken in respect to the Bill until it has been published in the Gazette and circulated to Local Governments with a view to obtaining opinions on it in its new form. It must also, by order of the Secretary of State, be re-translated into the Native languages and sent home to him for consideration. In fact, having regard to the complication and difficulty of the subject, we should prefer to have our present proposals treated as suggestions thrown out for discussion rather than as furnishing a final solution of the questions at issue.

The 11th March, 1881.

WHITLEY STOKES.
RIVERS THOMPSON.
J. PITT KENNEDY.
G. C. PAUL.
B. W. COLVIN.

No. III.

A Bill to define and amend the law relating to alluvion, islands and abandoned river-beds.

Preamble. WHEREAS it is expedient to define and amend the law relating to alluvion, islands and abandoned river-beds; It is hereby enacted as follows:—

I.—Preliminary.

Short title. 1. This Act may be called "The Indian Alluvion Act, 1882:"

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

Commencement. and it shall come into force on the *first* day of *March*, 1882.

Repeal of enactments. 2. The Acts, Regulation and Rules mentioned in the first 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—

W. R. 281: 4 W. R. 41: 4 W. R. 288. "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:

"frontage," used with reference to a holding, means the line or lines determined for such holding in the manner prescribed in the second schedule hereto annexed:

3 W. R. 95: 6 Ben. 348. 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 Abandoned River-beds.

Right to alluvial land formed on bank or shore. 4. Where from natural causes land is formed by imperceptible degrees, on the bank or shore of a river, the sea or a lake, either by accumulation of material or by recession of the river, sea or lake, the owner of the bank or shore is entitled to the land so formed.

When the formation takes place at the junction of two holdings, each owner shall be entitled to so much of the formation as lies on his side of a line drawn through the point of junction and bisecting the angle between the two frontages at that point.

Rights to islands where one channel is fordable. Bom. Act IV of 1868, s. 4. 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.

Islands where both channels fordable. 6. 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, and is separated from the bank or banks by a fordable channel or fordable channels;

Land formed by imperceptible degrees. and where from natural causes any land is formed, otherwise than by imperceptible degrees, on the bank of a river, the sea or a lake, either by accumulation of material or by recession of the river, sea or lake,

and where a river suddenly abandons its bed;

each particle of the island or land so formed, or the river bed so abandoned, shall belong to that one of the riparian owners who can show a point on the frontage of his holding nearest to such particle:

Provided that when the channel separating an island so formed in a river from one bank is fordable and the channel separating such island from the other bank is not fordable, the owners of the former bank shall alone be entitled as such to the island:

Provided also that when the line dividing the formation to which one owner is entitled under this section from the formation to which another owner is entitled under this section is an arc of a curve, the chord of such arc shall be substituted therefor.

III.—Miscellaneous.

Power to declare where tidal rivers end. 7. The Local Government may, from time to time, 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 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.

Savings. 8. 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 [illegible] 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.

(4) affect the right of the Government or a private owner—

to land formed on a site which is proved to belong to the Government or such owner, or

to the ancient bed of a river which is proved to have belonged to the Government or such owner immediately before its abandonment.

Local usage saved.

9. 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 76) the burden of proving such usage shall lie on the person alleging it.

Right of Crown to alluvial lands, &c., not hereinbefore provided for.

10. All land and islands formed, and all river-beds abandoned, as mentioned respectively in sections four and five, and not vesting under any of the provisions hereinbefore contained, shall vest in the Government.

THE FIRST 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.
1st May 1852.	Alluvion and Diluvion in Sindh.	Paragraphs 1, 2, 3, 4, 5 and 20.

THE SECOND SCHEDULE.

Rules for determining the frontage of a holding.

DRAW a right line connecting the extreme points of the riparian boundary of the holding, and take that as the frontage except—

(*a*) where such line or any portion of it lies altogether outside the riparian boundary of the holding, and any point on such line or portion, measuring along a perpendicular to it erected at such point, is further from such boundary than from the riparian boundary of any other holding; or

(*b*) where such line or any portion of it lies altogether within the riparian boundary of the holding, and there is any point on the portion of such boundary cut off by it so situated that right lines drawn from it to the extremities of such line or portion, as the case may be, contain an angle of less than 160°,

in either of which cases the line or portion of the line, as the case may be, must be rejected, and other lines substituted for it as follows:—

2. When the line or any portion of it is rejected on the ground mentioned in paragraph (*a*), the lines to be substituted for it are to be determined as follows:—

Erect a perpendicular to it at its middle point, connect its extremities with the point where such perpendicular intersects the riparian boundary, and take those connecting lines as the frontage along that portion of the boundary, unless it should be found that there is a point on either of them which, measuring along the perpendicular to it erected at such point, is further from the riparian boundary of the holding than from the riparian boundary of any other holding, in which case that line must be rejected, a perpendicular to it erected at its middle point, and right lines drawn from its extremities to the point where that perpendicular intersects the riparian boundary of the holding, and so on, repeating the process, until such a series of right lines is obtained that no point on any one of them, measuring along the perpendicular erected to it at such point, will be further from the riparian boundary of the holding than from the riparian boundary of any other holding.

3. Where any line or portion of a line is rejected on the ground stated in paragraph (*b*), the lines to be substituted for it are to be determined as follows:—

Erect a perpendicular to it at its middle point: connect its extremities with the point where such perpendicular intersects the riparian boundary, and take those connecting lines as the frontage along that portion of the boundary, unless it should be found that right lines drawn from the extremities of either of them to any point on the portion of the boundary cut off by it contain an angle of less than 160°, in which case that connecting line must be rejected, a perpendicular erected at its middle point, its extremities connected with the point where such perpendicular intersects the boundary, and so on, repeating the process, until such a series of right lines is obtained that the right lines connecting the extremities of any one of them with any point on the portion of the boundary cut off by it will, in no case, be less than 160°.

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

The Gazette of India,

EXTRAORDINARY.

Published by Authority.

SIMLA, THURSDAY, APRIL 7, 1881.

MILITARY DEPARTMENT.

APPOINTMENTS.

No. 195.

Simla, the 7th April, 1881.

GENERAL *Sir* D. M. STEWART, BART., G.C.B., appointed to be Commander-in-Chief of the Forces in India, as announced in G. G. O. No. 83 of 1881, assumed Command this day, in succession to General *Sir* F. P. Haines, G.C.B., G.C.S.I., C.I.E.

Ordered, that all Returns of the Army be made in the usual manner to General *Sir* D. M. Stewart, Bart., G.C.B., as Commander-in-Chief in India.

By order of His Excellency the Governor General in Council,

G. CHESNEY, *Colonel*,
Secretary to the Government of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, APRIL 23, 1881.

☞ 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 20th April, 1881, and was referred to a Select Committee :—

No. 10 of 1881.

Act No. III of 1871. *A Bill to amend the Indian Paper Currency Act, 1871.*

Preamble. WHEREAS it is expedient to amend the Indian Paper Currency Act, 1871, Act No. III of 1871. in manner hereinafter appearing; It is hereby enacted as follows :—

Amendment of section 4. **1.** In section four of the said Act, for the words "and two other officers, called, respectively, the Commissioner of the Department of Issue at Madras and the Commissioner of the Department of Issue at Bombay," the words "and three other officers, called, respectively, the Commissioner of the Department of Issue at Madras, the Commissioner of the Department of Issue at Bombay and the Commissioner of the Department of Issue at Rangoon" shall be substituted.

Amendment of section 5. **2.** In section five of the said Act, for the words "three of which circles shall include the Towns of Calcutta, Madras and Bombay, respectively," the words "four of which circles shall include the Towns of Calcutta, Madras, Bombay and Rangoon, respectively," shall be substituted; and for the words "any such town (other than Calcutta, Madras or Bombay) shall be deemed to be situate within such Presidency as is specified in the order," the words "any such town (other than Calcutta, Madras, Bombay or Rangoon) shall be deemed to be situate within such Presidency or Province as is specified in the order," shall be substituted.

Amendment of sections 6 and 9. **3.** In sections six and nine of the said Act, for the words "and Bombay" the words "Bombay and Rangoon" shall be substituted.

Amendment of section 7. **4.** In section seven of the said Act, for the words "the Commissioners at Madras and Bombay," the words "the Commissioners at Madras, Bombay and Rangoon" shall be substituted; and for the last sentence the following shall be substituted (namely) :—

"the Deputy Commissioners in the Presidencies of Fort Saint George and Bombay and in the Province of British Burma shall be subordinate to the Commissioners of Madras, Bombay and Rangoon, respectively."

Amendment of section 10. **5.** In section ten of the said Act, for the words "of either of the Commissioners," the words of the Commissioners" shall be substituted for the words "by either of the Commissioners" the words "by one of the Commissioners" shall be substituted.

Partial repeal of section 24. **6.** In section twenty-

STATEMENT OF OBJECTS AND REASONS.

THERE is at present no Paper Currency which is a legal tender in Burma. Notes of the Calcutta circle are used to a limited extent in the chief towns, and occasionally notes of other circles are used, but there is no circle of issue in Burma.

2. Great inconvenience has been felt by the mercantile classes in Burma from this want; and in the year 1872 the question of establishing a circle of issue in that Province was before the Government of India. The Indian Paper Currency Act of 1871, however, renders it necessary to declare every town (other than Calcutta, Madras or Bombay) in which there is an office of issue to be, for the purposes of the Act, situate within some Presidency. Had, therefore, a circle of issue been established in Burma, it would have been necessary to declare the place of issue to be situate within one of the Presidencies of Fort William, Fort St. George and Bombay. The result would have been that, under section 9 of the Act, the notes of the Burma circle would have been payable at the office or offices of issue in Burma, and also at the Presidency-town of the Presidency (probably Fort William) within which the town of issue had been declared, for the purposes of the Act, to be situate.

3. The nature of the commercial transactions between Burma and India is such that, under those circumstances, it would have been unwise to establish a circle of issue in Burma. At particular periods of the year large remittances of money are made between Calcutta and Rangoon, and if the Burmese notes were payable at Calcutta, the Government might be put to considerable inconvenience and expense in providing cash to meet the notes. The question was accordingly allowed to remain in abeyance.

4. The rapid increase of the trade of Burma has again caused the question to be brought before the Government of India. The best authorities are agreed that Burma can no longer do without a paper currency, but that the Burmese notes should be payable only at the office of issue and not at any Presidency-town. The public will thus enjoy most of the conveniences of a paper currency, while the Government will not be obliged to undertake the exchange business of British Burma.

5. The amendments in the Paper Currency Act proposed in the Bill have for their objects:—

1st—to create a Commissioner of the Department of Issue at Rangoon;

2ndly—to make the towns of issue in Burma independent of the Presidencies;

3rdly—to render the paper issued at any town in Burma payable only at the office of issue.

6. The first of these objects is attained by a slight alteration of the fourth section of the Act; the second, by amending section 5 so as to empower the Governor General in Council to declare a town to be situate for the purposes of the Act within a Province as well as a Presidency. The third will be effected by the amendment just described; for the town of issue in Burma can then be declared situate within the Province of British Burma, and Burmese notes will not then be payable at Calcutta or any other Presidency-town.

SIMLA:
The 8th April, 1881.

WHITLEY STOKES.

R. J. CROSTHWAITE,
Offg. Secretary to the Government 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 20th April, 1881, and was referred to a Select Committee:—

No. 11 OF 1881.

Act No. XIV of 1876. *A Bill to amend the Sindh Incumbered Estates Act, 1876.*

WHEREAS it is expedient to extend the time within which applications under the Sindh Incumbered Estates Act, 1876, section three, may be made, and otherwise to amend the same Act in manner hereinafter appearing; It is hereby enacted as follows:—

Preamble.

Act No. XIV of 1876.

1. Applications under the said Act, section three, may be made at any time within six months after the passing of this Act.

Time for making applications under Act XIV of 1876, section 3.

2. To the first sentence of section seven of the said Act, the following words shall be added (namely):—"or which may be incurred by the Manager receiving a loan from Government in the manner hereinafter provided."

Amendment of section 7.

3. To section ten of the said Act, the following shall be added (namely):—"and also for the repayment, either before or after the liquidation of such debts and liabilities, of any loan received from Government by the Manager under this Act."

Amendment of section 10.

4. In section sixteen of the said Act, after the words "under section ten," the words "and for the repayment of the money (if any) which the Manager proposes to borrow from Government under this Act" shall be inserted.

Amendment of section 16.

5. To section twenty-three of the said Act the following shall be added (namely):—"or (*c*) by borrowing money from Government at a fair rate of interest."

Amendment of section 23.

6. In section twenty-five of the said Act, after the words "mentioned in the liquidation-scheme," the following shall be inserted (namely):—"and the amount of any loan received from Government under clause (*c*) of section twenty-three, together with the interest (if any) due thereon."

Amendment of section 25.

STATEMENT OF OBJECTS AND REASONS.

IT has been the practice for the Manager, under the Sindh Encumbered Estates Act, to borrow, with the previous sanction of Government, from the Treasury and to pay off such creditors as agreed to enter into a compromise in consideration of obtaining speedy payment of their debts. The money so borrowed was repaid by the Manager, with or without interest, as Government directed, from the income of the indebted estate.

Hitherto the money thus borrowed has been regarded as a liability incurred to Government in respect of the property under management within the meaning of section 10 of the Act. This view, however, is based on an erroneous conception of the law, and, as the Act stands, the only way to secure advances made by Government is by mortgaging the indebted estate.

It is objected that as soon as the debts are paid off the estate is released from management, and that Government would then only have the security of an ordinary mortgage for the advance.

It is proposed, therefore, to amend the Act by enabling the Manager to borrow money from Government, and by providing that the estate shall not be released from management until the money so borrowed is repaid with interest.

This will be effected by slight additions to sections 23 and 25. By other amendments the management is made to extend to the debt which may be incurred to Government by the Manager borrowing money, and the Manager is directed, in submitting his liquidation-scheme, to show in it the amount which he proposes to borrow from Government and the way in which he proposes to repay it.

As the management cannot terminate till the whole advance is repaid, there is ample security for its repayment.

The Act allows applications under section three to be made within twelve months from the passing of the Act, and, at the suggestion of the Government of Bombay, it is now proposed to allow a further period of six months from the date of the passing of this amending Act.

SIMLA;
The 12th April, 1881.

J. GIBBS.

R. J. CROSTHWAITE,
Offg. Secretary to the Government of

[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 20th April, 1881, and was referred to a Select Committee:—

No. 12 of 1881.

Act No. XIV of 1877. *A Bill to amend the Broach and Kaira Incumbered Estates Act, 1877.*

WHEREAS it is expedient to amend the Broach and Kaira Incumbered Estates Act, 1877, in manner hereinafter appearing; It is hereby enacted as follows:— Preamble. Act No. XIV of 1877.

1. To the first sentence of section eight of the said Act, the following words shall be added (namely):— Amendment of section 8.

"or which may be incurred by the manager receiving a loan from Government in the manner hereinafter provided."

2. To section eleven of the said Act, the following shall be added (namely):— Amendment of section 11.

"and also for the repayment, either before or after the liquidation of such debts and liabilities, of any loan received from Government by the manager under this Act."

3. In section seventeen of the said Act, after the words and figures "under section 11," the words "and for the repayment of the money (if any) which the manager proposes to borrow from Government under this Act" shall be inserted. Amendment of section 17.

4. To section twenty-four of the said Act, the following shall be added (namely):— Amendment of section 24.

"or (*d*) by borrowing money from Government at a fair rate of interest."

5. In section twenty-six of the said Act, after the words "mentioned in the liquidation-scheme," the following shall be inserted (namely):— Amendment of section 26.

"and the amount of any loan received from Government under clause (*d*) of section 24, together with the interest (if any) due thereon."

STATEMENT OF OBJECTS AND REASONS.

THE object of the proposed Bill and the reasons for legislating are the same as those in the case of the Bill to amend the Sindh Incumbered Estates Act. It is also found expedient for the management of the Broach and Kaira Estates that the manager should be able to borrow money at a fair rate of interest from Government, and that the estate should be retained under management till the repayment of the amount so borrowed.

SIMLA; *The 12th April, 1881.*

J. GIBBS.

R. J. CROSTHWAITE,
Offg. Secretary to the Government 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 20th April, 1881, and was referred to a Select Committee:—

No. 13 OF 1881.

THE EXCISE BILL, 1881.

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A Bill to consolidate and amend the law relating to the Excise-revenue in Northern India, British Burma and Coorg.

WHEREAS it is expedient to consolidate and amend the law in force in Northern India, British Burma and Coorg relating to the production, sale, possession and import of spirit, fermented liquors and intoxicating drugs, and the collection of the revenue derived therefrom; It is hereby enacted as follows:—

Preamble.

CHAPTER I.

PRELIMINARY.

1. This Act may be called "The Excise Act, 1881":

Short title.

It extends to the territories administered respectively by the Lieutenant-Governors of the North-tern Provinces and the Panjáb, and the Chief ...issioners of Oudh, the Central Provinces, ...urma, Coorg, and Ajmer and Merwára;

Local extent.

Alluvion ... into force on the first day of December, 1881.

...day the Excise Act, 1871, ... be repealed, but all ...le, powers conferred ...der that Act and in force on the same day shall be deemed to have been respectively made, conferred and granted under this Act.

Interpretation-clause.

3. In this Act—

"Chief Revenue-authority": (*a*) "Chief Revenue-authority" means—

in the territories administered by the Lieutenant-Governor of the North-Western Provinces—the Board of Revenue;

in the territories administered by the Lieutenant-Governor of the Panjáb—the Financial Commissioner; and

in the territories respectively administered by the Chief Commissioners of Oudh, the Central Provinces, British Burma, Coorg, and Ajmer and Merwára—the Chief Commissioner:

"Collector": (*b*) "Collector" includes any Revenue-officer in independent charge of a District and any officer appointed by the Local Government to discharge, throughout any local area, the functions of a Collector under this Act: Act X of 1871, ss. 3 and 36.

"Commissioner of Revenue": "Commissioner of Revenue" includes any officer appointed by the Local Government to discharge, throughout any local area, the functions of a Commissioner of Revenue under this Act: See ss. 14 and 53.

"Magistrate": (*c*) "Magistrate" means any Magistrate exercising powers not less than those of a Magistrate of the second class or any Magistrate of the third class specially authorized in this behalf by the Magistrate of the District: Burma draft, s. 3.

"Place": "Place" includes also house and boat:

"Fermented liquor": (*d*) "Fermented liquor" means malt liquor, wine, pachwai and fermented tárí, and, in any provision of this Act, shall, if the Local Government, subject to the control of the Governor General in Council, so directs, include any other fermented liquor,* and also tárí though it may not have perceptibly begun to ferment: Act X of 1871, ss. 16 and 17; and see s. 64: Burma draft, s. 3.

* Durbahra, *e.g.*—See correspondence, Financial Department, in 1872.

"Spirit": (*e*) "Spirit" means any liquor containing alcohol obtained by distillation:

"Country spirit" and "country fermented liquor": (*f*) "Country spirit" and "country fermented liquor" mean respectively any spirit and fermented liquor made in India by any Native process:

"Foreign spirit" and "foreign fermented liquor": (*g*) "Foreign spirit" and "foreign fermented liquor" mean respectively any spirit and fermented liquor made in India after a manner in which spirit and fermented liquor are respectively made in Europe, and any spirit and fermented liquor made at any place beyond the limits of India: Cf. Act X of 1871, s. 12.

"Intoxicating drugs": (*h*) The expression "intoxicating drugs" means gánja, bháng, charas, and every preparation and admixture of the same:

"Tola": (*i*) "Tola" means a weight of one hundred and eighty grains Troy:

"Ser": (*j*) "Ser" means a weight of eighty tolas:

Act X of 1871, s. 19: s. 14, para. 2.

"Retail": (*k*) The articles next hereinafter mentioned shall be deemed to be sold retail within the meaning of this Act when sold in quantities not exceeding those next hereinafter specified in respect of them, that is to say,—

Foreign spirit or foreign fermented liquor, two imperial gallons or twelve reputed quart bottles;

country spirit, one ser;

country fermented liquor, four sers;

Correspondence with Central Provinces.

gánja, bháng, or charas, or any preparation or admixture thereof, five tolas:

"Wholesale."

If sold in larger quantities they shall be deemed to be sold wholesale.

Act X of 1871, s. 82.

Saving of Acts XVI of 1863 and III of 1880.

4. Nothing herein contained shall affect Act No. XVI of 1863 (*to make special provision for the levy of the Excise Duty payable on Spirits used exclusively in Arts and Manufactures or in Chemistry*) or the Cantonments Act, 1880.

CHAPTER II.

PRODUCTION OF SPIRIT, FERMENTED LIQUOR AND INTOXICATING DRUGS.

Act X of 1871, ss. 5, 9 and 11: Burma draft, s. 5: Correspondence with Central Provinces.

Manufacture of spirit and liquor without license prohibited.

5. No person shall construct, work or possess a distillery, still or brewery, or manufacture fermented liquor, in any district except under a license granted by the Collector and in accordance with the conditions (if any) contained therein.

Act X of 1871, s. 7.

Power to establish distilleries for country spirit.

6. The Collector may, with the sanction of the Chief Revenue-authority, from time to time, establish at any place within his district a distillery in which country spirit may be made, and discontinue any distillery so established.

Correspondence with Central Provinces.

When a distillery has been established under this section, the Collector may, from time to time, fix within his district limits within which no country spirit, except such as is made at such distillery, shall be introduced without a special pass from the Collector.

Act X of 1871, s. 21, cls. 1st, 2nd and 4th.

Duty on spirit.

7. No spirit shall be removed from any distillery licensed under section five or established under section six, until the duty payable in respect of such spirit under the Indian Tariff Act, 1875, section eleven, has been paid, or a bond for such duty has been executed as provided by the Sea Customs Act, 1878.

Act X of 1871, s. 6; s. 21, cl. 3rd.

Power to make rules as to distilleries and breweries licensed under section 5.

8. The Chief Revenue-authority may, from time to time, make rules as to—

(*a*) the granting of licenses for distilleries and breweries under section five;

(*b*) the notices to be given by the proprietor of a licensed distillery when he commences and discontinues work;

(*c*) the size and description of the stills in such distillery;

(*d*) the storing and passing out of the spirit made in such distillery, and the contents of the passes;

(*e*) the inspection and examination of the distillery and warehouses, and of the spirit made and stored therein;

(*f*) the furnishing of statements of the spirit, and of the stills, coppers, casks and other utensils in the distillery.

And for distilleries established under section 6.

9. The Chief Revenue-authority may, from time to time, make rules as to—

Act X of 1871, s. 8.

(*a*) the management of distilleries established under section six;

(*b*) the conditions on which spirit may be made in such distilleries; and

(*c*) the storing and passing out of the spirit so made, and the contents of the passes.

Sanction to rules under sections 8 and 9.

10. Except in the territories respectively administered by the Chief Commissioners of Oudh, the Central Provinces, British Burma, Coorg, and Ajmer and Merwára, the sanction of the Local Government is required to validate rules under sections eight and nine.

Act X of 1871, s. 10.

Production of intoxicating drugs.

11. In British Burma, the cultivation of hemp and the preparation of intoxicating drugs therefrom are prohibited except under, and in accordance with, a license granted by such officer as the Chief Commissioner may from time to time appoint in this behalf.

Act X of 1871, s. 40, cl. 2: Burma draft, s. 9: Correspondence with Central Provinces.

In the other territories to which this Act extends, the Chief Revenue-authority may, from time to time, make such rules to restrict and regulate the cultivation of hemp and the preparation of intoxicating drugs therefrom as it may deem necessary to secure the duty leviable in respect of those drugs.

CHAPTER III.

SALE OF SPIRIT, FERMENTED LIQUOR AND INTOXICATING DRUGS.

Spirit, fermented liquor and drugs not to be sold without license.

12. No spirit, fermented liquor or intoxicating drug shall be sold except under, and in accordance with the terms of, a license granted under the provisions hereinafter contained.

Act X of 1871, ss. 12, 15, 16, 17 and 27, para. 2.

Proviso.

Provided as follows—

1stly,—nothing in this section applies to the sale of any foreign spirit or foreign fermented liquor legally procured by any person for his private use ... and sold by auction upon his quitting a station or ... after his decease; Act X of 1871, s. 62, ...

2ndly,—any officer empowered in this ... the Chief Revenue-authority may grant ... ling merchants, subject to such rules ... as such authority from time to ... general license authorizing the ... spirit and foreign fermented ... any district which they may ... their travels, without ... that district;

3rdly,—any ... country fer... provisions ...

from time to time made by the Local Government in this behalf, sell such spirit or liquor to any person who is licensed as a retail vendor of such spirit or liquor;

Act X of 1871, ss. 20 and 64.

4thly,—any cultivator of the hemp plant may sell any intoxicating drug prepared from his plants to any person licensed under this Act to sell the same, or any person authorized by an order in writing from the Collector to purchase the same.

Act X of 1871, ss. 12, 15 and 19.

Licenses how granted.

13. Subject to the rules made by the Chief Controlling Revenue-authority under the power hereinafter conferred, the Collector may grant licenses for the sale of foreign spirit and foreign fermented liquor, wholesale or retail, and for the retail sale of country spirit or country fermented liquor and (except in British Burma) of intoxicating drugs within his district or any part thereof or at any place therein.

Licenses for the sale of country spirit and country fermented liquor and intoxicating drugs, wholesale, and licenses for the sale, in British Burma, of intoxicating drugs, retail, shall be granted only by such officer as the Local Government from time to time appoints in this behalf.

Act X of 1871, s. 34.

Power to cancel retail license.

14. Whenever the Collector considers the license of a retail vendor of country spirit, country fermented liquor or intoxicating drugs should be cancelled for any cause other than those specified in such license, he shall remit a sum equal to the amount of the license-fee for fifteen days, and shall either give fifteen days' previous notice of his intention to cancel the license, or shall, in addition to remitting such sum as aforesaid, make such compensation for default of notice as the Commissioner of Revenue or Chief Revenue-authority directs. On the expiration of such notice or the payment of such additional compensation, the Collector may cancel the said license.

Act X of 1871, s. 35.

Surrender of retail license.

15. Any such retail vendor may surrender his license on the expiration of one month's previous notice given by him to the Collector of his intention to surrender the same, and on paying such sum, not exceeding the amount of the license-fee for six months, as the Collector may fix in this behalf.

If the Collector is satisfied that there is a sufficient reason for surrendering a license, he may remit the sum so fixed.

Act X of 1871, s. 25.

Power to farm fees.

16. The Collector may, with the sanction of the Chief Revenue-authority, let in farm the fees leviable in any district or part of a district on licenses for the retail sale of any description of country spirit or fermented liquors or (except in British Burma) of intoxicating drugs.

When the fees leviable on any of such articles are let in farm, the farmer may, subject to [illegible] reservations or restrictions as the Collector, [illegible]ction of the Chief Revenue-authority, [illegible] to time impose, grant licenses for [illegible] articles within the local limits [illegible] file in the Collector's office a [illegible] of all the licenses granted [illegible]n in such form as may, [illegible]ne to time, be pre[illegible]thority.

Act X of 1871, s. 29.

Farm may be cancelled.

17. The Collector may, with the sanction of the Chief Revenue-authority, cancel any farm granted under this Act.

Compensation to farmers in certain cases.

18. If any such farm be cancelled for any cause other than a breach on the part of the farmer of the conditions of the farm, or if any reservation or restriction with respect to the grant of licenses be made or imposed within the period of the farm, the farmer shall be entitled to receive such compensation for any loss which he sustains thereby as the Chief Revenue-authority may determine.

Act X of 1871, s. 30.

Recovery of arrears by farmers.

19. Every farmer under this Act may use the same means and processes for the recovery of any arrear of fees due to him from any retail vendor, as may be lawfully used by zamíndárs and farmers of land for the recovery of arrears of rent due to them from their under-tenants.

Act X of 1871, s. 40, cl. 1.

Power to regulate supply of tárí and intoxicating drugs to licensed vendors.

20. The Chief Revenue-authority may, from time to time, make rules to regulate the mode in which tárí shall be supplied to licensed vendors of the same, and the grant of licenses or passes to persons possessing or transporting intoxicating drugs for the supply of the licensed vendors of such drugs.

CHAPTER IV.

POSSESSION OF SPIRIT, FERMENTED LIQUOR AND INTOXICATING DRUGS.

Act X of 1871, ss. 63 and 64.

Possession of spirit, &c.

21. Except as herein otherwise provided, no person shall have in his possession, without a pass from the Collector or from some other officer empowered by the Local Government in that behalf, any larger quantity of any spirit or fermented liquor than that specified in section three, clause (*k*), in respect of such spirit or liquor, unless he is permitted to manufacture or sell the same:

Proviso.

Nothing in this section extends to any foreign spirit or foreign fermented liquor in the possession of any common carrier or warehouse-man as such, or purchased by any person for his private use and not for sale.

Burma draft, s. 9; Act X of 1871, ss. 63 and 64.

Possession of intoxicating drugs.

22. In British Burma no person shall have in his possession any intoxicating drugs except under, and in accordance with the terms of, a general exemption granted by the Chief Commissioner, or a license granted by such officer as the Chief Commissioner may, from time to time, appoint in this behalf.

In the other territories to which this Act extends, no person shall have in his possession any larger quantity of such drugs than that specified in section three, clause (*k*), in respect of such drugs, unless he is permitted to manufacture or sell the same.

CHAPTER V.

IMPORT OF SPIRIT.

Act X of [illegible]

Spirit from foreign territory subject to duty.

23. No person shall bring into any territory to which this Act extends any spirit manufactured at any place in India beyond the limits of British India,

until duty equal to the duty prescribed for such spirit under the Indian Tariff Act, 1875, section eleven, has been paid in respect thereof and a pass has been obtained therefor from such officer as the Local Government may, from time to time, appoint in this behalf.

CHAPTER VI.

OFFICERS AND THEIR POWERS.

Act X of 1871, ss. 38, 39 and 46.

Collectors may appoint Excise-officers.

24. The Collector may appoint persons, by name or by virtue of their office, to be officers for the collection of the excise-revenue and for the prevention of offences against this Act; and the officers so appointed shall, in addition to their ordinary designations (if any), be styled Excise-officers.

Act X of 1871, s. 41.

Recovery of arrears of fees.

25. The Collector may recover any amount due to the Government under this Act or the rules made hereunder, by distress and sale of the moveable property of the person from whom such amount is due or of his surety, or by any other process for the time being in force for the recovery of arrears of land-revenue due from farmers of land or their sureties.

Act X of 1871, s. 42.

Power of Excise-officers to inspect shops.

26. Any Excise-officer may enter and inspect at any time by day or by night the shop or premises in which any licensed manufacturer or vendor carries on the manufacture of country spirit, or the sale of country spirit, country fermented liquor or intoxicating drugs.

71,

To arrest persons carrying spirit, [illegible] liquor or intoxicating drugs [illegible] under this Act,

27. Any Excise-officer may stop and detain any person carrying any spirit, [illegible] liquor or intoxicating drugs [illegible] under this Act, [illegible] officer suspects any person, [illegible]

and may seize such spirit, liquor or drug, together with any vessels, packages or coverings in which it is contained, and the animals and conveyances used in carrying it;

and may also arrest the person in whose possession such spirit, liquor or drug is found.

71,

To arrest persons in possession of article liable to confiscation, and to seize article.

28. Any Excise-officer in the receipt of a monthly salary of not less than *twelve* rupees may arrest any person having in his possession any article liable to confiscation under this Act, or engaged in the unlawful sale of any spirit, fermented liquor or intoxicating drug, and may seize such article, spirit, liquor or drug.

Act X of 1871, ss. 45 and 46.

To search on information of illicit manufacture or possession.

29. Whenever any Excise-officer in receipt of such monthly salary as aforesaid has reason to believe, from information given by any person (which [illegible] writing), [illegible] unlawfully manufactured, or that any article liable to confiscation under this Act is kept or concealed in any place,

Such officer may, after sunrise and before sunset (but always in the presence of an officer of police in the receipt of a monthly salary of not less than [illegible] rupees), enter into such place,

[illegible] case of resistance may break open any door and force and remove any other obstacle to such entry, and may seize and carry away such spirit or article,

and may also arrest the occupier of the place with all other persons concerned in the manufacture of such spirit, or in the keeping and concealing of such article.

Act X of 1871, s. 48.

Collector may issue warrant of arrest in certain cases.

30. The Collector may issue his warrant for the arrest of any person whom he has reason to believe, either from information in writing, or from the proceedings in any other case, to be engaged in the unlawful sale of spirit or fermented liquors or intoxicating drugs, or to have in his possession any article liable to confiscation under this Act.

Act X of 1871, s. 49.

Collector may issue search-warrant.

31. The Collector may issue his warrant for the search of any place in which, upon any of the grounds mentioned in the last preceding section, he has reason to believe that spirit is unlawfully manufactured, or that any spirit, fermented liquor or intoxicating drug liable to confiscation under this Act is kept or concealed.

Such warrant may be executed, by any Excise-officer in the receipt of a monthly salary of not less than *twelve* rupees, at the time and in the manner prescribed in section twenty-nine.

Special warrant authorizing search at night.

Whenever the Collector thinks that the search should be made after sunset and before sunrise on any particular day, he shall issue a warrant specially authorizing the search to be so made. Such warrant may be executed by any Excise-officer as aforesaid in the manner prescribed in section twenty-nine, and shall cease to be in force at sunrise on the day next following.

[illegible] officer arrests any person,

or seizes any article liable to confiscation under this Act,

or enters any place for the purpose of searching for any such article,

he shall, within twenty-four hours thereafter, make a full report of all the particulars of such arrest, seizure or search, to his official superior, and, unless acting under the warrant of the Collector, shall take the person arrested, or the article seized, with all convenient despatch to the Magistrate for trial or adjudication.

and to take person arrested to Magistrate.

Procedure after arrest or seizure.

33. Whenever any person is arrested or any article is seized under the warrant of a Collector, the officer making such arrest or seizure shall, within twenty-four hours thereafter, take the person arrested or the article seized, to the Collector, or the Collector, after such enquiry as [illegible] necessary, shall send such person or [illegible] nearest Magistrate, or shall order the discharge of such person or the article.

Police to assist Excise-officers.

34. All Police-officers [illegible] request [illegible]

or search shall, whenever it is practicable, give notice to the Commanding Officer of the intention to make the arrest or search, and in all other cases shall report the arrest or search to such Commanding Officer with as little delay as possible.

CHAPTER VII.

PENALTIES.

Act X of 1871, ss. 52, 56 and 62, para. 1.

36. Whoever in contravention of section five constructs, works or possesses a distillery, still or brewery, or makes fermented liquor shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both; *For illegally manufacturing spirit or liquor.*

and all spirit and liquor made in contravention of section five, and all materials and implements collected for the purpose of such manufacture, shall be liable to confiscation.

37. Any person who—

Act X of 1871, s. 60, para. 2.

(*a*) without a special pass from the Collector, introduces, into the limits fixed for the consumption of spirit made at a distillery established under section six, any country spirit manufactured at another place, or *For illegally introducing country spirit.*

Act X of 1871, ss. 54 and 60, para. 1.

(*b*) in contravention of section seven, or of any rule made under section eight or section nine, removes any spirit from a distillery, or *For illegally removing spirit.*

Correspondence with Central Provinces.

(*c*) in contravention of section twenty-three, brings any spirit into any territory to which this Act extends, *For illegally importing spirit.*

shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both;

and the spirit, together with the vessels containing the same, and the animals and conveyances used in carrying it, shall be liable to confiscation.

Act X of 1871, ss. 52 and 61.

38. Any person who, except in cases herein otherwise provided for, wilfully contravenes any rule made under section eight or section nine shall be punished with fine not exceeding one hundred rupees. *For contravening rules prescribed by Chief Revenue-authority.*

39. Any person who, in contravention of section eleven or of any rule made thereunder, cultivates hemp or prepares any intoxicating drug, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. *For illegally cultivating hemp and preparing drugs.*

40. Any person who, in contravention of section twelve, sells any spirit, fermented liquor or intoxicating drugs, shall be punished with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both. *For illicit sale of spirit.*

41. Any person licensed to sell retail spirit or fermented liquor, or intoxicating drugs, who permits gaming in his shop, or who is known to be of disorderly character to have any wearing apparel or other effects in barter for spirit, fermented liquor or intoxicating drugs, shall be punished with fine which may extend to two hundred rupees.

Act X of 1871, s. 68.

42. Any person who possesses any spirit, liquor or drug, in contravention of section twenty-one or section twenty-two, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both; *Illegal possession of spirit, liquor or drug.*

and the spirit, liquor or drug, together with any vessels, packages and coverings in which it is contained, and any animals and conveyances used in carrying it, shall be liable to confiscation.

Act X of 1871, s. 57.

43. Any person holding a license under this Act and refusing to produce the same on the demand of any Excise-officer, and any person who breaks any rule made under this Act or any condition of a license granted under this Act, for the breach of which rule or condition no other penalty is hereby provided, shall be punished with fine which may extend to fifty rupees. *For refusal to produce license and for breach of rules and conditions.*

Act X of 1871, ss. 68 and 73, 2nd para.

44. Any proprietor, farmer, tahsíldár, gumáshta or other manager of land who authorizes or connives at the illegal manufacture of spirit or the sale of spirit or fermented liquor or intoxicating drugs, shall for every such offence be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. *For conniving at illicit manufacture or sale of spirit, &c.*

And any person invested with local jurisdiction who authorizes or connives at the illegal sale of any spirit, fermented liquor or intoxicating drug within the local limits of such jurisdiction shall be punished with fine which may extend to five hundred rupees.

Act X of 1871, s. 69.

45. Any Police-officer who, without lawful excuse, neglects, or refuses to assist as required by section thirty-four, and any officer in charge of a Police-station who, on application made by an Excise-officer desiring to act under section twenty-nine, fails to attend a search himself, or to depute a subordinate officer of the required rank, shall be punished with fine which may extend to five hundred rupees. *For Police neglecting to assist.*

Act X of 1871, s. 72.

46. Any Excise-officer who—

(*a*) without reasonable grounds of suspicion searches or causes to be searched any place, or *For vexatious search or seizure.*

(*b*) vexatiously and unnecessarily seizes the moveable property of any person on the pretence of seizing or searching for any article liable to confiscation under this Act, or

(*c*) vexatiously and unnecessarily arrests any person, or

(*d*) commits any other excess not required for the execution of his duty,

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

Act X of 1871, s. 72.

47. Any Excise-officer who, in contravention of section thirty-two or section thirty-three, neglects to report the particulars of an arrest, seizure or search, or delays taking to the Magistrate or Collector, as *For delay in reporting arrest, &c., or in taking person arrested to Magistrate.*

the case may be, any person arrested, or any article seized, shall be punished with fine which may extend to two hundred rupees.

Act X of 1871, ss. 74 and 75, para. 3.

48. Prosecutions restricted. No complaint of an offence under any one of the following sections, that is to say, thirty-six, thirty-seven, thirty-eight, thirty-nine, forty, forty-two, forty-three and forty-four, shall be received unless it is made by the Collector or by an Excise-officer; and no complaint of an offence under this Act shall be received unless it is made within the six months next after the commission of such offence.

Cf. Act X of 1871, s. 77; and see correspondence with N.-W. P.

49. Confinement in what jail. Every person imprisoned for an offence under section thirty-eight or section forty-three shall be confined in the civil jail, and every person imprisoned for an offence under any other section shall be confined in the criminal jail.

50. Attempts and abetment. Whoever attempts to commit any offence punishable under this Act or abets within the meaning of the Indian Penal Code the commission of any such offence shall be punished with the punishment provided for such offence.

Act X of 1871, ss. 79, 80.

51. Disposal of fines, &c., as rewards. Any Magistrate before whom any person is convicted of any offence under sections thirty-six, thirty-seven, thirty-eight, thirty-nine, forty, forty-two or forty-four may award to any person who has contributed in any way to such conviction the whole or any portion of any fine imposed upon the offender and paid by him or realized from his property.

Act X of 1871, s. 54.

52. Magistrate to pass order of confiscation. Any article subject to confiscation under this Act may, on the application of an Excise-officer, be confiscated by the order of any Magistrate within the local limits of whose jurisdiction it is found.

CHAPTER VIII.

MISCELLANEOUS.

Act X of 1871, s. 66.

53. Collector subject to control of Commissioner. The Collector shall in all proceedings under this Act be subject to the control of the Commissioner of Revenue, and all orders passed by a Collector under this Act shall be appealable to such Commissioner in manner provided by the rules for the time being in force relating to appeals from the orders of Collectors.

54. Additional power to make rules. The Chief Controlling Revenue-authority may, from time to time, make rules consistent with this Act—

Act X of 1871, s. 13, cl. 2; s. 23.

(*a*) as to the period for which any license or farm under this Act shall be granted;

Act X of 1871, s. 13, cl. 1; s. 14, cl. 1; s. 24.

(*b*) as to the fee payable for any such license or farm, and the time or times at which it shall be payable;

Act X of 1871, s. 28 (*b*); s. 31.

(*c*) as to the security to be given by any licensee or farmer under this Act;

Act X of 1871, s. 29 (*b*); ss. 31, 33 and 34.

(*d*) as to the form of any license or farming lease and of the counterpart thereof (if any) to be taken from such licensee or farmer, and the conditions which may be inserted therein;

Act X of 1871, s. 76.

(*e*) as to the disposal of things confiscated under this Act;

Act X of 1871, s. 78.

(*f*) as to the duties of Excise-officers; and

(*g*) to provide generally for carrying out the provisions of this Act.

STATEMENT OF OBJECTS AND REASONS.

This Bill is in the main a re-enactment of the Excise Act, 1871, in a shorter and, it is believed, a clearer form.

The only substantial changes of importance which it introduces are—

1st, a greater restriction in regard to intoxicating drugs, especially in British Burma, and

2nd, an enhancement of the penalties for certain breaches of the excise-law.

2. As regards the former, the amendment of the law proposed for British Burma will practically amount to a prohibition of the use of intoxicating drugs except for medicinal purposes in that Province. This is advocated by the Chief Commissioner on the following grounds, *viz.*:—

(1) that these drugs are considerably more injurious than opium;

(2) that at present they are unknown to the Burmese themselves, or, at any rate, have not come into use to such an extent among them that they would feel deprived of a luxury if their supply were summarily stopped;

(3) that such drugs are already forbidden in the Arakan Hill Tracts, and that the prohibition has worked well; and

(4) that they are, for the most part, used only by immigrants from India, who deserve no special consideration in the matter.

3. The alteration of the law in this particular for other Provinces is of much less importance. It consists in the reduction of the weight of ganjá and bhángy, which may be sold by a retail vendor or possessed by a private person, from a quarter of a *sir* to *five tolas*, the same weight as is permitted in the case of *charas*.

4. The enhancement of the penalties prescribed for offences against the Act has been advocated by certain of the Local Governments on the ground that the persons who commonly commit such offences are unable to pay a fine, and that to them imprisonment in a civil jail or without hard labour is really no punishment. The Bill, accordingly, gives power to sentence to imprisonment of either description extending to six months in lieu of, or in addition to, fine in certain cases, and in other cases substitutes imprisonment in the criminal jail for imprisonment in the civil jail.

Sections 18, 65, 66, 67 and 87 of the present Act (No. X of 1871) are omitted as relating solely to opium: sections 55, 83, 84 and 85 are omitted as the subjects are sufficiently provided for by the Sea Customs Act, 1878. Section 7[illegible] is provided for by the Penal Code, section [illegible] and section 73 of the Act, paragraphs 1 and [illegible] the same Code taken in connection with [illegible] 53, clause (*f*), of the Bill. The sub[illegible] tion 75, paragraphs 1 and 2, is pro[illegible] the Code of Criminal Procedure [illegible] omitted, as all grave offences wi[illegible] able, on a first conviction, [illegible] prisonment. Section 86 [illegible] section 81, are also [illegible] necessary and in part [illegible] tive order.

The 14th [illegible]

1881.

The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, APRIL 30, 1881.

☞ 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 20th April, 1881, and was referred to a Select Committee:—

No. 10 OF 1881.

Act No. III of 1871. *A Bill to amend the Indian Paper Currency Act, 1871.*

Preamble. WHEREAS it is expedient to amend the Indian Paper Currency Act, 1871, in manner hereinafter appearing; It is hereby enacted as follows:—

Act No. III of 1871.

Amendment of section 4. 1. In section four of the said Act, for the words "and two other officers, called, respectively, the Commissioner of the Department of Issue at Madras and the Commissioner of the Department of Issue at Bombay," the words "and three other officers, called, respectively, the Commissioner of the Department of Issue at Madras, the Commissioner of the Department of Issue at Bombay and the Commissioner of the Department of Issue at Rangoon" shall be substituted.

Amendment of section 5. 2. In section five of the said Act, for the words "three of which circles shall include the Towns of Calcutta, Madras and Bombay, respectively," the words "four of which circles shall include the Towns of Calcuttá, Madras, Bombay and Rangoon, respectively," shall be substituted; and for the words "any such town (other than Calcutta, Madras or Bombay) shall be deemed to be situate within such Presidency as is specified in the order," the words "any such town (other than Calcutta, Madras, Bombay or Rangoon) shall be deemed to be situate within such Presidency or Province as is specified in the order," shall be substituted.

Amendment of sections 6 and 9. 3. In sections six and nine of the said Act, for the words "and Bombay" the words "Bombay and Rangoon" shall be substituted.

Amendment of section 7. 4. In section seven of the said Act, for the words "the Commissioners at Madras and Bombay," the words "the Commissioners at Madras, Bombay and Rangoon" shall be substituted; and for the last sentence the following shall be substituted (namely):—

"the Deputy Commissioners in the Presidencies of Fort Saint George and Bombay and in the Province of British Burma shall be subordinate to the Commissioners of Madras, Bombay and Rangoon, respectively."

Amendment of section 10. 5. In section ten of the said Act, for the words "of either of the Commissioners," the words "of the Commissioners" shall be substituted for the words "by either of the said sioners" the words "by one of the sioners" shall be substituted.

Partial repeal of section 24. 6. In section twenty-four the

STATEMENT OF OBJECTS AND REASONS.

THERE is at present no Paper Currency which is a legal tender in Burma. Notes of the Calcutta circle are used to a limited extent in the chief towns, and occasionally notes of other circles are used, but there is no circle of issue in Burma.

2. Great inconvenience has been felt by the mercantile classes in Burma from this want; and in the year 1872 the question of establishing a circle of issue in that Province was before the Government of India. The Indian Paper Currency Act of 1871, however, renders it necessary to declare every town (other than Calcutta, Madras or Bombay) in which there is an office of issue to be, for the purposes of the Act, situate within some Presidency. Had, therefore, a circle of issue been established in Burma, it would have been necessary to declare the place of issue to be situate within one of the Presidencies of Fort William, Fort St. George and Bombay. The result would have been that, under section 9 of the Act, the notes of the Burma circle would have been payable at the office or offices of issue in Burma, and also at the Presidency-town of the Presidency (probably Fort William) within which the town of issue had been declared, for the purposes of the Act, to be situate.

3. The nature of the commercial transactions between Burma and India is such that, under those circumstances, it would have been unwise to establish a circle of issue in Burma. At particular periods of the year large remittances of money are made between Calcutta and Rangoon, and if the Burmese notes were payable at Calcutta, the Government might be put to considerable inconvenience and expense in providing cash to meet the notes. The question was accordingly allowed to remain in abeyance.

4. The rapid increase of the trade of Burma has again caused the question to be brought before the Government of India. The best authorities are agreed that Burma can no longer do without a paper currency, but that the Burmese notes should be payable only at the office of issue and not at any Presidency-town. The public will thus enjoy most of the conveniences of a paper currency, while the Government will not be obliged to undertake the exchange business of British Burma.

5. The amendments in the Paper Currency Act proposed in the Bill have for their objects :—

1st—to create a Commissioner of the Department of Issue at Rangoon;

2ndly—to make the towns of issue in Burma independent of the Presidencies;

3rdly—to render the paper issued at any town in Burma payable only at the office of issue.

6. The first of these objects is attained by a slight alteration of the fourth section of the Act; the second, by amending section 5 so as to empower the Governor General in Council to declare a town to be situate for the purposes of the Act within a Province as well as a Presidency. The third will be effected by the amendment just described; for the town of issue in Burma can then be declared situate within the Province of British Burma, and Burmese notes will not then be payable at Calcutta or any other Presidency-town.

SIMLA:
The 8th April, 1881.

WHITLEY STOKES.

R. J. CROSTHWAITE,
Offg. Secretary to the Government 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 20th April, 1881, and was referred to a Select Committee :—

No. 11 OF 1881.

Act No. XIV of 1878.

A Bill to amend the Sindh Incumbered Estates Act, 1876.

Preamble.

WHEREAS it is expedient to extend the time within which applications under the Sindh Incum-

Act No. XIV of 1876.

bered Estates Act, 1876, section three, may be made, and otherwise to amend the same Act in manner hereinafter appearing; It is hereby enacted as follows :—

Time for making applications under Act XIV of 1876, section 3.

1. Applications under the said Act, section three, may be made at any time within six months after the passing of this Act.

Amendment of section 7.

2. To the first sentence of section seven of the said Act, the following words shall be added (namely) :—"or which may be incurred by the Manager receiving a loan from Government in the manner hereinafter provided."

Amendment of section 10.

3. To section ten of the said Act, the following shall be added (namely) :—"and also for the repayment, either before or after the liquidation of such debts and liabilities, of any loan received from Government by the Manager under this Act."

Amendment of section 16.

4. In section sixteen of the said Act, after the words "under section ten," the words "and for the repayment of the money (if any) which the Manager proposes to borrow from Government under this Act" shall be inserted.

Amendment of section 23.

5. To section twenty-three of the said Act the following shall be added (namely) :—"or (*c*) by borrowing money from Government at a fair rate of interest."

Amendment of section 25.

6. In section twenty-five of the said Act, after the words "mentioned in the liquidation-scheme," the following shall be inserted (namely) :—"and the amount of any loan received from Government under clause (*c*) of section twenty-three, together with the interest (if any) due thereon."

STATEMENT OF OBJECTS AND REASONS.

IT has been the practice for the Manager, under the Sindh Encumbered Estates Act, to borrow, with the previous sanction of Government, from the Treasury and to pay off such creditors as agreed to enter into a compromise in consideration of obtaining speedy payment of their debts. The money so borrowed was repaid by the Manager, with or without interest, as Government directed, from the income of the indebted estate.

Hitherto the money thus borrowed has been regarded as a liability incurred to Government in respect of the property under management within the meaning of section 10 of the Act. This view, however, is based on an erroneous conception of the law, and, as the Act stands, the only way to secure advances made by Government is by mortgaging the indebted estate.

It is objected that as soon as the debts are paid off the estate is released from management, and that Government would then only have the security of an ordinary mortgage for the advance.

It is proposed, therefore, to amend the Act by enabling the Manager to borrow money from Government, and by providing that the estate shall not be released from management until the money so borrowed is repaid with interest.

This will be effected by slight additions to sections 23 and 25. By other amendments the management is made to extend to the debt which may be incurred to Government by the Manager borrowing money, and the Manager is directed, in submitting his liquidation-scheme, to show in it the amount which he proposes to borrow from Government and the way in which he proposes to repay it.

As the management cannot terminate till the whole advance is repaid, there is ample security for its repayment.

The Act allows applications under section three to be made within twelve months from the passing of the Act, and, at the suggestion of the Government of Bombay, it is now proposed to allow a further period of six months from the date of the passing of this amending Act.

SIMLA;
The 12th April, 1881.

J. GIBBS.

R. J. CROSTH[illegible]
Offg. Secretary to the Go[illegible]

[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 20th April, 1881, and was referred to a Select Committee:—

No. 12 OF 1881.

Act No. XIV of 1877.

A Bill to amend the Broach and Kaira Incumbered Estates Act, 1877.

WHEREAS it is expedient to amend the Broach and Kaira Incumbered Estates Act, 1877, in manner hereinafter appearing; It is hereby enacted as follows:—

Preamble.

Act No. XIV of 1877.

1. To the first sentence of section eight of the said Act, the following words shall be added (namely):—

Amendment of section 8.

"or which may be incurred by the manager receiving a loan from Government in the manner hereinafter provided."

2. To section eleven of the said Act, the following shall be added (namely):—

Amendment of section 11.

"and also for the repayment, either before or after the liquidation of such debts and liabilities, of any loan received from Government by the manager under this Act."

3. In section seventeen of the said Act, after the words and figures "under section 11," the words "and for the repayment of the money (if any) which the manager proposes to borrow from Government under this Act" shall be inserted.

Amendment of section 17.

4. To section twenty-four of the said Act, the following shall be added (namely):—

Amendment of section 24.

"or (*d*) by borrowing money from Government at a fair rate of interest."

5. In section twenty-six of the said Act, after the words "mentioned in the liquidation-scheme," the following shall be inserted (namely):—

Amendment of section 26.

"and the amount of any loan received from Government under clause (*d*) of section 24, together with the interest (if any) due thereon."

STATEMENT OF OBJECTS AND REASONS.

THE object of the proposed Bill and the reasons for legislating are the same as those in the case of the Bill to amend the Sindh Incumbered Estates Act. It is also found expedient for the management of the Broach and Kaira Estates that the manager should be able to borrow money at a fair rate of interest from Government, and that the estate should be retained under management till the repayment of the amount so borrowed.

SIMLA;
The 12th April, 1881.

J. GIBBS.

R. J. CROSTHWAITE,
Offg. Secretary to the Government 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 20th April, 1881, and was referred to a Select Committee:—

No. 13 OF 1881.

THE EXCISE BILL, 1881.

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A Bill to consolidate and amend the law relating to the Excise-revenue in Northern India, British Burma and Coorg.

WHEREAS it is expedient to consolidate and amend the law in force in Northern India, British Burma and Coorg relating to the production, sale, possession and import of spirit, fermented liquors and intoxicating drugs, and the collection of the revenue derived therefrom; It is hereby enacted as follows:—

Preamble.

CHAPTER I.

PRELIMINARY.

1. This Act may be called "The Excise Act, 1881":

Short title.

It extends to the territories administered respectively by the Lieutenant-Governors of the North-Provinces and the Panjáb, and the Chief of Oudh, the Central Provinces, Coorg, and Ajmer and Merwára;

Local extent.

force on the first day of October, 1881.

Excise Act, 1871, repealed, but all conferred Act and in force on the same day shall be deemed to have been respectively made, conferred and granted under this Act.

Interpretation-clause.

3. In this Act—

"Chief Revenue-authority":

(*a*) "Chief Revenue-authority" means—

in the territories administered by the Lieutenant-Governor of the North-Western Provinces—the Board of Revenue;

in the territories administered by the Lieutenant-Governor of the Panjáb—the Financial Commissioner; and

in the territories respectively administered by the Chief Commissioners of Oudh, the Central Provinces, British Burma, Coorg, and Ajmer and Merwára—the Chief Commissioner:

"Collector":

(*b*) "Collector" includes any Revenue-officer in independent charge of a District and any officer appointed by the Local Government to discharge, throughout any local area, the functions of a Collector under this Act:

Act X of 1871, ss. 3 and 36.

"Commissioner of Revenue":

"Commissioner of Revenue" includes any officer appointed by the Local Government to discharge, throughout any local area, the functions of a Commissioner of Revenue under this Act:

See ss. 14 and 58.

"Magistrate":

(*c*) "Magistrate" means any Magistrate exercising powers not less than those of a Magistrate of the second class or any Magistrate of the third class specially authorized in this behalf by the Magistrate of the District:

Burma draft, s. 3.

"Place":

"Place" includes also house and boat:

"Fermented liquor":

(*d*) "Fermented liquor" means malt liquor, wine, pachwai and fermented tárí, and, in any provision of this Act, shall, if the Local Government, subject to the control of the Governor General in Council, so directs, include any other fermented liquor,* and also tárí though it may not have perceptibly begun to ferment:

Act X of 1871, ss. 16 and 17; and see s. 64: Burma draft, s. 3.

* Durbahra, *e.g.*—See correspondence, Financial Department, in 1872.

"Spirit":

(*e*) "Spirit" means any liquor containing alcohol obtained by distillation:

"Country spirit" and "country fermented liquor":

(*f*) "Country spirit" and "country fermented liquor" mean respectively any spirit and fermented liquor made in India by any Native process:

"Foreign spirit" and "foreign fermented liquor":

(*g*) "Foreign spirit" and "foreign fermented liquor" mean respectively any spirit and fermented liquor made in India after a manner in which spirit and fermented liquor are respectively made in Europe, and any spirit and fermented liquor made at any place beyond the limits of India:

Cf. Act X of 1871, s. 12.

"Intoxicating drugs":

(*h*) The expression "intoxicating drugs" means gánja, bháng, charas, and every preparation and admixture of the same:

"Tola":

(*i*) "Tola" means a weight of one hundred and eighty grains Troy:

"Ser":

(*j*) "Ser" means a weight of eighty tolas:

Act X of 1871, s. 19: s. 14, para. 2.

(*k*) The articles next hereinafter mentioned shall be deemed to be sold retail within the meaning of this Act when sold in quantities not exceeding those next hereinafter specified in respect of them, that is to say,—

"Retail":

Foreign spirit or foreign fermented liquor, two imperial gallons or twelve reputed quart bottles;

country spirit, one ser;

country fermented liquor, four sers;

Correspondence with Central Provinces.

gánja, bháng, or charas, or any preparation or admixture thereof, five tolas:

"Wholesale."

If sold in larger quantities they shall be deemed to be sold wholesale.

Act X of 1871, s. 82.

4. Nothing herein contained shall affect Act No. XVI of 1863 (*to make special provision for the levy of the Excise Duty payable on Spirits used exclusively in Arts and Manufactures or in Chemistry*) or the Cantonments Act, 1880.

Saving of Acts XVI of 1863 and III of 1880.

CHAPTER II.

PRODUCTION OF SPIRIT, FERMENTED LIQUOR AND INTOXICATING DRUGS.

Act X of 1871, ss. 5, 9 and 11: Burma draft, s. 5: Correspondence with Central Provinces.

5. No person shall construct, work or possess a distillery, still or brewery, or manufacture fermented liquor, in any district except under a license granted by the Collector and in accordance with the conditions (if any) contained therein.

Manufacture of spirit and liquor without license prohibited.

Act X of 1871, s. 7.

6. The Collector may, with the sanction of the Chief Revenue-authority, from time to time, establish at any place within his district a distillery in which country spirit may be made, and discontinue any distillery so established.

Power to establish distilleries for country spirit.

Correspondence with Central Provinces.

When a distillery has been established under this section, the Collector may, from time to time, fix within his district limits within which no country spirit, except such as is made at such distillery, shall be introduced without a special pass from the Collector.

Act X of 1871, s. 21, cls. 1st, 2nd and 4th.

7. No spirit shall be removed from any distillery licensed under section five or established under section six, until the duty payable in respect of such spirit under the Indian Tariff Act, 1875, section eleven, has been paid, or a bond for such duty has been executed as provided by the Sea Customs Act, 1878.

Duty on spirit.

Act X of 1871, s. 6: s. 21, cl. 2nd.

8. The Chief Revenue-authority may, from time to time, make rules as to—

Power to make rules as to distilleries and breweries licensed under section 5.

(*a*) the granting of licenses for distilleries and breweries under section five;

(*b*) the notices to be given by the proprietor of a licensed distillery when he commences and discontinues work;

(*c*) the size and description of the stills in such distillery;

(*d*) the storing and passing out of the spirit made in such distillery, and the contents of the passes;

(*e*) the inspection and examination of the distillery and warehouses, and of the spirit made and stored therein;

(*f*) the furnishing of statements of the spirit, and of the stills, coppers, casks and other utensils in the distillery.

Act X of 1871, s. 8.

9. The Chief Revenue-authority may, from time to time, make rules as to—

And for distilleries established under section 6.

(*a*) the management of distilleries established under section six;

(*b*) the conditions on which spirit may be made in such distilleries; and

(*c*) the storing and passing out of the spirit so made, and the contents of the passes.

Act X of 1871, s. 10.

10. Except in the territories respectively administered by the Chief Commissioners of Oudh, the Central Provinces, British Burma, Coorg, and Ajmer and Merwára, the sanction of the Local Government is required to validate rules under sections eight and nine.

Sanction to rules under sections 8 and 9.

Act X of 1871, s. 40, cl. 2: Burma draft, s. 9: Correspondence with Central Provinces.

11. In British Burma, the cultivation of hemp and the preparation of intoxicating drugs therefrom are prohibited except under, and in accordance with, a license granted by such officer as the Chief Commissioner may from time to time appoint in this behalf.

Production of intoxicating drugs.

In the other territories to which this Act extends, the Chief Revenue-authority may, from time to time, make such rules to restrict and regulate the cultivation of hemp and the preparation of intoxicating drugs therefrom as it may deem necessary to secure the duty leviable in respect of those drugs.

CHAPTER III.

SALE OF SPIRIT, FERMENTED LIQUOR AND INTOXICATING DRUGS.

Act X of 1871, ss. 12, 15, 17 and 22, para. 2.

12. No spirit, fermented liquor or intoxicating drug shall be sold except under, and in accordance with the terms of, a license granted under the provisions hereinafter contained.

Spirit, fermented liquor and drugs not to be sold without license.

Proviso.

Provided as follows—

1stly,—nothing in this section applies to the sale of any foreign spirit or foreign fermented liquor legally procured by any person for his private use and sold by auction upon his quitting a station after his decease;

2ndly,—any officer empowered in that behalf by the Chief Revenue-authority may grant to distilling merchants, subject to such conditions as such authority from time to time prescribes, general license authorizing the sale of foreign spirit and foreign fermented liquor within any district which they may enter in the course of their travels, with the consent of the Collector of that district;

3rdly,—

from time to time made by the Local Government in this behalf, sell such spirit or liquor to any person who is licensed as a retail vendor of such spirit or liquor;

Act X of 1871, ss. 20 and 64.

4thly,—any cultivator of the hemp plant may sell any intoxicating drug prepared from his plants to any person licensed under this Act to sell the same, or any person authorized by an order in writing from the Collector to purchase the same.

Act X of 1871, ss. 12, 15 and 19.

13. Subject to the rules made by the Chief Controlling Revenue-authority under the power hereinafter conferred, the Collector may grant licenses for the sale of foreign spirit and foreign fermented liquor, wholesale or retail, and for the retail sale of country spirit or country fermented liquor and (except in British Burma) of intoxicating drugs within his district or any part thereof or at any place therein.

Licenses how granted.

Licenses for the sale of country spirit and country fermented liquor and intoxicating drugs, wholesale, and licenses for the sale, in British Burma, of intoxicating drugs, retail, shall be granted only by such officer as the Local Government from time to time appoints in this behalf.

Act X of 1871, s. 34.

14. Whenever the Collector considers the license of a retail vendor of country spirit, country fermented liquor or intoxicating drugs should be cancelled for any cause other than those specified in such license, he shall remit a sum equal to the amount of the license-fee for fifteen days, and shall either give fifteen days' previous notice of his intention to cancel the license, or shall, in addition to remitting such sum as aforesaid, make such compensation for default of notice as the Commissioner of Revenue or Chief Revenue-authority directs. On the expiration of such notice or the payment of such additional compensation, the Collector may cancel the said license.

Power to cancel retail license.

Act X of 1871, s. 35.

15. Any such retail vendor may surrender his license on the expiration of one month's previous notice given by him to the Collector of his intention to surrender the same, and on paying such sum, not exceeding the amount of the license-fee for six months, as the Collector may fix in this behalf.

Surrender of retail license.

If the Collector is satisfied that there is a sufficient reason for surrendering a license, he may remit the sum so fixed.

Act X of 1871,

16. The Collector may, with the sanction of the Chief Revenue-authority, let in farm the fees leviable in any district or part of a district on licenses for the retail sale of any description of country spirit or fermented liquors or (except in British Burma) of intoxicating drugs.

Power to farm fees.

The fees leviable on any of such articles are let in farm, the farmer may, subject to restrictions as the Collector, Chief Revenue-authority, purpose, grant licenses for within the local limits Collector's office a licenses granted as may, be pre-

17. The Collector may, with the sanction of the Chief Revenue-authority, cancel any farm granted under this Act.

Act X of 1871, s. 29.

Farm may be cancelled.

18. If any such farm be cancelled for any cause other than a breach on the part of the farmer of the conditions of the farm, or if any reservation or restriction with respect to the grant of licenses be made or imposed within the period of the farm, the farmer shall be entitled to receive such compensation for any loss which he sustains thereby as the Chief Revenue-authority may determine.

Compensation to farmers in certain cases.

19. Every farmer under this Act may use the same means and processes for the recovery of any arrear of fees due to him from any retail vendor, as may be lawfully used by zamíndárs and farmers of land for the recovery of arrears of rent due to them from their under-tenants.

Act X of 1871, s. 30.

Recovery of arrears by farmers.

20. The Chief Revenue-authority may, from time to time, make rules to regulate the mode in which tárí shall be supplied to licensed vendors of the same, and the grant of licenses or passes to persons possessing or transporting intoxicating drugs for the supply of the licensed vendors of such drugs.

Act X of 1871, s. 40, cl. 1.

Power to regulate supply of tárí and intoxicating drugs to licensed vendors.

CHAPTER IV.

POSSESSION OF SPIRIT, FERMENTED LIQUOR AND INTOXICATING DRUGS.

21. Except as herein otherwise provided, no person shall have in his possession without a pass from the Collector or from some other officer empowered by the Local Government in that behalf, any larger quantity of any spirit or fermented liquor than that specified in section three, clause (*k*), in respect of such spirit or liquor, *unless he is permitted to manufacture or sell the same*:

Act X of 1871, ss. 63 and 64.

Possession of spirit, &c.

Nothing in this section extends to any foreign spirit or foreign fermented liquor in the possession of any common carrier or warehouse-man as such, or purchased by any person for his private use and not for sale.

Proviso.

22. In British Burma no person shall have in his possession any intoxicating drugs except under, and in accordance with the terms of, a general exemption granted by the Chief Commissioner, or a license granted by such officer as the Chief Commissioner may, from time to time, appoint in this behalf.

Burma draft, s. 9; Act X of 1871, ss. 63 and 64.

Possession of intoxicating drugs.

In the other territories to which this Act extends, no person shall have in his possession any larger quantity of such drugs than that specified in section three, clause (*k*), in respect of such drugs, unless he is permitted to manufacture or sell the same.

CHAPTER V.

IMPORT OF SPIRIT.

23. *No person shall bring into any territory to which this Act extends any spirit manufactured at any place in India beyond the limits of British India,*

Act X of 1871, s. 52, 1st para.

Spirit from foreign territory subject to duty.

until duty equal to the duty prescribed for such *spirit* under the Indian Tariff Act, 1875, section eleven, has been paid in respect thereof and a pass has been obtained therefor from such officer as the Local Government may, from time to time, [illegible] in this behalf.

CHAPTER VI.

OFFICERS AND THEIR POWERS.

24. The Collector may appoint persons, by name or by virtue of their office, to be officers for the collection of the excise-revenue and for the prevention of offences against this Act; and the officers so appointed shall, in addition to their ordinary designations (if any), be styled Excise-officers.

Collectors may appoint Excise-officers.

25. The Collector may recover any amount due to the Government under this Act or the rules made hereunder, by distress and sale of the moveable property of the person from whom such amount is due or of his surety, or by any other process for the time being in force for the recovery of arrears of land-revenue due from farmers of land or their sureties.

Recovery of arrears of fees.

26. Any Excise-officer may enter and inspect at any time by day or by night the shop or premises in which any licensed manufacturer or vendor carries on the manufacture of country spirit, or the sale of country spirit, country fermented liquor or intoxicating drugs.

Power of Excise-officers to inspect shops.

Act X of 1871, s. 43.

27. Any Excise-officer may stop and detain any person carrying any spirit, fermented liquor or intoxicating drug liable to confiscation under this Act;

To arrest persons carrying [illegible] liable to confiscation.

and may seize such spirit, liquor or drug, together with any vessels, packages or coverings in which it is contained, and the animals and conveyances used in carrying it;

and may also arrest the person in whose possession such spirit, liquor or drug is found.

Act X of 1871, s. 44.

28. Any Excise-officer in the receipt of a monthly salary of not less than *twelve* rupees may arrest any person having in his possession any article liable to confiscation under this Act, or engaged in the unlawful sale of any spirit, fermented liquor or intoxicating drug, and may seize such article, spirit, liquor or drug.

To arrest persons in possession of article liable to confiscation, and to seize article.

Act X of 1871, ss. 45 and 46.

29. Whenever any Excise-officer in receipt of such monthly salary as aforesaid has reason to believe, from information given by any person (which information shall be taken down in writing),

To search on information of illicit manufacture or possession.

that spirit is unlawfully manufactured, or that any article liable to confiscation under this Act is kept or concealed in any place,

Such officer may, after sunrise and before sunset [but always in the presence of an officer of police in the receipt of a monthly salary of not less than *twelve* rupees], enter into such place,

and in case of resistance may break open any door and force and remove any other obstacle to such entry, and may seize and carry away such spirit or article,

and may also arrest the occupier of the place with all other persons concerned in the manufacture of such spirit, or in the keeping and concealing of such article.

Act X of 1871, s. 48.

30. The Collector may issue his warrant for the arrest of any person whom he has reason to believe, either from information in writing, or from the proceedings in any other case, to be engaged in the unlawful sale of spirit or fermented liquors or intoxicating drugs, or to have in his possession any article liable to confiscation under this Act.

Collector may issue warrant of arrest in certain cases.

Act X of 1871, s. 49.

31. The Collector may issue his warrant for the search of any place in which he has reason to believe that spirit is unlawfully manufactured, or that any spirit, fermented liquor or intoxicating drug liable to confiscation under this Act is kept or concealed.

Collector may issue search-warrant.

Such warrant may be executed, by any Excise-officer in the receipt of a monthly salary of not less than *twelve* rupees, at the time and in the manner prescribed in section twenty-nine.

Whenever the Collector thinks that the search should be made after sunset and before sunrise on any particular day, he shall issue a warrant specially authorizing the search to be so made. Such warrant may be executed by any Excise-officer as aforesaid in the manner prescribed in section twenty-nine, and shall cease to be in force at sunrise on the day next following.

Special warrant authorizing search at night.

32. Whenever an Excise-officer arrests any person, or seizes any article liable to confiscation under this Act,

Excise-officer to report arrest, &c.;

or enters any place for the purpose of searching for any such article,

he shall, within twenty-four hours thereafter, make a full report of all the particulars of such arrest, seizure or search, to his official superior, and, unless acting under the warrant of the Collector, shall take the person arrested, or the article seized, with all convenient despatch to the Magistrate for trial or adjudication.

and to take person arrested to Magistrate.

33. Whenever any person is arrested or any article is seized under the warrant of a Collector, the officer making such arrest or seizure shall, within twenty-four hours thereafter, take the person arrested or the article seized, to the Collector, or, after such enquiry as he thinks necessary, shall send such person or article to the nearest Magistrate, or shall order the discharge of such person or the article.

Procedure after arrest or seizure.

34. All Police-officers [illegible]

Police to assist Excise-officers.

request made by

35. When

Mode of [illegible] or [illegible] entry.

or search shall, whenever it is practicable, give notice to the Commanding Officer of the intention to make the arrest or search, and in all other cases shall report the arrest or search to such Commanding Officer with as little delay as possible.

CHAPTER VII.

PENALTIES.

Act X of 1871, ss. 52, 56 and 62, para. 1.

36. Whoever in contravention of section five constructs, works or possesses a distillery, still or brewery, or makes fermented liquor shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both;

For illegally manufacturing spirit or liquor.

and all spirit and liquor made in contravention of section five, and all materials and implements collected for the purpose of such manufacture, shall be liable to confiscation.

37. Any person who—

Act X of 1871, s. 60, para. 2.

(*a*) without a special pass from the Collector, introduces, into the limits fixed for the consumption of spirit made at a distillery established under section six, any country spirit manufactured at another place, or

For illegally introducing country spirit.

Act X of 1871, ss. 54 and 60, para. 1.

(*b*) in contravention of section seven, or of any rule made under section eight or section nine, removes any spirit from a distillery, or

For illegally removing spirit.

Correspondence with Central Provinces.

(*c*) in contravention of section twenty-three, brings any spirit into any territory to which this Act extends,

For illegally importing spirit.

shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both;

and the spirit, together with the vessels containing the same, and the animals and conveyances used in carrying it, shall be liable to confiscation.

Act X of 1871, ss. 53 and 61.

38. Any person who, except in cases herein otherwise provided for, wilfully contravenes any rule made under section eight or section nine shall be punished with fine not exceeding one hundred rupees.

For contravening rules prescribed by Chief Revenue-authority.

39. Any person who, in contravention of section eleven or of any rule made thereunder, cultivates hemp or prepares any intoxicating drug, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

For illegally cultivating hemp and preparing drugs.

Any person who, in contravention of section twelve, sells any spirit, fermented liquor or intoxicating drugs, shall be punished with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

For illegal sale of spirit, &c.

And any person who has a license to sell retail spirit or fermented liquor, or intoxicating drugs, who permits drinking in his shop, or who is of bad character to be in his shop during hours during which the sale of liquor is prohibited, shall be punished with fine which may extend to two hundred rupees.

For illegally permitting drinking in shop.

40. Any person who, in contravention of section thirteen, buys any spirit, fermented liquor or intoxicating drugs, or receives the same in barter for apparel or other effects, shall be punished with fine which may extend to two hundred rupees.

For illegally buying spirit, &c.

41. Any person who possesses any spirit, liquor or drug, in contravention of section twenty-one or section twenty-two, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both;

Act X of 1871, s. 63.

Illegal possession of spirit, liquor or drug.

and the spirit, liquor or drug, together with any vessels, packages and coverings in which it is contained, and any animals and conveyances used in carrying it, shall be liable to confiscation.

42. Any person holding a license under this Act and refusing to produce the same on the demand of any Excise-officer, and any person who breaks any rule made under this Act or any condition of a license granted under this Act, for the breach of which rule or condition no other penalty is hereby provided, shall be punished with fine which may extend to fifty rupees.

Act X of 1871, s. 57.

For refusal to produce license and for breach of rules and conditions.

43. Any proprietor, farmer, *tahsíldár*, *gumáshta* or other manager of land who authorizes or connives at the illegal manufacture of spirit or the sale of spirit or fermented liquor or intoxicating drugs, shall for every such offence be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Act X of 18[illegible], ss. 68 and 2nd para.

For conniving at illicit manufacture or sale of spirit, &c.

And any person invested with local jurisdiction who authorizes or connives at the illegal sale of any spirit, fermented liquor or intoxicating drug within the local limits of such jurisdiction shall be punished with fine which may extend to five hundred rupees.

44. Any Police-officer who, without lawful excuse, neglects, or refuses to assist as required by section thirty-four, and any officer in charge of a Police-station who, on application made by an Excise-officer desiring to act under section twenty-nine, fails to attend a search himself, or to depute a subordinate officer of the required rank, shall be punished with fine which may extend to five hundred rupees.

Act X of 1871, s. 69.

For Police neglecting to assist.

45. Any Excise-officer who—

Act X of 1871, s. 71.

(*a*) without reasonable grounds of suspicion searches or causes to be searched any place, or

For vexatious search or seizure.

(*b*) vexatiously and unnecessarily seizes the moveable property of any person on the pretence of seizing or searching for any article liable to confiscation under this Act, or

(*c*) vexatiously and unnecessarily arrests any person, or

(*d*) commits any other excess not required for the execution of his duty,

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

46. Any Excise-officer who, in contravention of section thirty-two or section thirty-three, neglects to report the particulars of an arrest, seizure or search, or delays taking to the Magistrate or Collector, as the case may be, any person arrested, or any article seized, shall be punished with fine which may extend to two hundred rupees.

Act X of 1871, s. 72.

For delay in reporting arrest, &c., or in taking person arrested to Magistrate.

Act X of 18[illegible], ss. 74 and para.

48. No complaint of an offence under any one of the following sections, that is to say, thirty-six, thirty-seven, thirty-eight, thirty-nine, forty, forty-two, forty-three and forty-four, shall be received unless it is made by the Collector or by an Excise-officer; and no complaint of an offence under this Act shall be received unless it is made within the six months next after the commission of such offence.

Prosecutions restricted.

Act X of 1871, s. 77; and see correspondence with N. W. P.

49. Every person imprisoned for an offence under section thirty-eight or section forty-three shall be confined in the civil jail, and every person imprisoned for an offence under any other section shall be confined in the criminal jail.

Confinement in what jail.

50. Whoever attempts to commit any offence punishable under this Act or abets within the meaning of the Indian Penal Code the commission of any such offence shall be punished with the punishment provided for such offence.

Attempts and abetment.

Act X of 1871, ss. 79, 80.

51. Any Magistrate before whom any person is convicted of any offence under sections thirty-six, thirty-seven, thirty-eight, thirty-nine, forty, forty-two or forty-four may award to any person who has contributed in any way to such conviction the whole or any portion of any fine imposed upon the offender and paid by him or realized from his property.

Disposal of fines, &c., as rewards.

Act X of 1871, s. 75.

52. Any article subject to confiscation under this Act may, on the application of an Excise-officer, be confiscated by the order of any Magistrate within the local limits of whose jurisdiction it is found.

Magistrate to pass order of confiscation.

CHAPTER VIII.

MISCELLANEOUS.

Act X of 1871, s. 58.

53. The Collector shall in all proceedings under this Act be subject to the control of the Commissioner of Revenue, and all orders passed by a Collector under this Act shall be appealable to such Commissioner in manner provided by the rules for the time being in force relating to appeals from the orders of Collectors.

Collector subject to control of Commissioner.

54. The Chief Controlling Revenue-authority may, from time to time, make rules consistent with this Act—

Additional power to make rules.

Act X of 1871, ss. 9; s. 13, cl. 2; s. 33.

(*a*) as to the period for which any license or farm under this Act shall be granted;

Act X of 1871, s. 13, cl. 1; s. 14, cl. 1; s. 34.

(*b*) as to the fee payable for any such license or farm, and the time or times at which it shall be payable;

Act X of 1871, s. 20 (*b*); s. 31.

(*c*) as to the security to be given by any licensee or farmer under this Act;

Act X of 1871, s. 20 (*c*); ss. 31, 33 and 34.

(*d*) as to the form of any license or farming lease and of the counterpart thereof (if any) to be taken from such licenses or farmer, and the conditions which may be inserted therein;

Act X of 1871, s. 76.

(*e*) as to the disposal of things confiscated under this Act;

Act X of 1871, s. 26.

(*f*) as to the duties of Excise-officers;

(*g*) to provide generally for carrying out the provisions of this Act.

STATEMENT OF OBJECTS AND REASONS.

This Bill is in the main a re-enactment of the Excise Act, 1871, in a shorter and, it is believed, a clearer form.

The only substantial changes of importance which it introduces are—

1st, a greater restriction in regard to intoxicating drugs, especially in British Burma, and

2nd, an enhancement of the penalties for certain breaches of the excise-law.

2. As regards the former, the amendment of the law proposed for British Burma will practically amount to a prohibition of the use of intoxicating drugs except for medicinal purposes in that Province. This is advocated by the Chief Commissioner on the following grounds, *viz.*:—

(1) that these drugs are considerably more injurious than opium;

(2) that at present they are unknown to the Burmese themselves, or, at any rate, have not come into use to such an extent among them that they would feel deprived of a luxury if their supply were summarily stopped;

(3) that such drugs are already forbidden in the Arakan Hill Tracts, and that the prohibition has worked well; and

(4) that they are, for the most part, used only by immigrants from India, who deserve no special consideration in the matter.

3. The alteration of the law in this particular for other Provinces is of much less importance. It consists in the reduction of the weight of ganjá and bháng, which may be sold by a retail vendor or possessed by a private person, from a quarter of a seer to three tolas, the same weight as is permitted in the case of charas.

4. The enhancement of the penalties prescribed for offences against the Act has been advocated by certain of the Local Governments on the ground that the persons who commonly commit such offences are unable to pay a fine, and that to them imprisonment in a civil jail or without hard labour is really no punishment. The Bill, accordingly, gives power to sentence to imprisonment of either description extending to six months in lieu of, or in addition to, fine in certain cases, and in other cases substitutes imprisonment in the criminal jail for imprisonment in the civil jail.

Sections 18, 65, 66, 67 and 87 of the present Act (No. X of 1871) are omitted as relating solely to opium: sections 55, 83, 84 and 85 are omitted as the subjects are sufficiently provided for by the Sea Customs Act, 1878. [illegible] is provided for by the Penal Code, [illegible] and section 73 of the Act, paragraph [illegible] the same Code taken in connection [illegible] 53, clause (*f*), of the Bill, [illegible] tion 75, paragraphs 1 and [illegible] the Code of Criminal [illegible] omitted, as all grave [illegible] able, on a first conviction, [illegible] prisonment. [illegible] section 81, [illegible] necessary [illegible]

The Gazette of India.

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SIMLA, SATURDAY, MAY 7, 1881.

☞ 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 20th April, 1881, and was referred to a Select Committee:—

No. 10 OF 1881.

Act No. III of 1871.

A Bill to amend the Indian Paper Currency Act, 1871.

Act No. III of 1871.

WHEREAS it is expedient to amend the Indian Paper Currency Act, 1871, in manner hereinafter appearing; It is hereby enacted as follows:— Preamble.

1. In section four of the said Act, for the words "and two other officers, called, respectively, the Commissioner of the Department of Issue at Madras and the Commissioner of the Department of Issue at Bombay," the words "and three other officers, called, respectively, the Commissioner of the Department of Issue at Madras, the Commissioner of the Department of Issue at Bombay and the Commissioner of the Department of Issue at Rangoon" shall be substituted. Amendment of section 4.

2. In section five of the said Act, for the words "three of which circles shall include the Towns of Calcutta, Madras and Bombay, respectively," the words "four of which circles shall include the Towns of Calcutta, Madras, Bombay and Rangoon, respectively," shall be substituted; and for the words "any such town (other than Calcutta, Madras or Bombay) shall be deemed to be situate within such Presidency as is specified in the order," the words "any such town (other than Calcutta, Madras, Bombay or Rangoon) shall be deemed to be situate within such Presidency or Province as is specified in the order," shall be substituted. Amendment of section 5.

3. In sections six and nine of the said Act, for the words "and Bombay" the words "Bombay and Rangoon" shall be substituted. Amendment of sections 6 and 9.

4. In section seven of the said Act, for the words "the Commissioners at Madras and Bombay," the words "the Commissioners at Madras, Bombay and Rangoon" shall be substituted; and for the last sentence the following shall be substituted (namely):— Amendment of section 7.

"the Deputy Commissioners in the Presidencies of Fort Saint George and Bombay and in the Province of British Burma shall be subordinate to the Commissioners of Madras, Bombay and Rangoon, respectively."

5. In section ten of the said Act, for [illegible] Amendment of section 10.

[illegible] sioners." [illegible] of the Commissioners" shall be substituted; and for the words "by either of the Commissioners" the words "by [illegible] sioners" shall be substituted.

6. In section [illegible] Partial repeal of section 24.

STATEMENT OF OBJECTS AND REASONS.

THERE is at present no Paper Currency which is a legal tender in Burma. Notes of the Calcutta circle are used to a limited extent in the chief towns, and occasionally notes of other circles are used, but there is no circle of issue in Burma.

2. Great inconvenience has been felt by the mercantile classes in Burma from this want; and in the year 1872 the question of establishing a circle of issue in that Province was before the Government of India. The Indian Paper Currency Act of 1871, however, renders it necessary to declare every town (other than Calcutta, Madras or Bombay) in which there is an office of issue to be, for the purposes of the Act, situate within some Presidency. Had, therefore, a circle of issue been established in Burma, it would have been necessary to declare the place of issue to be situate within one of the Presidencies of Fort William, Fort St. George and Bombay. The result would have been that, under section 9 of the Act, the notes of the Burma circle would have been payable at the office or offices of issue in Burma, and also [illegible] town of the Presidency-town of the Presidency (probably Fort William) within which the [illegible] issue had been declared, for the purposes of the Act, to be situate.

3. The nature of the commercial transactions between Burma and India is such that, under those circumstances, it would have been unwise to establish a circle of issue in Burma. [illegible] made between Calcutta and At particular periods of the year large remittances of money are [illegible] the Government might be put Rangoon, and if the Burmese notes were payable at Calcutta [illegible]sh to meet the notes. The question to considerable inconvenience and expense in providing [illegible] was accordingly allowed to remain in abeyance. [illegible]rma has again caused the question to be brought

4. The rapid increase of the trade of Burma authorities are agreed that Burma can no longer before the Government of India. The [illegible]mat the Burmese notes should be payable only at the office do without a paper currency, but [illegible]y-town. The public will thus enjoy most of the conveni- of issue and not at any Presiden[illegible]e the Government will not be obliged to undertake the exchange ences of a paper currency, wh[illegible]a.

business of British Burmdments in the Paper Currency Act proposed in the Bill have for their

5. The amen[illegible]

objects :—

1st—to create a Commissioner of the Department of Issue at Rangoon;

2ndly—to make the towns of issue in Burma independent of the Presidencies;

3rdly—to render the paper issued at any town in Burma payable only at the office of issue.

6. The first of these objects is attained by a slight alteration of the fourth section of the Act; the second, by amending section 5 so as to empower the Governor General in Council to declare a town to be situate for the purposes of the Act within a Province as well as a Presidency. The third will be effected by the amendment just described; for the town of issue in Burma can then be declared situate within the Province of British Burma, and Burmese notes will not then be payable at Calcutta or any other Presidency-town.

SIMLA:
The 8th April, 1881.

WHITLEY STOKES.

R. J. CROSTHWAITE,
Offg. Secretary to the Government of India.

[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 20th April, 1881, and was referred to a Select Committee :—

No. 11 of 1881.

Act No. XIV of 1876. ***A Bill to amend the Sindh Incumbered Estates Act, 1876.***

WHEREAS it is expedient to extend the time within which applications under the Sindh Incum- Act No. XIV of 1876. bered Estates Act, 1876, section three, may be made, and otherwise to amend the same Act in manner hereinafter appearing; It is hereby enacted as follows :— Preamble.

1. Applications under the said Act, section three, may be made at any time within six months after the passing of this Act. Time for making applications under Act XIV of 1876, section 3.

2. To the first sentence of section seven of the said Act, the following words shall be added (namely) :— "or which may be incurred by the Manager receiving a loan from Government in the manner hereinafter provided." Amendment of section 7.

3. To section ten of the said Act, the following shall be added (namely) :— "and also for the repayment, either before or after the liquidation of such debts and liabilities, of any loan received from Government by the Manager under this Act." Amendment of section 10.

4. In section sixteen of the said Act, after the words "under section ten," the words "and for the repayment of the money (if any) which the Manager proposes to borrow from Government under this Act" shall be inserted. Amendment of section 16.

5. To section twenty-three of the said Act the following shall be added (namely) :—"or (*c*) by borrowing money from Government at a fair rate of interest." Amendment of section 23.

6. In section twenty-five of the said Act, after the words "mentioned in the liquidation-scheme," the following shall be inserted (namely) :—"and the amount of any loan received from Government under clause (*c*) of section twenty-three, together with the interest (if any) due thereon." Amendment of section 25.

STATEMENT OF OBJECTS AND REASONS.

IT has been the practice for the Manager, under the Sindh Encumbered Estates Act, to borrow, with the previous sanction of Government, from the Treasury and to pay off such creditors as agreed to enter into a compromise in consideration of obtaining speedy payment of their debts. The money so borrowed was repaid by the Manager, with or without interest, as Government directed, from the income of the indebted estate.

Hitherto the money thus borrowed has been regarded as a liability incurred to Government in respect of the property under management within the meaning of section 10 of the Act. This view, however, is based on an erroneous conception of the law, and, as the Act stands, the only way to secure advances made by Government is by mortgaging the indebted estate.

It is objected that as soon as the debts are paid off the estate is released from management, and that Government would then only have the security of an ordinary mortgage for the advance.

It is proposed, therefore, to amend the Act by enabling the Manager to borrow money from Government, and by providing that the estate shall not be released from management until the money so borrowed is repaid with interest.

This will be effected by slight additions to sections 23 and 25. By other amendments the management is made to extend to the debt which may be incurred to Government by the Manager borrowing money, and the Manager is directed, in submitting his liquidation-scheme, to show in it the amount which he proposes to borrow from Government and the way in which he proposes to repay it.

As the management cannot terminate till the whole advance is repaid, there is ample security for its repayment.

The Act allows applications under section three to be made within twelve months from the passing of the Act, and, at the suggestion of the Government of Bombay, it is now proposed to allow a further period of six months from the date of the passing of this amending Act.

SIMLA;
The 12th April, 1881.

J. GI[illegible]

R. J. CRO[illegible]
Offg. Secretary to t[illegible]